

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

E.C., et al., )  
)  
Plaintiffs, )  
)  
v. ) No. 05-0726-CV-W-SOW  
)  
Matt Blunt, et al., )  
)  
Defendants. )

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER , AND  
JUDGMENT DENYING PERMANENT INJUNCTION**

**BACKGROUND**

**Earlier Proceedings**

Plaintiffs brought this action for declaratory and preliminary and permanent injunctive relief under 42 U.S.C. § 1983 to declare unlawful and to enjoin implementation of the provisions of Senate Bill 539 that amend Mo.Rev.Stat. § 453.073. Plaintiffs claim that the amended statute violates Title IV–E of the Social Security Act, the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 620–629(i), as amended by the Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 670–679(b), and the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs also claim that the amended statute impairs the obligation of their adoption assistance contracts.

On August 18, 2005, this court entered a temporary restraining order, enjoining implementation of those provisions of Senate Bill 539 and any implementing regulation, continuing pre–existing adoption assistance agreements in full force and effect, and ordering defendants to offer new adoption assistance agreements consistent with their practices prior to

the enactment of the bill. On September 8, 2005, this court entered a preliminary injunction identical to its temporary restraining order.

On September 29, 2005, this court certified this action as a class action, defining the class 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.

On October 7, 2005, defendants appealed both the preliminary injunction and the class certification. Briefing is completed; oral argument is set for May 15, 2006.

On January 9, 2006, this court granted defendant Blunt's motion for judgment on the pleadings and dismissed him from the case.

### **The Federal–State Adoption Assistance Program**

The Adoption Assistance Program, 42 U.S.C. § 673, is a cooperatively run federal–state program through which the federal government provides participating states with funding to advance the adoption of special needs children. *See* 42 U.S.C. §§ 670, 671(a)(1), 674; *Glanowski v. New York Dep't of Family Assistance*, 225 F.Supp.2d 292, 296 (W.D. N.Y. 2002); *C.B. v. Pennsylvania Dep't of Public Welfare*, 5786 A.2d 176, 181 (Pa. 2001). Special needs children are those children the state has determined 1) cannot or should not be returned to the parental home and 2) because of ethnic background, age, or membership in a minority or sibling group or because of medical condition or physical, mental, or emotional handicap cannot be adopted

without providing adoption assistance payments or medical assistance. *See* 42 U.S.C. § 673(c)(1), (c)(2)(A).<sup>1</sup>

Special needs children are eligible for federal–state adoption assistance payments if they were first in state foster care. *See Glanowski*, 225 F.Supp.2d at 301–302; *C.B.*, 786 A.2d at 183. In addition, special needs children are eligible if at the time they were removed from the parental home or home of a specified relative and at the time adoption proceedings were initiated, they were Aid to Families with Dependent Children (AFDC) eligible. *See* 42 U.S.C. § 673(a)(2)(A)(i); § 672(a). Finally, special needs children are eligible if at the time of their removal from their home, a judicial determination was made that continuation in the home would be contrary to the welfare of the child and the state made reasonable efforts to prevent or eliminate the need for removing the child from the home. *See* 42 U.S.C. § 672(a)(1); § 671(a)(15)(B)(i); *Harvey v. Shalala*, 19 F.3d 1252, 1252–53 (8<sup>th</sup> Cir. 1994).<sup>2</sup>

States participating in the Adoption Assistance Program must enter into adoption assistance agreements with the adoptive parents of children with special needs. *See* 42 U.S.C. § 673(a)(1)(A). Adoption assistance agreements are written agreements, binding upon the state and the adoptive parents, that specify the “nature and amount of any payments, services, and assistance” to be provided. 42 U.S.C. § 675(3). Under such agreements, the states must make

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<sup>1</sup>There is an additional requirement that reasonable efforts have been extended to place the child with adoptive parents without providing adoption assistance payments or medical assistance. *See* 42 U.S.C. § 673(c)(2)(B).

<sup>2</sup>Other special needs children are eligible for adoption assistance payments if they are eligible for Supplemental Security Income (SSI) benefits, are children of minor parents who are special needs children, or received adoption assistance payments previously. *See* 42 U.S.C. § 673(a)(2)(A)(ii), (iii); § 673(a)(2)(C).

nonrecurring adoption expense payments (not at issue in this case) and adoption assistance payments to adoptive parents. 42 U.S.C. § 673(a)(1)(B).

The amount of adoption assistance payments must be determined through agreement between the adoptive parents and the state, and can be adjusted periodically with the concurrence of the adoptive parents depending upon changed circumstances, but that amount is capped at the maximum of the foster care maintenance payment that the adopted child would have received if she remained in foster care. *See* 42 U.S.C. § 673(a)(3).<sup>3</sup> The duration of adoption assistance payments is capped at the child's eighteenth birthday. *See* 42 U.S.C. § 673(a)(4).

In addition to receiving adoption assistance payments, special needs children are statutorily eligible for medical assistance. *See* 42 U.S.C. § 673(b)(1), § 1396a(10)(A)(i)(I) (they are treated as children who receive AFDC payments, who are eligible for medical assistance). And special needs children for whom an adoption assistance agreement is in effect that is not a federal–state agreement are also statutorily eligible for medical assistance. *See* 42 U.S.C. § 671(a)(21).

### **The Missouri Adoption Assistance Program**

Missouri participates in the federal–state Adoption Assistance Program. *See* Mo.Rev.Stat. § 453.065–453.075; 13 CSR 40–38.010, 40–38.020. Missouri participates through the Children's Division of the Department of Social Services. *See* Mo.Rev.Stat. § 453.074.1(6). Like federal law, Missouri extends adoption assistance payments to special needs children who have been in state foster care. *See* Mo.Rev.Stat. §§ 453.073.2.

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<sup>3</sup>Foster care maintenance payments cover the cost of providing children's food, clothing, shelter, daily supervision, school supplies, and other personal incidentals. *See* 42 U.S.C. § 672(a), 675(4)(A).

But unlike federal law, Missouri extends adoption assistance payments to special needs children who have been in state foster care, but who do not meet the additional federal eligibility requirements. State law does not require that removal must be from the parental home or home of a specified relative, AFDC eligibility at the time of removal and at the time of the adoption proceeding must exist, or contrary to welfare and reasonable efforts judicial determinations be made. And also unlike federal law, Missouri pays for “special services” for special needs children who are in need of “medical, dental, educational, mental health or other related services and treatment, including treatment for physical handicap, intellectual impairment, developmental disability, mental or emotional disturbance, [or] social maladjustment.” Mo.Rev.Stat. § 453.065(5). Missouri extends these assistance payments and payments for special services solely with state funds.

## **FINDINGS OF FACT**

### **Children’s Division Policy**

1. Children’s Division policy is to review annually and to renew adoption subsidy agreements before the end of the state fiscal year (June 30). *See* Child Welfare Manual, § 4, Ch. 30.4.G.

2. Children’s Division policy is also to automatically renew adoption assistance agreements unless changes are agreed to as a result of the annual review or are requested by the adoptive parents. *See* Child Welfare Manual, § 4, Ch. 30.4.G.

### **Senate Bill 539, Implementing Regulation, and Implementing Policy Memorandum**

3. The Missouri General Assembly passed and the governor signed Senate Bill 539 that amended, effective August 28, 2005, Missouri’s adoption assistance program.

4. Senate Bill 539 added a new subsection 4 to Mo.Rev.Stat. § 453.073 that states: “The subsidy shall 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.”

5. The Fiscal Note to Senate Bill 539 states: “The federal government does not allow means testing on children that are eligible for reimbursement of federal funds (IV–E). Therefore the CD [Children’s Division] assumes that the means test will only be applied to children who receive state only maintenance payments.”

6. Senate Bill 539 also amended subsection 3(4) of Mo.Rev.Stat. § 453.073 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.”

7. To implement these provisions of Senate Bill 539, the Children’s Division promulgated an Emergency Regulation, 13 CSR 35–38.020, effective August 28, 2005.

8. The regulation distinguishes between a “Title IV–E adoption subsidy” (defined as a subsidy that qualifies for federal funding under 42 U.S.C. § 670 et seq. and implementing regulations), a “state only adoption subsidy” (defined as a subsidy paid on behalf of a qualified child under Missouri law), and “services or special services” (defined as allotments for medical, dental, educational, mental health or other related health services and treatment that may be paid directly to service providers). *See* 13 CSR 35–38.020 (2)(C), (D), (E).

9. Adoption subsidy agreements may consist of a maintenance payment (defined as a monthly cash payment provided by either a Title IV–E adoption subsidy or a state only adoption subsidy), a provision for services, or both. *See* 13 CSR 35–38.020(2)(B), (7).

10. The regulation notes that the Missouri General Assembly appropriated sufficient funds to permit application of the means test at 250% of the federal poverty level.

11. On May 27, 2005, the Director of the Children’s Division issued a memorandum to Children’s Division personnel to introduce them to the policy changes in Missouri’s adoption assistance program brought about by Senate Bill 539.

12. The memorandum states that the means test established by Senate Bill 539 applies only to the subsidy or maintenance portion of state funded adoption subsidies. To apply the means test to existing contracts, current agreements for state funded adoption subsidies are extended until August 31, 2005. The means test will be applied each year to determine eligibility for state funded subsidies.

13. The memorandum states that Title IV–E adoption subsidy agreements are extended until June 30, 2006.

14. Any agreements negotiated for Title IV–E subsidies or state funded subsidies and services after September 1, 2005, are to be dated for a maximum of one year.

### **Implementation Process**

15. Before May 25, 2005, the Children’s Division identified 3,797 adopted children receiving state funded adoption subsidies.

16. By May 25, 2005, the Children’s Division had identified approximately 1,100 of those children as Title IV–E eligible; review of those children’s Title IV–E eligibility continues.

17. On May 25, 2005, the Children's Division sent to the 6,350 parents with IV-E eligible adopted children who were receiving Title IV-E adoption subsidies, a letter notifying them that they would not be required to be means tested to renew their agreements for the next year and that their agreements were being extended through June 30, 2006.

18. On May 25, 2005, the Children's Division also notified the 2,498 parents whose adopted children are not IV-E eligible and who were receiving state funded adoption subsidies that they must be means tested and that their agreements were being extended through August 31, 2005.

19. On June 6, 2005, the Children's Division sent to those parents receiving state funded adoption subsidies, a letter notifying them that they must be means tested to receive a subsidy or maintenance payment, but that Medicaid and special services are not affected by the means test.

20. The letter included an Application for State Only Adoption Subsidy and/or Services that asked the families to choose by August 31, 2005, one of three options: 1) consideration for a subsidy by submitting their most recent federal tax return, 2) refusal of consideration for a subsidy, but consideration for Medicaid and special services, or 3) refusal of consideration for any subsidy or services.

21. The Children's Division sent a second such letter and application again on August 1, 2005.

22. After applying the means test, the Children's Division sent letters notifying parents whether they were eligible or ineligible for the state funded adoption subsidy, in which event Medicaid and special services would continue, whether they chose to receive Medicaid and

special services only, or whether they chose to opt out of the state adoption assistance program entirely.

### **Duration of Assistance Agreements and Maintenance Payments**

23. Adoption assistance agreements, whether for Title IV–E eligible or ineligible children, do not extend to a date certain.

24. To ensure that the adoptive family is receiving the services necessary to preserve the adoptive placement, adoption assistance agreements are reviewed annually before the end of the state’s fiscal year (June 30) and renewed automatically unless changes are agreed upon or requested by the adoptive parents.

25. Adoption assistance maintenance payments, whether for Title IV–E eligible or ineligible children, do not always extend to the child’s eighteenth birthday.

### **Termination of Assistance Agreements**

25. Adoption assistance agreements provide that either party at any time upon 30 days written notice terminate the agreement without showing good cause.

26. Adoption assistance agreements provide that the Children’s Division does not intend to terminate them unless legal, fiscal, or other circumstances necessitate adjustment in adoption expenditures or procedures.

27. Missouri did not terminate the adoption assistance agreements of Title IV–E eligible children.

### **Special Needs Children**

28. Adoption assistance maintenance payments are paid monthly to adoptive parents on behalf of special needs children.

29. In Missouri, a special needs child is any child who has been in foster care in the custody of the state regardless of whether he or she has a handicapping mental, physical, or emotional condition, belongs to a racial or ethnic minority, has a guarded prognosis, or is a member of a sibling group.

### **Purpose of Means Test**

30. The means test has a two-fold purpose: to save Missouri money and to direct Missouri's limited financial resources to the most needy families.

## **CONCLUSIONS OF LAW**

Permanent injunctive relief is warranted when plaintiffs can demonstrate 1) actual success on the merits, 2) a threat of irreparable harm, 3) the balance between that harm and the harm that an injunction would cause to the other parties tips in their favor, and 4) and the public interest.

*See Randolph v. Rodgers*, 170 F.3d 850, 857 (8<sup>th</sup> Cir. 1999)

### **Plaintiffs Cannot Succeed on the Merits**

#### **Child Welfare Act Claim**

##### **New Subsection 4: The Means Test**

The provision of Senate Bill 539 that adds a new subsection 4 to Mo.Rev.Stat. § 453.073 on its face does not apply a means test to determine eligibility for federal-state funded adoption assistance payments. *“The subsidy shall 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.”*

Rather, on its face, the new subsection 4 applies the means test to determine eligibility for state funded adoption assistance payments. *“The subsidy shall 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.”*

Though a federal regulation prohibits the application of a means test to determine eligibility for adoption assistance payments, *see* 45 C.F.R. § 1356.40(c), the Adoption Assistance Act is silent and does not apply to state funded adoption assistance programs except to require that the state extend medical assistance to children receiving state funded subsidies. *See* 42 U.S.C. § 671(a)(21).

As applied, the fiscal note to the senate bill, the implementing regulation, the implementing policy memorandum, and the implementing letters all state that the means test will not apply to federal–state funded adoption assistance payments, but will apply to state funded adoption assistance payments.

**Amended Subsection 3(4): One–Year Length and Renewable at Director’s Discretion**

The provision of Senate Bill 539 that amends subsection 3(4) of Mo.Rev.Stat. § 453.073 reads as follows: “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.”

Amended subsection 3(4) does not on its face violate the Adoption Assistance Act because though a federal statute caps the duration of adoption assistance payments at the child’s eighteenth birthday, *see* 42 U.S.C. § 673(a)(4), neither the Adoption Assistance Act nor any regulation implementing the Act otherwise specifies the duration of adoption assistance payments.

Neither does amended subsection 3(4) as applied violate the Adoption Assistance Act. With respect to federal–state funded adoption subsidies, the Children’s Division intends to implement amended subsection 3(4) in accordance with 42 U.S.C. § 673(a)(3), which requires parental concurrence to any adjustments in the amount of the subsidy, and in accordance with its policy of reviewing annually and renewing automatically adoption subsidy agreements before the end of the state fiscal year (unless changes are agreed to or requested by adoptive parents).

As applied to state funded adoption assistance agreements, the Director intends to exercise his discretion by application of the means test on an annual basis. The Adoption Assistance Act is silent and does not apply to state funded adoption assistance programs except to require that the state extend medical assistance to children receiving state funded subsidies. *See* 42 U.S.C. § 671(a)(21).

#### **Medical Assistance**

Senate Bill 539 on its face does not affect medical assistance for special needs adopted children. And as applied, the implementing letters state that medical assistance is not affected.

#### **Equal Protection Claim<sup>4</sup>**

Review of the classification made by the Missouri legislature is “deferential.” *Bowen v. Gilliard*, 483 U.S. 587, 598 (1987). This “strong presumption of constitutionality to legislation conferring monetary benefits” exists because the legislature has “discretion in deciding how to expend necessarily limited resources.” *Schweiker v. Wilson*, 450 U.S. 221, 238 (1981) (internal

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<sup>4</sup>Equal protection “is essentially a direction that all persons similarly situated should be treated alike.” *See City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). Children who are not eligible for federal–state funded adoption subsidies are not similarly situated to those who are; federally ineligible children may not receive any maintenance payment, and any maintenance payment they do receive cannot be financed with federal funds.

quotation marks and citations omitted). Legislation conferring monetary benefits “inevitably involves the kind of line–drawing that will leave some comparably needy person outside the favored circle.” *Id.* The legislature has “plenary power to define the scope and the duration of the entitlement to ... benefits, and to increase, to decrease, or to terminate those benefits based on its appraisal of the relative importance of the recipients’ needs and the resources available to fund the program.” *Gilliard*, 483 U.S. at 598 (internal quotations and citations omitted).

Therefore, legislation conferring monetary benefits is unequal in the constitutional sense only when the legislative classification is “clearly wrong, a display of arbitrary power, not an exercise of judgment.” *Gilliard*, 483 U.S. at 598.

The classification Missouri made is not between 1) special needs children who are Title IV–E eligible and thus qualify for federal–state funded adoption assistance maintenance payments and 2) special needs children who are Title IV–E *ineligible* and thus do not qualify for federal–state funded subsidies and whose eligibility for state funded subsidies is determined by application of a means test to their adoptive parents’ income. Congress, not Missouri, made the classification between Title IV–E eligible and ineligible children. *See* 42 U.S.C. § 673(a)(2).

The classification Missouri made is solely within the second group of special needs children — those children who are Title IV–E ineligible and thus ineligible to receive federal–state funded adoption assistance maintenance payments. Within that class, those children whose adoptive families’ income falls above 200% of the federal poverty level for their family size will not receive subsidies that are solely state funded.

“[I]t is rational to distribute public benefits on the basis of income and resources available to potential recipients.” *Schweiker v. Hogan*, 457 U.S. 569, 590 (1982). And the validity of

legislative classification is “not properly judged” by focusing solely on the “disfavored class” — those that do not receive the benefit. *Hogan*, 457 U.S. at 589. Not only is it rational to conclude that those children adopted by families of modest means are likely to be less needy than those adopted by well-off families, it is irrational to suggest otherwise.

A legislative classification is not invalid even if some members of the disfavored class actually have greater need than those receiving the benefit. There is no constitutional rule that every statutory line must be precisely tailored to accommodate every individual application.

Indeed, the Supreme Court has held precisely the contrary:

A decision to allocate scarce assistance benefits on the basis of an assumption that persons with greater incomes generally are better able to prepare for future medical needs is not inconsistent with constitutional principles of equal treatment. In other words, it is rational to define need on the basis of income, even though some persons with greater income ... may actually be in greater need of assistance than those with less gross income.

*Hogan*, 457 U.S. at 591. Indeed, because the Missouri legislature could deny state funded subsidies entirely to federally ineligible children, it is not irrational to extend subsidies to only some of those children, using their families’ incomes as a rough indicator of financial wherewithal. *See Hogan*, 457 U.S. at 592

### **Obligation of Contracts Claim**

The extent to which the parties’ reasonable contract expectations have been disrupted and the foreseeability of that disruption relate to an obligation of contracts claim. *See Equipment Mfrs. Inst. v. Janklow*, 300 F.3d 842, 853–54, 857 (8<sup>th</sup> Cir. 2002).<sup>5</sup> Adoptive parents could have

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<sup>5</sup>No impairment of contract issue exists with respect to adoption assistance agreements containing federal–state funded subsidies. The new Missouri legislation does apply the means test as a condition of eligibility for federal–state funded subsidies.

reasonably foreseen that their adoption assistance agreements could be terminated in a limited circumstance. The termination clause is not overexpansive on Missouri's part; Missouri cannot terminate for any reason or for no reason, as parents can. Missouri cannot terminate, and adoption assistance agreements state that Missouri does not intend to terminate, "unless legal, fiscal, or other circumstances necessitate some adjustment in the Missouri Adoption Subsidy Program expenditures or procedures." That is what happened in this case — a change in Missouri adoption subsidy law brought about by budgetary constraints.

That change in Missouri law has a significant and legitimate public purpose that justifies any substantial impairment of adoption assistance agreements. Annual application of a means test to determine eligibility for state funded subsidies promotes Missouri's interest in allocating its limited financial resources. Annual application of a means test also promotes Missouri's interest in directing its limited resources to more needy families. These are "broad societal interests" that indicate a public purpose behind the legislation; adopted children, as recipients of a monetary benefit, represent the "narrow class" interest here. *See Equipment Mfrs. Inst.*, 300 F.3d at 859.

### **No Threat of Irreparable Harm**

No threat of irreparable harm exists to plaintiffs who are receiving federal–state funded adoption subsidies or to plaintiffs who are receiving state funded subsidies.

Senate Bill 539 does not apply to federal–state funded adoption subsidies except for limiting their length to one year. That limitation is in accordance with the Adoption Assistance Act's requirement of parental consent to adjust the amount of assistance payments, *see* 42 U.S.C. § 673(a)(3), with the Act's silence upon the duration of assistance agreements, *see* 42 U.S.C.

§ 673(a)(4), and with the Children's Division policy of reviewing annually and renewing automatically adoption subsidy agreements before the end of the state fiscal year (unless changes are agreed to or requested by adoptive parents).

Though the application of Senate Bill 539 means test to state funded adoption subsidies will result in the disqualification of some children from receiving subsidies, that disqualification is not prohibited by the Adoption Assistance Act or the Equal Protection Clause or § 10 of Article I of the U.S. Constitution.

**ORDER AND JUDGMENT**

Therefore, for good cause shown, it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiffs' complaint for a permanent injunction is denied. It is further

ORDERED, ADJUDGED AND DECREED that the preliminary injunction and class certification orders are dissolved.

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SCOTT O. WRIGHT  
Senior U.S. District Court Judge

Dated: \_\_\_\_\_