UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT COVINGTON

CIVIL ACTION NO. 91-187

JOHN DOE, ET AL — PLAINTIFFS

VS. **MEMORANDUM OPINION**

JAMES KNAUF, ET AL — DEFENDANTS

This matter is before the court on the defendants' motions to dismiss. Defendants James Knauf and Clyde Middleton argue that, under the Supreme Court's recent analysis in *Suter v. Artist M.*, 112 S. Ct 1360 (1992), a private right of action may not be implied under the Juvenile Justice & Delinquency Prevention Act of 1974, 42 U.S.C. §§ 5601-5780 [hereinafter Juvenile Justice Act]. They further argue that the plaintiffs' constitutional claims should be dismissed for failure to state a claim. Defendant Jack Lewis moves to dismiss on the ground that the Juvenile Justice Act does not create substantive rights enforceable through 42 U.S.C. § 1983 and on the basis of Eleventh Amendment immunity. The court overrules the motions to dismiss on these grounds, finding that the plaintiffs have adequately stated their claims and may proceed with this litigation.

The court recognizes that the defendants' argument that the plaintiffs' constitutional claims are too vague to state a claim is not properly before the court. It was not raised in the defendants' original motion, but rather was inserted in their reply brief. Regardless, the court finds that plaintiffs have adequately stated a claim under the Fourteenth Amendment for denial of due

process and under the Eighth Amendment for cruel and unusual punishment. Their amended complaint adequately alleges the facts on which their claims are based to meet the requirements of notice pleading.

The court will discuss other arguments made in the motions in more detail.

Juvenile Justice Act

As a preliminary matter, defendants Knauf and Middleton appear to be claiming that they are entitled to dismissal of the plaintiffs' causes of action citing violations of the Juvenile Justice Act because the Juvenile Justice Act does not itself imply a private right of action. Plaintiffs do not dispute this conclusion. Courts that have considered this issue before have concluded that the Act does not give rise to an express or implied right of action. *Doe v. McFaul*, 599 F. Supp. 1421, 1430 (N.D. Ohio 1984); *Cruz v. Collazo*, 84 F.R.D. 307, 314 (D.P.R. 1979). Since the plaintiffs do not contend that a private right of action exists, the court will accept the analyses of these earlier district courts and deny the defendants' motion to dismiss on this ground.

Plaintiffs are asserting that they may use the "and laws" provision of § 1983[1] to enforce substantive rights created by the Juvenile Justice Act. Defendant Lewis argues that the Act does not

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[1] This statute grants a private right of action to people who, under color of law, are deprived of their "rights, privileges, or immunities secured by the Constitution *and laws*." 42 U.S.C.A. § 1983 (West 1981) (emphasis added).

create enforceable rights. In a civil rights case with largely similar issues about the detention of juveniles, a court noted the difference between § 1983 enforcement and an implied right of action: "If it were true that section 1983 actions to enforce 'federally protected rights' were coextensive with implied private rights of action to enforce federal statutory rights, then the *Thiboutot* decision would have been completely unnecessary." *Grenier v. Kennebec County*, 748 F. Supp. 908, 916 (D. Me. 1990). The court went on to say that under *Maine v. Thiboutot*, 448 U.S. 1 (1980), plaintiffs can use § 1983 to vindicate federally-protected rights not enforceable through implied private causes of action. Another court recognized this distinction in an earlier Juvenile Justice Act case: "If the Court were to define the term 'right' so narrowly that no right would exist unless the Court could find an intent to permit a private suit, nothing would be left of *Thiboutot*." *Hendrickson v. Griggs*, 672 F. Supp. 1126, 1133 (N.D. Iowa 1987), *appeal dismissed*, 856 F.2d 1041 (8th Cir. 1988). Thus, it is apparent that § 1983 can be used to enforce federal laws that do not imply a private right of action.

In *Thiboutot*, 448 U.S. at 4, the United States Supreme Court established that § 1983 provided a right of action for violations of federal statutes. The Court has applied this principle to several cases since 1980, including *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981), *Wright v. City of Roanoke Redev. & Hous. Auth.*, 107 S. Ct. 766 (1987), and *Wilder v. Virginia Hosp. Ass'n*, 110 S. Ct. 2510 (1990). This line of cases illustrates the

Court's test for determining when § 1983 is applicable. Two requirements must be present: 1) the federal statute in question creates an enforceable right, privilege or immunity; and 2) Congress has not foreclosed private enforcement within the statute itself. *See, e.g., Suter*, 112 S. Ct. at 1366; *Wilder*, 110 S. Ct. at 2517; *Wright*, 107 S. Ct. at 770. The Court, in *Wright*, described the way the burden shifts in reference to these two requirements: "[I]f there is a state deprivation of a 'right' secured by a federal statute, § 1983 provides a remedial cause of action unless the state actor demonstrates by express provision or other specific evidence from the statute itself that Congress intended to foreclose such private enforcement." *Wright*, 107 S. Ct. at 770; *see also Hendrickson*, 672 F. Supp. at 1136. In order to make out a *prima facie* case under § 1983, the plaintiff must demonstrate an enforceable right arising from the statute, which the defendant may rebut by showing that Congress foreclosed a private remedy within the statute itself.

In *Wilder*, the Court attempted to elaborate on what constitutes an enforceable right. It noted that a right is not conferred when the statute "reflects merely a 'congressional preference' for a certain kind of conduct rather than a binding obligation on the governmental unit, or . . . the interest the plaintiff asserts is '"too vague and amorphous"' such that it is '"beyond the competence of the judiciary to enforce."'" *Wilder*, 110 S. Ct. at 2517 (citations omitted). In determining whether Congress has foreclosed enforcement through § 1983, the court should look for a

comprehensive remedial scheme within the statute, sufficient to displace the § 1983 remedy. In this regard, state administrative procedures normally do not foreclose resort to § 1983. *Wilder*, 110 S. Ct. at 2523-24.

Contrary to the defendants' assertions, *Suter* follows this same analysis in concluding that the Adoption Assistance and Child Welfare Act does not confer an enforceable right. The Court concluded that the term "reasonable efforts" was too ambiguous for the judiciary to enforce. In addition, the Court specifically distinguished *Wilder* on the basis of the amount of detail in the statute and regulations at issue in that case. *Suter*, 112 S. Ct. at 1368. Therefore, determining whether § 1983 is applicable requires a review of the statute sought to be enforced.

This court holds that the Juvenile Justice Act is sufficiently detailed and mandatory in its language to support the conclusion that it creates rights enforceable through § 1983. In specific, the following subsections make the Juvenile Justice Act more analogous to the Boren Amendment to the Medicaid Act discussed in *Wilder*, 110 S. Ct. 2510, than to the Adoption Assistance and Child Welfare Act discussed in *Suter*, 112 S. Ct. 1360.

> "In accordance with regulations which the Administrator shall prescribe, such plan shall--
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> . . .
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> (12)(B) provide that the State shall submit annual reports to the Administrator containing a review of the progress made by the State to achieve the deinstitutionalization of juveniles described in subparagraph (A) and a review of the progress made by the State to provide that such juveniles, if placed in facilities, are placed in facilities which (i) are the least restrictive alternatives appropriate to the needs of the child and the

> community; (ii) are in reasonable proximity to the family and the home communities of such juveniles; and (iii) provide the services described in section 5603(1) of this title;
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> (13) provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges . . . ."

42 U.S.C.A. § 5633(a)(12)(B), (a)(13) (West 1983).[2] On this basis, the court holds that the plaintiffs may use the "and laws" provision of § 1983 to enforce rights created by the Juvenile Justice Act.

Other courts that have considered this question have reached the same conclusion. The most thorough analyses can be found in *Grenier*, 748 F. Supp. 908, and *Hendrickson*, 672 F. Supp. 1126. Both of these courts found enforceable rights created in the Act at 42 U.S.C.A. § 5633(a)(12)-(14) (West 1983 & Supp. 1992). In *Grenier*, the court interpreted the Supreme Court's analysis in *Pennhurst* as follows: "The clear implication is that the presence of express conditions on federal grants, and the ability of the federal government to withhold funds when such conditions are not satisfied, indicates Congress' intent to create enforceable rights." *Grenier*, 748 F. Supp. at 916. The sections of the Act cited above provide for the withdrawal of federal funds if a state fails to meet the Act's requirements. The *Grenier* court went on to find that Congress did not foreclose the § 1983 remedy: "The power

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[2] These subsections constitute an example of the type of detail required under *Wilder*, 110 S. Ct. 2510, and *Suter*, 112 S. Ct. 1360, and are not intended to be exhaustive.

to cut off federal funds, even combined with other administrative review procedures, is simply insufficient to justify the radical step of precluding plaintiffs from pursuing section 1983 claims." *Grenier*, 748 F. Supp. at 917. The *Hendrickson* court came to the same conclusion in stating that the termination of federal funding is a sanction rather than a remedy. *Hendrickson*, 672 F. Supp. at 1136. Applying the analysis found in Supreme Court cases, these two district courts concluded that § 1983 can be used to enforce rights conferred by the Juvenile Justice Act.

The parties have provided two recent decisions from federal courts in Kentucky to support their opposing positions. Attached to the plaintiffs' memorandum is an opinion in *James v. Wilkerson*, Civil Action No. 89-0139-P(CS), slip op. at 7-9 (W.D. Ky. May 20, 1991), in which Judge Simpson concluded that the plaintiffs could proceed on their theory that the defendants, by violating the Juvenile Justice Act, violated § 1983. This opinion follows the analysis outlined above, finding an enforceable right under the Juvenile Justice Act and no foreclosure of the § 1983 remedy. Defendants rely on a recent order entered by Judge Forester in *Horn v. Devere*, Civil Action No. 91-235 (E.D. Ky. May 8, 1992). Judge Forester determined that since *McFaul*, 599 F. Supp. 1421, is from the same circuit, whereas *Hendrickson*, 672 F. Supp. 1126, is not, *McFaul* was dispositive of this issue. This two-page Order, however, fails to distinguish between implied rights of action and § 1983 enforcement and undertakes no analysis under either line of reasoning. It is possible that in *Horn* the plaintiff did not seek

§ 1983 enforcement of the Juvenile Justice Act. The court declines to follow the order in *Horn* without knowing the basis for the court's conclusion. Defendants' motions to dismiss the plaintiffs' § 1983 claim based on violations of the Juvenile Justice Act are denied.

Eleventh Amendment

Defendant Lewis, the Secretary of Corrections for the Commonwealth of Kentucky, argues that this action is barred by the Eleventh Amendment. His argument appears to be that since his duties to the plaintiffs arise only under state law, this court is prohibited from ordering him to conform his conduct to those standards. He makes a further argument that this court cannot order him to perform discretionary tasks. These arguments are rejected and the motion to dismiss denied on this ground.

The United States Supreme Court has issued many opinions discussing the nuances of application of the Eleventh Amendment when an action is brought against a state or its officials in federal court. In particular, the Court has explored the relationship between the Eleventh and Fourteenth Amendments. From this long line of cases, several fundamental principles may be discerned.

In *Ex parte Young*, 209 U.S. 123 (1908), the Court made clear that a federal court may enjoin a state official from enforcing a state law that disregards the mandates of the federal Constitution. In this regard the Court stated:

U.S. at 337.[4] The Court directed lower courts to look to the substance, rather than the form, of the relief sought. *Papasan*, 106 S. Ct. at 2941.

One court considered an Eleventh Amendment defense to a suit brought under the Juvenile Justice Act. *Grenier v. Kennebec County*, 733 F. Supp. 455 (D. Me.), *as amended*, 749 F. Supp. 28 (D. Me. 1990). The district court held that the Act does not override the state's Eleventh Amendment immunity. There the court applied the principles of *Ex parte Young*, 209 U.S. 123, and *Pennhurst*, 104 S. Ct. 900. It noted the general rule that "[a] state official, however, is not immune from a suit in federal court which seeks prospective injunctive relief under federal law." *Grenier*, 733 F. Supp. at 460.

Defendant Lewis tries to bring himself under the strictures of *Pennhurst*, 104 S. Ct. 900, by arguing that his sole duties to the plaintiffs arise under state law and therefore, they must be seeking an injunction ordering him to conform his conduct to state law. Plaintiffs, however, have brought claims against this defendant under the federal Constitution and the Juvenile Justice Act.[5] Defendant Lewis is not exempt from constitutional standards or the requirements of the Juvenile Justice Act. Therefore, the

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[4] *Cf. Sutton v. Evans,* 918 F.2d 654, 658 (6th Cir. 1990) ("Our cases hold that for an order which has a substantial effect on the state's budget to be valid under the Eleventh Amendment, it must be 'ancillary' to some other form of prospective relief.")

[5] Each claim must be examined to see if it is barred by the Eleventh Amendment. *Henry v. Metropolitan Sewer Dist.*, 922 F.2d 332, 337 (6th Cir. 1990).

> "[I]ndividuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action."

Young, 209 U.S. at 155-56. This pronouncement has been interpreted by the Court to also mean that a federal court may enjoin a state official from breaking federal law. *See Papasan v. Allain*, 106 S. Ct. 2932, 2940 (1986).

Defendant Lewis relies on the Court's holding in *Pennhurst State Sch. & Hosp. v. Halderman*, 104 S. Ct. 900 (1984). There the Court stated: "[A] federal suit against state officials on the basis of state law contravenes the Eleventh Amendment when--as here--the relief sought and ordered has an impact directly on the State itself." *Pennhurst*, 104 S. Ct. at 917. The Court recognized that a federal court may, however, vindicate federal rights under the doctrine of *Ex parte Young*, 209 U.S. 123, but that this interest was not implicated in a suit based on state law. The Court further held that pendent jurisdiction may not be used to circumvent the restrictions of the Eleventh Amendment. *Pennhurst*, 104 S. Ct. at 919. Thus, *Pennhurst* did not limit the federal court's ability to order a state official to conform her conduct to federal law.[3]

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[3] "We decline to endorse the proposition that officials may undermine federal court authority by violating state as well as federal law." *Spruytte v. Walters*, 753 F.2d 498, 514 (6th Cir. 1985), *cert. denied*, 106 S. Ct. 788 (1986).

In some instances, the Court has found that Congress evinced an intent to override the Eleventh Amendment in its enactments. Title VII of the Civil Rights Act of 1964 is an example of such legislation. The Court has held, however, that no legislative intent to abrogate the state's immunity was evident in passing § 1983. *Quern v. Jordan*, 440 U.S. 332, 343 (1979).

> "[Section] 1983 does not explicitly and by clear language indicate on its face an intent to sweep away the immunity of the States; nor does it have a history which focuses directly on the question of state liability and which shows that Congress considered and firmly decided to abrogate the Eleventh Amendment immunity of the States."

Quern, 440 U.S. at 345. Therefore, in an official-capacity suit under § 1983, the limitations of the Eleventh Amendment must be followed.

In addition to examining the type of claim brought by the plaintiff against the state official, the court must also ensure that the remedy sought is consistent with the Eleventh Amendment. In this regard, the Court has stated that suits against state officials should raise on-going violations of federal law and should seek relief that will end the violation. *Papasan*, 106 S. Ct. at 2940. Relief that is compensatory to third parties is barred. *Id.* "On the other hand, relief that serves directly to bring an end to a present violation of federal law is not barred by the Eleventh Amendment even though accompanied by a substantial ancillary effect on the state treasury." *Id.*; *see also Quern*, 440

court denies his motion to dismiss on the ground that Eleventh Amendment immunity is inapplicable here.

IT IS SO ORDERED this 24th day of August, 1992.

William O. Bertelsman

WILLIAM O. BERTELSMAN, CHIEF JUDGE

cc: James T. Redwine
James Bell
Suzanne D. Cordery
C. Thomas Hectus/W. Kenneth Nevitt
John Elfers
8/24/92
jmj