

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

E.C., J.L., J.C., T.G., B.G., and A.G.,)
each a minor by Next Friend, Jill Katz; et al.,)

Plaintiffs,)

vs.)

Matt Blunt, in his official capacity as)
Governor of the State of Missouri; and)
K. Gary Sherman, in his official capacity as)
Director of the Missouri Department of)
Social Services,)

Defendants.)

Case No. 05-0726-CV-C-SOW

AMENDED COMPLAINT

1. Adoption assistance subsidies are provided by the State of Missouri under federal and state law to help thousands of abused and neglected children, all of them currently or formerly in the custody of the Missouri foster care system, who have highly specialized medical, mental health or other special needs. Federal and state law provide subsidies for these children because, due to their special needs, they would likely not otherwise have a chance for a permanent family through adoption. Over 12,000 children are currently the beneficiaries of adoption assistance subsidies under contracts between the state of Missouri and the child's adoptive parents. Of the over 11,000 abused and neglected children still in the Missouri foster care system, thousands more will be or hope to be the beneficiaries of adoption assistance subsidies that will address their special needs so they can be adopted out of state custody and into a permanent family.

2. In his January 26, 2005 State of the State address, Missouri Governor Matt Blunt promised to “facilitate permanent placement for children who cannot return home” to their parents. However, in a shortsighted, ill-conceived, and illegal effort to restrain future spending, the Missouri Legislature passed and Governor Matt Blunt signed Missouri Senate Bill 539 into law, which will become effective on August 28, 2005. The provisions of Senate Bill 539 that amend Missouri’s adoption and foster care law will cause thousands of current and future foster children in state custody to lose opportunities for a permanent family, as the state unlawfully denies adoption assistance to address their special needs. Indeed, the new law will undermine and undo years of efforts to obtain permanent homes for abused and neglected foster children in Jackson County under the requirements of the existing Modified Consent Decree in *G.L., An Infant, by and through his Next Friend, et al., v. Stangler*, No. 77-0242-CV-W-1.¹ Furthermore, thousands of adopted, former foster children who are currently the beneficiaries of adoption assistance contracts entitling them to benefits until they reach the age of eighteen will suddenly find their contractual benefits modified or cut off entirely, and many of these children will also lose Medicaid benefits because their initial qualification for Medicaid was linked to their receipt of adoption assistance.

3. These harms will all occur because Missouri Senate Bill 539 will retroactively and prospectively render all adoption assistance contracts valid for no more than one year, and will make all such agreements renewable at the discretion of the Director of the Missouri Department of Social Services (“DSS”). The statute further will deem all existing subsidy contracts, regardless of their current duration, to have expired one year after the agreement was first

¹ This case has been filed a related matter to the *G.L.* action, in which the Modified Consent Decree applies to all children in the legal custody of the Missouri Division of Family Services, Jackson County, Missouri Office. Pursuant to Local Rule 83.9 of the United States District Court for the Western District of Missouri, “related cases, by mutual consent of the judges to whom the cases are assigned, shall be transferred to the judge with the lowest number case, without regard to whether the lowest number case is pending.”

entered into for the child's benefit. The new law violates the federal Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997 (collectively the "Adoption Assistance Act"), which prohibits states from unilaterally modifying or terminating adoption assistance contracts, and only allows individualized, periodic adjustments of subsidy amounts with the concurrence of the child's adoptive parents.

4. Additionally, the adoption assistance provisions of Senate Bill 539 will arbitrarily create two classifications of otherwise similarly situated abused and neglected, special needs children, all current or former state wards, and will use a means test to deny the adoption assistance to one group of children and not the other. Specifically, the means test will only be imposed on the income of a child's existing or prospective adoptive parents to deny or terminate a subsidy in cases where the income of the child's biological parents (from whom they were removed and placed into foster care) failed to meet an income eligibility threshold for federal Title IV-E purposes. In so doing, the means test is not rationally related to the state's interest in providing subsidies to the most needy children because the income of a current or former foster child's biological parents bears no relationship whatsoever to the child's need for an adoption assistance subsidy. The statute therefore violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and cannot be enforced. Moreover, its retroactive nullification of legally enforceable contracts for adoption assistance and Medicaid coverage violates the Contracts Clause of the United States Constitution.

5. Plaintiffs, on behalf of themselves and all persons similarly situated, therefore seek an order declaring the adoption assistance provisions of Senate Bill 539 unconstitutional and in violation of and preempted by the federal Adoption Assistance Act; as well as enjoining the defendants from implementing its provisions.

JURISDICTION AND VENUE

6. This is an action brought pursuant to 42 U.S.C. §1983, alleging violations of the United States Constitution and federal statutory law. This court has jurisdiction over the federal claims pursuant to 42 U.S.C. §§1331 and 1343.

7. Venue in this district is proper pursuant to 28 U.S.C. §1391(b) because the claims arise in this district.

PARTIES

Plaintiffs

8. Named Plaintiff E.C., by her Next Friend Jill Katz, resides in the legal custody of the Division of Family Services in Jackson County, Missouri. E.C. is a member of the *G.L. v. Stangler, et al.* class. She has lived in numerous foster homes since entering foster care at the age of 7 and has tired of moving from one home to another. E.C. has formed a bond with her current foster mother and wishes to be adopted by her. She desperately wants to enjoy safety and stability in her life. E.C. is ineligible for Title IV-E adoption assistance and fears that her foster mother will not have the financial capacity to adopt her absent adoption assistance. *See* Declaration of “E.C.” attached as Exhibit A.

9. Named Plaintiff J.C., by his Next Friend Jill Katz, is a 16 year-old now living in the legal custody of the Division of Family Services in Jackson County, Missouri. J.C. is a member of the *G.L. v. Stangler, et al.* class. He has lived in foster care since 1997, following the death of his mother and a short stay with his legal guardian. Since 1997, J.C. has been placed into more foster homes than he can recall. He wishes to be adopted and has experienced several adoptive placements that disrupted before finalization. J.C. believes that a family would give him a better understanding of himself and a place to call home on Christmas. He can only remember

Christmas holidays spent in temporary care in the company of temporary caretakers. J.C. fears that the absence of an adoption subsidy will prevent his dream of realizing an adoptive family.

See Declaration of “J.C.” attached as Exhibit B.

10. Named Plaintiffs T.G., B.G. and A.G., by their Next Friend Jill Katz, are 9, 6 and 4 year-old biological siblings living with their potential adoptive parents, Elizabeth W. Fischer and John S. Fischer, in Jackson County, Missouri. They are members of the *G.L. v. Stangler et al.* class. T.G. is in the 4th Grade and is considered cognitively/developmentally delayed. B.G., who was subjected to abuse in her biological home, has long-term conditions, including bipolar and attachment disorders. All three children have been diagnosed with post-traumatic stress disorder and take prescription medication. The Fischers have initiated adoption proceedings with respect to the three siblings. The Fischers have received notice from the state that the three children may not qualify for Title IV-E adoption assistance and that the Senate Bill 539 means test will determine their eligibility for state funded adoption subsidies. The Fischer’s monthly income is approximately \$7,800, and they fear that adoption assistance will not be offered. The state now pays the Fischers \$1800 per month in foster care maintenance payments, with two of the children being paid at the behavioral rate. The three siblings all would have been eligible for Title IV-E assistance, but for errors in family court documents only detected by the state after the timeframe for perfecting Title IV-E eligibility had expired. See Affidavit of Elizabeth W. Fischer attached as Exhibit C.

11. Named Plaintiffs W.S., M.S., and D.S., by their parent and Next Friend Robert Brian Strange, are boys aged 10, 7 and 6, respectively, who were adopted from the Missouri foster care system in 2000 as a sibling group. The boys were all in the *G.L. v. Stangler et al.* class prior to their adoption. They now live with their adoptive parents, Robert and Jennifer, in Cass County,

Missouri. The boys were initially removed from their biological home after M.S. sustained severe burns when held against a hot water heater by his mother. D.S. is developmentally disabled. The Stranges' annual income is about \$62,400. They currently receive three separate \$275 adoption assistance payments each month under the adoption assistance agreements they executed with the state of Missouri on behalf of each of the boys. The Stranges cannot support the medical, educational, emotional and physical needs of the boys absent the adoption assistance. The state of Missouri has sent a notice letter to the Stranges stating that W.S.'s and M.S.'s adoption assistance payments will terminate if the family's gross annual income exceeds the Senate Bill 539 means test. *See* Affidavit of Robert Brian Strange attached as Exhibit D.

12. Named Plaintiff M.P., by his parent and Next Friend Michael Patterson, is a 16 year-old adopted child who currently resides with his father in Jackson County, Missouri. Named Plaintiff J.L., by his Next Friend Jill Katz, is a 16 year-old foster child who has been placed with Mr. Patterson by the Jackson County Office of the Children's Division. J.L. is a member of the *G.L. v. Stangler et al.* class, as was M.P. before his adoption. Mr. Patterson currently receives a monthly \$651 adoption subsidy under an adoption assistance agreement he executed with the state of Missouri on behalf of M.P. Mr. Patterson cannot afford M.P.'s physical, emotional, medical and educational needs absent the adoption subsidy. The state of Missouri has sent a notice letter to Mr. Patterson stating that M.P.'s adoption assistance payments will terminate if his gross annual income fails the Senate Bill 539 means test, which he expects to occur. J.L. has asked Mr. Patterson to adopt him; however, Mr. Patterson is unsure whether he can afford to raise J.L. without an adoption subsidy. Mr. Patterson is financially more able to care for J.L. as a foster parent, because J.L. receives monthly foster care maintenance payments from the

Children's Division in his current foster status. *See* Affidavit of Michael Patterson attached as Exhibit E, and Declaration of J.L. attached as Exhibit F.

13. Named Plaintiff A.C., by his parent and Next Friend Lana Capps, is a 5 year-old boy who was adopted from the Missouri foster care system in 2002. A.C. and Ms. Capps live in Boone County, Missouri. A.C. suffers from a congenital heart disorder that has necessitated 14 hospitalizations during his young life. He will require additional heart surgeries. Ms. Capps earns approximately \$3,600 a month. She currently receives a monthly \$651 adoption subsidy under an adoption assistance agreement she executed with the state of Missouri. Ms. Capps cannot afford A.C.'s necessary and regular medical care absent the adoption subsidy. The state of Missouri has sent a notice letter to Ms. Capps stating that A.C.'s adoption assistance payments will terminate if her gross annual income exceeds the Senate Bill 539 means test – that is, 200% of the federal poverty level for a family of two, or \$25,660 under current federal guidelines. Ms. Capps earns approximately \$43,200 a year and, therefore, will exceed the Senate Bill 539 means test and lose A.C.'s subsidy payments under the new law. *See* Declaration of Lana Capps attached as Exhibit G.

14. Named Plaintiff J.A., by his parent and Next Friend John Antonich, is a 15 year-old boy. He was adopted from the Missouri foster care system in 2004 after some 6 years in foster care. J.A. lives with his adoptive parents in Jefferson County, Missouri. While in foster care, J.A. lived in 23 different foster homes between the ages of 8 and 10. He later was placed into group care after a suicide attempt. J.A. suffers from severe anxiety, attention deficit hyperactive disorder (“ADHD”), oppositional defiant behavior, and depression. The depression condition has required hospitalization. J.A. also has required intensive tutoring to improve his challenged educational growth. Mr. earns approximately \$4,580 a month. The family currently receives a

monthly \$651 adoption subsidy under an adoption assistance agreement they executed with the state of Missouri. This family cannot afford the considerable educational, psychiatric and behavioral care necessary to address J.A.'s special needs absent the adoption subsidy. The state of Missouri has sent a notice letter to the Mr. and Mrs. Antonich stating that their adoption assistance payments will be terminated if their annual income exceeds the Senate Bill 539 means test – 200% of the FPL for a family of 3 is \$32,180 under current federal guidelines. Mr. Antonich earns approximately \$54,960 per year, and his income will, therefore, surpass the Senate Bill 539 means test. *See* Declaration of John H. Antonich attached as Exhibit H.

15. Named Plaintiffs T.J. and A.J., by their parent and Next Friend Lavada Johnson, are 7 and 5 years old, respectively. They were adopted from the Missouri foster care system. Ms. Johnson, who is 60 years old, also supports two children in therapeutic foster care. T.J. suffers from severe asthma, sinus disease, ADHD and hypoglycemia and requires daily medication. A.J. suffers from chronic lung disease, chronic and persistent asthma and ADHD and also requires daily medication. Ms. Johnson earns approximately \$1,160 a month. She currently receives monthly \$651 adoption subsidy payments under the adoption assistance agreements she executed with the state of Missouri. Ms. Johnson cannot afford the considerable medical, psychiatric, educational and emotional care necessary to address T.J.'s and A.J.'s special needs absent the adoption subsidy. The state of Missouri has sent a notice letter to Ms. Johnson stating that the children are Title IV-E eligible, but that her adoption assistance agreements will automatically expire in 2006. *See* Declaration of Lavada Johnson attached as Exhibit I.

16. Named Plaintiff N.S., by his parent and Next Friend Tammy Smith, is a 3 year-old boy who was adopted from the Missouri foster care system in 2002 by Ms. Smith and her spouse, Harold Smith. N.S. lives with his adoptive parents in Boone County, Missouri. N.S. suffers

from severe asthma and takes 4 different medications daily to control the condition. N.S. also requires two breathing treatments twice daily. The asthma condition occasionally results in asthmatic crises and has required as many as 11 visits to the hospital in one 13-month span. Because of N.S.'s condition and special needs, the Smiths have had to modify their home, including, but not limited to, the removal of carpeting and the installation of special flooring and bedding. The Smiths earn approximately \$3,250 a month. They currently receive a monthly \$651 adoption subsidy under an adoption assistance agreement they executed with the state of Missouri. The Smiths cannot afford N.S.'s necessary and regular medical care or his special educational requirements absent the adoption subsidy. The state of Missouri has sent a notice letter to the Smiths stating that N.S.'s adoption assistance payments, made under Title IV-E, will expire within one year and made renewable at the discretion of the DSS Director. The Smiths have obtained approval to adopt a second child, but have serious concerns that such a decision will cause a financial hardship absent an adoption subsidy. *See* Declaration of Tammy Smith attached as Exhibit J.

Defendants

17. Defendant Matt Blunt is the Governor of Missouri, and is sued in his official capacity. His business address is Office of the Governor, Room 216, State Capitol Building, Jefferson City, Missouri 65101. Pursuant to Article IV of the Missouri State Constitution, Governor Blunt is directly responsible for ensuring that all Missouri agencies, including DSS, comply with applicable federal and state laws. Governor Blunt signed Senate Bill 539, which will take effect on August 28, 2005.

18. Defendant Gary Sherman is the Director of the Missouri DSS and is sued in his official capacity. His business address is Office of the Director, Broadway State Office Building, P.O.

Box 1527, Jefferson City, Missouri 65102. In his role as Director of DSS, Defendant Sherman is directly responsible for managing DSS and for supervising the adoption assistance programs in the state of Missouri as described by federal and Missouri law.

CLASS ACTION ALLEGATIONS

19. This action is properly maintained as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(2).

20. The class is defined as: “All future, current and former foster children in the Missouri foster care system, for whom adoption was, is or will be a court-ordered permanent placement goal, and who are or would be beneficiaries of adoption assistance subsidies under Missouri law as unchanged by Senate Bill 539.” A Means Test Subclass is defined as: “All class members for whom Senate Bill 539 would impose a means test on the income of their current or prospective adoptive parent(s) to terminate or deny ongoing adoption assistance subsidy payments for the benefit of those Class members.” An Existing Contracts Subclass is defined as: “All Class members that are beneficiaries of existing adoption assistance agreements between their adoptive parents and the Missouri Department of Social Services that were executed on or before August 27, 2005.”

21. The plaintiff class and subclasses are sufficiently numerous. As of June 2005, there were approximately 11,196 foster children in the Missouri foster care system. On average, these children have been in the custody of the Children’s Division for over 26 months and, at the end of June 2005, there were 2,002 foster children awaiting adoption. Furthermore, in the Fiscal Note analyzing the budgetary impact of Senate Bill 539, the Department of Social Services estimated that without the bill it would have an average monthly caseload of 12,474 former foster children receiving adoption assistance subsidies. Therefore, the class as a whole is

comprised of at least 14,000 current and former foster children who are either adopted or awaiting adoption and joinder of all class members is impracticable.

22. Furthermore, the same can be said for each of the subclasses. In the Fiscal Note for Senate Bill 539, the Department of Social Services reported that the bill would impose a means test on the adoptive parents of 43% (5,364) of its former foster children now receiving adoption assistance and that just over half, or 2,685, would fail the test and lose the assistance payment. The Means Test Subclass, therefore, is sufficiently numerous such that joinder would be impracticable. Moreover, more than 12,000 Class members are currently beneficiaries of adoption assistance agreements between their adoptive parents and the Department of Social Services, making the Existing Contracts Subclass sufficiently numerous to satisfy Rule 23(a).

23. The questions of law and fact raised by the Named Plaintiffs are common to and typical of those raised by the putative class. Each Named Plaintiff and each putative class member is subject to Defendants' laws, practices and policies concerning adoption assistance subsidy contracts, and is subject to Senate Bill 539 and Defendants' unlawful pattern and practice of implementation.

24. Common questions of law include:

- a. whether Senate Bill 539 violates Plaintiffs' rights under the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 620-629(i) and 670-679(b), and relevant federal regulations;
- b. whether Senate Bill 539 denies members of the Means Test Subclass equal protection under law as prohibited by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and

- c. whether Senate Bill 539 impairs the rights and obligations of the contracts that benefit the members of the Existing Contracts Subclass as prohibited by the Contracts Clause, Article I, Section 10 of the United States Constitution.

25. Common questions of fact include:

- a. whether Defendants are retroactively and prospectively rendering all adoption assistance subsidy contracts for the benefit of class members valid for no more than one year;
- b. whether Defendants are retroactively and prospectively rendering all adoption assistance subsidy contracts for the benefit of class members annually renewable at the discretion of the DSS Director;
- c. whether Defendants are deeming all existing subsidy contracts for the benefit of class members, regardless of their current duration, to have expired one year after the agreement was first entered into;
- d. whether Defendants have created two groups of otherwise similarly situated abused and neglected, special needs children, all of them current or former wards of the Missouri foster care system, and will apply a means test to deny or terminate the subsidy benefit for one of these groups of children (whom the state previously deemed ineligible under Title IV-E) but not the other (whom the state previously deemed eligible under Title IV-E); and,
- e. whether Defendants are nullifying the primary terms of pre-existing, long-term adoption assistance agreements between the Missouri Department of Social Services and parents that adopted former wards of Missouri's foster care system.

26. The legal violations shared by the Named Plaintiffs are typical of those shared by each member of the putative class and sub-classes. The harms suffered by the Named Plaintiffs are typical of the harms suffered by all children in the putative class.

27. Each Named Plaintiff appears by a next friend pursuant to Fed. R. Civ. P. 17(c) and each next friend is sufficiently familiar with the facts of the child's situation to fairly and adequately represent the child's best interests in this litigation.

28. The Named Plaintiffs will fairly and adequately protect the interests of the members of the putative class. The Named Plaintiffs and the putative class are represented by John Amman and Amy Sanders of the Saint Louis University Legal Clinic, St. Louis, Missouri; James P. Meuhlberger, Lori Burns-Bucklew and Nicholas P. Mizell of Shook Hardy & Bacon, Kansas City, Missouri; Marcia Robinson Lowry, Ira P. Lustbader and Sara M. Bartosz of Children's Rights, Inc, New York, New York; Thomas Kennedy and Deborah Greider of the Kennedy Law Office, Alton, Illinois; and James Wilson and Stephen Reynolds of Berg, Borgmann, Wilson & Wolk, LLP, St. Louis, Missouri. The above counsel for Plaintiffs collectively have extensive experience in complex child welfare class actions and are willing and able to vigorously prosecute this action. Counsel for Plaintiffs know of no conflicts among members of the putative class or subclass.

29. Defendants have acted or refused to act in a manner generally applicable to the putative class, making class-wide declaratory and injunctive relief appropriate and necessary.

**SYSTEMIC ALLEGATIONS CONCERNING THE MISSOURI ADOPTION
ASSISTANCE SUBSIDY PROGRAM**

Defendants' Unilateral Modification or Termination of All Subsidy Contracts

30. Congress enacted the Adoption Assistance Act to "establish a program of Federal support to encourage adoptions of children with special needs." 1980 U.S. Code Cong. And Admin

News at 1448, 1460. Children with special needs are those for whom the State has “determined that the child cannot be returned to the home of his parents” and that “there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under title XIX” and “except where it would be against the child’s best interests . . . a reasonable, but unsuccessful effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under title XIX.” 42 U.S.C. § 673(c).

31. The June 28, 2005 Child Welfare Policy Manual of the U.S. Department of Health and Human Services, Administration for Children Youth and Families, includes a Policy Announcement stating that:

The legislative history [of the adoption Assistance Act] indicates that Congress was concerned primarily with moving children in State foster care systems into permanent adoptive homes when appropriate. The Title IV-E adoption assistance program, therefore, was developed to provide permanency for children with special needs in public foster care by assisting States in providing ongoing financial and medical assistance on their behalf to the families who adopt them.

ACYF-CB-PA-01-01 (1/23/01).

32. The Missouri Child Welfare Manual, Section 4 Chapter 30, subsection 30.1 similarly states: “adoption or legal guardianship is a desired outcome for children who cannot be reunified with their families.” The Missouri Child Welfare Manual states that “[a]doption subsidy is a service that may be used to assist in providing permanency for children who, because of special needs, might not otherwise be adopted, and for whom a family is not readily available.” Additionally, the same provision in the manual states that “[s]ignificant to the use of the

adoption/legal guardianship subsidy, is the realization that without this resource the family would not otherwise have the resources to provide permanency to a special needs child.”

33. The subsidized federal adoption assistance program provides federal matching funds to states once a state determines that a child in foster care is eligible for such assistance. The federal funding structure under Title IV-E provides federal reimbursement rates for states that establish “qualifying plans” to provide adoption assistance.

34. The State of Missouri has a qualifying Title IV-E State Plan and receives federal funding for adoption assistance. The Missouri Department of Social Services is the state agency responsible for submitting the Missouri State Plan to the Secretary of Health and Human Services for approval. The Missouri State Plan requires the state’s foster care and adoption assistance programs to comply with federal law. Missouri state law, § 453.074 1.(1) and (6) R.S.Mo. (2005) states that “the division of family services shall have the following duties in the administration of the subsidy program: . . . Comply with all federal laws relating to adoption subsidies in order to maintain the eligibility of the state of Missouri for federal funds.”

35. The Missouri State Plan also provides that all children who are, or have been, in the custody of the Division of Family Services after 1999, are considered to have “special needs” for the purposes of adoption assistance subsidies. Similarly, Section 4 Chapter 30.2 and 30.4(C) of the Missouri Child Welfare Manual states that all abused and neglected children currently or formerly in the custody of the Division’s foster care program are considered special needs and thus are eligible for an adoption assistance subsidy.

36. The federal Adoption Assistance Act prohibits states from unilaterally modifying or terminating adoption assistance subsidy contracts. 42 U.S.C. § 673(a)(3) provides, in part:

The amount of the payments [adoption subsidies] to be made in any case under clauses (i) and (ii) of paragraph (1)(B) shall be determined through agreement between

the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child to be adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances.

37. The June 28, 2005 Child Welfare Policy Manual of the U.S. Department of Health and Human Services, Administration for Children Youth and Families, includes the following Policy Announcement:

States may limit the duration of payments under an adoption assistance agreement for individual eligible children to a period which may end prior to the child's eighteenth birthday, if the decision is made on a case-by-case basis, taking into consideration the provisions of [672(a)(2)]. **States may not have a blanket policy which limits the duration of all adoption assistance payments to a date earlier than the eighteenth birthday of eligible children**, although a time limit may be set in individual cases with the concurrence of the adopting parents, depending on the needs of the child and the circumstances of the parents.

ACYF-CB-PA-01-01 (1/23/01) (emphasis added).

38. Missouri state law, 453.073.1 R.S.Mo. (2005), unchanged by Senate Bill 539, states:

“Determination of the amount of monetary need is to be made by the division at the time of the placement, if practicable, and in reference to the needs of the child, including consideration of the physical and mental condition, and age of the child in each case[.]”

39. Senate Bill 539, when it becomes effective on August 28, 2005, will amend the language of Missouri state law, 453.073 R.S.Mo. (2005), and specifically 453.073.3(4), to state: “The time period for which the subsidy is granted shall not exceed one year. The agreement can be renewed for subsequent years at the discretion of the Director. All existing agreements will have deemed to have expired one year after they were initially entered into.”

40. On its face, Senate Bill 539 unlawfully imposes a blanket policy that renders all current and prospective adoption assistance subsidy contracts of one-year duration, renders all such

contracts annually renewable at the discretion of the DSS Director and without the concurrence of the adoptive parents, and thus violates the Adoption Assistance Act.

41. Senate Bill 539, if allowed to take effect, threatens to irreparably harm thousands of future, current and former foster children by unlawfully deeming all subsidy agreements, current and prospective, to expire in one year.

42. Moreover, Senate Bill 539 threatens to reverse the significant improvements in permanency outcomes achieved in Jackson County, Missouri under the court-supervised consent decree entered in *G.L. et al. v. Gary Stangler et al*, No. 77-0242-CV-W-1 in the Western District of Missouri. The systemic reforms implemented in Jackson County under the *G.L.* consent decree have caused the average time a child spends in foster care before realizing adoption to fall from 36.12 months in 1994 to 26.99 months in 2004. Similarly, the average length of time between the identification and assignment of adoption as a child's permanency goal to the child's adoptive placement has fallen from 23.37 months in 1995 to 15.92 months in 2004. *See* July 1, 2004 through December 31, 2004 Report of Compliance, *G.L. et al. v. Gary Stangler et al.* The instability and uncertainty that Senate Bill 539 will introduce into the adoptive arena threatens to undermine these important gains for Missouri's vulnerable children in Jackson County.

Defendants' Arbitrary Creation of Two Groups of Similarly Situated Children for Granting or Denying Adoption Assistance Subsidies

43. Senate Bill 539 also modifies Missouri state law 453.073(4) R.S.Mo. (2005), by adding a new subsection (6) which states: "The subsidy shall only be granted to children who reside in a household with an income that does not exceed two hundred percent of the federal poverty level or are eligible for Title IV-E adoption assistance."

44. Senate Bill 539 creates two groups of otherwise similarly situated abused and neglected special needs children, all of them current or former wards of the Missouri foster care system. For one group of children, at the time of the initial adoptive placement (which for most children occurred while the child was still in foster care), the child did not meet the Title IV-E eligibility requirements. For these children, the State will apply a means test to their current or prospective adoptive parents. If the child's adoptive parents' income is more than two hundred percent of the federal poverty level (currently \$32,180 annually for a family of three), a subsidy will be denied, or, if the subsidy was ongoing, the subsidy will be terminated.

45. For another group of children, at the time of the initial adoptive placement, the child did meet the Title IV-E eligibility requirements. For these children, the State will not apply a means test to their current or prospective adoptive parents.

46. Federal law creates four distinct Title IV-E eligibility categories for adoptive children qualified to receive Title IV-E adoption assistance benefits by virtue of their special needs status. These four eligibility categories are as follows: (1) the special needs child was eligible for AFDC benefits (as defined in 1996) during the month in which court proceedings for adoption were initiated or was eligible for said benefits within 6 months prior to that time, or (2) the special needs child was eligible for Supplemental Security Income ("SSI") programs under the Social Security Act before adoption, or (3) the special needs child's parent was in foster care and

receiving Title IV-E funds that covered both the parent and the child when the adoption was initiated, or (4) the special needs child previously received adoption assistance, and his or her adoptive parent died or the adoption was dissolved. The special needs child need only meet one of the above four eligibility prongs to claim a right to Title IV-E adoption assistance.

47. In a May 13, 2005 press release, Governor Blunt publicly stated that the changes made by Senate Bill 539 are “to ensure that taxpayer funded assistance is getting to the most needy.” However, the means test and the categorizing of children to whom it will be applied bear no rational relationship to the governmental purpose of using state funded subsidies for the “most needy.” Children who were previously deemed by the state to be eligible under Title IV-E are no more or less needy than the children who were previously deemed ineligible under Title IV-E. Similarly, the adoptive parents of children who were previously found IV-E eligible are not more or less in need of an adoption assistance subsidy than the adoptive parents of children who were previously found to be IV-E ineligible. This is because the requirements determining eligibility for Title IV-E at the time of the adoptive placement bear no relationship to the child’s individual need for a subsidy or the individual circumstances of the child’s current or prospective adoptive parent.

48. For example, if a IV-E eligible foster child was adopted five years ago and a subsidy has been provided for the child’s benefit, the means test of Senate Bill 539 would not apply, and the adoption assistance would continue regardless of whether the current income of the child’s adoptive parents is more than 200% of the FPL. However, if a IV-E ineligible child with severe and profound special needs was adopted five years ago and a subsidy has been provided for the child’s benefit, a means test will be now applied to the family’s income, and the adoption

assistance would *not* continue if the current income of the child's adoptive parents is more than 200% of the FPL.

49. The only way to equally apply a means test would be to means test every current or prospective adoptive parent. However, the federal Adoption Assistance Act prohibits means testing. The HHS Child Welfare Policy Manual provides in Section 8.2A.2, "the use of a means test is prohibited in the process of selecting a suitable adoptive family" Child Welfare Policy Manual, Section 8.2A.2.

50. The means test in Senate Bill 539 is arbitrary and bears no rational relationship to the state's interest in limiting state tax dollars to the most needy children. Senate Bill 539, if allowed to take effect, threatens to irreparably harm children in the means test subclass.

Defendants' Unilateral Termination of Medicaid Health Benefits to Beneficiaries of State-Funded Adoption Subsidies

51. Prior to and until the effective date of Senate Bill No. 539, the State of Missouri has furnished and will continue to furnish state-funded adoption assistance benefits to special needs children pursuant to the provisions of Missouri Revised Statutes, Chapter 453, Section 453.073, Subparts 1 through 3(1)-(6). Section 453.073, Subparts 1 through 3(1)-(6) make no provision for family income means testing in determining either the eligibility of a particular child for adoption assistance or the amount of that assistance.

52. Pursuant to the provisions of the Adoption and Safe Families Act of 1997 ("ASFA"), all children receiving either Title IV-E funded or non-Title IV-E, state-funded adoption assistance benefits must also be made eligible for and receive Medicaid health care coverage under the State's Medicaid Plan, as duly approved by the Department of Health and Human Services. 42 U.S.C. 675 *et. seq.* Prior to and until the effective date of Senate Bill No. 539, all children receiving either Title IV-E or state-funded adoption assistance benefits in Missouri were and will

continue to be provided with Medicaid health care coverage, regardless of the gross income of their respective adoptive families.

53. Senate Bill No. 539 amends Missouri Revised Statutes, Chapter 453, Section 453.073 to include a Subpart 4 that provides: “[t]he subsidy shall only be granted to children who reside in a household with an income that does not exceed two hundred percent of the federal poverty level or are eligible for Title IV-E adoption assistance.” Subpart 4 thereby subjects state-funded adoption assistance benefits to blanket means testing.

54. As a direct result of Senate Bill No. 539, and specifically the inclusion of the Subpart 4 means test provision, many special needs children who under preexisting Missouri law were eligible for and received Medicaid health care coverage by virtue of their status as recipients of state-funded adoption assistance benefits no longer will receive adoption assistance or Medicaid health care coverage. These effected children will fall into two categories: (a) non-IV-E special needs children placed into adoptive homes where the earner(s) have a gross income exceeding 300% of the FPL (the income threshold for Medicaid coverage under Missouri’s 1115 SCHIP Demonstration Waiver) and (b) non-IV-E special needs children placed into adoptive homes where the earner(s) have a gross income above 200% and below 300% of the FPL and possess the resources to secure “affordable health care coverage” – defined, by Senate Bill No. 539, Section 208.640(2), as private health care coverage with a premium amount equaling 133% or less than the average premium required in the state’s consolidated health care plan. *See* Title XXI of the Social Security Act, 42 U.S.C. 1397 *et. seq.* Senate Bill No. 539 contains no grandfather clause preserving state-funded adoption assistance and Medicaid rights bestowed prior to the effective date of the new law, and the above categories of children will include both those special needs children who already have qualified for and received adoption assistance under prior law

in Missouri and those special needs children whose prospective adoptive placements will be within families with gross incomes exceeding 200% of the FPL, under the new means test.

55. As applied to the Means Test Subclass, Senate Bill No. 539 violates the clear intent and requirement of the Adoption Assistance Act to assure government-funded health insurance coverage for all special needs adopted children to meet their unique physical and emotional needs. The means test introduced by Senate Bill No. 539 will deprive numerous special needs children in Missouri of health care coverage previously guaranteed under the Adoption Assistance Act, and further violates the Equal Protection rights of these children. Any means test that will deny Medicaid or other health insurance coverage to the Means Test Subclass bears no rational relationship to providing state-funded subsidies to the most needy children.

56. The denial of Medicaid or other health benefits to the Means Test Subclass threatens to irreparably harm these children by denying them critical health care coverage.

Defendants' Unilateral Impairment of Existing Adoption Assistance Agreements Entered into by the State of Missouri for the Benefit of its Special Needs Children

57. Senate Bill 539, on its face, will substantially impair existing adoption assistance agreements in Missouri. The Adoption Assistance Act requires that a binding agreement be executed between the state and the adoption assistance recipient. Likewise, RSMO 453.073 provides: "a written agreement shall be entered into by the division and the parents. The agreement shall set forth the following terms and conditions: (1) The type of allotment ;(2) The amount of assistance payments;(3) The services to be provided; (4) The time period for which the subsidy is granted."

58. The state-authored, standard form Adoption Assistance Agreement customarily and routinely entered into between the state of Missouri and adoptive parents, as parties and signators, provides for the continuation of benefits until (1) the 18th birthday of the adopted child,

or (2) termination of the parents' rights to the child, or (3) the parent is no longer financially responsible for the child, or (4) the child is no longer in the legal custody of the parents, or (5) the child has moved out of the home or (6) the child or both adoptive parents have died. In contravention of this essential contractual understanding, Senate Bill 539 explicitly provides that "all existing agreements will have deemed to have expired one year after they were entered into" Section 453.073.1(4).

59. Senate Bill 539 further provides that "[t]he agreement can be renewed for subsequent years at the discretion of the director." Section 453.073.1(4). Also, children in the Means Test subclass will have their contractual benefits denied or terminated. The new law thereby interferes with and frustrates the clear and reasonable expectation of adoptive parents when they act to adopt a special needs foster child and enter into an adoption assistance agreement that government-paid subsidies will continue until the adoptive child attains the age of majority. This continuous benefits stream forms the very essence of the adoption assistance agreement from the perspective of both contracting parties – the parents, who accept legal responsibility for a special needs child, and the state, which secures permanency for the foster child in a stable family setting and frees itself of legal custody.

60. The impairment of existing contractual rights to be caused by Senate Bill 539 serves no legitimate governmental purpose, and certainly not the best interests of the state's most needy – its vulnerable, special needs children adopted out of foster care. Instead, the new law completely interferes with and undermines the essential contractual promises and valuable consideration exchanged by the state in order to secure adoptive parents for special needs children. This retroactive nullification of the state's covenants and commitments violates the Contacts Clause

of the United States Constitution, as it constitutes a substantial impairment of pre-existing contractual rights.

CAUSES OF ACTION PURSUANT TO 42 U.S.C. § 1983

**FIRST CAUSE OF ACTION: ADOPTION ASSISTANCE ACT
(Asserted on behalf of All Class Members)**

61. Each and every allegation of the Complaint is incorporated as if fully set forth herein.

62. Senate Bill 539 on its face violates the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, 42 U.S.C. 620-627, 670-679a (collectively the “Adoption Assistance Act”), and by virtue of their foregoing actions and inactions, Defendants are engaging in a policy, pattern, and practice of depriving Plaintiffs of rights individually conferred upon them by the Adoption Assistance Act and the regulations promulgated thereunder (45 C.F.R. Parts 1355-1357). These rights include, but are not limited to: the right to have adoption assistance subsidy payments for their benefit individually determined by mutual agreement with the State or local agency administering the subsidy program that takes into consideration on a case by case basis the needs of the child and the circumstances of the adopting parents; the right not to have adoption assistance subsidy payments readjusted, modified or terminated without the concurrence of the adoptive parents and based on the individualized needs of the child; the right not to be subject to a blanket policy that automatically limits the duration of adoption subsidy agreements; the right to health insurance coverage for any child who has been determined to have special needs for whom there is in effect an adoption assistance agreement funded solely by State funds; the right to be accurately determined for eligibility for adoption assistance; and the right to the State’s compliance with the terms of the Title IV-E State Plan concerning adoption assistance. *See* 42 U.S.C. § 671(a)(3);

671(a)(12); 671(a)(21); 673(a)(1); 673(a)(2); 673(a)(3); 673(c); 675(3); and 45 C.F.R. Parts 1355-1357.

**SECOND CAUSE OF ACTION: EQUAL PROTECTION UNDER THE FOURTEENTH
AMENDMENT TO THE UNITED STATES CONSTITUTION
(Asserted on behalf of the Means Test Subclass)**

63. Each and every allegation of the Complaint is incorporated as if fully set forth herein.

64. The foregoing actions and inactions of the Defendants are inconsistent with the exercise of reasonable professional judgment and also amount to a pattern, practice and custom of deliberate indifference to the constitutional rights of children in the Means Test Subclass.

65. Missouri Senate Bill 539 and Defendants' foregoing actions and omissions intentionally and arbitrarily create two groups of otherwise similarly situated abused and neglected, special needs children, all of them current or former wards of the Missouri foster care system, and will deny or terminate adoption assistance subsidy benefits, Medicaid and other services to the Means Test Subclass but not other similarly situated children, through the use of a means test on the income of their current or prospective adoptive parents. Defendants' implementation of the means test and denial or termination of adoption assistance subsidies, Medicaid and other services for the benefit of the Means Test Subclass bears no rational relation to a legitimate state interest and violates their Equal Protection rights.

**THIRD CAUSE OF ACTION: CONTRACTS CLAUSE OF THE UNITED STATES
CONSTITUTION
(Asserted on behalf of the Existing Contracts Subclass)**

66. Each and every allegation of the Complaint is incorporated as if fully set forth herein.

67. As a result of Defendants' foregoing actions and inactions, the essential rights and obligations in the long-term, pre-existing contracts of which members of the Existing Contracts Subclass are intended third-party beneficiaries will be substantially impaired without serving a

legitimate governmental purpose. This substantial impairment of contractual rights through the retroactive application of a newly enacted statute violates the Contract Clause, Article I., Section 10 of the United States Constitution.

PRAYER FOR RELIEF

68. WHEREFORE, the Plaintiff children respectfully request that this Court:
- a. Assert jurisdiction over this action;
 - b. Order that all Plaintiffs may maintain this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;
 - c. Declare pursuant to Rule 57 of the Federal Rules of Civil Procedure: (1) that the portion of Senate Bill 539 replacing Missouri state law Section 453.073 conflicts with, violates and is preempted by the federal Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, and regulations promulgated thereunder; (2) that the portion of Senate Bill 539 replacing Missouri state law Section 453.073 is unconstitutional on its face under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; (3) that the portion of Senate Bill 539 replacing Missouri state law Section 453.073 violates Plaintiffs' rights under the Contracts Clause, Article I, Section 10 of the United States Constitution;
 - d. Permanently enjoin defendants from enacting or implementing the portion of Senate Bill 539 replacing Missouri state law Section 453.073 and otherwise prevent these provisions from taking effect;
 - e. Order appropriate remedies to ensure Defendants' future compliance with federal law concerning adoption assistance subsidies;

- f. Award Plaintiffs their reasonable attorneys fees and costs pursuant to 42 U.S.C. § 1988 and 1920 and Federal Rule of Civil Procedure 23(e) and (h); and
- g. Grant such other and further equitable relief as the Court deems just, necessary and proper to protect Plaintiffs from further harm by Defendants.

DATED: September 14, 2005

Respectfully Submitted,

SHOOK, HARDY & BACON L.L.P.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this 14th day of September, 2005, a true and correct copy of the foregoing was served by using the CM/ECF system; by first class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

Attorney General's Office
Attn Gary Gardner
Supreme Court Bldg.
PO Box 899
Jefferson City MO 65101

CM/ECF
 U.S. Mail
 FAX
 Overnight Delivery
 Hand Delivery
 electronic Mail

/s/ Loretta Burns-Bucklew