

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

DWIGHT D. MITCHELL, individually and on behalf of his children X.M., A.M., and BRYCE MITCHELL; and STOP CHILD PROTECTION SERVICES FROM LEGALLY KIDNAPPING,

Plaintiffs,

v.

DAKOTA COUNTY SOCIAL SERVICES; COUNTY OF DAKOTA; EMILY PIPER, in her official capacity as Commissioner of Department of Human Services; PATRICK COYNE, individually and in his official capacity as Executive Director of Dakota County Social Services; JOAN GRANGER-KOPESKY, individually and in her official capacity as Deputy Director of Dakota County Social Services; LESLIE YUNKER, individually and in her official capacity as Supervisor of Dakota County Social Services; DIANE STANG, individually and in her official capacity as Supervisor of Dakota County Social Services; SUSAN BORELAND, individually and in her official capacity as Social Worker of Dakota County Social Services; CHRIS P'SIMER, individually and in his official capacity as Social Worker of Dakota County Social Services; CHRISTINA AKOLLY, individually and in her official capacity as Social Worker of Dakota County Social Services; JACOB TROTZKY-SIRR, individually and in his official capacity as Guardian ad Litem of Dakota County; TANYA DERBY, individually and in her official capacity as Public Defender of Dakota County; KATHRYN "KATHY" SCOTT, individually and in her official capacity as Assistant County Attorney of Dakota County; ELIZABETH SWANK, individually and in her official capacity as Assistant County Attorney of Dakota County,

Defendants.

Case No. 18-CV-1091 WMW/BRT
Judge Wilhelmina M. Wright
Demand for Jury Trial

**CORRECTED
AMENDED COMPLAINT**

Preliminary Statement

Stop Child Protection Services from Legally Kidnapping (SCPS) is an association of parents who have been affected or may be affected by Minnesota's child-protection statutes, Minnesota Department of Human Services' rules and policies, or Minnesota counties' child-protection services. SCPS is committed to preventing state and county agencies from unconstitutionally interfering in the parent-child relationship, even on a temporary basis, when there is at least a single fit parent. The reason is that when the government takes custody of a child away from a single fit parent, the government is horrible and terribly expensive in raising children—much worse than the single fit parent.

This complaint's counts 1 through 6 contain claims that facially challenge statewide application of Minnesota's child protection laws as unconstitutionally vague, unconstitutionally overbroad and fail strict scrutiny. The remaining counts are as-applied constitutional claims and state-law claims particular to the Defendants' actions against the Mitchell family. The remedies include damages and broad statewide injunctions against the Defendants so that what happened to the Mitchell family does not occur again.

Plaintiff Dwight Mitchell (Mitchell) and his children Bryce Mitchell, XM, and AM (collectively, the Mitchells) have the same claims as SCPS and more claims.

Mitchell brought this complaint after his children were illegally removed from the home without court order and without exigent circumstances and was forced to wait ten days for a post-deprivation hearing for his three children Bryce Mitchell, XM, and AM. After Mitchell complied with all county requests, only two of his three children were returned and not until after five months. The authorities maliciously denied Mitchell all contact with his middle son XM for 22 months.

Mitchell was allowed no phone calls, no visits, no letters—absolutely no contact—for 22 months. It was 22 months of lost smiles, lost hugs and lost time spent together as a family. Almost two years of not seeing or hearing from his child. Mitchell was not even being told where XM was. Every night, Mitchell did not know where XM was. Mitchell had the same feeling that a normal parent would have in a normal parent’s worst nightmare: kidnapping.

It was hell on earth and totally disproportionate to the need presented. It was inspired by malice or sadism rather than a merely careless or unwise excess of zeal. It amounted to a brutal and inhumane abuse of official power shocking to the conscience and offending judicial notions of fairness, especially in light of the fact that Mitchell’s 6-year old son AM was returned in five months and three Dakota County Social Services (DCSS) psychologists said that Mitchell was a fit parent.

There was no danger present in the home. Mitchell had a constitutional right for his legal proceedings to be free of fabricated evidence and judicial deception. Because the legal proceedings were tainted by fabricated evidence and judicial deception, Mitchell’s children were illegally detained. This case is also about overzealous, inadequately trained, and inadequately supervised employees of an out-of-control county government agency, and the acts of those employees were directed, authorized or ratified by the agency’s policymaking officials.

The defendants knew almost immediately that they lacked “subject matter jurisdiction” over Mitchell and his children pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and that Mitchell’s former wife had fabricated her allegations of Mitchell’s long-term abuse against her and the boys in an attempt to regain custody.

Jurisdiction and Venue

1. The plaintiffs bring this civil-rights lawsuit under 42 U.S.C. §§ 1981, 1983, 1985, 1986, and 1988 to redress the defendants’ deprivation of the plaintiffs’ rights under the United

States Constitution, including, but not limited to, the Fourth and Fourteenth Amendments, and under federal and state law.

2. This Court has supplemental jurisdiction over Mitchell's state-law claims under 28 U.S.C. § 1367(a) because they are part of the same case and controversy described by Plaintiffs' federal claims, and independent original jurisdiction over Mitchell's state-law claims under 28 U.S.C. § 1332 because this action is between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

3. Venue is proper in the District of Minnesota under 28 U.S.C. § 1391(b)(1), (2), and (3) because most or all of the Defendants reside and may be found in Minnesota and a substantial part of the events giving rise to these claims occurred in Dakota County, Minnesota.

Parties

4. SCPS is an association of parents who are citizens of the United States and Minnesota. SCPS is committed to Minnesota's child-protection statutes, rules, policies, and actions conforming to the U.S. Constitution. All of them have had experiences with the child-protection system in Minnesota which provide them standing to bring SCPS's claims in this court.

5. Mitchell is an African-American citizen of the United States. He is—and was during all times relevant to this complaint—a New Jersey resident. On February 16, 2014, Mitchell, a management consultant in the IT industry, was in Minnesota to complete a temporary contractual work engagement for CHS (Cenex Harvest States).

6. Bryce Mitchell, XM, and AM are all Mitchell's children. They reside with Mitchell in New Jersey. They were minors at the times relevant to this complaint, but Bryce Mitchell is now an adult.

7. The County of Dakota (the County) is a public entity and a political subdivision

of the State of Minnesota. The County of Dakota has purchased liability insurance sufficient under Minn. Stat. § 3.736 to waive its immunity against civil liability.

8. The County operates Dakota County Social Services, which is the County's department implementing Minnesota Department of Human Service standards and Minnesota law.

9. The Dakota County Social Services or Department of Social Services (Agency or DCSS) is an agency of the County.

10. Defendant Emily Piper (Piper) is the Commissioner of the Minnesota Department of Human Services who is legally obligated to ensure enforcement of Minn. Stat. ch. 518D. Enforcement includes, but is not limited to, the implementation of the Department's child protection plan, training, creating manuals, and disciplining social workers for non-compliance on matters of custody. She is sued in her official capacity as a Minnesota state employee. Piper is a citizen and resident of Minnesota.

11. Defendant Kathryn "Kathy" Scott (Scott) was, at the times relevant to this complaint's allegations, an Assistant County Attorney with the County, and acted during her employment under color of state law. Scott led and directed the civil factual investigation of the allegations against Mitchell. She is sued both in her individual capacity and in her official capacity as a County employee. Scott is a citizen and resident of Minnesota.

12. Defendant Elizabeth Swank (Swank) was, at the times relevant to this complaint's allegations, an Assistant County Attorney with the County, and acted during her employment under color of state law. Swank led and directed the criminal factual investigation of the allegations against Mitchell. She is sued both in her individual capacity and in her official capacity as a County employee.

13. Defendant Patrick Coyne (Coyne) was, at the times relevant to this complaint's

allegations, an Executive Director with DCSS and in that capacity served in a supervisory or policymaking role and acted during his employment under color of state law. He is sued both in his individual capacity and in his official capacity as a County employee. Coyne is a citizen and resident of Minnesota.

14. Defendant Joan Granger Kopesky (Kopesky) was, at the times relevant to this complaint's allegations, a Deputy Director with DCSS and in that capacity served in a supervisory or policymaking role and acted during her employment under color of state law. She is sued in both her individual capacity and in her official capacity as a County employee. Kopesky is a citizen and resident of Minnesota.

15. Defendant Leslie Yunker (Yunker) was, at the times relevant to this complaint's allegations, a Supervisor with DCSS and in that capacity served in a supervisory or policymaking role with respect to this investigation and case and acted during her employment under color of state law. She is sued both in her individual capacity and in her official capacity as a County employee. Yunker is a citizen and resident of Minnesota.

16. Defendant Diane Stang (Stang) was, at the times relevant to this complaint's allegations, a Supervisor with DCSS, and, in that capacity, served in a supervisory or policymaking role with respect to the investigation and case and acted during her employment under color of state law. She is sued both in her individual capacity and in her official capacity as a County employee. Stang is a citizen and resident of Minnesota.

17. Defendant Susan Boreland (Boreland) was, at the times relevant to this complaint's allegations, a social worker with DCSS and acted during her employment under color of state law. She is sued both in her individual capacity and in her official capacity as a County employee. Boreland is a citizen and resident of Minnesota.

18. Defendant Chris P'Simer (P'Simer) was, at the times relevant to this complaint's

allegations, a social worker with DCSS and acted during his employment under color of state law. He is sued both in his individual capacity and in his official capacity as a County employee. P'Simer is a citizen and resident of Minnesota.

19. Defendant Jacob Trotzky-Sirr (Sirr) was, at the times relevant to this complaint's allegations, a guardian ad litem with the County, and acted during his employment under color of state law. He is sued both in his individual capacity and in his official capacity as a Minnesota state employee. Sirr is a citizen and resident of Minnesota.

20. Defendant Tanya Derby (Derby) was, at all times relevant to this complaint's allegations, a public defender with the County, and acted during her employment or under color of state law. She is sued both in her individual capacity and in her official capacity as a Minnesota state employee. Derby is a citizen and resident of Minnesota.

Facts

A. Mitchell and his children were domiciled in New Jersey, but lived temporarily in Minnesota.

21. Mitchell has owned his home at 20 Summershade Circle, Piscataway, New Jersey for 22 years.

22. Although traveling domestically and internationally for business, Mitchell has never rented out his house in Piscataway, New Jersey.

23. During the 22-year period that Mitchell owned his current home, he has continuously.

- filed federal and New Jersey state income taxes using his current home address;
- maintained a New Jersey driver's license and New Jersey automobile insurance;
- received at his current home address financial statements, utility bills, and tax-reporting forms; and

COUNT I
42 U.S.C. § 1983

Minnesota's laws terminating parental rights are unconstitutionally vague.

361. Plaintiffs incorporate this complaint's previous paragraphs.

362. The Fourteenth Amendment's Due Process Clause prohibits the state from taking away someone's life, liberty, or property under a law—criminal or civil—so vague that it fails to give ordinary people fair notice of the conduct it prohibits, or so standardless that it invites arbitrary enforcement.

363. Minnesota Statutes § 260C.007, which incorporates §609.224 and §609.377 and §626.556, and §260C.301 are unconstitutionally vague as to terminating parental rights.

364. Specifically, the following Minnesota statutory provisions are void for unconstitutional vagueness:

- Minn. Stat. §260C.007, subd. 5, subd. 6(2)(i)–(iii), (4), (5), subd. 13;
- Minn. Stat. §260C.301, subd. 1, (b)(2), (4), (5); and
- Minn. Stat. §626.556, subd. 2(f), (k).

365. These Minnesota laws terminating parental right are unconstitutionally vague because they do not give ordinary parents fair notice of the parental conduct that they prohibit and the laws are so standardless that they invite arbitrary enforcement.

366. The statutes are unconstitutionally vague by not specifying a threshold of harm to the child required to be shown by the government as a legal requirement before terminating parental rights.

367. Because of Defendants' actions, SCPS and its members, including the Mitchell family, have suffered deprivations of rights guaranteed to them by the Fourteenth Amendment's Due Process Clause, which protects parental rights to discipline children as fundamental rights.

368. Defendants' actions have damaged SCPS and its members, including the Mitchell family.

369. The Plaintiffs seek judgment against the defendants as stated in the prayer for relief.

COUNT II
42 U.S.C. § 1983

Minnesota's laws terminating parental rights based on parental use of corporal punishment to discipline or correct a child are unconstitutional.

370. Plaintiffs incorporate this complaint's previous paragraphs.

371. Minnesota's statutes terminating parental rights are subject to strict scrutiny because they authorize government intervention in the constitutionally protected fundamental rights of a parent to raise a child.

372. Under the federal Constitution, parents have a constitutional right to use corporal punishment to discipline or correct a child. It is a fundamental right under the Constitution.

373. Certain provisions of Minnesota's laws terminating parental rights are unconstitutional because they authorize child-protection services to intervene in the parent-child relationship based on a parent's constitutionally-protected use of corporal punishment to correct or discipline a child.

374. Minnesota Statutes §260C.007, which incorporates §609.224 and §609.377 and §626.556, and §260C.301 prohibit parental corporal punishment to discipline or correct a child upon penalty of temporary or permanent termination of parental rights.

375. Minnesota's laws terminating parental rights prohibit parental corporal punishment to discipline or correct a child.

376. By banning corporal punishment used to discipline or correct a child, Minnesota's laws violate the parents' constitutional rights to use corporal punishment to discipline or correct their children.

377. Because of Defendants' actions, SCPS and its members, including the Mitchell

family, have suffered deprivations of rights guaranteed to them by the Fourteenth Amendment's Due Process Clause, which protects parental rights to discipline children as fundamental rights.

378. Defendants' actions have damaged SCPS and its members, including the Mitchell family.

379. The Plaintiffs seek a judgment against the defendants as stated in the prayer for relief.

COUNT III
42 U.S.C. § 1983

Minnesota's laws terminating parental rights facially violate substantive due process.

380. Plaintiffs incorporate this complaint's previous paragraphs.

381. Under the U.S. Constitution, Fourteenth Amendment, Due Process Clause, Minnesota's laws terminating parental rights are subject to strict scrutiny because they authorize government intervention in the constitutionally-protected fundamental rights of a parent to raise a child.

382. Minnesota's statutes terminating parental rights are not narrowly tailored to meet a compelling state interest because they authorize child-protection services to intervene in the parent-child relationship without a showing of a prescribed threshold of harm to terminate parental rights.

383. Minnesota Statutes §260C.007, which incorporates §609.224 and §609.377 and §626.556, and §260C.301 violate parents' substantive due process rights by terminating parental rights without requiring a prescribed showing of the harm to the child if the child is not separated from the parent

384. Specifically, the following Minnesota statutory provisions violate substantive due process:

- Minn. Stat. §260C.007, subd. 5, subd. 6(2)(i)-(iii), (4), (5), subd. 13;

- Minn. Stat. §260C.301, subd. 1, (b)(2), (4), (5); and
- Minn. Stat. §626.556, subd. 2(f), (k).

385. These statutory provisions violate parents' substantive due process rights by terminating parental rights without requiring a prescribed showing of the harm to the child if the child is not separated from the parent.

386. Therefore, the statutory provisions are not narrowly tailored to meet a compelling state interest.

387. Because of Defendants' actions, SCPS and its members, including the Mitchell family, suffer deprivations of rights guaranteed to them by the Fourteenth Amendment's Due Process Clause, which protects parental substantive due process rights.

388. Defendants' actions have damaged SCPS and its members, including the Mitchell family.

389. The Plaintiffs seek a judgment against the defendants as stated in the prayer for relief.

COUNT IV
42 U.S.C. § 1983

Minnesota's laws terminating parental rights facially violate procedural due process.

390. Plaintiffs incorporate this complaint's previous paragraphs.

391. Under the U.S. Constitution, Fourteenth Amendment, Due Process Clause, Minnesota's laws terminating parental rights must provide parents notice and a meaningful opportunity to be heard.

392. Minnesota's statutes terminating parental rights do not provide parents the constitutionally-required notice and opportunity to be heard.

393. First, the statutes do not require the child-protection agency to produce exculpatory information to the court and to the parents. Since the child protection agency serves

a dual role in attempting to reunite the family and, in certain cases, to terminate parental rights, the Due Process Clause requires the agency to submit to parents and to the court all exculpatory information—as a prosecutor would under *Brady*. Child protection agencies terminating parental rights, like prosecutors, are subject to the constitutional duty to provide parents and the court with exculpatory information. The role of the agency prosecuting a child protection case transcends that of an adversary; the child protection agency’s goal is not to win the case, but to ensure the right decision regarding the specific parent and child is made.

394. Second, as explained in the void-for-vagueness Count above, the Minnesota laws terminating parental rights do not give fair warning to the parent that their child may be determined as CHIPS and their parental rights may be terminated as a result. The parent of ordinary intelligence would not know that they would lose their children to the child protection services agency under the statutes if they engaged in parental discipline, care, medical treatment, duties and conditions. For example, as to termination of parental rights, Minnesota Statutes § 260C.301, subd. 1(b)(5), authorizes termination of parental rights if “reasonable efforts, under the direction of the court, have failed to correct the conditions leading to the child’s placement.” This sentence violates procedural due process because it is not specific about what harm to the child is being avoided by a permanent termination of parental rights. Specifically, the phrase “conditions leading to the child’s placement” is not linked to any specific on-going harm to the child that justifies termination of parental rights.

395. Third, after the out-of-home placement based on the parent’s corporal punishment, the statute prohibits any parental challenge to inadequacy of the agency’s reunification plans. After these children are in out-of-home placements, the statutes prohibit a parental challenge to the adequacy of the government’s reunification plan. Minnesota Statutes §260.012(g) limits the right to such a hearing until after “the court has determine[d] that

reasonable efforts for reunification are not required because the court has made one of the prima facie determinations under paragraph (a). Rule 15.04 of the Rules of Juvenile Protection Procedure, titled “Motion to Dismiss Petition”, is limited to jurisdictional issues and does not cover the issues raised by Minnesota Statutes §260.012(g).

396. So, under Minnesota Statutes §260.012(g), a parent and child are unconstitutionally prohibited from either filing a motion and obtaining a hearing challenging the government’s failure to make reasonable efforts to reunify parent and child *until after* the court determines that reasonable efforts for reunification are not required because the court has made one of the prima facie determinations under paragraph (a).

397. Minn. Stat. §260C.301, subd. 1(b)(5) also includes an unconstitutional presumption in favor of the government if the child has been in foster care for 12 of the preceding 24 months, a filed out-of-home placement plan has not corrected the conditions leading to the child’s placement, and the government has made reasonable efforts to rehabilitate parent and reunite the family. The length of a foster care placement is an unconstitutional criterion for terminating parental rights because the length of a foster care placement is a decision made by the government—and is outside the direct control of the parent.

398. Fourth, in the Mitchell family’s case, the agency failed to follow the Uniform Child Custody Judgment and Enforcement Act (UCCJEA) codified at Minnesota Statutes ch. 518D. The New Jersey state court order awarded Dwight Mitchell sole physical and legal custody over his minor children. The UCCJEA required that a proceeding occur in New Jersey state court before the Dakota County District Court asserted jurisdiction. Even though the county was legally obligated to initiate proceedings, it did not do so. Instead, the county proceeded, after over a year of proceedings and foster care, to petition the Minnesota court for permanency proceedings, attempting to award Mitchell’s ex-wife sole physical and legal custody and to

terminate Dwight Mitchell's parental rights—all without reference to the New Jersey state court order. The county eventually withdrew that motion. But the county's actions directly violated the UCCJEA, and, consequently, violated Mitchell's procedural due process rights.

399. Minnesota laws terminating parental rights violate procedural due process rights.

400. Because of Defendants' actions, SCPS and its members, including the Mitchell family, suffer deprivations of rights guaranteed to them by the Fourteenth Amendment's Due Process Clause, which protects parental due process rights.

401. Defendants' actions have damaged SCPS and its members, including the Mitchell family.

402. The Plaintiffs seek a judgment against the defendants as stated in the prayer for relief.

COUNT V
42 U.S.C. § 1983

Minnesota's laws terminating parental rights facially violate equal protection rights.

403. Plaintiffs incorporate this complaint's previous paragraphs.

404. Under the U.S. Constitution, Fourteenth Amendment, Equal Protection Clause, Minnesota's laws categorizing by race are subject to strict scrutiny.

405. Therefore, a categorization by race must be narrowly tailored to meet a compelling state purpose.

406. Minnesota's laws terminating parental rights using "cultural" classifications cannot be justified by any compelling state interest. In Minnesota's laws, "culture" is a proxy for race.

407. Minnesota's compelling state interest in laws terminating parental rights is protecting children from harm.

408. Minnesota is not constitutionally permitted to protect children in one culture one

way and protect children in a different culture a different way.

409. There must be one uniform standard of protecting children; there can be no exceptions for this culture, but not for that culture.

410. Thus, section 626.556, subd. 2(r) violates the Equal Protection Clause:

(r) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

By its own terms, paragraph (r) impermissibly requires the “accepted child-rearing practice of the culture in which a child participates and accepted teacher discipline practices” to be taken into account in child protection assessments and investigations.

411. Additionally, section 626.556, subd. 2(f)'s last seven words—“with due regard to the child's culture”—violate the Equal Protection Clause:

(f) “Mental injury” means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

The words focused on culture constitute a prepositional phrase, one that appears to be a postpositive series modifier. The phrase appears to modify the preceding words “performance and behavior.” In context, the phrase looks like it means that whoever is applying the definition of “mental injury” or “emotional harm” is to determine what constitutes the child's culture. But, again, a child's culture is an unconstitutional categorization in determining a child protection matter.

412. Similarly, section 626.556, subd. 2(g) on “neglect” violates the Equal Protection Clause:

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that

is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

This subdivision contains yet another unconstitutional category of "culture" used as a legal criterion for terminating parental rights.

413. Minnesota's statutes terminating parental rights violate the Equal Protection Clause.

414. Because of Defendants' actions, SCPS and its members, including the Mitchell family, suffer deprivations of rights guaranteed to them by the Fourteenth Amendment's Equal Protection Clause.

415. Defendants' actions have damaged SCPS and its members, including the Mitchell family.

416. The Plaintiffs seek a judgment against the defendants as stated in the prayer for relief.

COUNT VI

42 U.S.C. § 1983

Minnesota Statutes section 260C.007, subd. 6(2)(i)–(iii)'s provision for greater derivative protection than direct protection lacks even a rational basis.

417. Plaintiffs incorporate this complaint's previous paragraphs.

418. Minnesota Statutes section 260C.007, subd. 6(2)(i)–(iii)'s provision for greater derivative protection than direct protection lacks even a rational basis required under the U.S. Constitution, Fourteenth Amendment's Due Process Clause.

419. As the Minnesota Supreme Court explained in *In re Welfare of Children of N.F.*, the version of section 260C.007, subd. 6(2) applied by the court "delineates two categories of children in need of protection or services: those who are themselves victims of physical abuse, sexual abuse, or emotional maltreatment (subdivision 6(2)(i) and (iv)); and those who are in need of protection or services only because they reside with victims of domestic child abuse or with

perpetrators of domestic child abuse or child abuse (subdivision 6(2)(ii) and (iii)).” 749 N.W.2d 802, 807 (Minn. 2008). Here is the version of section 260C.007, subd. 6(2) applied by the court in that case:

(2)(i) has been a victim of physical or sexual abuse, (ii) resides with or has resided with a victim of domestic child abuse as defined in subdivision 5, (iii) resides with or would reside with a perpetrator of domestic child abuse or child abuse as defined in subdivision 5, or (iv) is a victim of emotional maltreatment as defined in subdivision 8.

In re Welfare of Children of N.F., 749 N.W.2d at 806 (quoting Minn. Stat. § 260C.007, subd. 6(2) (2006)).

420. In the version of section 260C.007 applied in *Children of N.F.*, neither the definition of “child abuse” nor the definition of “domestic child abuse” used the term “physical abuse” or “sexual abuse.” Minn. Stat. § 260C.007, subs. 5, 13 (2006). The legislature added these terms to the definitions, along with cross references to section 626.556, subd. 2, by amendments that had already been signed into law when the case was decided, but that had not yet become effective. Licenses and Permits—Foster Care—Children and Minors, 2008 Minn. Sess. Law Serv., ch. 361, art. 6 § 25 (amending Minn. Stat. § 260C.007, subd. 5), § 27 (amending Minn. Stat. § 260C.007, subd. 13).

421. The current version of section 260C.007, subd. 5, reflects this recent amendment to it:

Subd. 5. **Child abuse.** “Child abuse” means an act that involves a minor victim that constitutes a violation of section 609.221, 609.222, 609.223, 609.224, 609.2242, 609.322, 609.324, 609.342, 609.343, 609.344, 609.345, 609.377, 609.378, 617.246, or that is physical or sexual abuse as defined in section 626.556, subdivision 2, or an act committed in another state that involves a minor victim and would constitute a violation of one of these sections if committed in this state.

(emphasis added). Here is the current version of section 260C.007, subd. 13, which reflects this recent amendment to it:

Subd. 13. **Domestic child abuse.** “Domestic child abuse” means:

- (1) any physical injury to a minor family or household member inflicted by an adult family or household member other than by accidental means;
- (2) subjection of a minor family or household member by an adult family or household member to any act which constitutes a violation of sections 609.321 to 609.324, 609.342, 609.343, 609.344, 609.345, or 617.246; *or*
- (3) *physical or sexual abuse as defined in section 626.556, subdivision 2.*

(emphasis added).

422. Under the current version of section 260C.007, subd. 6(2), a child is a CHIPS if the child:

- (2)(i) has been *a victim of physical or sexual abuse as defined in section 626.556, subdivision 2*, (ii) resides with or has resided with *a victim of child abuse as defined in subdivision 5 or domestic child abuse as defined in subdivision 13*, (iii) resides with or would reside with *a perpetrator of domestic child abuse as defined in subdivision 13 or child abuse as defined in subdivision 5 or 13*, or (iv) is a victim of emotional maltreatment as defined in subdivision 15.

(emphasis added).

423. These recent amendments have a bizarre implication. Because of the way that the current section 260C.007, subd. 5’s definition of “child abuse” incorporates section 626.556, subd. 2’s definitions of “physical abuse” and “sexual abuse,” in addition to various sections of the penal code, the universe of acts constituting “child abuse” is much broader than the category of acts constituting “physical abuse” or “sexual abuse,” and hence is broader than the acts conferring CHIPS status on a child under section 260C.007, subd. 6(2)(i), which refers to “physical or sexual abuse,” but not to “child abuse” or “domestic child abuse.” This means that, under subd. 6(2)(ii), child *A* could be a CHIPS because he resides with child *B* who has been victimized in some way, even if child *B*’s victimization does not confer CHIPS status on child *B*. Similarly, under subd. 6(2)(iii) child *A* could be a CHIPS because he resides with a person who has committed “child abuse” or “domestic child abuse” against child *B*, even if the act constituting “child abuse” or “domestic child abuse” does not constitute “physical or sexual

abuse” of child *B* and hence is not reason for treating child *B* as a CHIPS under subd. 6(2)(i).

The universe of acts conferring derivative protection is broader than the universe of acts conferring direct protection—the opposite of what was true under the law applied in *Children of N.F.*

424. There is no question that chapter 260C.007 serves a legitimate state interest: protecting children. But subd. 6’s categorization of those who are CHIPS because they have been abused and those who are CHIPS because they live with someone who has been abused or has committed abuse bears no rational relation to this goal.

425. Minnesota Statutes section 260C.007, subd. 6(2)(i)–(iii) is therefore unconstitutional under the Fourteenth Amendment’s Due Process Clause, which requires that each law restricting a liberty interest have a rational relation to a legitimate state interest.

426. Because of Defendants’ actions, SCPS and its members, including the Mitchell family, suffer deprivations of rights guaranteed to them by the U.S. Constitution..

427. Defendants’ actions have damaged SCPS and its members, including the Mitchell family.

428. SCPS and Mitchell seek a judgment against the as stated in the prayer for relief.

COUNT VII

The Mitchells’ Cause of Action for Violation of Civil Rights (42 U.S.C. § 1983) (Procedural Due Process, Unlawful Removal, and Familial Association) Against Defendants Boreland, Stang, and Yunker

429. The plaintiffs incorporate this complaint’s previous paragraphs.

430. Under this case’s circumstances, Mitchell and his children had the right to be free from the removal of the children from their family home under the Fourteenth Amendment’s Due Process Clause.

431. This right is “clearly established” such that a reasonable social worker in