UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

Rabbi Alexander Milchtein and **Ester Riva Milchtein,** *Plaintiffs*, ***v.*** **John T. Chisholm,** in his official capacity as Milwaukee County District Attorney, **Lori Kornblum**, in her official capacity as Milwaukee County Assistant District Attorney of the City of Milwaukee, **Arlene Happach**, in her official capacity as the Director of the Bureau of Milwaukee Child Welfare, and **Eloise Anderson**, in her official capacity as the Secretary of the Wisconsin Department of Children and Families, *Defendant*s.	**Civil Action No. _____** **VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF WITH JURY DEMAND**

Plaintiffs Rabbi Alexander Milchtein and his wife Ester Riva Milchtein, for their Complaint against Defendants John T. Chisholm, in his official capacity as Milwaukee County District of Attorney, Lori Kornblum, in her official capacity as Milwaukee County Assistant District Attorney, Arlene Happach, in her official capacity as the Director of the Bureau of Milwaukee Child Welfare, and Eloise Anderson, in her official capacity as the Secretary of the Wisconsin Department of Children and Families, state the following:

Introduction

1. This is a civil action for declaratory and injunctive relief arising under the Constitution of the United States.

2. Plaintiffs Rabbi Alexander and Ester Riva Milchtein are practicing Orthodox Jews in Milwaukee, Wisconsin. They have twelve children that they have either homeschooled, placed in Jewish day schools, or sent to Jewish boarding schools. They are part of a very strict Orthodox Jewish community in Milwaukee. Rabbi Milchtein serves as rabbi and Executive Director at the Milwaukee Synagogue for Russian Jews: Congregation Moshiach Now, which serves the greater Milwaukee Russian Jewish community of more than 1,400 families.

3. On October 17, 2011, Plaintiffs' teenage daughter C.M. was removed from their home on the grounds that she could cause injury to herself and others and has inadequate parental supervision and was placed in foster care. (Tr. Emergency Hearing 10/24/11, attached as Ex. 1, at 11:17-21.) On December 3, 2012, the state trial court dismissed C.M.'s case, which was stayed pending appeal. (Tr. Pretrial Conference, attached as Ex. 2, at 7:20-24.)

4. On December 6, 2012, Plaintiffs' teenage daughter S.M. was picked up and placed in foster care on neglect and "risk of abuse" grounds. In April 2013, the state trial court dismissed the neglect charges in S.M.'s case, (Tr. Mot. Dismiss Hearing, attached as Ex. 3, at 21:21-22:13), and "just barely" allowed the "risk of abuse" claims to move forward to an August 2013 trial. (*Id.* at 19:11-12.) That trial that is expected to be adjourned, (Tr. Mot. Dismiss Hearing, attached as Ex. 3, at 18:16-19:12.) A criminal trial charging abuse against the Rabbi was held in June 2013, the outcome of which was a not guilty verdict.[1]

[1]Both Plaintiffs were also declared "maltreaters" by the Bureau in December 2011, a designation that "may be shared with a certifying or licensing agency or certain employers." (*Maltreatment Notices*, attached as Ex. 22.) Their appeals are still pending nearly two years later, notwithstanding the dismissal of charges and not guilty verdict.

5. Plaintiffs have been unconstitutionally deprived of their right to raise C.M. and S.M. and to provide the religious education and environment they desire for those children as a result of these groundless proceedings.

6. Plaintiffs challenge the constitutionality of a policy of the Milwaukee County District Attorney's Office that disallows assistant district attorneys to be substituted on cases, without exception (hereinafter the "ADA Substitution Policy"). (Tr. Pretrial Conf. 9/27/12, attached as Ex. 4, at 35:19-39:15.) Despite substitution requests from both Plaintiffs and trial court judge Christenson to the District Attorney's Office, the ADA Policy prevented Defendant ADA Lori Kornblum from being substituted in C.M.'s case despite a known personal, religious conflict of interest between Defendant Kornblum and Plaintiffs and resulted in C.M.'s case taking over a year and a half to conclude. (Tr. Pretrial Conf. 9/27/12, attached as Ex. 4, at 16:12-22:7.)

7. The ADA Substitution Policy violates the First and Fourteenth Amendments of the United States Constitution by having the effect of establishing religion as proscribed in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and by interfering with Plaintiffs' freedom of religion and right to raise their children, *see Wisconsin v. Yoder*, 406 U.S. 205, 213-14 (1972).

8. Plaintiffs seek to **(1)** enjoin Defendant Chisholm from enforcing the ADA Substitution Policy as applied to religious conflicts of interest, **(2)** enjoin Defendant Kornblum's involvement in any future litigation involving them and their children, and **(3)**, because of the pervasiveness of Ms. Kornblum's involvement with other ADAs, including the ADA in S.M.'s case, enjoin Defendant Chisholm's office from being involved in any future legal proceedings that might be brought against Plaintiffs regarding their children.

9. Plaintiffs seek to have declared unconstitutional Defendants the Bureau of Milwaukee Child Welfare and the Wisconsin Department of Children and Families' (hereinafter collectively "the Bureau") failure to place C.M. and S.M. in religious schools. Such failure violates the First Amendment's Free Exercise Clause and Fourteenth Amendment substantive due process rights under *Wisconsin v. Yoder,* 406 U.S. 205 (1972).

10. Plaintiffs seek to have declared unconstitutional Wisconsin Statute Section 48.57(1)(d), which authorizes the Bureau "[t]o provide for the moral and religious training of children in its care according to the religious belief of the child or of his or her parents." This broad-sweeping provision allows the Bureau to follow a child's religious beliefs rather than those of fit parents in violation of *Wisconsin v. Yoder,* 406 U.S. 205 (1972) and *Troxel v. Granville*, 530 U.S. 57 (2000). Plaintiffs seek to enjoin the Bureau from operating under this Religious Directive.

11. Plaintiffs also seek to have declared unconstitutional a medical consent provision of a standing trial court order. The standing order states that "the Bureau of Milwaukee Child Welfare shall, in all cases in which the Bureau has temporary physical custody or legal custody of a child, have authority to consent to the provision of routine medical care for the child including immunizations and vaccinations. . . ." (*04-07C Directive,* attached as Ex. 5, at 1.) This Consent Provision is vague because it does not adequately define "routine," and it violates Plaintiffs' substantive due process rights under the Fourteenth Amendment. Plaintiffs have been deprived of their right to make medical decisions for their children without due process of law. They seek to have the Bureau enjoined from operating under the Consent Provision.

12. Plaintiffs challenge the Bureau's procedures for interviewing S.M. while investigating her case. The Bureau interviewed S.M. at her principal's home in Illinois, exceeding the court order

they secured to interview S.M. and resulting in an unreasonable search and seizure of S.M. under the Fourth Amendment that deprived Plaintiffs of their parental rights. Plaintiffs seek to enjoin the Bureau from conducting such interviews again.

13. Last, Plaintiffs challenge the state procedures used during the investigation of the alleged abuse and neglect in C.M. and S.M.'s cases. The Bureau placed C.M. with Jewish families that are extremely hostile to Plaintiffs for Sabbath observance without a hearing or consent from Plaintiffs. Defendant Kornblum was able to **(1)** file an supposedly "emergency" motion before a new trial judge to pick up all of the Milchtein children despite his unfamiliarity with C.M.'s case, which was still ongoing, and to **(2)** present her motion without Plaintiffs or their attorneys, whom were known to Defendant Kornblum, present. These procedures (or lack thereof) deprived Plaintiffs of their right to be heard regarding both the where C.M. was placed for the Sabbath and for the interrogation of S.M. These inadequate procedures resulted in the authorization of the Bureau to violate the privacy of Plaintiffs' home with the police to interrogate S.M. despite Defendant Kornblum's knowledge that S.M. was not in the home. Plaintiffs seek to enjoin Defendant Chisholm and Defendant Kornblum from initiating any future proceedings against them involving their children in the absence of Plaintiffs or their attorneys and to enjoin the Bureau from changing the placement of children without either **(1)** parental consent or, alternatively, **(2)** a court hearing conducted with the opportunity for any parents or their attorneys to be present.

14. Plaintiffs fear that Defendants will continue to attempt to remove children from their home and thereby unconstitutionally deprive them of their parental rights, notwithstanding the dismissal of C.M. and S.M.'s respective claims and Plaintiff Rabbi Milchtein's not guilty verdict. This

issue should be resolved promptly so that Plaintiffs and those similarly situated will not be deprived of their religious, parental, and procedural rights in future litigation.

Jurisdiction and Venue

15. This action arises under Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, 42 U.S.C. § 1983, and the First and Fourteenth Amendments to the Constitution of the United States.

16. This Court has jurisdiction over the claims arising under 42 U.S.C. § 1983 under 28 U.S.C. § 1343(a). This Court has jurisdiction over the claims arising under the First and Fourteenth Amendments under 28 U.S.C. §§ 1331 and 1343(a).

17. Venue in the Eastern District of Wisconsin is proper pursuant to 28 U.S.C. § 1391(b).

Parties

18. Plaintiff Alexander Milchtein is a Jewish rabbi in Milwaukee, Wisconsin. He is rabbi and Executive Director of the Milwaukee Synagogue for Russian Jews: Congregation Moshiach Now. Significant religious differences exist between him and other rabbis in the larger Jewish Orthodox community in Milwaukee. (*Newspaper Article,* attached as Ex. 6.) He is the father of C.M. and S.M.

19. Plaintiff Ester Riva Milchtein is Rabbi Milchtein's wife and resides with him in Milwaukee, Wisconsin. She and her husband have twelve children. She is the mother of C.M and S.M.

20. Defendant John T. Chisholm is the District Attorney of Milwaukee County. The district attorney is charged with "[i]nstitut[ing], commenc[ing] or appear[ing] in all civil actions or special proceedings under and perform the duties set forth for the district attorney under . . [Section] 48.09(5)," which is found in the "Children's Code." Wis. Stat. § 978.05(6)(a). Wis. Stat. § 48.09(5)

of the Children's Code states that "[t]he interests of the public shall be represented in proceedings under this chapter as follows: (5) By the district attorney . . . ."

21. Defendant Lori Kornblum is a supervising Assistant District Attorney of Milwaukee County. Assistant district attorneys "may perform any duty required by law to be performed by the district attorney." Wis. Stat. § 978.03(3).

22. Defendant Kornblum considers herself a practicing Orthodox Jew. She and her husband Dr. Bruce Semon have financially supported the Plaintiffs' synagogue in the past, but now she belongs to an Orthodox Jewish community that is extremely hostile to Plaintiffs because of a significant theological dispute. (*Apostasy Ad,* attached as Ex. 7.) After this dispute occurred, Dr. Semon informed Plaintiff Rabbi Milchtein that they would no longer be supporting him for theological reasons. Defendant Kornblum is likewise hostile to Plaintiffs. (*Kornblum Emails*, attached as Ex. 8.)

23. Defendant Arlene Happach is the Director of the Bureau of Milwaukee Child Welfare. The Bureau has the authority to "investigate the conditions surrounding . . . children in need of protection or services," Wis. Stat. § 48.57(1)(a), to "accept legal custody of children transferred to it by the court," *id.* at § 48.57(1)(b), and to "provide appropriate protection and services for children." *Id.* at § 48.57(1)(c). It is also directed "[t]o provide for the moral and religious training of children in its care according to the religious belief of the child or of his or her parents." Wis. Stat. § 48.57(1)(d).

24. Defendant Eloise Anderson is the Secretary of the Wisconsin Department of Children and Families. The Department of Children and Families "provide[s] child welfare services in a county having a population of 500,000 or more," Wis. Stat. § 48.561(1), has the authority "[t]o promote the

enforcement of the laws relating to children in need of protection or services," Wis. Stat. § 48.48(1), and is directed "to administer child welfare services." Wis. Stat. § 48.48(17)(a).

Facts

25. C.M. is Plaintiffs' oldest child. She has been diagnosed with bipolar disorder, ADHD, Oppositional Defiant Disorder, and mood disorder otherwise not specified. She has made numerous reports of abuse to the police and Child Protective Services ("CPS"), all of which the Bureau found to be unsubstantiated.

26. A symptom of bipolar disorder is hypersexuality. *See Psychiatric Disorders,* AllPsych Online: The Virtual Psychology Classroom, http://allpsych.com/disorders/mood/bipolar.html (last visited August 17, 2013). This is true of C.M., for whom it is an obsession. This obsession resulted in her soliciting sex online at a very early age. At age 13, C.M. was sexually assaulted, with criminal charges successfully brought against the perpetrator.

27. At age 14, her behavior improved due to medication. When she was 15 years old, Plaintiffs sent C.M. to a Jewish school in Brooklyn, New York, with two siblings, including S.M.. C.M. initially moved out under the supervision of her grandmother, then joined S.M. and another sister to live with another Jewish family.

28. When C.M. was 16, Plaintiffs discovered she had acquired a cell phone and was again soliciting sexual encounters on numerous "dating" websites.[2] Her conduct was of grave concern to Plaintiffs in light of C.M.'s past sexual conduct, and so she was sent to boarding school in Chicago, much closer to home, with a weekly therapy plan in place.

[2] Rabbi Milchtein's criminal charges of abuse related to an alleged altercation between him and C.M. during a discussion about the existence of her cellphone.

29. In early October 2011, C.M. again contacted CPS, alleging she was afraid to go home. Holly Jones, a licensed, experienced intake worker for the Bureau, conducted an almost three week investigation into C.M. and the family and, after an overnight removal of C.M. to a group home, determined that the issue was a parent/child conflict rather than a situation of abuse. *(Bureau Report,* attached as Ex. 9.) C.M. did not want to return home, however, because her parents required the disclosure of her internet passwords. So while with Ms. Jones at the Bureau, C.M. convinced Ms. Jones's supervisor Martha Stacker not to make her return home. Ms. Stacker ordered C.M. to be detained and returned to the group home. (*Id.*) Ms. Stacker has no field experience as an initial assessment social worker and is not licensed. C.M. was picked up on October 17, 2011.

30. The assistant district attorney ("ADA") initially appointed to C.M.'s case was Maria Dorsey. She appeared once with ADA Defendant Lori Kornblum, who thereafter handled the case.

31. Typically, an ADA is assigned to a court and does work in that respective court only. However, notwithstanding Plaintiffs' two judge substitutions as allowed under Wisconsin law, Defendant Kornblum remained on C.M.'s case.

32. Plaintiffs and their attorneys Sheila Smith and Kerry Cleghorn contacted Defendant John T. Chisholm regarding Ms. Kornblum's involvement as a source of religious conflict. (Tr. Pretrial Conference 9/27/12, attached as Ex. 4, at 8:22-10:4.) Defendant Chisholm indicated "he would see that the matter was handled." (*Id.* at 9:25-10:4.)

33. C.M.'s caseworker Jackie Voykin informed Plaintiff Rabbi Milchtein that she had similarly voiced concern to Defendant Kornblum because Defendant Kornblum's involvement was interfering with her ability to do her job and turning the process into a weapon.

34. However, on September 27, 2012, Plaintiffs were notified at a court hearing that the Milwaukee County District Attorney's Office has a policy that, when assigning assistant district attorneys, the office would not allow substitutions of assistant district attorneys. (*Id.* at 35:19-39:15.) Moreover, it was revealed that Defendant Kornblum was selected because of "[h]er knowledge about the religious practices that [C.M.] wanted to practice and had a right to practice" would be helpful in the litigation of the case, a decision that had "nothing to do with the legal decisions that were made." (*Id.* at 38:16-20.)

35. The process to place C.M. with relatives was never initiated because Defendant Kornblum instructed the Bureau not to do so because she believed Plaintiff Rabbi Milchtein would have too much control over C.M.'s care. Instead, C.M. was initially placed with the Heifetz family, then the Krivitzky family, and then the Blumberg family, at Defendant Kornblum's recommendation. Each of these families hold observe religious beliefs that are hostile to Plaintiffs' religious beliefs. The Blumbergs are an extremely affluent, non-practicing Jewish family that Defendant Kornblum recommended to the Bureau. They generously provided substantial material possessions and opportunities to C.M., including a "smart phone," a computer with internet access, and acting lessons. They left C.M. home alone for two weeks during a trip to Finland in August 2012.

36. A probable cause hearing was held on October 24, 2011. During the hearing, the Bureau informed Plaintiffs that it would be sensitive to their religious desires as parents.

37. Shortly thereafter, C.M. was repeatedly temporarily placed in different Jewish homes for Sabbath without consulting her parents. On October 28, 2011, Bureau supervisor Martha Stacker conferred with the District Attorney's Office about placing C.M. in an Orthodox Jewish home for the

Sabbath and was informed that C.M. could be taken to an undisclosed home for that purpose. (Tr. Motion Hearing 11/9/11, attached as Ex. 10, at 5:23-6:5.) Plaintiffs discovered afterwards that this placement was with Rabbi Shmotkin's family, a Jewish family that has great animus for Plaintiff Rabbi Milchtein, has spoken publicly against him and who is not part of the Milchtein synagogue. (*Id.* at 7:2-6; *Apostasy Ad*, attached as Ex. 7.) Plaintiffs and the Bureau worked out a plan addressing future Sabbaths, but a week later on November 4, 2011, Defendant Kornblum filed an emergency motion heard in Judge Donald's chambers to place C.M. with the McKinney/Mandelman family, another family to which Plaintiffs objected on religious grounds. The motion was granted. Again, on November 9, 2011, Defendant Kornblum filed another placement motion over the Bureau and Plaintiffs' objections. (Tr. Motion Hearing 11/9/11, attached as Ex. 10, at 16:7-19, 21:25-22:6.) The judge deferred to the Bureau to find a suitable Sabbath placement. (*Id.* at 43:16-17.)

38. None of these placements were necessary for C.M. to keep the Sabbath. Sabbath observance can occur wherever its observers are, whether at home or traveling. Plaintiffs desired a group home placement for C.M. to ensure she was supervised and did not have unsupervised access to the internet.

39. C.M.'s case was transferred to the Ongoing Unit in the Bureau, a group of social workers with the goal of reunifying the family and establishing a safety plan. (*Bureau Organization Webpage*, attached as Ex. 11.) The original Ongoing Unit that participated in the probable cause hearing was replaced on December 16, 2011, with a new team led by social worker Sara Waldschmidt, who as a law student had served as an intern for the district attorney's office and had assisted

Defendant Kornblum in prosecuting a case. Defendant Kornblum recommended this case to Ms. Waldschmidt because Ms. Kornblum felt it would be a good learning experience for Ms. Waldschmidt.

40. Ms. Waldschmidt took C.M. on a four (4) hour shopping trip at the mall to buy clothes (Tr. Temporary Guardianship 1/10/12, attached as Ex. 12, at 12:19-23) and ensured that tutoring services were provided to C.M. Three social workers were assigned to C.M.'s case.

41. C.M.'s three social workers, her placement with affluent families, the involvement of social workers in shopping for her clothes (rather than providing clothes from the Bureau), the tutoring services, and the acting lessons provided to her are very atypical for foster children.

42. Initially, Plaintiffs requested that internet schooling be provided to C.M., but Ms. Waldschmidt refused to on the grounds that C.M. needed supervision for such schooling that the Bureau could not provide. (*Waldschmidt C.M. Education Email*, attached as Ex. 13.) Defendant Kornblum spoke with the Bureau, also arguing against internet schooling on the grounds that it was an effort by Plaintiffs to isolate C.M. (*Kornblum Emails,* attached as Ex. 8.) So instead, the Plaintiffs sought to put C.M. in the only all-female Jewish school in Milwaukee (referred to as TAM).

43. Under Milwaukee's Parental Choice Program, a participating private school cannot refuse to take a child unless they do not satisfy the two eligibility requirements relating to family income and residency. (*CHOICE FAQs,* attached as Ex. 25, at 2.) TAM participates in the CHOICE program.

44. Plaintiffs provided the Bureau with the necessary paperwork for C.M.'s admission into TAM. The Bureau did not timely submit the paperwork and transferred C.M. out of the City of Milwaukee before the paperwork was submitted, making her ineligible for Milwaukee's school

CHOICE program at the time of its submission. As a result, C.M. was not admitted into TAM (nor eligible for any private CHOICE program school) and instead was sent to a mixed gender public school, where she had internet schooling with unrestricted and unsupervised access to the internet. Plaintiffs believe that C.M. would have been admitted into TAM but for the tardiness of the Bureau.

45. The trial court authorized the Bureau to send C.M. back to her boarding school in Illinois. (Tr. CHIPS Detention Hearing 10/24/2011, attached as Ex. 1, at 15:23-16:4.) The Bureau did not do so.

46. On June 18, 2012, C.M.'s trial date was adjourned for six months when it became apparent to Judge Christenson that a serious conflict of interest existed between Defendant Kornblum and Plaintiffs and directed the parties to brief the issue. (Tr. Jury Trial Hearing 6/18/2012, attached as Ex. 14, at 49:5-7.) In a August 27, 2012, hearing before the court, Ms. Kornblum's supervisor Mary Sowinski asserted that it was the policy of the district attorney's office not to grant requests to change ADAs and that, in any event, the office had reviewed the situation and was not going to allow Ms. Kornblum to be replaced because Defendant Kornblum's "knowledge about the religious practices that this child wanted to practice and had the right to practice were helpful in the litigation of the case," a fact that had "nothing to do with the legal decisions that were made." (Tr. Pretrial Conf. 9/27/12, attached as Ex. 4, at 38:16-20.)

47. Because of this conflict, resolution of C.M.'s case took over 1.5 years to conclude.[3]

[3]In an effort to initiate reforms in the Bureau, the Bureau was sued in federal court and is now under a continuing Settlement Agreement that obligates it to reunify at least 71% of children in its care within 12 months. (*Settlement Agreement*, attached as Ex. 20, at 3.)

48. Judge Christenson, recognizing that the case really was about "litigating personal vendettas," (Tr. Jury Trial Hearing 6/18/12, attached as Ex. 23, at 17:9-12), ordered mediation on June 18, 2012, the result of which would have resulted in a consent decree without admission of guilt. Mediation began on August 17, 2012, with Judge Malmstadt. The mediation was almost successful, until Defendant Kornblum secured an ex parte pick-up order for Plaintiffs' daughter S.M. on September 12, 2013, the day that the final draft of the consent decree was due in C.M.'s case, which undermined trust and caused the mediation to unravel. (Tr. Pretrial Conference 9/27/12, attached as Ex. 4, at 44:15-45:19.) The matter began to move towards trial again.

49. On December 3, 2012, the court dismissed C.M.'s case without a trial because **(1)** the case had been drawn out so long that C.M.'s eighteenth birthday was imminently approaching, which would divest the court of jurisdiction and **(2)** because C.M. would not lose any services due to turning 18. (Tr. Pretrial Hearing 12/3/12, attached as Ex. 15, at 5:2-7:25.) Ms. Kornblum indicated she would appeal and secured a stay pending appeal at that hearing, acknowledging that she was requested the stay so that C.M. could continue to receive state support through graduation, notwithstanding her age. (Tr. Property Hearing 5/13/13, attached as Ex. 16, at 9:2-8.) The appeal has not been pursued.

50. On May 13, 2013, the court stated that its dismissal of the case was because "it has been a personal matter that the legal system was drawn into . . . this is a family matter at bottom." (*Id*.)

51. Meanwhile, Defendant Kornblum and the Bureau pressed forward with S.M.'s case. Beginning in August 2012, S.M. was at boarding school in Chicago. (Tr. Mot. Dismiss Hearing, attached as Ex. 3, at 11:2-5; 13:13-17.)

52. Defendant Kornblum received a call from a person alleging to be a former teacher of S.M. from S.M.'s school in New York City. The teacher told Ms. Kornblum, on condition of anonymity, that S.M. was afraid to come home. (Tr. Pretrial Conf. 9/27/12, attached as Ex. 4, at 11:12-17.)

53. On September 11, 2012, Ms. Kornblum reported the call to the Bureau, which then went to Plaintiffs' home to interview S.M., but was denied entry and given the phone numbers of Plaintiffs' attorneys. (*Id.* at 11:18-12:8.)

54. Defendant Kornblum then sought an emergency hearing that afternoon before Judge Donald, asking to have all of the children removed from the home on grounds of suspected abuse and neglect. (Tr. Pretrial Conf. 9/27/12, attached as Ex. 4, at 10:10-11:11.) Judge Donald scheduled a full hearing on the matter for the next day. (*Id.* at 12:9-13.) Defendant Kornblum did not notify Plaintiffs or their attorneys of the hearing scheduled for the next day on September 12, 2013, and so the Plaintiffs were not present.

55. Plaintiffs believe that Defendant Kornblum and the Bureau knew or should have known from their investigation of their family that S.M. would not be at Plaintiffs' home on September 11, 2012, and that S.M. would be at boarding school in Illinois that day. However, the transcripts of the hearing show that neither party made mention of it to the court.[4] Plaintiffs also believe that Defendant Kornblum attempted to mislead Judge Donald to falsely believe that Plaintiffs were isolating their children from the community and that Plaintiffs were not cooperating with the Bureau to justify

[4]Beyond this pick up order hearing, Ms. Kornblum has not been directly litigating the S.M. matter. However, she is believed to be the supervisor of the ADA assigned to S.M.'s case and is very involved behind the scenes.

picking them up. (*Id.* at 16:6-9, 25:7-12, 31:23-32:2.) Defendant Kornblum falsely stated to Judge Donald that Plaintiff Ester Riva Milchtein had no contact with C.M., (*id.* at 13:21-14:4), used C.M. as an anonymous reporter,[5] (*id.* at 28:9-14), served as an anonymous reporter herself for a matter in which she was also counsel, (Pick Up Order, attached as Ex. 21, at 2 "D."), and offered unsubstantiated evidence relating to C.M., not S.M., that dated back as far as 2007, (*id.* at 6-7) to justify her "emergency" motion.

56. Judge Donald found insufficient evidence for Defendant Kornblum's broad-sweeping request to pick up all the children, but allowed the Bureau to confirm S.M.'s availability with Plaintiffs' attorneys and to otherwise go to Plaintiffs' home to interview S.M. (Tr. Pick Up Hearing 9/12/12, attached as Ex. 17, at 35:15-19, 36:17-20; Pick Up Order, attached as Ex. 21, at 8.)

57. The Bureau proceeded to send two initial assessment social workers, a Jewish Bureau trainee, a translator, and two police officers to Plaintiffs' home. The Bureau team forcibly entered the Plaintiffs' home. Only the youngest children were at the home at the time. They were in the care of a babysitter. Despite the order, the Bureau directed the police officers to interview the children but the police refused to do so because they did not believe they had the authority. On receiving a call from her babysitter, Plaintiff Ester Riva Milchtein returned to the home promptly with her attorney and found the police inside the home.

58. On discovering that S.M. was at boarding school in Illnois, the Bureau then proceeded to immediately go to Illinois to interview S.M. at the school principal's home. (Tr. Pretrial Hearing,

---

[5]"Reporter" refers to individuals that report incidents of child abuse or neglect to the Bureau. As an ADA, Defendant Kornblum is a mandatory reporter and is obligated to report such incidents.

attached as Ex. 4, at 12:22.) Plaintiffs, now aware of an order (though not provided with a copy), were able to find an Illinois attorney to represent S.M. during the interview. (*Id.* at 12:23-13:2.) However, during the interview, the attorney was dismissed because S.M. refused to listen to him, and the Bureau continued to interview S.M. without the attorney present or parental consent.

59. Upon interviewing S.M. on September 13, 2012, the Bureau found that S.M.'s claims of abuse were unsubstantiated. (*Id.* at 13:3-6.) S.M. did not return home from school for any holiday or to visit thereafter because her abuse claims with the Bureau and her involvement in her father's criminal suit as a witness made her afraid to do so.

60. On November 11, 2011, S.M. was caught shoplifting and in early December 2011, threatened Plaintiffs that she would call CPS like C.M. had unless they met her demands for money. When Plaintiffs refused to comply, S.M. told them she had called C.M.

61. The Bureau told S.M. they would help her if she was in Milwaukee. So on December 6, 2012, S.M. used a bus ticket purchased by C.M.[6] to return to Milwaukee and on her return, (Tr. Mot. Dismiss, attached as Ex. 3, at 13:25-14:9), the Bureau promptly detained her and initiated protective services proceedings on the grounds of S.M.'s "profound fear" to return home.

62. S.M.'s shoplifting charges remain an open issue. She missed her December 19, 2012, and a January 24, 2013, court dates set by the Illinois court despite Plaintiffs' notification to S.M.'s foster parents of the hearing. The Illinois court imposed a $750 fine. Additionally, the store sent a

[6]How C.M. came by the money for the ticket is not presently known. Nor is S.M.'s ability to purchase the ticket known. Under Illinois law, it is illegal to sell to, give to, or purchase for a minor a public conveyance travel ticket without parental or guardian consent. 720 Ill. Comp. Stat. 5/10-8.1.

demand letter to Plaintiffs seeking to recover over one thousand dollars as a result of S.M.'s shoplifting. Plaintiffs are not able to contact her to get her to resolve these issues.

63. S.M. was placed with the Blumberg family with C.M., which Plaintiffs opposed because of C.M.'s behavior problems. At the Blumbergs, S.M. was given a new guitar and receives guitar lessons, driving lessons, a "smart phone", and has been provided substantial material possessions without parental consent or involvement.

64. S.M. attends public school, which is also against Plaintiffs' wishes and despite the Illinois boarding school's willingness to let her complete the year there. To Plaintiffs' knowledge and belief, the Bureau treated S.M. as homeless under the Homeless Act and allowed S.M. to select her own school. The trial court deferred to the Bureau to decide where to send S.M. to school. (Tr. Emergency Hearing, attached as Ex. 18, at 35:16-24.) The Bureau gave S.M. veto power over Plaintiffs' wishes and because it did not understand how Plaintiffs' religious preferences might make a public school offensive to them, disregarded them. (*Waldschmidt S.M. Education Email* 12/27/2012, attached as Ex. 19.)

65. The lifestyle C.M. and S.M. have enjoyed is not possible in Plaintiffs' home and thus creates an obstacle to reunification.

66. Plaintiffs are very conscientious about the healthcare of all their children. They have made clear to the Bureau often and repeatedly their desire to be notified, to have their consent secured, and to participate in any medical matters involving C.M. and S.M.

67. Despite this, throughout both C.M. and S.M.'s cases, the Bureau authorized numerous medical appointments without parental notification (pre- or post-), consent, or participation. For example, after Plaintiffs authorized dental treatment, the Bureau authorized C.M.'s wisdom teeth to be

removed on the Sabbath of December 22, 2012, without notifying Plaintiffs when it was scheduled. S.M. was taken to an eye appointment on January 2, 2013, without parental notification or consent. She was taken in for a throat culture for possible strep on January 22, 2013, without prior notification. She had a dental appointment without parental notification, consent, or participation. She was scheduled to see an Ear/Nose/Throat specialist on July 4, 2013, but Plaintiff Ester Riva Milchtein cancelled the appointment because it was made without their notification, consent, and participation. And S.M. had an appointment at a sleep clinic on July 31, 2013, despite Plaintiff Rabbi Milchtein's revocation of authorization for the appointment because Plaintiffs were not allowed to be present. Plaintiffs learned of these appointments only afterwards either from the Bureau or doctors and beforehand only by chance conversations with friends and medical receptionists.

68. The Bureau removed Plaintiffs as responsible parties with C.M. and S.M.'s insurance provider and so deprived them of access to C.M. or S.M.'s medical bills.

69. C.M. was prescribed birth control and S.M. has been prescribed numerous drugs, including a narcotic, without Plaintiffs' notification or consent.

70. The Bureau failed to bring C.M. to her psychiatrist to address her psychiatric-related mental health issues and for medical management every three months (which is needed) while she was in their care. As a consequence, after six months with no appointments, her psychiatrist dropped her. C.M. has only received her bipolar medication twice throughout her entire 1.5 year long case. The Bureau also failed to ensure that C.M. was supervised sufficiently so C.M. was able to purchase a book entitled "How To Have Anal Sex" from Half Price Books.

71. A standing court order states that "the Bureau of Milwaukee Child Welfare shall, in all cases in which the Bureau has temporary physical custody or legal custody of a child, have authority to

consent to the provision of routine medical care for the child including immunizations and vaccinations. . . ." (*04-07C Directive*, attached as Ex. 5, at 1) (hereinafter "Consent Provision"). The Bureau interprets "routine" very broadly. (*See Waldschmidt S.M. Medical Email,* attached as Ex.24.)

72. At no point has any state court terminated Plaintiffs' parental rights nor have any proceedings been initiated to do so.

73. Nowhere in the Consent Provision does it state that parental notification nor parental attendance to appointments is not required or not allowed.

74. The Bureau is not permitted to participate in the appointments due to privacy laws. So, without parental attendance, medical appointments for minors like C.M. and S.M. are conducted without a legal guardian present and result in the minor child making their own medical decision.

75. Plaintiffs and their family have been irreparably harmed by the ADA Substitution Policy, the Consent Provision, and the state procedures employed during C.M. and S.M.'s cases. As a public figure, Plaintiff Rabbi Milchtein has also suffered reputational harm from these groundless lawsuits and proceedings.

76. Plaintiffs have been irreparably harmed by Defendants, and they reasonably believe they will be again.

77. Plaintiffs have no adequate remedy at law.

COUNT I

THE ADA SUBSTITUTION POLICY AS APPLIED TO RELIGIOUS CONFLICTS OF INTEREST UNCONSTITUTIONALLY ESTABLISHING RELIGION.

78. Plaintiffs reallege the preceding paragraphs.

79. The Milwaukee District Attorney's policy (hereinafter "the ADA Substitution Policy") disallows the substitution of an assistant district attorney for any reason. (Tr. Pretrial Conf. 9/27/12, attached as Ex. 4, at 35:19-39:15.)

80. The "First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion." *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 15–16 (1947). "Manifesting a purpose to favor one faith over another, or adherence to religion generally, clashes with the 'understanding, reached . . . after decades of religious war, that liberty and social stability demand a religious tolerance that respects the religious views of all citizens . . . .'" *McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005) (*quoting Zelman v. Simmons–Harris*, 536 U.S. 639, 718 (2002)).

81. The Supreme Court has delineated a three part test to determine whether government is violating the Establishment Clause. First, the government action must have a secular purpose. *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971). Second, "its principal or primary effect must be one that neither advances nor inhibits religion." *Id.* And third, it "must not foster 'an excessive government entanglement with religion.'" *Id.* at 613 (internal citations omitted). The purpose "requirement aims at preventing [government] from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters." *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 335 (1987).

82. Under Establishment Clause jurisprudence, the ADA Substitution Policy as applied to religious conflicts of interest does not serve a secular purpose, is not neutral, and results in excessive entanglement. It is therefore unconstitutional.

COUNT II

DEFENDANTS UNCONSTITUTIONALLY INTERFERED WITH PLAINTIFFS' FREE EXERCISE OF RELIGION AND SUBSTANTIVE DUE PROCESS RIGHTS.

83. Plaintiffs reallege the preceding paragraphs.

84. "[T]he values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society." *Wisconsin v. Yoder*, 406 U.S. 205, 213-14 (1972). Thus, "a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of *Pierce*, 'prepare (them) for additional obligations.'" *Id.* at 214.

85. The District Attorney's Office selected Defendant Kornblum as the ADA in C.M.'s case because of her Jewish background. (Tr. Pretrial Conf. 9/27/12, attached as Ex. 4, at 38:16-20.) Its refusal to make an exception to the ADA Substitution Policy to replace her on C.M.'s case because of a personal, religious conflict between her and Plaintiffs unconstitutionally interfered with Plaintiffs' right to raise their children in a manner consistent with their religious beliefs. C.M. and S.M. were placed in affluent Jewish homes of another Jewish denomination, and C.M. participated in Sabbath traditions that were inconsistent with Plaintiffs'.

86. The Defendant Bureau also interfered with Plaintiffs' right to have their children instructed in a manner consistent with their religious beliefs. The Bureau failed to pursue Plaintiffs' request that the girls be placed in a Jewish school—a request that could easily have been accommodated given Wisconsin's school choice options and Illinois schools they were already

attending—missed C.M.'s TAM application deadline, and declared S.M. homeless so she could select a school without parental involvement.

87. Defendant Chisholm's religiously motived appointment of Defendant Kornblum to C.M.'s case, the ADA Substitution Policy, and the Bureau's conduct regarding C.M. and S.M.'s medical and educational needs are unconstitutional under the First Amendment's Free Exercise Clause and Substantive Due Process of the Fourteenth Amendment.

COUNT III

THE RELIGIOUS DIRECTIVE VIOLATES PLAINTIFFS' FREE EXERCISE OF RELIGION AND SUBSTANTIVE DUE PROCESS RIGHTS.

88. Plaintiffs reallege the preceding paragraphs.

89. "[T]he values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society." *Wisconsin v. Yoder*, 406 U.S. 205, 213-14 (1972). Thus, a State's interest in a child must be balanced against the parents "when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment." *Id.* at 214. Likewise, "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

90. It is presumed that "a fit parent will act in the best interest of his or her child." *Id.* at 69. So "the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state [actor] believes a 'better' decision could be made." *Id.* at 72-73.

91. The Bureau is directed "[t]o provide for the moral and religious training of children in its care according to the religious belief of the child or of his or her parents." Wis. Stat. § 48.57(1)(d) (hereinafter "the Religious Directive").

92. The Religious Directive allows the Bureau to step outside its role of ensuring the safety of Wisconsin's children to inject itself into religious issues by broadly authorizing the Bureau to disregard the religious beliefs of the parents and follow the child's, regardless of the fitness of the parents and without notice or a hearing.

93. Plaintiffs are not unfit parents and have not had their parental rights terminated.

94. Throughout C.M. and S.M.'s cases, the Bureau has disregarded Plaintiffs' religious beliefs regarding the Sabbath and education and followed C.M.'s, S.M.'s, Defendant Kornblum's, or their own. This violates Plaintiffs' right to raise their children within the religious framework of Plaintiffs' choice.

95. The Religious Directive is therefore unconstitutional under the First Amendment's Free Exercise Clause and Fourteenth Amendment substantive due process protections.

COUNT IV

THE CONSENT PROVISION IS UNCONSTITUTIONALLY VAGUE.

96. Plaintiffs reallege the preceding paragraphs.

97. A law is vague if "if its prohibitions are not clearly defined." *Grayned v. City of Rockford,* 408 U.S. 104, 108 (1972). "If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them." *Id.* "The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends

in part on the nature of the enactment." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982).

98. "The most important factor affecting the degree of clarity necessary to satisfy the Constitution is whether constitutional rights are at stake. When a law threatens to inhibit the exercise of constitutionally protected rights . . . the Constitution demands that courts apply a more stringent vagueness test." *Karlin v. Foust*, 188 F.3d 446, 458 (7th Cir. 1999).

99. A vagueness challenge to the constitutionality of a statute will only succeed "if a plaintiff can 'establish that no set of circumstances exists under which the Act would be valid.'" *Doe v. Heck*, 327 F.3d 492, 528 (7th Cir. 2003) (*quoting United States v. Salerno*, 481 U.S. 739, 745 (1987)).

100. The Consent Provision states that "the Bureau of Milwaukee Child Welfare shall, in all cases in which the Bureau has temporary physical custody or legal custody of a child, have authority to consent to the provision of routine medical care for the child including immunizations and vaccinations. . . ." (*04-07C Directive*, attached as Ex. 5, at 1.).

101. Plaintiffs have a constitutional right to raise their children, including to make medical decisions on their behalf. *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923).

102. Plaintiffs' parental rights for C.M. and S.M. have not been terminated.

103. The Bureau scheduled numerous medical appointments for C.M. and S.M. without Plaintiffs' prior knowledge or consent. For example, C.M.'s wisdom teeth were removed on December 22, 2012—a Sabbath—without informing Plaintiffs. S.M. was taken to an eye appointment on January 2, 2013, without parental notification, consent, or attendance. She was taken to a dental appointment on February 19, 2013, without parental notification, consent, or participation. She was taken in for a

throat culture for possible strep on January 22, 2013, without prior notification, consent, or attendance. She was scheduled to see an Ear/Nose/Throat specialist on July 4, 2013, but Plaintiff Ester Riva Milchtein, upon learning about the appointment, cancelled it because it was made without their notification and consent. S.M. had an appointment at a sleep clinic on July 31, 2013, despite Plaintiff Rabbi Milchtein's express objection to the appointment. And medications have been prescribed for C.M. and S.M without Plaintiffs' knowledge or consent. Plaintiffs learned of these appointments only afterwards either from the Bureau or doctors and beforehand only by chance conversations with friends and medical receptionists.

104. Plaintiffs have been removed as responsible parties from C.M. and S.M.'s medical account with her insurance provider and so cannot access C.M. and S.M.'s medical accounts.

105. What constitutes "routine" under the Consent Provision is not defined.

106. The Bureau has interpreted "routine" to include specialist appointments and surgeries. (*See Waldschmidt S.M. Medical Email,* attached as Ex. 24.) This interpretation is arbitrary and discriminatory.

107. Moreover, nowhere in the Consent Provision is parental notification waived or parental attendance at medical appointments for their children disallowed or not required.

108. No circumstance exists where the Consent Provision is valid.

109. The Consent Provision is unconstitutionally vague.

COUNT V

THE CONSENT PROVISION UNCONSTITUTIONALLY VIOLATES PROCEDURAL DUE PROCESS.

110. Plaintiffs reallege the preceding paragraphs.

111. The Fourteenth Amendment provides that "No state . . . shall deprive any person of life, liberty or property without due process of law."

112. Life, liberty and property include "not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *see Crowley v. McKinney*, 400 F.3d 965, 968 (7th Cir. 2005).

113. The Consent Provision states that "the Bureau of Milwaukee Child Welfare shall, in all cases in which the Bureau has temporary physical custody or legal custody of a child, have authority to consent to the provision of routine medical care for the child including immunizations and vaccinations. . . ." (*04-07C Directive*, attached as Ex. 5, at 1.)

114. The Bureau scheduled numerous medical appointments for C.M. and S.M. without Plaintiffs' prior knowledge or consent. For example, C.M.'s wisdom teeth were removed on December 22, 2012—a Sabbath—without informing Plaintiffs. S.M. was taken to an eye appointment on January 2, 2013, without parental notification, consent, or attendance. She was taken to a dental appointment on February 19, 2013, without parental notification, consent, or participation. She was taken in for a throat culture for possible strep on January 22, 2013, without prior notification, consent, or attendance. She was scheduled to see an Ear/Nose/Throat specialist on July 4, 2013, but Plaintiff Ester Riva Milchtein, upon learning about the appointment, cancelled it because it was made without their notification and consent. S.M. had an appointment at a sleep clinic on July 31, 2013, despite Plaintiff

Rabbi Milchtein's express objection to the appointment. And medications have been prescribed for C.M. and S.M without Plaintiffs' knowledge or consent. Plaintiffs learned of these appointments only afterwards either from the Bureau or doctors and beforehand only by chance conversations with friends and medical receptionists.

115. Plaintiffs have been removed as responsible parties from C.M. and S.M.'s medical account with her insurance provider and so cannot access C.M. and S.M.'s medical accounts.

116. C.M. was prescribed birth control and S.M. has been prescribed numerous drugs, including a narcotic, without Plaintiffs' notification or consent.

117. The Bureau thinks that appointments like those above are "routine" within the meaning of the Medical Provision and so notification and consent are not necessary. (*See Waldschmidt S.M. Medical Email,* attached as Ex. 24.)

118. Plaintiffs have a constitutional right to raise their children, including to make medical decisions on their behalf. *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923).

119. Plaintiffs' parental rights for C.M. and S.M. have not been terminated.

120. The Medical Provision deprives Plaintiffs of their constitutional right to make medical decisions on behalf of their children and therefore, as applied to fit parents, violates their procedural due process rights under the Fourteenth Amendment.

COUNT VI

STATE PROCEDURES EMPLOYED IN C.M.'S CASE AND S.M.'S CASE UNCONSTITUTIONALLY VIOLATED THEIR RIGHTS TO PROCEDURAL DUE PROCESS.

121. Plaintiffs reallege the preceding paragraphs.

122. The Fourteenth Amendment provides that "No state . . . shall deprive any person of life, liberty or property without due process of law."

123. Life, liberty and property include "not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *see Crowley v. McKinney*, 400 F.3d 965, 968 (7th Cir. 2005).

124. Plaintiffs have a liberty interest in raising C.M. and S.M.

125. During C.M.'s case, no initial hearing was held regarding where C.M. would observe the Sabbath. She was moved to a nondisclosed location without notice or an opportunity to be heard for Plaintiffs. (Tr. Motion Hearing 11/9/11, attached as Ex. 10, at 5:23-6:5.) This is fundamentally unfair and deprived Plaintiffs of their right to raise C.M. without sufficient procedural safeguards.

126. To initiate S.M.'s case, Defendant Kornblum was able to go to a different trial court to get an allegedly emergency motion to pick up S.M. heard without Plaintiffs nor their attorneys present. (Tr. Pretrial Conf. 9/27/12, attached as Ex. 4.) State procedures allowed the motion to be entertained by a trial judge that was not familiar with the family history despite another, similar, ongoing matter and without Plaintiffs or their attorneys. This deprived Plaintiffs of their opportunity to be heard, is fundamentally unfair, and deprived Plaintiffs of their liberty interest to raise S.M. without sufficient procedural safeguards.

COUNT VII

THE BUREAU'S INTERVIEW PROCEDURES FOR S.M. WERE AN UNREASONABLE SEARCH AND SEIZURE THAT VIOLATED THE FOURTH AMENDMENT.

127. Plaintiffs reallege the preceding paragraphs.

128. The Fourth Amendment states: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."

129. "The strictures of the Fourth Amendment apply to child welfare workers, as well as all other governmental employees." *Doe v. Heck*, 327 F.3d 492, 509 (7th Cir. 2003).

130. Gathering information is "an activity that most certainly constitutes a search under the Fourth Amendment," *id.* at 510, and "[a] person has been 'seized' within the meaning of the Fourth Amendment if, in view of all of the circumstances surrounding the incident, a reasonable person would not have believed that he was free to leave." *Id.* at 510.

131. The Bureau's interview of S.M. at her principal's home was a search and seizure.

132. "'What is reasonable depends on the context within which a search takes place,'" *id.* at 510 (*quoting New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985). "[A] warrantless search or seizure conducted on private property is presumptively unreasonable." *Id.* at 511.

133. Judge Donald's order to pick up S.M. was limited to Plaintiffs' home and had no authority in Illinois. Thus, the Bureau's interview in Illinois in the principal's home was warrantless and presumptively unreasonable.

134. A warrantless search and seizure on private property:

> can only be upheld if either falls within one of the "few specifically established and well delineated exceptions" to the Fourth Amendment's warrant and probable cause requirements, *Minnesota v. Dickerson*, 508 U.S. 366, 372, 113 S.Ct. 2130, 124 L.Ed.2d

> 334 (1993) (citations and internal quotations omitted), *e.g.*, consent, *Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973), or exigent circumstances. *United States v. Karo*, 468 U.S. 705, 718, 104 S.Ct. 3296, 82 L.Ed.2d 530 (1984).

Heck, 327 F.3d at 513.

135. Plaintiffs did not consent to the interview and did what they could to protect S.M. during the interview process by providing for her an attorney.

136. No emergency or exigent circumstances existed to make the Bureau's search and seizure reasonable. S.M. was not at home and so under no immediate threat of the alleged and unsubstantiated harm from her father. And the original warrant was supported by **(1)** years old evidence involving another child that was known to and deemed unsubstantiated by the Bureau, **(2)** unsubstantiated evidence from C.M., **(3)** evidence offered by Defendant Kornblum herself as a "reporter," and **(4)** S.M.'s claim that she was fearful to come home. (Pick Up Order, attached as Ex. 21, at 2, 6-7.)

137. The Bureau's interview procedures were unconstitutional under the Fourth Amendment and resulted in a violation of Plaintiffs' parental rights.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court to:

(1) Declare the ADA Substitution Policy unconstitutional under the Establishment Clause as applied to religious conflicts of interest;

(2) Declare Defendants' conduct in C.M.'s and S.M.'s cases and the ADA Substitution Policy to be violations of the Free Exercise Clause and the Fourteenth Amendment;

(3) Declare Wis. Stat. § 48.57(1)(d) (the "Religious Directive") unconstitutional under the First Amendment's Free Exercise Clause and the Due Process Clause of the Fourteenth Amendment;

(4) Declare trial court directive 04-07C (the "Consent Provision") unconstitutionally vague and unconstitutional as applied to fit parents;

(5) Declare any state procedures that allow the placement of a child without affording the parents an opportunity to be heard unconstitutional under the Due Process Clause of the Fourteenth Amendment;

(6) Declare any state procedures that allow a different judge to hear ex parte a pick up order motion when another related matter is in progress unconstitutional under the Due Process Clause of the Fourteenth Amendment;

(7) Declare the Bureau's warrantless interview procedures to be an unconstitutional search and seizure under the Fourth Amendment;

(8) Enjoin Defendant Chisholm, his agents, and successors, from enforcing the ADA Policy in religious conflicts of interest contexts;

(9) Enjoin Defendant Chisholm, his agents, and successors from pursuing claims against Plaintiffs regarding their children and require him, his agents, and successors to seek the appointment of a special prosecutor in such a matter pursuant to Wis. Stat. § 978.045(1r)(h);

(10) Enjoin Defendant Kornblum from participating in any way and in any matter involving the Milchtein children, both in the District Attorney's Office and with the Bureau;

(11) Enjoin Defendants Arlene Happach and Eloise Anderson, their agents, and successors from disregarding the religious beliefs of fit parents when making decisions regarding children in their care;

(12) Enjoin Defendants Arlene Happach and Eloise Anderson, their agents, and successors from acting pursuant to the Consent Provision's "routine appointment" provision;

(13) Enjoin Defendants Arlene Happach and Eloise Anderson, their agents, and successors from acting pursuant to the Religious Directive of Wis. Stat. § 48.57(1)(d);

(14) Enjoin Defendants Arlene Happach and Eloise Anderson, their agents, and successors from initiating an investigation of a child without a court order, parental consent, or exigent circumstances;

(15) Direct all Defendants to offer a written, public apology to Plaintiffs in light of **(1)** the harm their conduct has caused Plaintiffs' family, **(2)** the negative impact Defendants' conduct has had on Plaintiffs' reputation in the Jewish community and **(3)** Plaintiffs' loss of doctors who now refuse to see any of their children as a result of the Bureau's conduct in C.M's and S.M.'s cases;

(16) Grant Plaintiffs their costs of this action, including reasonable attorney's fees, pursuant to 42 U.S.C. § 1988 and any other applicable authority; and

(17) Grant Plaintiffs such other relief as may be just and equitable.

JURY DEMAND

Pursuant to the Seventh Amendment to the United States Constitution and Federal Rule of Civil Procedure 38, Plaintiffs request a jury trial on all issues so triable.

Dated: August 20, 2013

Respectfully submitted,

/s/ Justin McAdam

James Bopp Jr., Ind. #2838-84
Anita Y. Woudenberg, Ind. #25162-64
Justin McAdam, Ind. #30016-49
THE BOPP LAW FIRM
1 South Sixth Street
Terre Haute, IN 47807-3510
Ph: 812/232-2434
Fax: 812/234-3685
jboppjr@aol.com
awoudenberg@bopplaw.com
jmcadam@bopplaw.com
Counsel for Plaintiffs

VERIFICATION

I AFFIRM UNDER THE PENALTIES FOR PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING STATEMENTS MADE IN THE FOREGOING VERIFIED COMPLAINT CONCERNING ME ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND UNDERSTANDING.

Dated: August 18, 2013

A. Milchtein

Rabbi Alexander Milchtein

VERIFICATION

I AFFIRM UNDER THE PENALTIES FOR PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING STATEMENTS MADE IN THE FOREGOING VERIFIED COMPLAINT CONCERNING ME ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND UNDERSTANDING.

Dated: August 18, 2013

Ester Riva Milchtein