

**IN THE U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF  
TENNESSEE, NORTHEASTERN DIVISION**

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CHRISTOPHER SULLIVAN, )

*Plaintiff,* )

v. )

Case No. 2:17-cv-00052

SAM BENNINGFIELD and )

ODDIE SHOUBE, )

*Defendants.* )

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**PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

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Comes now Plaintiff Christopher Sullivan, by and through undersigned counsel of record, and pursuant to Fed. R. Civ. P. 65, moves this Court to issue a preliminary injunction enjoining the enforcement of the Sterilization Orders attached hereto as **Exhibit A** and **Exhibit B**. As grounds for this motion, the Plaintiff respectfully states as follows:

**I. INTRODUCTION**

This case concerns two standing orders in White County, Tennessee, that render the length of a defendant’s sentence contingent upon whether the defendant agrees to submit to long-term, surgical sterilization. See **Exhibit A**; **Exhibit B**. On May 15, 2017, Defendant Sam Benningfield ordered that the length of time that “any White County inmate serving a sentence for the General Sessions Court” would be required to spend in jail would depend on whether or not the inmate became surgically sterilized. See **Exhibit A**. Compared with similarly situated inmates who did agree to be sterilized, Judge Benningfield’s First Sterilization Order provided that inmates who refused to relinquish

their reproductive rights would be required to serve “an additional thirty (30) days” in the White County jail. *Id.*

A subsequent July 26, 2017 Supplemental Order issued by Defendant Benningfield purported to rescind the above-mentioned May 15, 2017, Order. See **Exhibit B**. However, as before, Defendant Benningfield’s Second Sterilization Order states in clear, unequivocal terms that inmates who fail to “demonstrate[] to the court their desire to improve their situations and take serious and considered steps toward their rehabilitation by having the [long-term surgical sterilization] procedures or agreeing to have same” will still be incarcerated for 30 days longer than similarly situated inmates who do acquiesce to long-term, surgical sterilization. *Id.* Accordingly, in flagrant violation of the 14<sup>th</sup> Amendment, inmates in White County continue to receive disparate treatment based on whether or not they agree to relinquish their fundamental right to procreate. This action followed.

## **II. FACTORS JUSTIFYING A PRELIMINARY INJUNCTION**

The Sixth Circuit has instructed that:

[C]ourts must examine four factors in deciding whether to grant a preliminary injunction: (1) whether the movant has demonstrated a substantial likelihood of success on the merits, (2) whether the movant will suffer irreparable injury absent injunction, (3) whether a preliminary injunction would cause substantial harm to others, and (4) whether the public interest will be served by an injunction.

*Flight Options, LLC v. Int’l Bhd. of Teamsters, Local 1108*, 863 F.3d 529, 539–40 (6th Cir. 2017).

In the instant case, all four factors militate in favor of issuing a preliminary injunction.

### III. ARGUMENT

#### 1. Substantial Likelihood of Success on the Merits

The Plaintiff is substantially likely to succeed on the merits of his claims. While unbelievable, the Sterilization Orders attached to this motion are authentic. *See Exhibit A; Exhibit B.* By their express terms, they treat similarly situated defendants differently based on whether or not they opt to forgo their constitutional right to procreate. *Id.* Such disparate treatment unequivocally violates the Constitution.

The right to procreate has achieved fundamental status. *See, e.g., Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (“If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”); *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 851 (1992) (“Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.”) (collecting cases) (internal citations omitted). *See also Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 65 (1973) (holding that the Fourteenth Amendment “encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing.”). Notwithstanding the Supreme Court’s clear and unequivocal articulation of this fundamental right, however, Defendant Benningfield’s Sterilizations Orders expressly exclude all those who refuse to relinquish their right to procreate from receiving a sentence reduction while providing this benefit to similarly situated defendants who do. *See Exhibit A; Exhibit B.*

Drawing classifications on the basis of an individual’s fundamental right to procreate violates the equal protection clause. *See, e.g. Skinner v. State of Okl. ex rel.*

*Williamson*, 316 U.S. 535, 541 (1942) (“When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made as an invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment.”); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973) (holding that if a classification “impinges upon a fundamental right explicitly or implicitly protected by the Constitution,” then “strict judicial scrutiny” is required).

Under such circumstances, two remedies are available: “a court may either [1] declare the [policy] a nullity and order that its benefits not extend to the class that the [policy] intended to benefit, or [2] it may extend the coverage of the [policy] to include those who are aggrieved by the exclusion.” *Califano v. Westcott*, 443 U.S. 76, 89 (1979) (alterations omitted). *See also Heckler v. Mathews*, 465 U.S. 728, 740 (1984) (“when the ‘right invoked is that of equal treatment,’ the appropriate remedy is a mandate of equal treatment, a result that can be accomplished by withdrawal of benefits from the favored class as well as by extension of benefits to the excluded class.”). “How equality is accomplished—by extension or invalidation of the unequally distributed benefit or burden, or some other measure—is a matter on which the Constitution is silent.” *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 426–427 (2010). Notably, the continuing availability of either remedy to cure an equal protection violation was recently reaffirmed by the United States Supreme Court in its 2017 term. *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1698 (2017) (“There are two remedial alternatives, our decisions instruct, when a statute benefits one class . . . and excludes another from the benefit.”) (cleaned up). In the instant case, the Plaintiff’s Complaint expressly calls upon this Court to provide both of these available remedies.

Thus, given the Sterilizations Orders' explicit discrimination based on an inmates' agreement or refusal to relinquish a fundamental constitutional right, and given that this Court is empowered to provide either or both of the remedies that he seeks, the Plaintiff's likelihood of success on the merits is high. A preliminary injunction should issue as a result.

**2. The movant may suffer irreparable injury absent an injunction.**

The Sterilization Orders at issue operate to punish inmates in White County with an additional 30 days in jail if they refuse to submit to long term, surgical sterilization. See **Exhibit A**; **Exhibit B**. In the case of male inmates like the Plaintiff, Defendant Benningfield's Sterilization Orders specifically call for a vasectomy—a procedure that can be and often is irreversible. See, e.g., *Ariemma v. Perlow*, 223 Ga. App. 360, 362 (1996) (noting that a vasectomy renders the recipient "infertile and incapable of fathering children," and that a patient "should consider it irreversible."). As prior victims of Defendant Benningfield's sterilization program have stated regrettably, the coercive pressure to submit to such irreversible sterilization in exchange for an early chance at freedom is enormous. Jessica Lussenhop, '*We were guinea pigs*': Jailed inmates agreed to birth control, BBC NEWS (Aug. 18, 2017), <http://www.bbc.com/news/world-us-canada-40955288>.

**3. A preliminary injunction would not cause substantial harm to others.**

The issuance of a preliminary injunction in the instant case would not cause substantial (or any) harm to others—least of all the Defendants. In fact, Defendant Benningfield has already purported to rescind his First Sterilization Order. See **Exhibit B**. See also, Derek Hawkins; *Tennessee judge, under fire, pulls offer to trade shorter jail*

*sentences for vasectomies*, THE WASHINGTON POST (Jul. 28, 2017), [https://www.washingtonpost.com/news/morning-mix/wp/2017/07/28/tennessee-judge-under-fire-pulls-offer-to-trade-shorter-jail-sentences-for-vasectomies/?utm\\_term=.9cc24040cb5b](https://www.washingtonpost.com/news/morning-mix/wp/2017/07/28/tennessee-judge-under-fire-pulls-offer-to-trade-shorter-jail-sentences-for-vasectomies/?utm_term=.9cc24040cb5b). As such, a preliminary injunction would merely serve to restore the publicly-claimed status quo and prevent further, possibly irreparable constitutional injuries.

#### **4. The public interest will be served by an injunction.**

The public interest will be served by the issuance of an injunction. After a horrid and grotesque period of unforgiveable eugenics experimentation and sterilization policy, eugenics is now illegal in the United States. International law also appropriately declares enforced sterilization to be a crime against humanity. See Rome Statute, Article 7 (1)(g)-5 (defining elements of “Crime against humanity of enforced sterilization”). See also, *Morales v. Brown*, No. 114CV01717LJOSAB, 2015 WL 6167451, at \*7 (E.D. Cal. Oct. 20, 2015) (“Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity. . . are universally recognized as impermissible under international law . . .”).

With this context in mind, Defendant Benningfield’s sterilization program is an abhorrent, national disgrace, and it has appropriately been derided as a form of eugenics. See, e.g., Kali Holloway, *Modern-day eugenics? Prisoners sterilized for shorter sentences*, SALON (Jul. 28, 2017), [http://www.salon.com/2017/07/28/modern-day-eugenics-prisoners-sterilized-for-shorter-sentences\\_partner/](http://www.salon.com/2017/07/28/modern-day-eugenics-prisoners-sterilized-for-shorter-sentences_partner/); Matthew Walther, *The unspeakable evil of the Tennessee eugenics program*, The Week (Jul. 24, 2017); <http://theweek.com/articles/713600/unspeakable-evil-tennessee-eugenics-program>; Derek Hawkins, *Judge to inmates: Get sterilized and I’ll shave off jail time*, THE

WASHINGTON POST (Jul 21, 2017), [https://www.washingtonpost.com/news/morning-mix/wp/2017/07/21/judge-to-inmates-get-sterilized-and-ill-shave-off-jail-time/?utm\\_term=.3e28b727e9fb](https://www.washingtonpost.com/news/morning-mix/wp/2017/07/21/judge-to-inmates-get-sterilized-and-ill-shave-off-jail-time/?utm_term=.3e28b727e9fb)). In response to this widespread outrage, Defendant Benningfield also claimed to have ended White County's sterilization program, although his Second Sterilization Order reflects that he has not, in fact, done so. See **Exhibit B**. As such, the public interest will be served by terminating White County's eugenics program and bringing Defendant Benningfield's claim that the program has ended in conformity with reality.

#### **IV. CONCLUSION**

For the foregoing reasons, all four factors of the preliminary injunction inquiry favor the issuance of a preliminary injunction. Accordingly, the instant motion for a preliminary injunction should be granted pending a final adjudication of this action on its merits.

Respectfully submitted,

By: /s Daniel A. Horwitz  
Daniel A. Horwitz, BPR #032176  
1803 Broadway, Suite #531  
Nashville, TN 37203  
daniel.a.horwitz@gmail.com  
(615) 739-2888

Richard M. Brooks  
130 Third Avenue West  
Carthage, TN 37030

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of September, 2017, a copy of the foregoing was sent via CM/ECF, and to the following parties:

Michael T. Schmitt, BPR #026573  
330 Commerce Street, Suite 110  
Nashville, TN 37201  
mschmitt@ortalkelley.com  
615-256-9999

*Counsel for Defendants*

By: /s Daniel A. Horwitz



IN THE GENERAL SESSIONS COURT OF WHITE COUNTY, TENNESSEE

IN RE: Services of the State of Tennessee  
Department of Health;  
NAS Education Program

FILED

MAY 15 2017

TIME 2:05 PM  
BEVERLY F. JOLLEY  
CIRCUIT COURT CLERK

STANDING ORDER

For good cause shown including judicial economy and the administration of justice, it is **ORDERED** any White County inmate serving a sentence for the General Sessions Court who satisfactorily completes the State of Tennessee, Department of Health Neonatal Syndrome Education (NAS) Program be given two (2) days credit toward completion of his/her jail sentence. Any such female inmate who receives the free nexplanon implant or any such male inmate who has the free vasectomy as a result thereof shall be given an additional thirty (30) days credit toward completion of his/her jail sentence.

**ORDERED** this the 15th day of May, 2017.

  
Sam Benningfield, Judge

Cc: White County Circuit Court Clerk  
White County Sheriff  
White County Jail Administrator

**IN THE GENERAL SESSIONS COURT OF WHITE COUNTY, TENNESSEE****FILED**

IN RE: Services of the State of Tennessee  
Department of Health;  
NAS Education Program

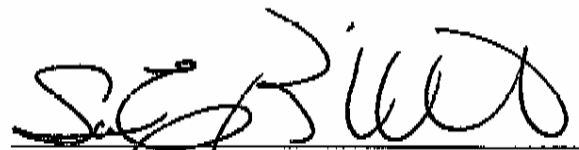
JUL 26 2017  
TIME 3:02 PM  
BEVERLY F. JOLLEY  
CIRCUIT COURT CLERK

**ORDER RESCINDING PREVIOUS STANDING ORDER**

Whereas the State of Tennessee, Department of Health has indicated to the court through its representatives that it will no longer offer free vasectomies to White County inmates serving a sentence for the General Sessions Court and will not provide the free nexplanon implant to White County inmates serving a sentence for the General Sessions Court who receives any credit toward the completion of their jail sentence as a result thereof; it is hereby **ORDERED** the previous order in this regard is hereby rescinded.

Those inmates who have demonstrated to the court their desire to improve their situations and take serious and considered steps toward their rehabilitation by having the procedures or agreeing to have same will not be denied the credit. You will be awarded the 30 days jail credit promised whether you ultimately receive the procedures or not. All inmates shall remain eligible for the two (2) days credit for completing the State of Tennessee, Department of Health Neonatal Syndrome Education (NAS) Program satisfactorily.

**ORDERED** this the 26th day of July, 2017.

  
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Sam Benningfield, Judge

Cc: White County Circuit Court Clerk  
White County Sheriff  
White County Jail Administrator