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**FEDERAL DISTRICT COURT CERTIFIES A CLASS IN WEST VIRGINIA
FOSTER CARE LAWSUIT**

**Finding That the Case is “tailor-made” for Class Resolution, the Court Rules in
Favor of Plaintiffs**

CHARLESTON, August 17, 2023- Ruling that “plaintiffs’ claims, challenging systemic deficiencies in West Virginia’s foster care system, are tailor-made for class resolution,” a federal district court in West Virginia on Thursday has certified the foster case, *Jonathan R. v. Justice*, as a class action, allowing it to proceed on behalf of all of the approximately 6,100 children in foster care in the state.

“This is a careful, thoughtful decision, which will allow us to fully represent all these children and finally prove that the state’s foster care system exposes children to the unreasonable risk of serious harm, which the Constitution bars the state from inflicting on children,” said Marcia Robinson Lowry, lead plaintiff for the class and Executive Director of A Better Childhood (“ABC”). ABC is counsel for the children, along with Shaffer & Shaffer, a West Virginia law firm, and non-profit organization Disability Rights of West Virginia.

The lawsuit was filed in September 2019. A motion for class action status was initially filed in September 2020, but was left undecided when the case was dismissed in 2021. That decision was reversed by the Fourth Circuit Court of Appeals in 2022, and the class action motion was renewed in May 2023. The decision allows the case to go forward and prove its claims of serious harm to children. The class action decision will uncover additional information that will allow the plaintiffs to do so.

In moving for class certification, the plaintiffs had to make an initial showing that it could prove its claims. The court found that “plaintiffs have demonstrated that DHHR maintains an inadequate array of placements to meet the needs of these foster children,” citing examples of expert testimony that showed the lack of placements and the lack of stability in the placements that “rise to the level of an unreasonable risk of harm”. The court also found that DHHR “contrary to its own stated policies fails to include families in the case planning process and engage in permanency planning for children.”

In addition, the court concluded “plaintiffs have presented sufficient evidence of high caseloads and chronic understaffing,” and connected that to the unreasonable risk of serious harm. It also found that plaintiffs had shown that these were long-standing problems, and that the state had also failed to offer community-based mental health services. “We will be moving forward to now

present evidence of the state’s long-term neglect of these children, and how they have been seriously damaged by the state’s foster care system,” said Ms. Lowry. “The state is supposed to protect, not further harm, these vulnerable children. Instead, this system has ignored these children for far too long. It is time that the state is finally held accountable.”

“For decades DHHR has failed the children of West Virginia, not only by directly placing them in harm’s way but also by failing to prepare them for life after foster care,” said Rich Walters, Partner at Shaffer & Shaffer. “Our children deserve better, and the Court’s decision today will help us continue the fight to protect West Virginia’s children and fix a broken DHHR.”

Read the decision [here](#).

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About A Better Childhood

A Better Childhood (“ABC”) is a national nonprofit advocacy organization that uses the courts to reform dysfunctional child welfare systems around the country. ABC currently has cases in New York, New Jersey, Mississippi, Oregon, West Virginia, Alaska, California, and Texas. For more information, please visit <http://www.abetterchildhood.org/>.