IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

CHRISTOPHER SULLIVAN, *et al.*,	)	
	)	
Plaintiff,	)	
	)	Case No. 2:17-CV-00052
vs.	)	Chief District Judge Crenshaw
	)	Magistrate Judge Holmes
SAM BENNINGFIELD, *et al.*	)	JURY DEMANDED
	)	
Defendants.	)	

MEMORANDUM SUPPORTING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO RULE 12(b)(1) AND 12(b)(6)

I. INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents a challenge to Judge Benningfield's exercise of his authority to shorten the sentences of individuals under his jurisdiction. Specifically, Judge Benningfield entered a Standing Order that offered a 30-day sentence reduction for any individual sentenced in his court who voluntarily agreed to receive a free vasectomy (for men) or Nexplanon implant (for women). The Standing Order was subsequently rescinded. Plaintiffs are three male inmates at the White County Jail, only one being sentenced by the General Sessions Court at the relevant times the Standing Order was in effect. None of the Plaintiffs received a vasectomy, although Mr. Gentry signed up for the program before it was rescinded. Plaintiffs assert that the fact that they were tempted with shortened sentences in exchange for giving up their fundamental right to procreate was unconstitutional and that this Court has the authority to redress this alleged violation. Defendants disagree.

Initially, Plaintiffs lack standing to assert their challenge. In order to establish standing, Plaintiffs must establish *inter alia* an injury that can be redressed by a ruling from this Court. The

Amended Complaint fails to establish either of these components. First, the challenged orders did not create a liberty interest protected by the Due Process Clause of the Fourteenth Amendment. Second, Plaintiffs were not treated differently than similarly situated individuals and therefore their Equal Protection claims must fail. Third, this Court cannot redress any alleged injury pursuant to the *Younger* Abstention Doctrine, the Supreme Court's holding in *Heck v. Humphrey* and the *Rooker-Feldman* Doctrine. Fourth, Plaintiffs' claims under the Tennessee Constitution are not actionable. Finally, Plaintiffs' requests for injunctive relief and attorney's fees and costs against Judge Benningfield are barred by the plain language of 42 U.S.C. §§ 1983 and 1988.

II. FACTUAL BACKGROUND SUPPORTING DISMISSAL

On May 15, 2017, White County General Sessions Judge Sam Benningfield entered a Standing Order, which stated:

> 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.

Amended Complaint, ¶¶ 1, 38; Ex. A (Doc. Nos. 13, 13-1). On July 26, 2017, Judge Benningfield entered an Order Rescinding Previous Standing Order, which stated:

> Whereas the State of Tennessee, Department of Health has indicated to the court through its representative that it will no longer offer free vasectomies to White County inmates serving a sentence for the General Sessions Court and will not provide 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 is [sic] 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.

Amended Complaint, ¶ 48; Ex. B (Doc. Nos. 13, 13-2).

Plaintiff Christopher Sullivan was arrested on July 23, 2017 and held at the White County jail without bond while awaiting sentencing by the Criminal Court. *See Sullivan Booking Sheet*, attached to Motion to Dismiss as **Exhibit A**. Mr. Sullivan was in the White County jail as a pretrial detainee for only three days before the Standing Order was rescinded. *Id.*; *see also* Amended Complaint, ¶ 18, Ex. B (Doc. No. 13-2). On August 25, 2017, almost a full month after the Standing Order was rescinded, Mr. Sullivan was sentenced by the White County Criminal Court to serve 120 days for violation of his probation terms. *See Sullivan Revocation Order*, attached to Motion to Dismiss as **Exhibit B**. Mr. Sullivan never accepted the offer of a free vasectomy by the Tennessee Department of Health. *Amend. Compl.*, ¶ 31.

Plaintiff Nathan Haskall was arrested on February 24, 2017 and served his sentence issued by the White County General Sessions Court until his release on July 25, 2017. *See Haskell Booking Sheet No. 1*, attached to Motion to Dismiss as **Exhibit C**; *see also Amend. Compl.*, ¶ 17 (Doc. No. 13). Mr. Haskell did not sign up for a vasectomy. *Amend. Compl.*, ¶ 21. Mr. Haskall was arrested again on August 17, 2017 and is currently being held at the White County Jail. *See Haskell Booking Sheet No. 2*, attached to Motion to Dismiss as **Exhibit D**.

Plaintiff William Gentry was arrested on July 15, 2017 for violation of his probation and held without bond while his charges were pending. *See Gentry Booking Sheet*, attached to Motion as **Exhibit E**; *see also Amend. Compl.*, ¶ 26 (Doc. No. 13). Mr. Gentry's was previously sentenced for eight years on a felony violation and ultimately he received probation. *See Gentry Revocation Order*, attached to Motion as **Exhibit F**. While his charges were pending and before he was sentenced by the Criminal Court, Mr. Gentry agreed to have the vasectomy. *Amend. Compl.*, ¶ 26.

On August 25, 2017, Mr. Gentry's probation was partially revoked by the White County Criminal Court and he was ordered to serve an additional one year. *Gentry Revocation Order*. Mr. Gentry does not allege he actually received the vasectomy and the Standing Order was rescinded 10 days after his arrest and before he was resentenced by the Criminal Court. *Amend. Compl.*, ¶¶ 25-29, Ex. B (Doc. Nos. 13 and 13-2).

Judge Benningfield was at all relevant times the General Sessions Judge for White County, Tennessee. *Amend. Compl.*, ¶ 32. He is sued solely in his individual capacity. *Id.* Sheriff Oddie Shoupe was at all relevant times the Sheriff of White County, Tennessee. *Id.* at ¶ 33. He is sued solely in his official capacity. *Id.*

III. STANDARD FOR REVIEW FOR RULING ON A RULE 12(b)(1) AND 12(b)(6) MOTION, INCLUDING ABILITY TO CONSIDER MATTERS OUTSIDE THE COMPLAINT.

"Standing to sue is a threshold requirement in every federal action. Standing must be present at the time the suit is brought." *Sicom Sys. v. Agilent Techs., Inc.*, 427 F.3d 971, 975-76 (Fed. Cir. 2005). A complaint may be dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction if the opposing party lacks standing to bring suit. *See, e.g., Ward v. Alt. Health Delivery Sys.*, 261 F.3d 624, 626 (6th Cir. 2001) (affirming motion to dismiss for lack of standing, finding that "[s]tanding is thought of as a 'jurisdictional' matter, and a plaintiff's lack of standing is said to deprive a court of jurisdiction"); *Pitt Excavating LLC v. Pitt*, No. 3:13-CV-00909, 2013 WL 6708679, at *14 (M.D. Tenn. Dec. 18, 2013)(attached to Motion as **Exhibit G**), *order set aside in part*, No. 3:13-CV-00909, 2014 WL 1715442 (M.D. Tenn. Apr. 30, 2014), *aff'd sub nom. Pitt Excavating, LLC v. Pitt*, 603 F. App'x 393 (6th Cir. 2015), *and aff'd sub nom. Pitt Excavating, LLC v. Pitt*, 603 F. App'x 393 (6th Cir. 2015) (granting defendant's Rule 12(b)(1) motion to dismiss for lack of standing). "The plaintiff bears the burden of proof that jurisdiction exists under 12(b)(1)." *Id.* (citing *RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996)).

When assessing a factual attack on subject matter jurisdiction, as is the case with Defendants' Motion to Dismiss, "no presumptive truthfulness applies to the factual allegations, and the court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Pitt Excavating LLC*, 2013 U.S. Dist. LEXIS 178353, at *14 (quoting *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994)). Moreover, "[a] trial court has wide discretion to allow affidavits, documents and even a limited evidentiary hearing to resolve disputed jurisdictional facts." *Id.* (quoting *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990)).

Additionally, Defendants seek dismissal of Plaintiffs' claims pursuant to Rule 12(b)(6). This Court recently reiterated the well-known standard for ruling on a Rule 12(b)(6) motion to dismiss.

> In considering a motion to dismiss under Rule 12(b)(6), the Court "construe[s] the complaint in the light most favorable to the plaintiff, accept[s] its allegations as true, and draw[s] all reasonable inferences in favor of the plaintiff." *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007); *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 619 (6th Cir. 2002). Plaintiff need only provide "a short and plain statement of the claim that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests," *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), and the Court must determine only whether "the claimant is entitled to offer evidence to support the claims," not whether the plaintiff can ultimately prove the facts alleged. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)). Nevertheless, the allegations "must be enough to raise a right to relief above the speculative level," *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), and must contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). In short, "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Id.* at 679, 129 S.Ct. 1937; *Twombly*, 550 U.S. at 556, 127 S.Ct. 1955.

Jones v. WFM-Wo, Inc., No. 3:17-CV-00749, 2017 WL 3017193, at *1 (M.D. Tenn. July 17, 2017)

The Sixth Circuit has noted that "[t]here are exceptions to th[e] general rule" that "matters outside the pleadings may not be considered in ruling on a 12(b)(6) motion to dismiss unless the

motion is converted to one for summary judgment." *Jackson v. City of Columbus*, 194 F.3d 737, 745 (6th Cir.1999). Without converting the motion, "[c]ourts may ... consider public records, matters of which a court may take judicial notice, and letter decisions of governmental agencies." *Id.* This same standard has been enunciated by the United States Supreme Court. "[When] faced with a Rule 12(b)(6) motion to dismiss… courts *must consider* the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, *and matters of which a court may take judicial notice. Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322, 127 S. Ct. 2499, 2509, 168 L. Ed. 2d 179 (2007)(emphasis added)(citation omitted); *see also Wyser-Pratte Management Inc. v. Telxon Corp.*, 413 F.3d 553, 560 (6th Cir.2005) (noting matters that are appropriate for taking judicial notice may be considered in a Rule 12(b)(6) Motion).

In this case, Defendants rely upon Mr. Sullivan's and Mr. Gentry's booking sheets and the Criminal Court's Revocation Orders for each, which establish when they were sentenced and by what Court. This Court can consider this information because Defendants are making a factual attack on the standing to bring suit and because the documents presented to the Court are public record, *Jackson*, 194 F.3d at 745, and the information contained therein is not subject to reasonable dispute. *See* Fed. R. Evid. 201(b), (c) ("The court ... must take judicial notice" of "a fact that is not subject to reasonable dispute" "if a party requests it and the court is supplied with the necessary information.") A fact "is not subject to reasonable dispute" if it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). "The court may take judicial notice at any stage of the proceeding." Fed. R. Evid. 201(d). Furthermore, judicial notice can be appropriate in the context of when an individual is

sentenced and information contained in a jail booking report. *See Berry v. Canady*, No. 2:09-CV-765-FTM, 2011 WL 881988, at *2, n. 3 (M.D. Fla. Mar. 11, 2011)(taking judicial notice of the plaintiff's probation sentence, affidavit for violation of probation, the warrant, plaintiff's booking sheet, and court minutes when ruling on a motion to dismiss)(unreported).

Defendants request that this Court consider Ms. Sullivan's and Mr. Gentry's sentencing date and sentencing court, as set forth in the booking sheets and Revocation Orders, without converting this Motion into a Motion for Summary Judgment.

IV. ARGUMENT

A. Plaintiffs Lack Standing to Bring This Action.

Plaintiffs challenge the constitutionality of the Standing Order and the Order Rescinding Previous Standing Order, request this Court enjoin Defendants from enforcing the orders and to release Plaintiffs from their sentences 30 days early. *See Amend. Compl.*, Claims For Relief, ¶¶ 1-4 (Doc. No. 13). Plaintiffs were not injured as a result of these orders nor is there any injury that is imminent. Furthermore, if this Court rules that these orders were unconstitutional, this will not remedy any alleged injuries. Stated simply, Plaintiffs lack standing to bring this action as required under Article III of the United States Constitution. Their Amended Complaint should therefore be dismissed.

The Sixth Circuit Court of Appeals recently addressed the requirements for establishing standing in the face of a Rule 12(b)(6) challenge, stating:

> To establish Article III standing, the plaintiff must allege that: (1) he has suffered an injury-in-fact that is both "(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical"; (2) the injury is fairly traceable to the defendant's conduct; and (3) it is likely that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992); *Coyne v. Am. Tobacco Co.*, 183 F.3d 488, 494 (6th Cir. 1999). In the case of a plaintiff seeking equitable relief, as Binno does here, the claimant must allege "actual present harm or a significant possibility of future

> harm in order to demonstrate the need for pre-enforcement review." *Daubenmire v. City of Columbus*, 507 F.3d 383, 388 (6th Cir. 2007) (internal quotation marks and citation omitted). "The party seeking to invoke federal jurisdiction bears the burden to demonstrate standing and he 'must plead its components with specificity.' " *Id.* (quoting *Coyne*, 183 F.3d at 494).

Binno v. Am. Bar Ass'n, 826 F.3d 338, 344 (6th Cir. 2016), *cert. denied sub nom. Binno v. The Am. Bar Ass'n*, 137 S. Ct. 1375, 197 L. Ed. 2d 554 (2017).

Plaintiffs cannot establish an injury-in-fact. In an attempt to establish an injury, Plaintiffs allege that their refusal to relinquish their reproductive rights amounts to them serving "an additional thirty (30) days" in the White County, Jail. *Amend. Compl.*, ¶¶ 3 and 96)(Doc. No. 13). This allegation is misleading and inaccurate. Plaintiffs' sentences have not been affected by the challenged orders. Rather, what Plaintiffs really want is "a 30-day reduction in their sentences without having to undergo a vasectomy." *Id.* at ¶ 85. Plaintiffs argue that denying them a sentence reduction violates their rights under the Fourteenth Amendment and the Tennessee Constitution. *Id.* at ¶ 94, 96, 106, 108 and 110. This is insufficient because Plaintiffs cannot establish that the Standing Order created a liberty interest protected by the Due Process clause.

"A state creates a protected liberty interest 'by placing substantive limitations on official discretion."' *Gibbs v. Hopkins*, 10 F.3d 373, 377 (6th Cir. 1993)(quoting *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983)). "[I]n order to create a protected liberty interest, a statute, rule or regulation must use explicitly mandatory language that establishes 'specific substantive predicates' which limit official discretion by mandatorily requiring specific action by the responsible officials *once the substantive predicates are found to be in place*." *Mackey v. Dyke*, 29 F.3d 1086, 1089 (6th Cir. 1994)(emphasis added). The specific substantive predicates set out in the Standing Order necessary to receive a 30-day sentence reduction are: (1) the inmate must be serving a sentence for the General Sessions Court, and (2) the inmate receive a free Nexplanon implant or vasectomy. *Standing Order* (Doc. No. 13-1). The second predicate was amended by the Order Rescinding

Previous Standing Order by offering the 30-day sentence reduction to those individuals who previously had the contraceptive procedure or agreed to have it, regardless of whether the procedure was ultimately performed. *Order Rescinding Previous Standing Order* (Doc. No. 13-2).

Assuming without admitting that a court order can create a protected liberty interest, the substantive predicates were not met in this case. Mr. Sullivan was not serving a sentence for the General Sessions Court. *Revocation Order* (attached to Motion as **Exhibit B**). Further, Mr. Sullivan was not sentenced until after the Standing Order was rescinded. *Id.*; *see also Order Rescinding Previous Standing Order* (Doc. No. 13-2). Mr. Gentry was not sentenced at the time he agreed to have the vasectomy. *Amend. Compl.*, ¶ 26 (Doc. No. 13). Furthermore, Mr. Gentry does not allege when his sentence expires and therefore does not allege that he has been denied a 30-day reduction (if the Order Rescinding Previous Standing Order even applies to him). Finally, Neither Mr. Haskell or Mr. Sullivan agreed to have the procedure. *Amend. Compl.*, ¶¶ 21 and 31 (Doc. No. 13). Because the substantive predicates have not been met, Plaintiffs cannot establish that denial of a liberty interest and therefore cannot establish a constitutional injury.

Even if Plaintiffs can establish an injury, Plaintiffs cannot establish their injuries will be redressed by a favorable decision from this Court. *Binno v*, 826 F.3d at 344 (citations omitted). Plaintiffs request declaratory and injunctive relief (in addition to attorney's fees and costs). *Amend. Compl.*, Claims for Relief (Doc. No. 13). In order to have standing to request declaratory or injunctive relief, Plaintiffs must establish a real and immediate threat that they will suffer a future injury. This point is illustrated in a prior ruling from this Court.

> The plaintiff's requests for declaratory and injunctive relief are also not sufficient to prevent his claims against Defendant Gay from being dismissed. Even though absolute judicial immunity does not protect a defendant from claims for prospective injunctive or declaratory relief, see Pulliam v. Allen, 466 U.S. 522, 541–43, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984), and a state employee may be sued for such relief in his official capacity, see Thiokol Corp. v. Department of Treasury, State

> of Michigan, 987 F.2d 376, 381 (6th Cir.1993), the plaintiff does not set out viable claims for declaratory or injunctive relief. He has not shown that there is a real and immediate threat that he will suffer a future injury due to the alleged wrongdoing. Thus, he has no standing to seek prospective injunctive relief. See *City of Los Angeles v. Lyons*, 461 U.S. 95, 102–09, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983); *Blakely v. United States*, 276 F.3d 853, 873–74 (6th Cir.2002); *Williams v. Ellington*, 936 F.2d 881, 889 (6th Cir.1991). The plaintiff's past exposure to alleged illegal conduct "does not in itself show a present case or controversy regarding injunctive relief." *O'Shea v. Littleton*, 414 U.S. 488, 495, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974). Similarly, the plaintiff's request for declaratory relief lacks merit because there is not an actual and continuing controversy between the parties that would cause an immediate and real threat of injury to him. *City of Los Angeles*, 461 U.S. at 102; Emory v. Peeler, 756 F.2d 1547, 1552 (11th Cir.1985).

Freeman v. Gay, No. 3:11-0867, 2012 WL 2061557, at *10 (M.D. Tenn. June 7, 2012), *report and recommendation adopted*, No. 3:11-CV-0867, 2012 WL 4510670 (M.D. Tenn. Sept. 28, 2012)(attached to Motion as **Exhibit H**). Here, the Standing Order has been rescinded. Plaintiffs do not allege that they are likely to undergo a vasectomy. Rather, Plaintiffs merely argue that they are not being release from jail early. As stated above, Plaintiffs do not have a liberty interest in an early release. Even if they did have such an interest, they may not raise claims in a civil rights action if a judgment on the merits of those claims would affect the validity of his conviction or sentence, unless the conviction or sentence has been set aside. *See Edwards v. Balisok*, 520 U.S. 641 (1997); *Heck v. Humphrey*, 512 U.S. 477, 486 (1994). The holding in *Heck* applies whether a plaintiff seeks injunctive, declaratory or monetary relief. *Wilson v. Kinkela*, No. 97–4035, 1998 WL 246401 at *1 (6th Cir. May 5, 1998)(unpublished)(attached to Motion as **Exhibit I**). In this case, Plaintiffs request a 30-day reduction in their jail sentence. *Amend. Compl.*, ¶¶ 85, Claims For Relief, ¶ 2 (Doc. No. 13). This request affects the validity of their sentences. Plaintiffs do not allege their convictions underlying their sentences were declared invalid or were ultimately resolved in their favor. As such, this Court cannot redress the alleged injury of not being released early pursuant to the Supreme Court's holding in *Heck v. Humphrey*. Furthermore, Plaintiffs claims for injunctive and declaratory relief relate directly to the criminal

proceedings brought against them and not to any present case or controversy which is unrelated to these criminal proceedings. Specifically, their claim for release from their sentences early directly relates to their sentencing in their criminal proceedings. To the extent that Plaintiffs seek this Court's intervention in state criminal proceedings which are not yet final, federal courts generally abstain from intervening in pending state criminal proceedings. *See Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971); *Thigpen v. Kane*, No. 3:17-CV-919, 2017 WL 3868282, at *2 (M.D. Tenn. Sept. 5, 2017)(attached to Motion as **Exhibit J**)("The law is well-settled that a federal court should not interfere with pending state court criminal proceedings, absent the threat of 'great and immediate' irreparable injury.")(citing *Younger v. Harris*, 401 U.S. 37, 46 (1971); *see also Reece v. Whitley*, No. 3:15-CV-0361, 2016 WL 705265, at *5 (M.D. Feb. 23, 2016), *report and recommendation adopted*, No. 3:15-CV-0361, 2016 WL 5930886 (M.S. Tenn. Oct. 12, 2016)(attached to Motion as **Exhibit K**)("Plaintiff's specific request for declaratory relief that the judgment of acquittal from the state criminal court on April 1, 2014, be declared "null and void," as well as any other request seeking to void the judgments of the state criminal court, are requests barred by [*Rooker-Feldman*] doctrine.").

Additionally, 42 U.S.C. § 1983 bars Plaintiffs' request to enjoin Judge Benningfield's conduct. Section 1983 states, in part:

> Every person who, under color of any statute ... of any State, subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in ... [a] suit in equity ... *except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.*

42 U.S.C. § 1983 (emphasis added). Judge Benningfield's decisions to enter, and ultimately rescind, the Standing Order were actions performed in his judicial capacity. Plaintiffs do not allege that a declaratory decree was violated. Further, under Tennessee law, declaratory relief has

previously been found available against a judicial officer in a challenge to the constitutionality of the judicial officer's orders. *See Graham v. Gen. Sessions Court of Franklin Cty.*, 157 S.W.3d 790 (Tenn. Ct. App. 2004)(overturning trial court's denial of declaratory judgment action against general sessions judge challenging the constitutionality of a court order). Pursuant to the plain language of § 1983, injunctive relief is not available against Judge Benningfield.

Defendants respectfully request that this Honorable Court find that Plaintiffs have not alleged an injury that is actual or imminent that can be redressed by a ruling from this Court. Therefore, Plaintiffs have failed to establish standing to bring this action pursuant to Article III of the Constitution.

B. Plaintiffs Have Failed To Allege a Violation of the Equal Protection Clause of the Fourteenth Amendment.

Plaintiffs have failed to allege sufficient facts to support a claim under the Equal Protection Clause of the Fourteenth Amendment. The Equal Protection Clause provides that no state shall "deny to any person within its jurisdiction the equal protection of law." U.S. Const. amend. XIV § 1. "To state an equal protection claim, a plaintiff must adequately plead that the government treated the plaintiff disparately as compared to similarly situated persons **and** that such disparate treatment either burdens a fundamental right, targets a suspect class, or has no rational basis." *In re City of Detroit, Mich.*, 841 F.3d 684, 701 (6th Cir. 2016)(emphasis added)(citing *Ctr. for Bio–Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 379 (6th Cir. 2011)). In this case, Plaintiffs failed to allege facts that would show that the Standing Order treated them "disparately as compared to similarly situated persons."

"To satisfy [the Equal Protection Clause's] threshold inquiry, [plaintiffs] must allege that [they] and other individuals who were treated differently *were similarly situated in all material respects*." *Aldridge v. City of Memphis*, 404 F. App'x 29, 42 (6th Cir. 2010) (emphasis added,

alterations in original) (attached to Motion as **Exhibit L**)(citing *Taylor Acquisitions, L.L.C. v. City of Taylor*, 313 Fed.Appx. 826, 836 (6th Cir.2009)). The Standing Order offered all persons serving a sentence under the jurisdiction of the General Sessions Court the chance to reduce their sentences if they agreed to contraceptive services. The fact that Mr. Sullivan was not serving a sentence under the jurisdiction of the General Sessions Court means he is not similarly situated. Further, the fact that Mr. Haskell refused the offer set out in the Standing Order does not mean he was treated differently, it just means that he chose not to accept the offer. If Mr. Haskell alleges that those that accepted the offer were treated differently than those that did accept the offer, he fails to consider that those two classes are not similarly situated. Finally, Mr. Gentry alleges he accepted the offer before he was sentenced and alleges he did not receive the 30-day credit envisioned in the Order Rescinding Previous Standing Order. *Amend. Compl.*, ¶ 29 (Doc. No. 13). But, the Standing Order only applies to individuals who have already been sentenced. *Standing Order* (Doc. No. 13-1). Therefore, Mr. Gentry is not similarly situated.

Because Plaintiffs failed to allege facts sufficient to establish that they were treated "disparately as compared to similarly situated persons," they have failed to allege an Equal Protection Claim and the same should be dismissed.

C. Mr. Sullivan Cannot Establish Due Process Violations.

Plaintiffs' Amended Complaint fails to establish a violation of his procedural and substantive due process rights protected by the Fourteenth Amendment. "Procedural due process is traditionally viewed as the requirement that the government provide a fair procedure when depriving someone of life, liberty, or property; substantive due process protects individual liberty against certain government actions regardless of the fairness of the procedures used to implement them." *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012)(quotation marks and

citations omitted). Because Plaintiffs were not deprived of a liberty interest protected by the due process clause, their due process claims fail.

To establish his procedural due process claim, Mr. Sullivan must show that (1) he had a life, liberty, or property interest protected by the Due Process Clause; (2) Defendants deprived him of this protected interest; and (3) Defendants did not afford him procedural adequate rights prior to deprivation of the protected interest. *Women's Med. Prof'l Corp. v. Baird*, 438 F.3d 595, 611 (6th Cir. 2006). This claim fails because Plaintiffs were not deprived of a liberty interest protected by the Due Process Clause without adequate procedural rights. Although Plaintiffs identify the liberty interest of being able to conceive children, they do not allege they were deprived of this right. To the extent that they allege they were deprived of a liberty interest by not having their sentences reduced by 30 days, they fail to allege the entitlement to this right. Defendants incorporate their arguments as to this point as set out in Section IV, A. above. Even if Plaintiffs have a right in early release, Plaintiffs do not allege that state remedies were inadequate to compensate for this alleged deprivation. *See Collyer v. Darling*, 98 F.3d 211, 223 (6th Cir. 1996) ("However, to pursue a § 1983 claim, the plaintiff bears the burden of demonstrating that the available state procedures were inadequate to compensate for the alleged unconstitutional deprivation.")(citations omitted). For instance, Plaintiffs do not explain why Tennessee's tort law or habeas corpus remedy are insufficient to address the alleged violation. *See Gardner, v. Morriss*, No. 3:17-CV-00747, 2017 WL 4805205, at *2 (M.D. Tenn. Oct. 24, 2017)(attached to Motion as **Exhibit M**)("When success in a § 1983 prisoner action would implicitly question the validity of conviction or duration of sentence, the prisoner must first successfully pursue his state or federal habeas corpus remedies[.]")(citing *Heck v. Humphrey*, 512 U.S. 477, 486-487 (1994)); *see also Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973)(The Court also has no ability in the context of an

action brought under 42 U.S.C. § 1983 to direct that Plaintiffs receive sentence credits that would reduce or impact the criminal sentence they are serving.) Further, Plaintiffs do not allege their sentences being served were ordered without appropriate due process. For these reasons, Defendants submit that Plaintiffs' procedure due process claims should be dismissed.

Finally, to state a claim for a substantive due process violation, Mr. Sullivan must establish that (1) a constitutionally protected property or liberty interest exists, and (2) that constitutionally protected interest has been deprived through arbitrary and capricious action. See *Silver v. Franklin Township, Bd. of Zoning Appeals*, 966 F.2d 1031, 1036 (6th Cir. 1992) ("To establish a violation of substantive due process, a plaintiff must first establish the existence of a constitutionally-protected property or liberty interest."). In this case, Plaintiffs where not deprived of a liberty interest. *See Section IV, A. supra*. While the right to intimate personal decisions might be a protected liberty interest under the substantive due process clause, Plaintiffs did not have a vasectomy and were not deprived of this right. Further, Plaintiffs have no substantive due process right to an early release from prison. *Toney-El v. Franzen*, 777 F.2d 1224, 1227 (7th Cir. 1985)(In Toney–El, the prisoner was incarcerated beyond his release date because the defendants miscalculated his good time credits.") Therefore, Defendants submit that Plaintiffs have failed to allege facts sufficient to state a cognizable substantive due process claim.

D. Plaintiffs Cannot Recover Attorney's Fees and Costs From Judge Benningfield.

Judge Benningfield's decisions to enter, and ultimately rescind, the Standing Order were actions performed in his judicial capacity. Plaintiffs' claims for attorney's fees and costs against Judge Benningfield are similarly barred. These claims are governed by 42 U.S.C. § 1988(b), which states:

> In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. §

> 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. § 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, *except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.*

42 U.S.C. § 1988(b)(emphasis added).

Judge Benningfield is a judicial officer and was at all times acting in this capacity. Plaintiffs do not allege that Judge Benningfield was acting in clear excess of his jurisdiction, nor could they. Judge Benningfield was acting pursuant to the authority granted in Tenn. Code Ann. § 40-35-314(c), which states: "The court shall retain full jurisdiction over the defendant during the term of the sentence and may reduce or modify the sentence or may place the defendant on probation supervision where otherwise eligible." The plain language of the Standing Order limits its applicability to individuals serving a sentence from the General Sessions Court. *Amend. Compl.*, Ex. A (Doc. No. 13-1). Defendants submit that Judge Benningfield was at all times acting in his judicial capacity and that his orders were not entered in clear excess of his jurisdiction. Therefore, pursuant to 42 U.S.C. § 1988(b), Defendants request an order stating Plaintiffs cannot recover fees and costs against Judge Benningfield and dismissing this claim from the Amended Complaint.

E. Plaintiffs' Claims Based on the Tennessee Constitution are Without Merit.

The Tennessee Constitutional provisions cited by Plaintiffs were not violated. First, Plaintiffs allege their rights under Article I, § 8 of the Tennessee Constitution were violated. *Amend. Compl.*, ¶ 108 (Doc. No. 13). Article I, § 8 of the Tennessee Constitution "is synonymous with the due process provisions of the federal constitution." *Lynch v. City of Jellico*, 205 S.W.3d 384, 391 (Tenn.2006). To this end, Defendants incorporate their due process arguments herein and submit that Plaintiffs' claim under the Tennessee Constitution must suffer the same fate. Second,

Plaintiffs allege their rights under Article I, § 3 of the Tennessee Constitution were violated. *Amend. Compl.*, ¶ 110 (Doc. No. 13). Article I, § 3 of the Tennessee Constitution deals with the freedom of worship. Tenn. Const. art. I, § 3. Plaintiffs fail to explain how the facts set forth in their Complaint supports this conclusion. To the extent Plaintiffs allege that their right to have a vasectomy (or to not have one) is religious based, which they don't, none of Plaintiffs had a vasectomy and therefore there is no violation. Defendants submit that Plaintiffs' claim for declaratory relief for the alleged violations of the Tennessee Constitution be dismissed.

V. CONCLUSION

For the reasons listed herein, Defendants request that the Amended Complaint filed against them be dismissed pursuant to Rule 12(b)(1) because Plaintiffs lack standing to bring these claims. Additionally, Defendants request that this Court dismiss Plaintiffs' Amended Complaint pursuant to Rule 12(b)(6) because Plaintiffs have failed to state a claim upon which relief may be granted.

Respectfully Submitted By,

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2017 a true and correct copy of the foregoing Memorandum has been served via email through the Court's CM/ECF system on the following:

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