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Poe v. Lynchburg Complaint

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(Lynchburg Division)

filed
12/20/80

JAMES POE, JUDITH DOE, MARY LOU ADAMS,)
and LAURA ROE, on behalf of)
themselves and all other persons)
similarly situated,)

DR. JANIS GABLE and DR. JOSEPH B. HADDAD,)
on behalf of themselves and all other)
persons similarly situated,)

Plaintiffs,)

v.)

LYNCHBURG TRAINING SCHOOL AND)
HOSPITAL, and THE DIRECTOR)
OF LYNCHBURG TRAINING SCHOOL)
AND HOSPITAL, in his official)
capacity,)
P. O. Box 1098)
Lynchburg, Virginia 24505)
(804) 528-6000)

SOUTHSIDE VIRGINIA TRAINING)
CENTER FOR THE MENTALLY RETARDED,)
and THE DIRECTOR OF SOUTHSIDE)
VIRGINIA TRAINING CENTER FOR THE)
MENTALLY RETARDED, in his official)
capacity,)
P. O. Box 4110)
Petersburg, Virginia 23803)
(804) 861-7000)

CENTRAL STATE HOSPITAL,)
and THE DIRECTOR OF CENTRAL)
STATE HOSPITAL, in his)
official capacity,)
P. O. Box 4030)
Petersburg, Virginia 23803)
(804) 861-7000)

EASTERN STATE HOSPITAL,)
and THE DIRECTOR OF)
EASTERN STATE HOSPITAL,)
in his official capacity,)
P. O. Drawer A)
Williamsburg, Virginia 23185)
(804) 253-5000)

SOUTHWESTERN STATE HOSPITAL,)
and THE DIRECTOR OF SOUTH-)
WESTERN STATE HOSPITAL,)
in his official capacity,)
P. O. Box 670)
Marion, Virginia 24354)
(703) 783-3171)

CIVIL ACTION NO. ^{#50-} 0172

COMPLAINT

RECEIVED & NOTED
BY
BOGAN & HANTSON
ROCKET COMPANY
12/20/80

WESTERN STATE HOSPITAL,
and THE DIRECTOR OF WESTERN
STATE HOSPITAL, in his
official capacity,
P. O. Box 2500
Staunton, Virginia 24401
(703) 886-2345

DR. LEO E. KIRVEN, Jr.,
in his official capacity as
the Commissioner of Mental
Health and Retardation of
the Commonwealth of Virginia,
109 Governor Street
Richmond, Virginia 22314

STATE MENTAL HEALTH AND
MENTAL RETARDATION BOARD,
and THE CHAIRMAN
OF THE STATE MENTAL HEALTH
AND MENTAL RETARDATION BOARD,
in his official capacity,
414 West Franklin Street
Richmond, Virginia 23220

DR. JEAN L. HARRIS, in
her official capacity
as Secretary of Human
Resources of the
Commonwealth of Virginia,
Ninth Street Office Bldg.
Richmond, Virginia 23219

JOHN N. DALTON, in his
official capacity as
the Governor of the
Commonwealth of Virginia,
State Capitol
Richmond, Virginia 23219,

Defendants.

I. PRELIMINARY STATEMENT

1. This is an individual and class action challenging the involuntary surgical sterilization of over 7,200 men and women by Virginia state officials and agencies and challenging defendants' subsequent failure to notify and prevent further harm to the victims of the involuntary sterilization program.

Plaintiffs seek a declaratory judgment that defendants have violated the United States Constitution and federal and state law by (a) involuntarily sterilizing the individual plaintiffs and the thousands of men and women whom they represent, thus depriving them indefinitely of the ability to bear children, and (b) refusing to notify these men and women of the circumstances, effects, possible reversibility, or the fact of their forced sterilizations or to provide ancillary medical evaluation, diagnosis and treatment to prevent further harm to these men and women. Plaintiffs also seek an injunction ordering defendants to provide such notification and ancillary services in order to prevent additional harm to these involuntarily sterilized persons.

2. This action concerns Virginia's involuntary "eugenic" sterilization of thousands of men and women in coercive institutional settings with the avowed purpose of preventing "the increase of feeble-minded, morons and criminals." See paragraph 25, infra. These forced surgical sterilizations were conducted without adequately and fully informing the individuals sterilized of the nature and effects of the operations, without obtaining informed consent to the sterilizations, without providing adequate representation to the men and women sterilized, without presenting or considering appropriate medical or genetic evidence, and without proof by clear and convincing evidence of a compelling state interest. This action also arises from defendants' continuing refusal to notify the persons who were involuntarily sterilized of the facts, circumstances, effects, and possible reversibility of their sterilizations and thus to enable many of them to obtain surgical reversal of their operations, to provide their physicians with the complete medical histories essential to adequate care, and otherwise to prevent further harm to these individuals.

II. JURISDICTION

3. This action arises under the Constitution and laws of the United States, including the Fourteenth Amendment to the Constitution of the United States, 42 U.S.C. § 1983, and 42 U.S.C. § 6000 et seq.

4. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343. Plaintiffs' action for declaratory and injunctive relief is also authorized by 28 U.S.C. §§ 2201 and 2202 and by 42 U.S.C. § 1988. The Court has jurisdiction over plaintiffs' state law claims pursuant to the pendent jurisdiction of this Court.

III. INDIVIDUAL PLAINTIFFS

5. Plaintiff James Poe, a citizen and resident of Virginia, was admitted involuntarily to the Lynchburg Training School and Hospital ("defendant Lynchburg") in Lynchburg, Virginia, at the age of 13. Mr. Poe is now employed as a coal mine electrician and repairman, certified by both the United States Department of the Interior and the Commonwealth of Virginia Board of Mine Examiners, despite allegations in records at defendant Lynchburg that he was a "high-moron." Although records at Lynchburg itself indicate that he was "adjusting quite satisfactorily" after being furloughed home in 1952, and although no psychological tests had been given to him since 1948, Mr. Poe was forced to undergo a vasectomy which resulted in his involuntary sterilization under color of state law at defendant Lynchburg in November, 1952. The sterilization was performed without his informed consent or even notice that he would be sterilized indefinitely. Instead, he was told falsely that he

would be circumcised. Mr. Poe is young enough to father children, but he will remain permanently incapable of doing so unless a reversal operation is performed, because of his involuntary sterilization.

6. Plaintiff Judith Doe, a citizen and resident of Virginia, was admitted involuntarily to defendant Lynchburg at the age of 14. She was admitted less than a year after giving birth to a son as a result of having been raped by her stepfather. Records at defendant Lynchburg state that Ms. Doe was "not basically defective" and that instead she was "at an emotional and intellectual loss" because of her "recent trauma." There was no indication in the records of any abnormality in Ms. Doe's son. Nevertheless, she was forced to undergo an operation resulting in her involuntary and permanent sterilization under color of state law at defendant Lynchburg in December, 1949. The sterilization was performed without her informed consent or even notice that she was to be sterilized indefinitely.

7. Plaintiff Mary Lou Adams, a citizen and resident of Virginia, was admitted involuntarily to defendant Lynchburg at the age of 15. Several months later, officials of defendant Lynchburg determined that she was pregnant and began proceedings to sterilize her. Approximately six months before her involuntary sterilization, Ms. Adams gave birth to a son, who was put up for adoption. Records at defendant Lynchburg reveal no indication of abnormality in Ms. Adams' son and demonstrate no effort to ascertain his mental or developmental status. Nevertheless, Ms. Adams was involuntarily sterilized at defendant Lynchburg under color of state law in May, 1965, without informed

consent or even notice that she was to be sterilized indefinitely. She was subsequently released from defendant Lynchburg and is now married. She remains in her child-bearing years and both she and her husband wish to have children and raise a family. Because of her involuntary sterilization, however, Ms. Adams is unable to bear children. She will be permanently incapable of bearing children unless a reversal operation is performed.

8. Plaintiff Laura Roe, a citizen and resident of Virginia, was admitted involuntarily to the Central State Hospital ("defendant Central State") in Petersburg, Virginia at the age of 15. Records at defendant Central State state that she was allegedly "maladjusted socially, unable to adjust herself without guidance and supervision, and that she is promiscuous sexually and has syphilis" and that it is "probable that she was sent here more because of this than because of her mental condition." Nevertheless, less than four months after her admission, she was forced to undergo an operation which resulted in her involuntary and permanent sterilization under color of state law in June, 1939. The sterilization was performed without her informed consent or even notice that she was to be sterilized indefinitely. She was released thirteen days after the involuntary surgical sterilization was performed.

9. Plaintiffs James Poe, Judith Doe and Laura Roe bring this action under pseudonyms due to the sensitive and personal nature of the matter contained in paragraphs 5, 6 and 8 above. The true identities of these plaintiffs is contained in an affidavit filed by their attorney under seal with the Court, and is available to defendants upon their agreement that the true identities of these plaintiffs will be kept in confidence.

IV. CLASS ACTION

10. Each individual plaintiff sues on his or her own behalf and on behalf of all other persons similarly situated. The members of this class (hereinafter "sterilized class") are all men and women who have been involuntarily sterilized at governmental institutions in Virginia under color of state law.

11. This is a proper class action under Rules 23(b)(1) and (2) of the Federal Rules of Civil Procedure. The class is so numerous as to make joinder of all members impracticable. There are substantial questions of law and fact common to the entire class and the claims of each plaintiff are typical of the claims of the class and predominate over any questions affecting only individual members. The named plaintiffs will fairly and adequately represent the interests of the class. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive and declaratory relief appropriate with respect to the class as a whole. In addition, this class action is superior to any other available method for the fair and efficient adjudication of the controversy.

12. The questions of law and fact common to the sterilized class include, among others, the following:

a. Does involuntary surgical sterilization of men and women without a compelling governmental interest violate the Fourteenth Amendment to the United States Constitution?

b. Did defendants' actions in ordering, conducting, supervising, and approving the involuntary sterilization of the individual plaintiffs and the class they represent violate the rights of the sterilized class under the Fourteenth Amendment to the United States Constitution and the common law of Virginia?

c. Does defendants' failure and refusal to notify the individual plaintiffs and the class they represent of the facts, circumstances, effects, and possible reversibility of their involuntary sterilizations and to seek to prevent further harm to these individuals violate their rights under the Fourteenth Amendment to the United States Constitution, federal statutory law, and the common law of Virginia?

V. PHYSICIAN PLAINTIFFS AND CLASS

13. Dr. Janis Gable is a licensed physician in the Commonwealth of Virginia who resides in Washington County. Dr. Gable operates a family practice clinic in the Konnarock community area of southwest Virginia in which, upon information and belief, some absent class members sterilized by defendants reside. Dr. Gable is willing to provide medical care to members of the sterilized class and, upon information and belief, may have already treated members of the sterilized class. Dr. Gable is unable to provide effective medical care services, however, because defendants' failure to notify members of the sterilized class of the facts, circumstances, and possible effects of their involuntary sterilizations, including the fact that their sterilizations are permanent unless reversal operations are performed, prevents these sterilized persons from providing complete and accurate medical histories to physicians

such as Dr. Gable and from seeking appropriate care. Upon information and belief, many absent sterilized class members remain unaware even that they have been sterilized. Dr. Gable accordingly sues to vindicate both her own interests in providing needed medical care and the rights of absent sterilized class members who are unable to assert their own interests.

14. Dr. Joseph B. Haddad is a licensed physician in the Commonwealth of Virginia who practices in Richmond. Dr. Haddad specializes in surgery which can reverse the effect of some female sterilizations, and is willing to perform such surgery on members of the sterilized class who wish to reverse their involuntary sterilizations. Dr. Haddad is unable to do so, however, because defendants have refused to notify members of the sterilized class of the facts, circumstances, effects, and possible reversibility of their involuntary sterilizations and, upon information and belief, absent class members remain unaware that they have been sterilized and of the facts and circumstances surrounding their sterilizations, including the effects and possible reversibility of the operations. Dr. Haddad accordingly sues to vindicate both his own interests in seeking to provide medical care and services to those who want them and the rights of absent sterilized class members who are unable to assert their own interests.

15. Dr. Gable and Dr. Haddad also sue on behalf of all other persons similarly situated. The members of this class (hereinafter "physician class") include all physicians in the Commonwealth of Virginia who have provided or are willing to provide medical care services to members of the sterilized class, but who are unable to provide adequate medical care services

because of defendants' failure to notify members of the sterilized class of the facts, circumstances, effects, and possible reversibility of their involuntary sterilizations.

16. This is a proper class action under Rules 23(b)(1) and (2) of the Federal Rules of Civil Procedure. The class is so numerous as to make joinder of all members impracticable. There are substantial questions of law and fact common to the entire class and the claims of each plaintiff are typical of the claims of the class and predominate over any questions affecting only individual members. The named plaintiffs will fairly and adequately represent the interests of the class. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive and declaratory relief appropriate with respect to the class as a whole. In addition, this class action is superior to any other available method for the fair and efficient adjudication of the controversy.

17. In addition to the common questions set forth in paragraph 12 above, the questions of law and fact common to the physician class include, among others, the following: Does defendants' failure to notify members of the sterilized class of the facts and circumstances of their involuntary sterilizations and of the effects and possible reversibility of the operations violate the constitutional rights of the physician class to practice medicine properly and to establish fully informed

doctor-patient relationships with and to render proper medical care to such sterilized men and women?

VI. DEFENDANTS

18. Defendants Lynchburg Training School and Hospital ("Lynchburg"), Southside Virginia Hospital for the Mentally Retarded ("Southside"), Central State Hospital, Eastern State Hospital, Southwestern State Hospital, and Western State Hospital (hereinafter referred to collectively as "defendant institutions") are Virginia state institutions operated by the Virginia Department of Mental Health and Mental Retardation. At various times, defendant Lynchburg was previously known as the Lynchburg State Colony and the State Colony for the Epileptic and the Feeble-minded, and defendant Southside was previously known as the Petersburg State Colony, the Petersburg Training School, and the Petersburg Training School and Hospital. The forced surgical sterilizations giving rise to this action occurred at defendant institutions. Officers, employees, and agents of defendant institutions proposed, petitioned for, directed, supervised, and performed these involuntary sterilizations.

19. Each of the defendant institutions is managed by a director who is appointed by the Commissioner of the Department of Mental Health and Mental Retardation of the Commonwealth of Virginia. Said directors and their predecessors in their official capacities ("defendant directors") are the officials responsible, under Virginia law, for supervising and administering defendant institutions, selecting men and women to be involuntarily sterilized, petitioning for their forced surgical sterilization, and directing, supervising, and performing or causing to be performed the involuntary sterilizations which give

rise to this action. In addition, upon information and belief, some or all of defendant directors participated in the decision to refuse to notify the members of the sterilized class of their involuntary sterilizations, as described in paragraphs 40-42 below.

20. Defendant Leo E. Kirven, Jr., M.D. ("defendant Kirven") is the Commissioner of Mental Health and Mental Retardation of the Commonwealth of Virginia. In his official capacity under Virginia law, defendant Kirven is responsible for supervising and managing the Virginia Department of Mental Health and Mental Retardation and its facilities, including the defendant institutions, in accordance with the policies, rules, and regulations of the State Mental Health and Mental Retardation Board. In addition, upon information and belief, defendant Kirven participated in the decision to refuse to notify the members of the sterilized class of their involuntary sterilizations.

21. Defendant State Mental Health and Mental Retardation Board ("defendant Board") and its chairman are responsible, under Virginia law, for establishing the policies, rules, and regulations to govern the management of the Department of Mental Health and Mental Retardation and its facilities, including defendant institutions, and for monitoring the activities of defendant Kirven and his predecessors in their official capacities. Defendant Board is the successor in interest to the former State Hospital Board, the special boards of directors of each of defendant institutions, and all other predecessors of defendant Board, and the functions, duties, and responsibilities of said predecessors have been transferred to defendant Board

under Virginia law. Defendant Board and its predecessors and delegates in their official capacities were also responsible for approving the forced sterilizations which give rise to this action and, upon information and belief, for participating in the decision to refuse to notify the members of the sterilized class of their involuntary sterilizations.

22. Defendant Jean L. Harris, M.D. ("defendant Harris") is the Secretary of Human Resources of the Commonwealth of Virginia. In her official capacity under Virginia law, defendant Harris is responsible for the supervision of the Department of Mental Health and Mental Retardation, including defendants Board and Kirven and defendant institutions. In addition, defendant Harris participated in the decision to refuse to notify the sterilized class of their involuntary sterilizations.

23. Defendant John N. Dalton ("defendant Dalton") is the Governor of the Commonwealth of Virginia. In his official capacity under Virginia law, defendant Dalton is responsible for appointing and exercising general supervisory authority over defendants Kirven, Board and Harris, for administering the laws of Virginia, for exercising overall responsibility for the operation of all state departments, agencies, and institutions, including defendant institutions, and for formulating and administering the policies of the executive branch. In addition, upon information and belief, defendant Dalton participated in the decision to refuse to notify the sterilized class of their involuntary sterilizations.

VII. FACTUAL CONTENTIONS

Virginia's Involuntary Eugenic Sterilization Program

24. Beginning in the late 1910's and early 1920's, Virginia state officials at defendant Lynchburg and other defendant institutions instituted a program of forced surgical sterilization of selected Virginia citizens. The program continued until at least 1973, by which time, according to the Commonwealth's own estimates, over 7,200 men and women had been involuntarily sterilized under color of state law at defendant institutions. These forced sterilizations were conducted in order to render members of the sterilized class permanently incapable of bearing children. More than 2,800 of the involuntary surgical sterilizations took place at defendant Lynchburg, where the program was begun by two former directors of defendant Lynchburg, Dr. A. S. Priddy and Dr. John Bell, in their official capacities.

25. Dr. Bell defended the eugenic purpose of the involuntary sterilization program in a 1932-33 Annual Report concerning defendant Lynchburg, in which he praised the Nazi German program of "elimination of the unfit" through forced sterilization and contended that "now is the time to apply the pruning knife with vigor and without fear or favor." A 1925 report by the Virginia Bureau of Vital Statistics similarly ✓ asserted that "laws are needed to prevent the increase of feeble-minded, morons and criminals by segregation or sterilization. These are the classes who do much toward furnishing us with our race problem."

26. Upon information and belief, the first Virginia law authorizing defendants' involuntary eugenic sterilization

program, 1924 Virginia Acts, Chapter 394, Page 569, was drafted and introduced at Dr. Priddy's behest. The preamble to the law asserted that heredity plays an important part in the transmission of mental disease and crime.

27. The assumption that mental disease and crime are inherited has long been recognized by medical science to be false. Mental health professionals have recognized at least as early as the 1920's that most mental retardation, disease, and crime are not determined by heredity, but are associated instead with a variety of medical, environmental, cultural, economic, and other factors. Even those members of the sterilized class who are mentally retarded have not been shown to be suffering from genetic disorders which are likely to be inherited.

28. Many of the men and women involuntarily sterilized at defendant institutions were in fact not mentally ill or retarded. Instead, they were selected for sterilization because they were characterized as "misfits," "loose women," or "incorrigibles." Many were released from the defendant institutions shortly after their involuntary sterilization, even though they were committed to defendant institutions because they were allegedly retarded or unable to care for themselves.

Involuntary Sterilization Standards and Procedures

29. The applicable Virginia involuntary sterilization law provided that involuntary surgical sterilizations were to be conducted on males by the operation of vasectomy, a scrotal incision severing the vas deferens duct, and on females by the operation of salpingectomy or tubal sterilization, an abdominal incision cutting and tying the fallopian tubes. These involuntary sterilization operations performed on the sterilized

class are generally permanent unless reversal operations are performed where possible.

30. The applicable Virginia involuntary sterilization law authorized defendant directors and their predecessors to perform or direct the performance of forced sterilizations upon approval of a petition for involuntary surgical sterilization submitted to defendant Board and its predecessors. Upon information and belief, defendant Board and its predecessors delegated its responsibilities for approving forced sterilizations to officials at the respective defendant institutions, where hearings pertaining to the proposed involuntary sterilizations took place.

31. In conducting hearings, defendant directors, institutions, and Board and their predecessors and delegates failed to obtain informed consent to the surgical sterilization procedures from members of the sterilized class and failed to provide adequate notice and explanation of the procedures and their effects to members of the sterilized class, such as the permanent nature of the sterilizations unless surgically reversed. Many involuntarily sterilized men and women were falsely told that the operation being performed was simply an appendectomy, a circumcision, or other surgery. Many were told that they would not be permitted to leave the defendant institution until they consented to the operation.

32. The hearings conducted at defendant institutions were also procedurally defective in a number of other respects. Based upon current information and belief, these defects included, but are not limited to, the following:

✓ a. The representation of members of the sterilized class provided by appointed guardians was inadequate and defective;

b. There was no independent and impartial judicial decision-maker at the hearings;

c. Independent genetic and medical evidence was not presented and received at the hearings;

d. No consistent standard of proof was applied at the hearings; and

e. Findings were not made by clear and convincing evidence at the hearings.

33. The forced surgical sterilizations at defendant institutions were approved and conducted in violation of substantive constitutional standards. In particular, there was no proof, by clear and convincing evidence, that the men and women involuntarily sterilized were suffering from a specific mental disease or defect which would probably be inherited and which rendered them incapable of informed consent, that they were likely and able to have children, and that no less drastic means of fertility control was available. In fact, upon information and belief, no consideration whatsoever was given to less drastic alternatives.

34. At some time after their forced surgical sterilizations, members of the sterilized class were released from defendant institutions. Defendants failed to provide counseling, instruction, or medical advice to the men and women involuntarily sterilized concerning the medical and psychological effects of their forced surgical sterilizations and concerning future necessary and desirable care and treatment.

Harm to Plaintiffs

35. The involuntary sterilizations ordered by defendants have caused and continue to cause the named plaintiffs and other members of the sterilized class to suffer both continued infertility and significant associated mental and emotional pain, suffering, and other harm. The inability to have children has produced anguish and humiliation to the men and women involuntarily sterilized by defendants. The lack of knowledge about the forced sterilizations caused by defendants' conduct has caused members of the sterilized class to suffer additional frustration, humiliation, and psychological and marital problems and to incur significant medical and other expenses in attempting to determine the cause of their infertility.

36. The involuntary sterilizations ordered by defendants have also caused and continue to cause a significant risk of physical harm to members of the sterilized class. The incomplete knowledge of their medical history possessed by members of the plaintiff class as a result of defendants' conduct significantly increases the risk of diagnostic error, unnecessary invasive medical procedures, delays in providing needed medical care, and other medical complications. In addition, persons who have been sterilized face increased risks of potentially serious medical problems about which both the patient and the doctor must be informed in order to provide the timely and adequate counseling, preventive care and treatment necessary to prevent serious injury. Some members of the sterilized class have already suffered from such medical problems.

37. Members of the physician class have similarly been injured by defendants' conduct. Because defendants have failed

to provide proper notice and explanation to the men and women sterilized of the facts, circumstances, effects, and possible reversibility of their operations, Dr. Gable, Dr. Haddad, and other members of the physician class are and will continue to be unable to establish fully informed doctor-patient relationships with and to render prompt and proper medical care to these involuntarily sterilized persons. In addition, defendants' failure to provide proper notice and explanation has significantly increased the risk of diagnostic error or unnecessary invasive medical procedures by members of the physician class.

38. Despite the significant harm already suffered, it is medically possible in many cases to prevent or limit further harm to members of the sterilized and physician classes. Some members of the sterilized class remain within child-bearing years and could benefit from operations to reverse their sterilizations. Notice of the circumstances and possible effects of the sterilizations would enable class members to seek necessary medical treatment and to give full and accurate medical histories to doctors for the first time, facilitating correct diagnoses and timely, proper medical care. Other medical and psychological counseling and treatment could also prevent or limit additional harm to members of the sterilized class.

Defendants' Subsequent Failure to Notify

39. In succeeding years, the men and women sterilized as a result of the Virginia eugenic sterilization program have continued to suffer harm as described in paragraphs 35-36 above. Nevertheless, defendants have continually failed to take any steps to provide necessary and adequate notice, counseling and

treatment to the thousands of men and women involuntarily sterilized at defendant institutions under color of state law.

40. In February, 1980, newspaper articles revealed to the public for the first time the existence and extent of Virginia's involuntary eugenic sterilization program and the sterilized persons' lack of knowledge about their forced sterilizations because of defendants' conduct. Within the next several months, a number of civic, medical, and religious leaders and organizations, such as the Virginia Council of Churches, called upon defendants Harris and Dalton to provide adequate notice and appropriate counseling and treatment to the men and women involuntarily sterilized at defendant institutions.

41. Upon information and belief, defendants Harris and Dalton consulted with defendants Kirven, Board, directors, and other unknown officials in responding to the requests referred to in paragraph 40 above. Defendants know or can determine with reasonable diligence the current names and addresses of many members of the sterilized class, and can take other reasonable steps to provide effective constructive notice to members of the sterilized class who do not receive personal notice. Nevertheless, defendants have continued to refuse to take any steps whatsoever to effectively notify or otherwise assist the men and women sterilized under the Virginia involuntary eugenic sterilization program. Defendants' only response to these requests has been to set up a toll-free telephone number which individuals concerned about possible sterilization can call. This response cannot effectively provide necessary information, counselling, and services to class members. Moreover, defendants' response cannot even reach those class members, particularly in rural

areas, who remain unaware of their involuntary sterilizations or of the existence of defendants' telephone number in the first place.

42. As a direct result of defendants' continuing failure to notify or otherwise assist the men and women sterilized in defendant institutions, these persons have continued and will continue to suffer significant and irreparable harm as described in paragraphs 35-36 above. Members of the physician class have similarly continued to incur harm as described in paragraph 37 above.

43. The conduct of defendants as described in paragraphs 1 through 42 of this Complaint was undertaken under color of state law and constitutes state action.

VIII. CAUSES OF ACTION

Count I - Fourteenth Amendment

44. Paragraphs 1 through 43 of this Complaint are incorporated herein by reference.

45. The conduct of defendants as described in paragraphs 1 through 43 of this Complaint has deprived members of the sterilized class of their liberty without due process of law and has denied them the equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution. Defendants have violated the Fourteenth Amendment rights of the members of the sterilized class by, inter alia, indefinitely depriving them of their fundamental right to bear children and invading their fundamental rights to privacy and bodily integrity without any compelling state interest and without according them procedural due process, and by refusing to

notify and provide assistance to members of the sterilized class after involuntarily sterilizing these men and women. As a result, members of the sterilized class have suffered and continue to suffer harm as described in paragraphs 35-36 above.

46. The conduct of defendants as described in paragraphs 1 through 43 of this Complaint has deprived members of the physician class of their liberty and property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution. Defendants have violated the Fourteenth Amendment rights of members of the physician class by, inter alia, depriving them of their rights to practice medicine properly and to provide treatment to and establish fully informed doctor-patient relationships with members of the sterilized class by refusing to notify and provide assistance to members of the sterilized class, as described in paragraphs 13, 14, and 37 above.

Count II - Developmentally Disabled Assistance and Bill of Rights Act (42 U.S.C. § 6000 et seq.)

47. Paragraphs 1 through 43 of this Complaint are incorporated herein by reference.

48. The Commonwealth of Virginia has received funds from the federal government pursuant to the Developmentally Disabled Assistance and Bill of Rights Act ("Bill of Rights Act"), 42 U.S.C. § 6000 et seq.

49. By failing to provide notice, counselling, medical evaluation, and treatment to those members of the sterilized class who are developmentally disabled, defendants have violated the rights of these members of the sterilized class to appropriate treatment, services, and habilitation under the Bill of Rights Act. As a result, members of the sterilized class have

suffered and continue to suffer harm as described in paragraphs 36-37 above.

Count III - 42 U.S.C. § 1983

50. Paragraphs 1 through 49 of this Complaint are incorporated herein by reference.

51. Through their conduct as described in paragraphs 1 through 49 of this Complaint, defendants have, under color of state law, subjected members of the sterilized and physician classes and caused them to be subjected to deprivations of their rights, privileges, and immunities guaranteed by the Fourteenth Amendment to the United States Constitution and by 42 U.S.C. § 6000 et seq. As a result, plaintiffs have suffered and continue to suffer harm as described in paragraphs 35-37 above.

Count IV - Failure to Provide Advance Notification and Explanation

52. Paragraphs 1 through 43 of this Complaint are incorporated herein by reference.

53. Prior to the performance of any surgical sterilization upon any man or woman in defendant institutions, defendants had a duty under the common law of Virginia to provide adequate notification, explanation and instruction to that individual, either directly or through defendants' officers, agents, subordinates, or employees. Specifically, defendants were required to provide a comprehensive and comprehensible explanation to each member of the sterilized class concerning the procedures to be performed and the effects and risks of those procedures, and to provide proper instruction for future care and treatment related to the procedures.

54. Defendants negligently or intentionally failed to perform their duties as set forth in paragraph 53 above, thereby causing members of the sterilized class to suffer and to continue to suffer harm as described in paragraphs 35-36 above.

55. Plaintiffs' claim that defendants failed to provide advance notification and explanation and plaintiffs' claims that defendants have violated the Fourteenth Amendment to the United States Constitution, the Bill of Rights Act, and 42 U.S.C. § 1983 all derive from a common nucleus of operative fact and plaintiffs would ordinarily be expected to try all these claims in the same proceeding.

Count V - Failure to Provide Subsequent
Notification and Assistance

56. Paragraphs 1 through 43 of this Complaint are incorporated herein by reference.

57. After the forced surgical sterilizations of the sterilized class, defendants had a duty under the common law of Virginia to notify the men and women involuntarily sterilized of the circumstances, effects, and possible reversibility of the operations and to prevent further risk or harm to the sterilized class either by taking action personally or through defendants' officers, agents, subordinates, or employees.

58. Defendants negligently or intentionally failed to fulfill their duties as set forth in paragraph 57 above, thereby causing members of the sterilized class to suffer and to continue to suffer harm as described in paragraphs 35-36 above.

59. Plaintiffs' claim that defendants have failed to provide subsequent notification and assistance and plaintiffs' claims that defendants have violated the Fourteenth Amendment to

the United States Constitution, the Bill of Rights Act, and 42 U.S.C. § 1983 all derive from a common nucleus of fact and plaintiffs would ordinarily be expected to try all these claims in the same proceeding.

IX. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

(1) Enter a judgment declaring that:

(a) the forced surgical sterilization of the sterilized class by Virginia state officials and agencies violated the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, and the common law of Virginia; and

(b) defendants' subsequent failure to notify and prevent further harm to members of the sterilized class violates the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, the Developmentally Disabled Assistance and Bill of Rights Act, and the common law of Virginia.

(2) Enter an order enjoining the defendants, their officers, agents, subordinates, employees, and successors in office, and all those acting in concert and participation with them, from engaging in the unconstitutional and unlawful practices described in paragraphs 24 through 59 of this Complaint and from authorizing or conducting any surgical sterilizations without prior informed consent.

(3) Enter an order requiring the defendants to provide adequate notice to all members of the sterilized class of the facts and circumstances of their involuntary surgical sterilizations, including the effects and possible reversibility of the operations, and to provide such medical, surgical, and psychological assistance as is necessary to prevent further harm

to members of the sterilized class resulting therefrom, including operations to reverse their sterilizations where possible.

(4) Award plaintiffs their costs and disbursements and reasonable attorneys' fees as provided in 28 U.S.C. § 1920 and 42 U.S.C. § 1988.

(5) Grant to plaintiffs and against defendants such other and further relief as this Court may deem just and proper.

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