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CIVIL TRACK I
JUDGE DIXON

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

T.I., a minor, by and through
his mother and next friend, D.I.,
et al.,

Plaintiffs,

v.

HAROLD DELIA, Director,
DEPARTMENT OF YOUTH SERVICES, in
his personal and official
capacities, et al.

Defendants.

CLASS ACTION

NO. 90-2-16125-1

PLAINTIFFS' MEMORANDUM
IN OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS INJUNCTIVE
CLAIMS FOR LACK OF
STANDING

I. INTRODUCTION

The defendant King County seeks to dismiss plaintiffs' claims for injunctive and declaratory relief for lack of standing because none of the three named plaintiffs was actually a resident in the King County Detention Facility (KCDF) at the time the lawsuit was filed. King County's observation is correct only because the plaintiffs delayed in filing the lawsuit during the pendency of settlement negotiations with the County. Those negotiations, spanning a number of months, failed, and the lawsuit was filed one week after the last of the plaintiffs, D.I., was released from the facility. This court should deny the motion because it is likely these plaintiffs will experience the overcrowding and other

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2 onerous conditions they have experienced in the past and which are
3 the subject of this lawsuit, and because it would be inequitable
4 to dismiss these claims solely because of plaintiffs' forbearance
5 in filing the suit during the pendency of pre-filing negotiations.
6 In any event, even if King County's motion is found to have
7 technical merit, the problem is easily resolved. Plaintiffs are
8 prepared to amend to add new plaintiffs, who are current residents
9 of the KCDF, as class representatives to resolve any alleged
10 technical deficiency.

11 **II. FACTUAL BACKGROUND**

12 In early March, 1990, the attorneys for the plaintiffs began
13 extensive negotiations with the King County Defendants regarding
14 the conditions in the KCDF. The negotiations spanned a period of
15 five months, and a number of meetings were held to attempt to
16 resolve the claims that were ultimately included in the lawsuit.
17 Declaration of Patricia J. Arthur In Support Of Motion For Class
18 Certification, Ex. A to Plaintiffs' Motion For Class
19 Certification, at 2-3. During the pendency of these negotiations,
20 the plaintiffs T.I., W.F., and D.I. all were residents in the
21 facility. T.I. resided in the facility from February 7, 1990
22 until July 3, 1990, W.F. was in the facility from June 12, 1990
23 until July 2, 1990, and D.I., most recently, was in the facility
24 from June 8, 1990 until August 3, 1990, just days before the
25 Complaint was filed. See Declaration of Dick Carlson. Many of
26 the youth in the KCDF are there for short periods of time. The
27 average length of stay in 1989 was nine days. Some youth stay in

28 **PLAINTIFFS' MEMO IN OPPOSITION TO
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2 the facility for only a matter of hours, while others, like T.I.,
3 remain in the facility for a period of months.

4 After the negotiations regarding KCDF conditions broke down,
5 plaintiffs' counsel filed this lawsuit as a class action on
6 August 10, 1990, approximately seven days after the last of the
7 plaintiffs, D.I., had been released from the facility.
8 Plaintiffs' counsel represent a number of other youth who are
9 current residents of the facility and who are willing to serve as
10 class representatives in this action. Those youth include B.F.
11 and S.K.

12 III. ARGUMENT

13 A. The Criteria For Determining Plaintiffs' Standing In A 14 Class Action Are More Flexible Than In A Conventional 15 Suit.

16 Among the reasons for allowing a group of similarly situated
17 plaintiffs to sue as a class rather than individually are protec-
18 tion of the defendant from inconsistent obligations, protection of
19 the interests of absentees, provision of a convenient and
20 economical means for disposing of similar lawsuits, and facilita-
21 tion of spreading litigation costs among numerous litigants with
22 similar claims. United States Parole Commission v. Geraghty, 445
23 U.S. 338, 403, 100 S. Ct. 1202, 1212 (1980). Benefits accruing to
24 a named plaintiff generally are byproducts of the class-action
25 device. A class representative's right to have a class certified
26 was established in order to achieve the primary benefits of the
27 class action and is more analogous to the "private attorney

28 PLAINTIFFS' MEMO IN OPPOSITION TO
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2 general" concept than to the type of interest traditionally
3 thought to satisfy the "personal stake" requirement. Id.

4 A juvenile resident of King County may be incarcerated at KCDF
5 for any one of a variety of reasons (for example, to await first
6 appearance, to await trial, to serve a sentence). A stay may be
7 as short as a few hours or as long as several months. However
8 long the detention may be, a juvenile inmate at KCDF will be
9 threatened by the harm that is the subject of this suit. Not all
10 detainees, however, will have enough time during their detention
11 to retain an attorney and file a complaint to enjoin the harmful
12 conduct. The named plaintiffs here are cases in point. Although
13 each secured an attorney, they were discharged from KCDF while
14 that attorney was negotiating with DYS officials concerning the
15 violations of which the plaintiffs had complained. That their
16 discharge occurred before the complaint was filed in no way
17 diminishes the likelihood that they will again suffer harm at
18 KCDF. It in no way diminishes the likelihood that unnamed class
19 members will suffer such harm. And, if this action is dismissed
20 because of their discharge, prior to filing of the suit, there
21 will be no diminution of the harm itself. Dismissal will only
22 delay resolution of this case. ¹

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25 ¹ "Some claims are so inherently transitory that the trial
26 court will not have even enough time to rule on a motion for class
27 certification before the proposed representative's individual
28 interest expires." Geraghty, 445 U.S. at 399, 100 S. Ct. at 1210.

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3 It is by no means certain that any given youth, named as a
4 plaintiff, would be in custody at KCDF long enough for this court
5 to certify the class. In this case, however, the constant
6 existence of a class of persons likely to suffer harm at KCDF is
7 certain. Moreover, since the attorneys representing the named
8 plaintiffs and the class are acting as members of public interest
9 law organizations, this court may assume that these attorneys have
10 other clients with a continuing live interest in this case and
11 that those clients will be vigorously represented. See Gerstein
12 v. Pugh, 420 U.S. 103, 110 n. 11, 95 S. Ct. 854, 861 n. 11 (1975).

13 B. T.I., W.F., And D.I. Are Proper Named Class Plaintiffs
14 Because Each Has A Reasonable Fear Of Future Injury At The
15 King County Detention Facility.

16 The defendants assert that, because none of the named plain-
17 tiffs was incarcerated at KCDF on the day this action was com-
18 menced, they do not have a "personal stake" in the action
19 sufficient to establish standing to assert claims for injunctive
20 relief. It is generally recognized, however, that in suits for
21 injunction a "credible threat" or "very significant possibility"
22 of future harm confers standing on a plaintiff. Nelson v. King
23 County, 895 F.2d 1248, 1250 (9th Cir. 1990). The reasonableness
24 of a plaintiff's fear is dependent upon the likely recurrence of
25 the allegedly unlawful conduct. City of Los Angeles v. Lyons, 461
26 U.S. 95, 107 n. 7, n. 8, 103 S. Ct. 1660, 1667-98 n. 7, n.8
27 (1983); Kolendar v. Lawson, 461 U.S. 352, 355 n.3, 103 S.Ct. 1855,
28 75 L.Ed.2d 903 (1983).

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2 As juvenile offenders, the named plaintiffs face a very
3 significant possibility of being reincarcerated at KCDF. All that
4 would be required is for one of them to commit or appear to commit
5 an offense and be arrested for it. He would then be taken
6 directly to KCDF to await further disposition and there would
7 again be subject to the overcrowding and other conditions that are
8 the subject of this action. Such an occurrence is particularly
9 likely in the case of 15-year-old D.I. He has been detained at
10 KCDF 12 times in the last 27 months for such offenses as arson,
11 shoplifting, and criminal trespass and is now in DYS custody at
12 Echo Glen. Given D.I.'s record of extreme recidivism, it is
13 reasonable to assume that, once he is released from Echo Glen
14 Children's Center (which is in King County), as he is scheduled to
15 be at the end of this month, it is not conjecture that he will
16 soon be at KCDF again. Affidavit of Patricia J. Arthur, attached.
17 Compare Kolendar, supra, 461 U.S. at 355 n.3 (standing established
18 because of repeated stops under the challenged statute).

19 It is very likely, too, that T.I., now at Green Hill School,
20 will soon return to KCDF. The case for which he is being held is
21 under appeal and, if the appeal is successful, he would be moved
22 to KCDF pending his retrial. See Affidavit of Patricia J. Arthur.

23 Contrary to the defendants' assertions and unlike the
24 plaintiffs in Nelson (relied upon by King County here), the
25 plaintiffs here base their "personal stake" in the outcome of this
26 action on an individualized showing that there is a very
27 significant possibility that they will suffer future harm at KCDF.

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2 This likelihood is not one of abstract statistical probability, as
3 was the case in Nelson, nor does it require occurrence of a
4 contingent set of events, as suggested by King County here. On
5 Page 8 of their motion to dismiss, King County submits that, in
6 order for the named plaintiffs to establish their "personal stake,
7 "they must (1) stay in King County, (2) commit an offense, (3) be
8 charged to answer for such an offense, (4) be ordered detained at
9 KCDF, and (5) find that conditions at KCDF have not changed."

10 While even this hypothetical chain of events is not at all
11 improbable, it implies complexity where there is none. As for the
12 first link, that should be considered a given. All plaintiffs,
13 when not confined in DYS facilities, live at home (in King County)
14 as is quite normal for children of their age. The second link is
15 one plaintiffs have shown to be quite likely to occur. The third
16 is implicit in arrest for an offense, and the plaintiffs have
17 demonstrated no particular aptitude for avoiding arrest. That
18 step 4 will follow step 3 requires no speculation whatever: KCDF
19 is the holding facility for all arrested juvenile offenders. The
20 final link is tautological, as there will be no cause of action if
21 the complained-of conditions at KCDF are corrected.

22 In this case, there is a distinct, individualized probability
23 that the plaintiffs will suffer future harm of the precise sort
24 that is the subject of this action. They are proper named
25 plaintiffs in this action.

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28 **PLAINTIFFS' MEMO IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS - 7**

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2 C. Standing Should Not Be Denied Simply Because Of
3 Plaintiffs' Forbearance In Filing Suit During The Pendency
4 Of Prefiling Negotiations.

5 This past March, plaintiffs' attorneys began negotiations with
6 DYS officials concerning conditions at KCDF. They met personally
7 with defendant Harold Delia and other KCDF administrators a number
8 of times and communicated with them by letter. The negotiations
9 continued until July 20, 1990, during which time defendant Delia
10 was, himself, represented by counsel. W.F., T.I., and D.I. all
11 were represented by plaintiffs' counsel at some time during the
12 negotiation period, although all were discharged before this
13 action was formally commenced. D.I., for example, was discharged
14 on August 3, 1990. The suit was filed a few days later. D.I. has
15 as much of a "personal stake" in the lawsuit as would a person who
16 was in KCDF on the day of filing and left a few days later.

17 Thus, the only reason King County may even assert lack of
18 standing in this case is because of plaintiffs' forbearance in
19 bringing a suit before the conclusion of prefiling negotiations.
20 Under the circumstances, this Court should not permit King County
21 to raise a standing defense when the only reason a technical
22 standing claim exists is because plaintiffs delayed filing until
23 prefiling negotiations could be fairly concluded.

24 D. Even If The Current Plaintiffs Are Deemed Inadequate,
25 Additional Plaintiffs Who Are Current Residents Of The
26 KCDF, Are Prepared To Become Plaintiffs In This Case.

27 Plaintiffs will file by November 19 a proposed Second Amended
28 Complaint and Motion To Amend, seeking to add as plaintiffs B.I.
and S.K., who are currently incarcerated at KCDF. Insofar as the

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2 court perceives any merit to defendants' highly technical standing
3 argument, amendment to add these plaintiffs will cure it.

4 It should be noted that this case and cause number will remain
5 alive no matter the outcome of defendants' standing claim.
6 Plaintiff W.F. has made a claim for damages, which cannot
7 conceivably be dismissed for lack of standing. Therefore, any
8 necessary adjustment of plaintiffs to cure alleged technical
9 standing problems should occur in this case for reasons of docket
10 economy.

11 CONCLUSION

12 For the reasons set forth above, the motion to dismiss for lack
13 of standing should be denied.

14 Dated this 16th day of November, 1990.

15 Respectfully submitted,

16 HELLER, EHRMAN, WHITE & MCAULIFFE

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18 John W. Phillips
19 Washington State Bar #12185
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On Behalf of Plaintiffs
T.I. and D.I.

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30 DEFENDANTS' MOTION TO DISMISS - 9

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