

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.)	Case No. 05-0726-CV-C-SOW
)	
Matt Blunt, in his official capacity as Governor of the State of Missouri; et al.,)	
)	
Defendants.)	

ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Before the Court are plaintiffs' Motion for Class Certification (Doc. #3), defendants' Suggestions in Opposition, and plaintiffs' Reply. Having considered the pleadings and the evidence offered by the parties, the Court finds that plaintiffs' proposed Class and Subclasses meet the requisite elements of subparts (a) and (b)(2) of Rule 23 of the Federal Rules of Civil Procedure.

In particular, the Court finds that the Class and its Subclasses are so numerous that joinder of all members is impracticable, that there are significant questions of law and fact common to the Class and its Subclasses, that the unnamed members of the Class and its Subclasses have the same or similar claims as the named plaintiffs, that the named plaintiffs will fairly and adequately protect the interests of the members of the putative class, and that plaintiffs' counsel have the experience and means to vigorously prosecute this action on behalf of the class. Therefore, the Class and its Subclasses meet the requirements of Rule 23(a).

The Court further finds that defendants have acted on grounds generally applicable to the plaintiff Class and its Subclasses and that plaintiffs seek injunctive or declaratory relief. Accordingly, certification under Rule 23(b)(2) is appropriate in this matter.

For these reasons, it is hereby

ORDERED that plaintiffs' Motion for Class Certification (Doc. #3) is granted. It is further

ORDERED that

1. The certified Class is defined as follows:

“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.”

2. Two Subclasses are certified and defined as follows:

The Means Test Subclass: “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.”

The Existing Contracts Subclass: “All Class members who 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.”

3. The class claims are as follows:

- a. Violation of Adoption Assistance Act (asserted on behalf of the entire Class): Missouri 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 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).

- b. Equal Protection (asserted on behalf of the Means Test Subclass): Missouri Senate Bill 539 and Defendants' 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.
- c. Impairment of Contract (asserted on behalf of the Existing Contracts Subclass): Missouri Senate Bill 539 and Defendants' actions and inactions substantially impair 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 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.

4. The Class Representatives shall be the Named Plaintiffs, i.e., E.C., J.L., J.C., T.G., B.G., and A.G., each a minor by Next Friend, Jill Katz; W.S., M.S., and D.S., each a minor by Next Friend, Robert Strange; M.P., a minor by Next Friend, Michael Patterson; A.C., a minor by Next Friend, Lana Capps; J.A., a minor by Next Friend, John Antonich; T.J. and A.J., each a minor by Next Friend, Lavada Johnson; and N.S., a minor by Next Friend, Tammy Smith.
5. The following are appointed as Class Counsel pursuant to Federal Rule of Civil Procedure 23(g): John Amman and Amy Sanders of the Saint Louis University Legal Clinic, St. Louis, Missouri; James P. Muehlberger, Loretta Burns-Bucklew, Nicholas P. Mizell, Pamela Macer, and Kathleen A. Jeanetta 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.

/s/Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

Dated: 9-29-05