

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

ALICIA M. PEDREIRA, PAUL)
SIMMONS, JOHANNA W.H. VAN)
WIJK-BOS, ELWOOD STURTEVANT,)

Plaintiffs)

CIVIL ACTION NO. 3:00-CV-210-S

v.)

SECOND AMENDED COMPLAINT

SUNRISE CHILDREN’S SERVICES,)
F/K/A KENTUCKY BAPTIST HOMES)
FOR CHILDREN, INC.;)
JANIE MILLER, SECRETARY, CABINET)
FOR HEALTH AND FAMILY SERVICES,)
AND J. MICHAEL BROWN,)
SECRETARY, JUSTICE AND PUBLIC)
SAFETY CABINET,)

Defendants.)

INTRODUCTION

This lawsuit is brought on behalf of four Kentucky taxpayers who object to and have been injured by the Commonwealth of Kentucky’s funding of the Sunrise Children’s Services, formerly known as Kentucky Baptist Homes for Children, Inc. (hereinafter “KBHC”). KBHC uses Commonwealth funds to hire employees who are required to accept and abide by the institution’s religious beliefs, and to pay for services that seek to teach youth the institution’s version of Christian values.

Alicia Pedreira was employed by KBHC and then terminated because her committed relationship with another woman was inconsistent with KBHC’s religious beliefs. The other taxpayer Plaintiffs are clergy and concerned citizens who object to the use of their state tax dollars to fund KBHC.

Plaintiffs believe that the actions of the Commonwealth of Kentucky violate the Establishment Clause of the First Amendment of the United States Constitution.

JURISDICTION

1. This action involves a federal question under the First Amendment to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. § 1331(a), which gives federal district courts original jurisdiction over cases involving federal questions and 28 U.S.C. § 1343. This Court has jurisdiction to grant the declaratory relief requested under 28 U.S.C. § 2201.

VENUE

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because some of the Defendants reside in this district, and a substantial number of the events giving rise to these claims occurred in this district.

PARTIES

3. Plaintiff ALICIA M. PEDREIRA (hereinafter “Pedreira”) is a resident of Louisville, Kentucky. PEDREIRA was employed as a Family Specialist at KBHC’s Spring Meadows Children’s Home. Pedreira has been, and now is, a taxpayer of the Commonwealth of Kentucky.

4. Plaintiff PAUL SIMMONS (“Simmons”) is a resident of Louisville, Kentucky. At all relevant times, SIMMONS has been, and continues to be, a taxpayer of the Commonwealth of Kentucky.

5. Plaintiff JOHANNA W.H. VAN WIJK-BOS (“Bos”) is a resident of Louisville, Kentucky. At all relevant times, BOS has been, and continues to be, a taxpayer of the Commonwealth of Kentucky.

6. Plaintiff ELWOOD STURTEVANT (“Sturtevant”) is a resident of Louisville, Kentucky. At all relevant times, STURTEVANT has been, and continues to be, a taxpayer of the Commonwealth of Kentucky.

7. Defendant KBHC is a non-profit corporation organized under the laws of the Commonwealth of Kentucky, with its principal place of business located in Mt. Washington, Kentucky.

8. Defendant JANIE MILLER (“Miller”) is the Secretary of the Cabinet for Health and Family Services of the Commonwealth of Kentucky. In this capacity, MILLER is responsible for approving all contracts for services between the Cabinet for Health and Family Services and contracting agencies, including KBHC. MILLER’s actions complained of were performed and undertaken under color of Kentucky law. She is sued in her official capacity only.

9. Defendant J. MICHAEL BROWN is the Secretary of the Justice and Public Safety Cabinet of the Commonwealth of Kentucky. In this capacity, BROWN is responsible for approving all contracts for services between the Justice and Public Safety Cabinet and contracting agencies, including KBHC. BROWN’s actions complained of were performed and undertaken under color of Kentucky law. He is sued in his official capacity only.

10. Plaintiffs are all Kentucky state taxpayers. They have state taxpayer standing because KBHC is the recipient of state taxpayer dollars.

STATEMENT OF FACTS

11. ALICIA PEDREIRA holds a Bachelor of Science degree and a Master of Arts degree from the University of Louisville. PEDREIRA is a lesbian and, at the time of her

employment with KBHC, was in a long-term committed relationship with her life partner, Nance Goodman.

12. In or about February 1998, PEDREIRA was recruited by Jack Cox, KBHC Program Director, to apply for the publicly-funded position of Family Specialist at KBHC. PEDREIRA told Cox that she was a lesbian, and he still encouraged her to apply for the position. She applied, was offered and accepted the position, and began working full-time at the Spring Meadows Children's Home of KBHC on March 19, 1998.

13. PEDREIRA's job responsibilities included supervising adolescent youth in a transitional living cottage, teaching independent living skills, counseling, and assisting in individual case management.

14. PEDREIRA's job performance was outstanding throughout her employment with KBHC. PEDREIRA's six month performance evaluation lauded her "exceptional skills" and noted that she worked well with staff and was a "valuable part" of the KBHC program. PEDREIRA's direct supervisor, Jack Cox, described her as a good clinician and a "wonderful person to supervise," who was "very honest and hard working" and of the "highest moral and ethical character."

15. KBHC describes itself as the oldest Southern Baptist child care ministry and the largest private residential child care provider in Kentucky. It was founded in 1869 by the Ladies Aid Society of the Walnut Street Baptist Church, along with women from other Baptist churches in Louisville.

16. Although historically KBHC was financed primarily by contributions from Baptist churches, during the time of PEDREIRA's employment, and at present, most of KBHC's budget comes from contracts with the Commonwealth of Kentucky.

17. KBHC also receives financial contributions from the Kentucky Baptist Convention and from individual Baptist churches. It is licensed by the Commonwealth of Kentucky as a child-care and child-placing agency.

18. KBHC contracts with Commonwealth of Kentucky agencies including, but not limited to, the Cabinet for Health and Family Services and the Justice and Public Safety Cabinet, to provide services to youth. Most of the youth in the care of KBHC are either temporary or permanent wards of the Commonwealth of Kentucky and are placed at KBHC by state or county social workers.

19. KBHC receives state funds through contracts with Kentucky state government agencies, including the Cabinet for Health and Family Services and the Justice and Public Safety Cabinet's Department of Juvenile Justice. The Kentucky General Assembly has authorized these two Kentucky agencies to distribute state funds through such contracts pursuant to its taxing and spending powers. Section 230 of the Kentucky Constitution provides that "[n]o money shall be drawn from the State Treasury, except in pursuance of appropriations made by law." The Kentucky Constitution gives the General Assembly the powers to tax and spend. *See* Ky. Const., §§ 36(1), 171. Pursuant to these powers, the General Assembly has provided that "[t]he [C]abinet [for Health and Family Services] or the Department of Juvenile Justice, as appropriate, is authorized and may pay for such care and treatment as it deems necessary for the well-being of any child committed to it, including medical expenses, room and board, clothing, and all other

necessities for such children committed to its care and custody.” Ky. Rev. Stat. Ann. § 200.115(1).

The General Assembly has also authorized the Cabinet for Health and Family Services “to expend available funds to provide for the board, lodging, and care of children . . . who are placed by the cabinet in a foster home or boarding home.” Ky. Rev. Stat. Ann. § 605.120(1). The General Assembly has in fact regularly appropriated state funds to the Cabinet for Health and Family Services and the Department of Juvenile Justice.

20. The Commonwealth of Kentucky pays for most of the services provided to youth in the care of KBHC, including adolescent youth at Spring Meadows Children’s Home. KBHC uses funds obtained from the Commonwealth to pay the salaries of most KBHC employees, including the salary for PEDREIRA’s position while she was employed at KBHC.

21. KBHC elects its trustees in accordance with the conditions and bylaws of the Kentucky Baptist Convention. It maintains a close relationship with the Kentucky Baptist Convention and is committed to the same purposes, interests and concerns as the Convention. KBHC reserves its leadership positions for those who are professing Christians and active members of the Baptist Church. Among the KBHC positions so restricted are: President, Executive Assistant to the President, Vice President of Development/Communications, Vice President of Program Services, Regional Administrators, Cornerstone Counseling Directors, Director of Religious Life, and Special Representatives to the President.

22. KBHC’s mission statement declares: “Kentucky Baptist Homes for Children provides care and hope for hurting families and children through Christ-centered ministries We are a Christian ministry that, through God’s direction and leadership, reaches out to children

and families with Christ's love and compassion. We are committed to presenting a clear message of Christian values.”

23. On information and belief, KBHC seeks to instill its version of Christian values and teachings to the youth in its care by, among other things, taking the youth to Baptist church services, hiring only staff who model KBHC's version of Christian values and lifestyles, denying the youth access to healthy adult gay and lesbian role models, providing informal Christian training to the youth through KBHC staff, and placing foster children in Baptist foster homes. KBHC's Christ-centered mission permeates KBHC programs and the services that KBHC provides to youth in its care.

24. KBHC requires all employees to “exhibit values in their professional conduct and personal lifestyles that are consistent with the Christian mission and purpose of the institution.”

25. William Smithwick (“Smithwick”) is the President and Chief Executive Officer of Defendant KBHC. In that position, he is responsible for formulating and applying the employment policies of Defendant KBHC.

26. In or about August 1998, a photograph of PEDREIRA and her life partner appeared in a display at the Kentucky State Fair. The photograph of the couple was taken at an AIDS Walk fundraiser. Neither PEDREIRA nor her partner was aware that the photograph was on display at the State Fair until PEDREIRA was informed by KBHC co-workers. Smithwick and other members of KBHC management became aware that PEDREIRA is a lesbian as a result of the photograph.

27. In or about September 1998, the Cabinet of KBHC, which consisted of Smithwick and other members of the KBHC management team, met and discussed whether PEDREIRA

should remain employed at KBHC in light of KBHC's religious belief that homosexuality is sinful and immoral.

28. Shortly thereafter, Jack Cox informed PEDREIRA that the KBHC Cabinet decided to ask PEDREIRA to resign because she is a lesbian. PEDREIRA refused to resign. Shortly thereafter, PEDREIRA was informed that she would be terminated because her sexual orientation was inconsistent with KBHC's religious beliefs.

29. PEDREIRA and Cox decided that it would be clinically dangerous if PEDREIRA's departure were not explained to the youth in her care, who might feel abandoned if they thought her departure was voluntary, or might feel that their trust was violated unless they were told the true reason for her departure. Therefore, for therapeutic reasons, PEDREIRA agreed to explain to the youth the reason she was being fired, and she and Cox met with the young men for this purpose. PEDREIRA had never discussed her sexual orientation with any of the young men until this meeting.

30. PEDREIRA suffered great humiliation and embarrassment as a result of being forced to disclose her sexual orientation, and the fact that she was being terminated because of it, to the youth in her care. Nonetheless, she told the young men in order to protect their well-being.

31. The following day, PEDREIRA led a regularly scheduled group session with the young men. Several of them were upset because another KBHC staff member told them that PEDREIRA, who the young men had come to trust, was no better than a murderer because she was gay and therefore deserved to be fired. Several of the youth expressed fear that they could be expelled from KBHC if they were gay. PEDREIRA did her best to calm them and tried to reassure them that they would be protected.

32. PEDREIRA suffered further humiliation and embarrassment as she helped the young men in her care understand and accept her termination and worked to repair the sense of abandonment, betrayal, and instability caused by KBHC.

33. On or about October 23, 1998, PEDREIRA met with Smithwick, who informed PEDREIRA that her employment with KBHC was being terminated because she is a lesbian. PEDREIRA was given a Termination Statement by Karen Hamilton, KBHC Vice President for Human Resources. The Termination Statement declares: "Alicia Pedreira is being terminated on October 23, 1998, from Kentucky Baptist Homes for Children because her admitted homosexual lifestyle is contrary to Kentucky Baptist Homes for Children core values." In a public statement to the media concerning PEDREIRA's termination, KBHC explained: "It is important that we stay true to our Christian values. Homosexuality is a lifestyle that would prohibit employment."

34. On the same date that PEDREIRA was terminated, KBHC management informed all KBHC employees that "in order to reaffirm and clarify our values," the Board of Directors of KBHC had that day adopted the following employment policy:

Homosexuality is a lifestyle that would prohibit employment with Kentucky Baptist Homes for Children. The Board does not encourage or intend for staff to seek out people within the organization who may live an alternate lifestyle, we will, however, act according to Board policy if a situation is brought to our attention.

35. KBHC's termination of PEDREIRA and its simultaneous adoption of a policy barring gays and lesbians from employment was motivated by religious reasons. KBHC's decision to deny youth in its care adult role models who are gay or lesbian was motivated by the religious

goal of teaching youth that homosexuality is sinful and immoral, thus causing KBHC to provide services based on religious criteria.

36. KBHC's religiously-motivated employment policy and its attempts to impart Christian teaching about homosexuality to youth in its care conflicts with widely-recognized best practices in the child welfare field, professional norms of social work, and the best interests of youth who are entrusted to KBHC's care by the Commonwealth of Kentucky. For example, the Code of Ethics for the National Association of Social Workers states: "Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of . . . sexual orientation"

37. As a result of KBHC's religiously-motivated employment policy and discriminatory stance concerning homosexuality, the Kent School of Social Work of the University of Louisville and the Department of Social Work of Spalding University informed KBHC that they would no longer use KBHC as a practicum placement site for their graduate students. The decisions of the Kent School of Social Work and the Spalding Department of Social Work were endorsed by the Kentucky Association of Social Work Educators. The quality of the services that KBHC provides to youth in its care has suffered as a result.

38. As a result of KBHC's religiously-motivated employment policy and discriminatory stance concerning homosexuality, numerous KBHC employees, including trained counselors and social workers, have resigned their positions with the agency. These include, but are not limited to, PEDREIRA's direct supervisor, a KBHC cottage supervisor, and a KBHC residential counselor.

39. Numerous individuals, including trained counselors and social workers, have been unable to apply for employment at KBHC because of the agency's religiously-motivated and discriminatory policy. The quality of the services that KBHC provides to youth in its care has suffered as a result.

40. Despite KBHC's adoption of a religiously-motivated employment policy concerning homosexuality, the Commonwealth of Kentucky has continued to provide KBHC with most of its operating budget, including funds for staff positions. Defendant MILLER has continued to approve service contracts with KBHC on behalf of the Cabinet for Health and Family Services. Defendant BROWN has continued to approve service contracts with KBHC on behalf of the Justice and Public Safety Cabinet.

41. The Commonwealth of Kentucky's continued funding of KBHC has engendered deep political divisiveness along religious lines by creating public questioning of the Commonwealth's neutrality on religious questions.

42. PAUL SIMMONS is an ordained Baptist minister who taught Christian ethics at the Southern Baptist Theological Seminary in Louisville for twenty three years. He is now a clinical professor in the Department of Family and Community Medicine, and an adjunct professor in philosophy at the University of Louisville. Reverend SIMMONS is a Kentucky taxpayer, and he objects to the receipt and use of taxpayer funds by KBHC in light of its religiously-motivated employment policy concerning homosexuality.

43. JOHANNA W.H. VAN WIJK-BOS is an ordained Presbyterian minister and has been a Professor of the Old Testament at the Louisville Presbyterian Theological Seminary for more than two decades. Reverend BOS is a Kentucky taxpayer, and she objects to the receipt and

use of taxpayer funds by KBHC in light of its religiously-motivated employment policy and discriminatory stance concerning homosexuality.

44. ELWOOD STURTEVANT is an ordained Unitarian Universalist minister and is the pastor of the Thomas Jefferson Unitarian Church in Louisville. Reverend STURTEVANT is a Kentucky taxpayer, and he objects to the receipt and use of taxpayer funds by KBHC in light of its religiously-motivated employment policy and discriminatory stance concerning homosexuality.

45. As state taxpayers, Plaintiffs object to the receipt and use of taxpayer funds by KBHC in light of the fact that it is pervasively sectarian and the fact that it uses taxpayer dollars for religious indoctrination.

46. KBHC is pervasively sectarian. The Baptist Children's Messenger, a publication of KBHC, says that KBHC's "efforts include permeating the environment of KBHC's programs with Christian influences such as music, magazines and Bibles, and giving children opportunities to explore spiritual matters in many different ways: Mid-week Bible studies, mission trips, camp and Christian concerns are some of the things KBHC strives to offer." As reflected in that statement, religion permeates all aspects of the lives of the youth in KBHC's care. Religion permeates their treatment, as demonstrated by statements of Jay Close, KBHC's regional minister for the Louisville area: "The goal is to integrate religious or spiritual aspects into the treatment of every child or family member that KBHC services. What we have to do is to confront them with their need for God and attempt to bring spiritual matters into their lives." Religion also permeates their extracurricular activities, such as Christian camps and speakers. Moreover, there is reason to believe that there is evidence of religious iconography on display at KBHC, and evidence that KBHC leads its staff in prayer during staff meetings. Such pervasive sectarianism is consistent

with the message that KBHC sends to the community at large on its website: “We are a Christian ministry that, through God’s direction and leadership, reaches out to children and families with Christ’s love and compassion. We are committed to presenting a clear message of Christian values.” It is also consistent with the message that KBHC sends to the community at large through its employees: “Kentucky Baptist Homes for Children is a ministry operated under the direction of a board of directors elected by the Kentucky Baptists Convention. Our mission is to provide care and hope for hurting families and children through Christ-centered ministries. Every employee is a role model for the children and families under Kentucky Baptist Homes for Children’s care, therefore, employees are expected to exhibit values in their professional conduct and personal lifestyles that are consistent with the Christian mission and purpose of the institution. Kentucky Baptist Homes for Children prohibits personal behavior which . . . interferes with KBHC’s pursuit of its Christian mission and purpose.” As summed up by KBHC’s President William Smithwick in a news release, “[KBHC’s] mission is to provide care and hope for hurting families through Christ-centered ministries. I want this mission to permeate our agency like the very blood throughout our bodies. I want to provide Christian support to every child, staff member, and foster parent.”

47. The contracts between KBHC and the Commonwealth do not effectively restrict the use to which taxpayer dollars may be put. The Commonwealth does not effectively prohibit the use of taxpayer dollars by KBHC for religious purposes. No effective safeguards, statutory, administrative, or otherwise, exist to prevent KBHC from putting government funds to religious uses. The Commonwealth does not effectively monitor KBHC to ensure that KBHC is not using government funds to finance religious activity. KBHC does not effectively attempt to use only

private funds to pay for religious activity. KBHC uses government funds to pay the salaries of employees who engage in religious indoctrination and other religious activities as part of their duties at KBHC.

48. KBHC actually uses taxpayer dollars for religious activities, instruction, and indoctrination. For example, according to the Baptist Children's Messenger, KBHC's "goal is to keep Kentucky Baptist Homes for Children a Christ-centered agency, not just in name, but in practice." It quotes Mike Dixon, KBHC's Vice President for Religious Life, as saying, "It isn't too difficult to convince children that God exists. Kids are looking for someone, or something to believe in. What we have to do is give them an appropriate image of God. If they hear that and absorb it, most of them will give him a shot." It further quotes Dixon as saying that, of late, KBHC feels "a sense of urgency" in providing the "opportunity to experience God and accept Christ." Through an annual report, KBHC's President William Smithwick has made clear that KBHC dedicates staff resources to this goal: "We know that no child's treatment plan is complete without opportunities for spiritual growth. The angels rejoiced last year as 244 of our children made decisions about their relationships with Jesus Christ. Because of that, we are committed to hiring youth ministers in each of our regions of service to direct religious activities and offer spiritual guidance to our children and families. We already have one of these positions filled." This specific dedication of staff resources supplements the religious indoctrination of the youth in KBHC's care that already occurs during the course of a typical day through KBHC's direct care counselors and other staff. In addition, KBHC pressures and coerces the youth in its care to attend Baptist church services twice a week, regardless of whether they are Baptist or even Christian. KBHC also leads the youth in its care in Christian prayer before meals; provides Bibles and other

Christian literature to the youth in its care; has relationships with local churches that “come to campuses to lead Bible studies or to distribute Bibles and other materials;” makes efforts to increase the likelihood of child placement with Baptist families; and otherwise engages in religious indoctrination of the youth in its care – all regardless of whether the youth in its care are Baptist or even Christian.

49. After they learned of the circumstances of Plaintiff Pedreira’s termination, Viola Miller and Robert Stephens, who were then the Secretaries of the Cabinet for Families and Children and the Justice Cabinet respectively, decided to terminate the contractual relationship between KBHC and the Commonwealth because they believed that KBHC’s religious views on homosexuality were compromising the quality of care that KBHC was providing to the youth in its care. They further believed that a continued contractual relationship “[could] be construed as putting us in the position of endorsing – or at least through our funding – giving some sort of state sanction to a religious practice.” At the eleventh hour, however, Governor Paul Patton, a Southern Baptist, overruled their decision at the request of KBHC and the Baptist community at large.

FIRST CLAIM FOR RELIEF

Violation of the Establishment Clause of the First Amendment, U.S. Constitution (Against Defendants Miller and Brown)

50. Plaintiffs repeat, reallege and incorporate by reference the allegations contained in paragraphs 1 through 49 as if fully set out herein.

51. The Establishment Clause of the First Amendment of the United States Constitution provides that “Congress shall make no law respecting an establishment of religion, or

prohibiting the free exercise thereof.” This Clause is applicable to the states and their political subdivisions through the Fourteenth Amendment of the U.S. Constitution.

52. The Commonwealth of Kentucky’s practice of providing government funds to finance KBHC staff positions that are filled in accordance with religious tenets constitutes evidence of a violation of the Establishment Clause.

53. The Commonwealth of Kentucky’s practice of providing government funds to finance KBHC services that seek to instill Christian values and teachings to the youth in its care constitutes a violation of the Establishment Clause.

54. The conduct of the Commonwealth of Kentucky described above has deprived and continues to deprive Plaintiffs of their rights, as Kentucky taxpayers, that are protected by the First and Fourteenth Amendments to the United States Constitution and made actionable by 42 U.S.C. § 1983.

55. Ky. Rev. Stat. Ann. § 200.115(1), Ky. Rev. Stat. Ann. § 605.120(1), and the appropriation acts by the Kentucky General Assembly that are referred to in paragraph 19 above are unconstitutional as applied. These statutes and appropriations acts violate the Establishment Clause as applied in the context of the provision of Commonwealth funds to KBHC because these statutes and appropriations acts authorize the provision of Commonwealth funds to private child-care providers (such as KBHC) but lack any restrictions or safeguards against religious use of the funds or provision of the funds to pervasively religious entities.

56. KBHC is named as a defendant in this claim, pursuant to Federal Rule of Civil Procedure 19, because in its absence complete relief cannot be afforded to Plaintiffs and because

KBHC claims an interest relating to the subject of this action and its absence may as a practical matter impair or impede its ability to protect that interest.

57. As a result of Defendants Miller's and Brown's and their predecessors' violations of Plaintiffs' rights as Kentucky taxpayers, Plaintiffs are entitled to (1) a declaration that the Commonwealth of Kentucky has violated the Establishment Clause of the First Amendment of the United States Constitution by funding KBHC; (2) an order enjoining the Commonwealth of Kentucky from providing further funding to KBHC for services so long as they seek to instill Christian values and teachings to youth in KBHC's care; and (3) an award of costs, including reasonable attorney's fees, pursuant to 42 U.S.C. § 1988.

REQUEST FOR RELIEF

All Plaintiffs request the following relief:

1. A declaration that the Commonwealth of Kentucky has violated the Establishment Clause of the First Amendment of the United States Constitution by funding KBHC;
2. An order enjoining the Commonwealth of Kentucky from providing further funding to KBHC for services as long as they seek to instill Christian values and teachings to youth in KBHC's care;
3. An award of costs, including reasonable attorney's fees, pursuant to 42 U.S.C. §1988;
4. Such other relief as the Court deems just and appropriate.

Dated: January 10, 2012

Respectfully submitted,

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