

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

TAMARA M. LOERTSCHER

Plaintiff,

Case No. 14-cv-870

v.

J.B. VAN HOLLEN, in his official capacity as
ATTORNEY GENERAL OF THE
STATE OF WISCONSIN, and
ELOISE ANDERSON, in her official capacity as
SECRETARY OF THE DEPARTMENT OF
CHILDREN AND FAMILIES

Defendants.

PLAINTIFF'S COMPULSORY MOTION TO FILE DOCUMENTS UNDER SEAL

The rules of this Court require that documents filed under seal be accompanied by a contemporaneous motion to seal. *See* Administrative Order, No. 311. Although Plaintiff does not wish to file these documents under seal, and requests that this Court order that they be disclosed to the public, Plaintiff is constrained by the confidentiality provision of Wisconsin Statute Section 48.396 to file the exhibits attached to her Complaint under seal. Thus Wisconsin state law places Plaintiff in the unusual position of having to oppose her own motion to seal the exhibits to her Complaint.

Plaintiff Tamara Loertscher, a thirty-year-old adult pregnant woman, brings this action to challenge the constitutionality of 1997 Wisconsin Act 292, codified at, *inter alia*, Wis. Stat. § 48.133 *et seq.* (hereinafter “The Act,” *see* Appendix to Complaint, Exhibits 1 & 2). The Act empowers a juvenile court to exert jurisdiction over an “adult expectant mother” in a juvenile proceeding when “an unborn child [is] alleged to be in need of protection or services.” *See* Wis.

Stat. § 48.133. In connection with a proceeding styled as a “Child in Need of Protective Services” (“CHIPS”) action, agents within the oversight and control of Defendants invoked the Act in order to inflict egregious constitutional harms on Ms. Loertscher, as set forth in her Complaint. They petitioned for, obtained, and sought enforcement of court orders against Ms. Loertscher, mandating unwanted and inappropriate medical treatment and incarceration. They arrested her and jailed her while she was pregnant, and they then subjected her to solitary confinement, deprivations, and abuse while she was incarcerated. And they issued an administrative determination—while Ms. Loertscher was still pregnant—that she had abused her less than 14-week fetus.

Wisconsin Statute Section 48.396 provides for the confidentiality of all records of juvenile proceedings. *See* Wis. Stat. § 48.396(2)(a) (records of a court exercising jurisdiction pursuant to Chapter 48, Wisconsin’s Children’s Code, “shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter [Chp. 48].”). Thus clothed in secrecy, Defendants’ unconstitutional conduct pursuant to the Act has been shielded from public scrutiny.

Ms. Loertscher, through counsel, requested and obtained records of the proceedings in the juvenile court matter captioned *In the Interest of J. Doe, an unborn child and Tamara Loertscher*, Case No. 14-JC-09. *See* Wis. Stat. § 48.396(2)(aj) (permitting an expectant mother older than 14 “who is the subject of a record of a [juvenile court] to obtain court records concerning her for “inspection” upon request). A copy of Ms. Loertscher’s letter to the Taylor County Circuit Court requesting these records on her own behalf is attached hereto as Exhibit A. Ms. Loertscher also received from the Taylor County Department of Human Services two notices addressed to her informing her that she had been found to have committed maltreatment

of her less-than-14-week old fetus. Ms. Loertscher has given her informed consent for the following materials to be filed publically in connection with this action:

- Exhibit A: August 5, 2014 – Motion Hearing Transcript
- Exhibit B: Order for Temporary Physical Custody
- Exhibit C: Notice of Motion and Motion for Remedial Contempt and Affidavit of Liza Daleiden
- Exhibit D: Motion to Take Expectant Mother Into Immediate Custody and Affidavit of Liza Daleiden
- Exhibit E: Order To Take Expectant Mother Into Immediate Custody
- Exhibit F: August 25, 2014 – Hearing Transcript
- Exhibit G: September 4, 2014 – Adjourned Plea Hearing, Motion Hearing Transcript
- Exhibit H: Remedial Contempt Order and Order for Commitment
- Exhibit I: Order Appointing Counsel
- Exhibit J: September 22, 2014 – Stipulation Hearing Transcript
- Exhibit K: Order for Purge Modification and Release from Taylor County Jail
- Exhibit L: Consent Decree
- Exhibit M: Notice of Child Maltreatment Determination and Right to Appeal
- Exhibit N: November 10, 2014 –Notice from Taylor County Human Services Department

In compliance with Wisconsin Statute Section 48.396, these materials have been filed under seal, thus affording Defendants the opportunity to support the motion to seal and to articulate any interest they contend warrants keeping these records from the public. However, as set forth in the accompanying brief in opposition to this motion, Ms. Loertscher respectfully submits that no legitimate public interest is served by sealing these records in this proceeding. Home addresses and dates of birth have been redacted from these materials pursuant to this

Court's standing order governing mandatory redaction of personal information. Thus these documents are ready for immediate disclosure to the public upon an Order from this Court.¹

Accordingly, Ms. Loertscher respectfully requests that this motion to seal be denied.

Dated this 15th day of December, 2014.

Respectfully submitted,

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¹ Wis. Stat. § 48.396 provides that records of a juvenile court proceeding may only be disclosed "by order of the court assigned to exercise jurisdiction under this chapter," *i.e.*, the Wisconsin state circuit court. Nonetheless, the Supremacy Clause of the United States Constitution and 42 U.S.C. §§ 1983 & 1988 empower this Court to order disclosure of these records in a civil rights action brought to vindicate the federal constitutional rights violated by the proceedings these records document.

**CARR CENTER FOR
REPRODUCTIVE JUSTICE**

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