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Groundbreaking Lawsuit Accuses South Carolina, Doctors and Hospitals of Performing Unnecessary Surgery on Infant

First-of-Its-Kind Lawsuit Sues for Irreparable Harm Resulting from Surgery

COLUMBIA, S.C. – Advocates for Informed Choice (AIC), The Southern Poverty Law Center (SPLC), and pro bono counsel for the private law firms of Janet, Jenner & Suggs and Steptoe & Johnson LLP filed a lawsuit today against the South Carolina Department of Social Services, Greenville Hospital System, Medical University of South Carolina and individual employees for performing an irreversible and medically unnecessary surgery on an infant in the state’s care.

The lawsuit, filed in both state and federal court, charges that it was a violation of the U.S. Constitution when South Carolina doctors working for the state surgically removed the healthy genital tissue of a 16-month-old child, potentially sterilizing him and greatly reducing, if not eliminating, his sexual function.

M.C. was born with an intersex condition (previously called hermaphroditism) – a reproductive or sexual anatomy that does not fit typical definitions of male or female. Doctors referred to M.C. as a “true hermaphrodite.” The child was in the care of the South Carolina Department of Social Services when doctors, in cooperation with social services employees, decided to perform this medically unnecessary surgery. Children with M.C.’s intersex condition have bodies that are not easily labeled as either male or female.

Typically, children with these conditions develop as a boy or girl as they grow. Despite not knowing whether M.C. would grow up to be a man or woman, or whether he would elect to have any surgery at all, the defendants performed sex-assignment surgery on a 16-month-old child, removing his healthy phallus in an attempt to make M.C. a girl. M.C. has shown signs of developing a male gender and now, at age 8, has clearly identified himself as a boy.

“This case is about ensuring the safety of all children who do not have a voice,” said Anne Tamar-Mattis, executive director of Advocates for Informed Choice. “No one advocated for M.C.’s rights when this decision was made at a time when the state was entrusted with his safety and well-being. It is time the state and all involved answer for the needless harm they inflicted on M.C.”

The lawsuit is the first of its kind in the United States. Since the 1950s, doctors have performed this type of sex assignment surgery on infants with intersex conditions. They often fail to provide full information about the procedure's risks to the child's parents or guardians.

This lawsuit joins a long line of SPLC cases brought on behalf of those harmed by medical recklessness, including a 1973 case on behalf of young African-American women sterilized against their will. The lawsuit filed today was brought on behalf of M.C. by his adoptive parents, Mark and Pam Crawford, who hope to end this inhumane and antiquated practice.

“By performing this needless surgery, the state and the doctors told M.C. that he was not acceptable or loveable the way he was born,” Pam Crawford said. “They disfigured him because they could not accept him for who he was – not because he needed any surgery. M.C. is a charming, enchanting and resilient kid. We will not stop until we get justice for our son.”

Although long-term outcomes of today's genital surgeries in children have not been well-studied, many doctors and advocates recommend that children with intersex conditions be assigned a gender at birth, but postpone any unnecessary surgery until they are old enough to self-identify with a gender and make their own decisions about their bodies.

“God made M.C. the way he is, but with one unnecessary surgery, the state of South Carolina irreparably injured him,” said Alesdair H. Ittelson, SPLC staff attorney. “The state made a decision that robbed him of his freedom to decide what should happen to his own body. Sadly, no one advocated for M.C.'s rights when this decision was made. It is time the state and all those involved be held accountable.”

Sean Saifa Wall, an adult with an intersex condition, was raised as a female but now lives his life as a man. He remembers the pressure doctors put on his mother to consent to vaginal construction surgery during puberty. After hearing the details of how invasive and almost barbaric the surgery appeared, Wall's mother refused, sparing him from irreparable injury.

“Infants and children should be loved and accepted in the bodies they were born in,” Wall said. “I speak for the many who cannot speak, including those living with the shame, isolation and secrecy that surround people with intersex conditions. I say to them, you are not alone and it's time for us to be proud of these bodies we inhabit.”

The lawsuit charges that the defendants' actions violated the Due Process Clause of the U.S. Constitution by subjecting M.C. to “a medically unnecessary surgery that altered M.C.'s body and permanently limits M.C.'s ability to procreate without notice or a hearing to determine whether the procedure was in M.C.'s best interest.”

The lawsuit also charges that the doctors committed medical malpractice by failing to obtain adequate informed consent before proceeding. The defendants told M.C.'s guardians to allow the sex assignment surgery but did not include information concerning the significant risks of the surgery or the alternative of not having surgery at all. Most important, they did not notify them the surgery itself was medically unnecessary.

“My firm, Janet, Jenner & Suggs, is known for its advocacy of young children, particularly those who suffer birth injuries,” said Ken Suggs, a partner at the law firm. “We took this case pro-bono because we believe that it involves a significant kind of preventable injury to a young child – one that destroys a basic human right, the right of sexual identity. This case says, inalterably, that the very young have the right to a free and unobstructed path toward the gender that God has in store for them. None of us, not doctors, not social workers – not even parents – have the right to interfere.”

Material risks of sex assignment surgery include the following:

- The initial sex assignment may be at odds with the gender identity that develops.
- Diminished sexual sensation
- Sexual dysfunction
- Chronic pain
- Loss of potential fertility
- Loss of the important health benefits of hormones

“The commitment Steptoe is making to this case is reflective of the firm’s rich tradition of public service,” said John Lovi, a partner at Steptoe & Johnson LLP, who is serving as co-lead counsel. “Every year, our firm’s lawyers devote tens of thousands of hours of pro bono work on matters ranging from death penalty cases to asylum, family law and fair housing. Steptoe is recognized for our trial lawyers, and the team we’ve pulled together from our New York and Washington offices is determined to provide the Crawford family with the best legal representation possible.”

The lawsuit, *M.C. v. Medical University of South Carolina*, was filed in County of Richland Court of Common Pleas. *M.C. v. Aaronson* was filed in the U.S. District Court for the District of South Carolina.

More information about the case can be viewed at <http://aiclegal.org/>.

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