

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT  
SANGAMON COUNTY, ILLINOIS**

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CATHOLIC CHARITIES OF THE	)	
DIOCESE OF SPRINGFIELD-IN-ILLINOIS,	)	
an Illinois non-profit corporation,	)	
CATHOLIC CHARITIES OF THE	)	
DIOCESE OF PEORIA, an Illinois non-profit	)	
corporation, and CATHOLIC CHARITIES	)	
OF THE DIOCESE OF JOLIET, INC., an	)	
Illinois non-profit corporation,	)	
	)	
Plaintiffs,	)	
	)	Case No. 11-MR-254
v.	)	
	)	
STATE OF ILLINOIS, LISA MADIGAN, in	)	
her official capacity as the Attorney General	)	
of the State of Illinois, ERWIN McEWEN, in	)	
his official capacity as Director of the	)	
Department of Children and Family Services,	)	
State of Illinois, and the DEPARTMENT OF	)	
CHILDREN AND FAMILY SERVICES,	)	
State of Illinois,	)	
	)	
Defendants.	)	

**AFFIDAVIT OF MICHAEL SHAVER**

The undersigned declares that he is an adult over the age of 18 and is competent to testify to the following matters if called as a witness:

1. I have prepared this declaration at the request of counsel for the Next Friend of the class of foster children in *B.H. v. McEwen*, regarding the structure of the Illinois child welfare system, including private agency licensing, placement and funding, managing transitions of large caseloads, and the impact of Catholic Charities' licensing and placement policies. I have personal knowledge of the matters stated herein.

## **I. Credentials**

2. Since 2007, I have been the Executive Vice President and Chief Operating Officer of Children's Home and Aid, a statewide social service agency reaching more than 40,000 children and families in Illinois each year. I am responsible for program operations staffed by approximately 700 employees in sites throughout the State, and planning and managing a full continuum of social services including child welfare, early childhood education, mental health and juvenile justice services. In a professional career that includes over a decade of experience in child welfare, I served as the Deputy Director of Budget, Research and Planning for the Illinois Department of Children and Family Services (DCFS) and have worked as a consultant on child welfare financing, accountability and contracting.

3. In 1988, I was hired by DCFS to manage statewide performance-based contracts, which included referrals and placements for all children entering relative or traditional foster care. I served in that role until 2000 when I moved into the role of Deputy Director of Budget, Research and Planning where I oversaw strategic initiatives for the Director until 2003. In 2003, I went to work for the Children and Family Research Center at the University of Illinois at Urbana-Champaign School of Social Work to provide analysis on national child welfare policy. From 2004 to 2007, I was an independent contractor and consultant on public and private contracting in the states of Florida, Nebraska and Wisconsin, and the cities of Philadelphia and New York. I have published on the subject of performance based contracting for the provision of child welfare services. A current copy of my curriculum vitae is attached as Exhibit A.

4. Children's Home and Aid is a statewide, licensed child welfare agency with more than 120 years of experience providing services to children and families in Illinois. Our annual budget

includes over \$50 million in programming. We are located in every region of the State and we serve approximately 900 children annually in relative, traditional and specialized foster homes. We oversee a minimum of thirty (30) foster homes where the foster parents have self-identified as gay and lesbian adults.

## **II. Structure of the Child Welfare System**

5. The juvenile courts grant custody and guardianship of children to DCFS when they have been abused or neglected by their parents. DCFS manages the cases of some of these children itself, but assigns the majority of these children to private, state-licensed child welfare agencies.

6. Wards of the State often have been traumatized as a result of the abuse or neglect they have suffered. They are particularly vulnerable at the time they are removed from their homes. It is of paramount importance that they are placed in safe, stable foster homes or other settings that are able to minimize further trauma as soon as practicable. This decision must be based on the best interests of the child. Making the right choice of family in the first placement is crucial. Child welfare agencies attempt to make the best possible placement match based on the available licensed families who are ready, willing and able to take in a child. The more diverse the pool of an agency's potential foster parents, the better equipped the agency is to find a placement that fits the best interests of the child in need.

7. The Illinois child welfare system is managed by DCFS in part through purchase of service contracts. Some children's cases are managed by DCFS alone. In the majority of cases, DCFS delegates its authority and duties to private agencies, but retains guardianship of those

children and the ultimate authority to make certain decisions regarding the care of the child, such as the power to consent to psychiatric treatment for the child.

8. As a licensed child welfare agency, Children's Home and Aid has the responsibility to recruit and license foster parents. Our agency has designated licensing staff who are trained and licensed by DCFS to perform licensing functions for prospective foster families. No child can be placed in a non-relative foster home unless that home is licensed. Applicants for foster parent licenses are a valuable resource, and we do not turn applicants away unless they fail to meet State standards as set forth by statute and DCFS' accompanying rules. We work with families throughout the licensing process, which includes a home study, compliance visit and background checks, to ensure that they meet all of the Department's licensing standards. We do not impose any licensing standards beyond the State's requirements for licensure, and we do not discriminate against prospective foster parents on the basis of race, religion, marital status and sexual orientation because, among other reasons, these factors are not relevant to determining who may be a good caregiver for a child. Maximizing placement resources is an integral part of child welfare work.

9. All agencies under contract with the Department for unrelated and relative care placement are compensated at a standard rate for like services. These payments provide the funds needed to provide the State-required level of care for the children. Accordingly, if Catholic Charities were to cease providing foster care services to DCFS wards, the State would not have to pay higher care or contract rates to another agency to assume supervision over those cases. And while Catholic Charities may provide additional services to children in its care using funds it has received through charitable donations, many other agencies, including Children's

Home and Aid, also engage in such fundraising and volunteer work to supplement the payments received from the State and to provide additional supports to children.

10. Based on my experience as Executive Vice President and Chief Operating Officer of Children's Home and Aid and on DCFS' monthly Executive Statistical Reports, for approximately 50% of children who come into DCFS' custody, the placement that best fits the interests of the child is a placement with a relative of the child. Research overwhelmingly confirms that relative placements are most often in the best interests of the child because of the family bond and the familiarity, which can mitigate the trauma of removal. Research further shows that relative home placements are safer, more stable and more likely to result in permanency, the optimal outcome for a child, than any other placement. In order to place a child with a relative, State policy does not require a relative to be licensed. However, consistent with the State's interest in maximizing federal financial reimbursement, there is a recognized objective to license as many relatives as possible. Our agency makes a great effort to see that these homes are licensed so that relative foster homes are compensated at the same rate as non-relative homes. This is necessary as most relative foster homes need this same level of financial support in order to meet the needs of the children.

11. DCFS holds our agency accountable for performance, including the stability of our placements and success in moving children to permanent homes. Our work with families does not end once we have licensed a family. We have long term relationships and constantly work with licensed families by providing compliance monitoring and services to ensure the safety and stability of the placement. This includes providing ongoing training and development, as well as investigating any potential violations of the State's policies and procedures for licensed foster parents. DCFS always reserves the right to transfer cases or even our entire caseload if we do not

live up to our obligations. The contracts with our agency, and other agencies providing foster care services to children in Illinois, always extend only for a defined term. The contract does not renew automatically and, in most cases, can be terminated with thirty (30) days notice by either party.

### **III. Harm to Foster Children**

12. Policies that discriminate against unmarried foster parents who live with their partners are highly likely to cause significant harm to foster children.

13. As discussed above, for many foster children, the optimal placement is with a child's relative. DCFS data shows more than half of the children placed in foster care and supervised by Catholic Charities in Peoria, Springfield and Joliet are living with relatives. (A verified copy of DCFS' Catholic Agency Caseload Analysis as of July 8, 2011, is attached as Exhibit B.) Decisions to place children with relatives usually are made by DCFS at the time a child is removed from a parent's home. The child's case subsequently is assigned to an agency. At the time of that assignment, the relative with whom the child will be placed typically has gone through only an expedited background check and will not have completed the full licensing process.

14. It is my experience at both DCFS and Children's Home and Aid that it is not uncommon that the relative identified as the best placement for a child lives with a domestic partner to whom the relative is not married. At the time when such a case is assigned to an agency, the agency may be unaware of the cohabitation of the unmarried couple. For an agency whose policies prohibit placement with or licensing of cohabiting, unmarried couples, the agency is presented with several alternatives. First, the agency can return the case to DCFS when it

becomes aware of that the foster parent has a partner, a result that is likely to delay and disrupt the casework and oversight provided to the child at a critical stage. Second, it can remove the child from that home, a course of action that not only is contrary to the child's best interests, but may well cause serious psychological harm to the child, who already is likely to have been traumatized by the circumstances surrounding removal from his parents' custody. One of the agencies states "[o]nce a child is placed with Catholic Charities of Peoria, our services and our decision making are driven solely by the concern for the best interest of that child." (Paragraph 9 of the Fox Declaration.) However, if the agency continues to provide services to the child and caregiver, the agency's unwillingness to permit the relative to become a licensed foster parent is likely to deprive the caregiver and the child of the enhanced resources and supports that being licensed would provide. All of these outcomes increase the risk of harm to the child.

15. Many children are placed with single foster parents, including relatives. Single adults often provide a supportive and loving environment for foster children. There is a shortage of foster home placements for children with specialized needs, including medically compromised children and older youth. Quite a few of my agency's best foster parents are single, including foster parents who help care for some of the neediest children.

16. Further, living situations can change, and it is my experience that single foster parents may form a committed relationship and cohabit with a same or opposite sex partner subsequent to the placement of a child in their home. An agency that discriminates against unmarried, cohabiting adults or those in civil unions will not have a good option in those circumstances. First, it may choose to move a child who has developed a strong bond with a foster parent. Again, that option not only is contrary to the best interests of the child, it may cause serious psychological harm to the child. Second, the agency may transfer the case to

another agency, but that decision may disrupt important relationships between the caseworker and the child and foster parent. And explaining that the case was transferred because of the foster parent's decision to enter into a civil union would likely send a cruel and harmful message to a foster child that the person caring for the child is not "adequate" to be a parent. Such a message is harmful to any foster parent / foster child relationship, and would be particularly devastating if, by chance, the child in the placement identifies as lesbian or gay or is struggling with his or her own sexual orientation. Finally, even if the agency makes an exception to its policies and permits the child to stay in the home after the foster parent forms a civil union, the agency's policy against assisting in the licensing of unmarried couples would prevent the foster parent's partner from joining as a licensed foster parent of the child, which substantially increases the instability of the placement and guarantees uncertainty for the child in the event of the death or disability of the original foster parent. Again, all of these options increase the risk of harm to the child.

17. As noted above, Children's Home and Aid is committed to fostering a diverse pool of foster parents. The more diverse the profile of foster parents, the better situated an agency is to serve the needs of children in the foster care system. Any agency that imposes additional limitations that State law does not recognize as disqualifying, either by refusing to assist that parent in securing a license, by refusing to place a child in the parent's home, or by refusing to supervise a child's case, acts in a manner that compromises the well-being of foster children. The State and all the agencies that contract with the State must work continuously to recruit foster parents. For example, there is a continuing need for appropriate foster placements for children who presently are in residential treatment settings, but who could move into less restrictive placements, thereby leading to the benefit of better outcomes for the children and less

cost to the State. Children come in all shapes and sizes, and the State accordingly needs potential foster parents in all shapes and sizes too.

18. I have observed an increasing number of lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth in our agency's care in recent years who have been willing to disclose their sexual orientation or gender identity to agency staff. Caregivers and agency staff must be prepared to support these young people and their unique needs. An agency must have a welcoming culture, not a culture of condemnation and rejection, to provide the necessary support for these children—to say these children are worthy, that they “count,” and to advocate for them rigorously when they face challenges in schools, within residential settings and elsewhere. In partnership with another agency, Children's Home and Aid developed auxiliary staff training so that our agency is sensitive to these children's needs. This is particularly important when LGBTQ foster youth are in smaller towns where the incidence of isolation and hence marginalization may be greater. It is a challenge to support a rich diversity of kids. Agencies contracting with the State must join the State in not discriminating against unmarried couples willing to foster children and LGBTQ foster youth. It is fundamental to good child welfare practice to have a work force willing to and capable of dealing with a wide variety of issues and needs. An agency that openly discriminates against lesbian and gay adults sends a damaging and inevitably harmful message to children in its care, particularly LGBTQ youth.

#### **IV. Transitioning Caseloads**

19. With appropriate planning, private agency caseloads can be transferred with minimal disruption. I have seen transfers managed effectively several times on both small and large scales. When I worked in the public sector for DCFS, for example, the agency Family Link

unexpectedly closed in or around 2001, by simply locking its doors and giving its workers notice that the agency was closing. Family Link was responsible for hundreds of cases. At DCFS, we focused on getting other agencies to cover all of the children with minimal disruption. The process, in spite of the short notice, went well. DCFS had up-to-date data on the children in homes and other agencies reached out to take on caseloads. We worked to keep families together and we were able to keep caseworkers with families in many cases. In a matter of 72 hours, all cases were reviewed and a framework was established for the agencies to assume responsibility. I do not think there was a single instance where a child was forced to move because the agency shut its doors. In my experience, very few placements are disrupted, and very few caseworker assignments change and, indeed, there actually are fewer disruptions of that kind when a large-scale transfer of cases from one agency to another takes place.

20. As part of performance-based contracting, DCFS routinely manages transitions of cases. During my time there, we transferred the entire relative care caseload supervised by the DCFS Cook South region. The Director looked at performance and, based on the region's position at the bottom of the performance indicators, ordered the transfer of some 600-700 cases to private agencies.

21. The 30-day window built into agency contracts for transition of cases in the event of an agency closure or the termination or expiration of a contract generally provides ample time for the Department to plan transitions in a manner that results in minimal disruption. The transfer of nearly 1000 cases when the Cook County Catholic Charities' agency went out of the foster care business a few years ago is an example of this. The Department carefully monitored the transition. There were very few instances where a child was removed from the foster family. Many of the Catholic Charities' caseworkers were hired by other agencies.

22. It is important to note when considering these transfers that licensed caseworkers are a very valuable commodity, and no agency can assign a case to a caseworker who is not already licensed by the State and properly trained. Indeed, practically speaking, agencies picking up additional caseloads need the prior agency's workforce to support the children added to the agency's caseload, and the agencies rarely (if ever) have so many extra caseworkers that they could take on their new case assignments, and then wait 4-6 weeks to train newly-hired workers.

23. The recent Rockford Catholic Charities closure is yet another example of a nearly seamless transition with little or no disruption. The entire caseload was kept intact and completely assumed by Youth Services Bureau of Illinois Valley. Foster parents and entire teams of caseworkers simply transferred to the new agency. Our agency has had similarly smooth transitions on a smaller scale. In 2002, we assumed responsibility for a caseload of 170 foster children and two teams of foster care staff, including two supervisors and seven workers for each team, formerly handled by the YMCA. In 2008, we assumed responsibility for 60 cases, three caseworkers and one case aid, formerly supervised by the Sullivan House.

24. In my experience, a large scale transfer of 2000 cases can be accomplished with minimal disruptions. Ultimately, the receiving agencies would have to determine that the homes they will oversee are appropriate homes, but Catholic Charities themselves have insisted that the homes they manage are in good standing. That suggests that it is highly unlikely that a newly-assigned agency would find any appreciable number of Catholic Charities' homes unsuitable. Moreover, agencies are well-equipped to assess the adequacy of homes they supervise in an efficient manner, since they must perform this function with their own homes periodically to ensure that they remain suitable placements for children. There is more than enough capacity in the provider system to transfer 2000 cases without upsetting the entire system. At one point there

were more than 50,000 children in the Illinois foster care system; now there are only 15,000 children.

Under penalties as provided by law, pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to such matters therein stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

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

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Michael Shaver