

# Exhibit A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
SAN ANGELO DIVISION**

S.D., on behalf of herself and all others  
similarly situated,

B.P., on behalf of herself and all others  
similarly situated,

Plaintiffs,

v.

Cherie Townsend, in her official capacity as  
Executive Director of the Texas Youth  
Commission,

James Smith, in his official capacity as  
Director of Residential and Community  
Services of the Texas Youth Commission,  
and

Thomas Adamski, in his official capacity as  
Superintendent of Ron Jackson Juvenile  
Correctional Complex,

Defendants.

Civil Action No. 6:09-CV-012-C

Hon. Sam R. Cummings

**SECOND AMENDED CLASS ACTION  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**PRELIMINARY STATEMENT**

1. The Texas Youth Commission (TYC) is the juvenile corrections agency of the State of Texas. Most girls held in TYC custody are confined in a youth prison called Brownwood State School (Brownwood). Brownwood is also known as the Ron Jackson State Juvenile Correctional Complex. The majority of girls confined in Brownwood have suffered previous, often severe and persistent, physical, sexual, and/or emotional abuse resulting in trauma. Almost all of the girls have been diagnosed with mental illness.

2. Girls incarcerated in Brownwood are frequently subjected to punitive solitary confinement in bare and oppressive conditions. Such confinement provokes and

exacerbates tendencies to self-harm, to which TYC workers respond in some instances with brutal force, and in other instances with complete indifference. Girls in Brownwood have also been frequently subjected to unjustified and invasive strip searches and/or pat searches conducted by TYC workers. Girls resisting such sexual exposure are subjected to excessive physical force.

3. Punitive solitary confinement and routine and invasive searches inflict severe psychological damage and concomitant physical injury on incarcerated girls, especially in light of the girls' youth, their histories of abuse, and their mental health diagnoses. Such treatment is degrading and humiliating; as a consequence, girls leave TYC custody more physically and emotionally damaged than when they entered.

4. This civil rights action is brought by currently incarcerated girls on behalf of all girls and young women who are now or in the future will be held in Brownwood. This action challenges TYC policies and practices permitting the punitive imposition of solitary confinement on girls in the absence of an immediate threat of physical injury. This action also challenges the routine and unwarranted strip- and/or pat-searching of incarcerated girls. By maintaining such policies and practices, TYC violates the girls' rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. Such policies and practices also violate customary international law, including laws extending special protections to children, and prohibiting torture and other forms of cruel, inhuman, and degrading treatment or punishment.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1343(3) and (4); 28 U.S.C. §1331; 28 U.S.C. §§2201 and 2202; 20 U.S.C.

§§1401 *et seq.* and regulations promulgated thereunder; and customary international law, incorporated under federal common law. Plaintiffs' claims for relief are authorized by 42 U.S.C. §1983 which provides for redress of deprivations under color of state law of rights guaranteed by the Constitution and laws of the United States, including, *inter alia*, customary international law.

6. Venue is proper in this district pursuant to 28 U.S.C. §1391 because one or more defendants reside in the Western District of Texas, and a substantial part of the events or omissions giving rise to the claims herein asserted occurred in the Western District of Texas.

## **PARTIES**

### **A. Plaintiffs**

7. Each Plaintiff is a resident of the State of Texas. Each Plaintiff is currently confined in Brownwood and is subject to the policies and practices of defendants. Each Plaintiff has suffered and will continue to suffer actual injury as a result of defendants' policies and practices and the conditions of confinement in Brownwood.

8. Plaintiff S.D. is nineteen years old and was committed to TYC custody in late 2006. She has been housed at Brownwood for approximately two and a half years, since early 2007. In that time, she has never had a Category 1 rule violation and has never done anything violent. In her time at Brownwood, she has been placed in solitary confinement in the security unit approximately 10 to 15 times. About half of those times were a result of minor rule violations, and about half were self-referrals. S.D. has been sent to solitary confinement for actions such as directing profanities at staff, not

following staff instructions, and trying to make a hotline call. On occasion, she has self-referred to solitary confinement when she was upset or experiencing some kind of emotional problem and wanted to be left alone.

9. S.D. has a history of childhood sexual abuse and has been diagnosed with post-partum depression, ADHD and bi-polar disorder. She currently takes several psychiatric medications that make her tired, and has fallen in the shower three times because of her medications. S.D. had her “YES” stage denied twice because she will not talk to Dr. Burke, who is a man, about her abuse history because it makes her feel uncomfortable. She has not been referred to a female psychologist. If S.D. refuses her medications, that could also affect her stage progression.

10. In late May 2009, S.D. was sent to solitary confinement for sleeping with the covers over her head. Staff instructed her to remove the covers, but she was asleep and does not remember hearing them ask. It was after 10:00 p.m. and S.D. was knocked out by taking her medications. When she did not respond immediately, Brownwood staff pulled her from the bed and restrained her. She was written up for refusing to follow staff instructions, handcuffed, and sent to solitary confinement. She developed a large bruise on her leg from being restrained. S.D. asked the officers to take a picture of the bruise, but they refused.

11. After S.D. was brought to the security unit, she was left handcuffed and alone in a cell because she initially refused to “change over”—or agree to remove her bra and panties in front of security staff. While sitting on the floor, S.D. moved her cuffed hands from behind her back to behind her knees, because that felt more comfortable. When staff observed this, they demanded that she return her cuffed hands behind her

back. Because of her position, S.D. could not comply with this request. In response, two security staff roughly restrained S.D.—one holding her face on the floor and one bearing down on her shoulders—and forced her hands behind her back. They then left her crying on the floor for about 30 minutes. S.D. eventually agreed to “change over” and removed her bra and panties while one of the women who had restrained her stood in the door and watched. S.D. felt humiliated by the experience, and the violent restraint triggered memories of her childhood sexual abuse.

12. S.D. was then admitted to the security unit and spent that night in solitary confinement; she was not released until late the following afternoon. S.D. was not permitted to attend class the next day or participate in out-of-cell exercise. While in solitary confinement, she left her cell only to shower in the morning. During the entire experience of being referred, forcibly restrained, handcuffed, transported to the security building, forcibly restrained again, forced to undress, and then held in solitary confinement for almost 24 hours, S.D. never behaved violently or placed anyone at imminent risk of harm.

13. S.D., who has asthma, has never been pepper sprayed at Brownwood, but she has been in close proximity when other girls have been pepper sprayed and the fumes caused her to become sick and dizzy.

14. S.D. finished high school at Brownwood in January 2009 and expects to begin college-level correspondence courses at the end of August. She was selected and served for eight months as a TYC Youth Ombudsperson for the Brownwood facility. S.D. was recently removed from this position for “disrespecting” staff, a false accusation that she believes is tied to her participation in this lawsuit.

15. Plaintiff B.P. is nineteen years old and has been housed at the Brownwood facility since October 2006. In the nearly three years that she has been at Brownwood, B.P. has been placed in solitary confinement several times, although she has never done anything violent. At least half of her referrals to solitary confinement were self-referrals, when she felt like she needed to get away from the chaos in the dorm and gather her thoughts. However, in solitary confinement she felt like an animal in a cage and did not feel safe.

16. On one occasion, B.P. was caught with candy after visitation and was strip searched and then admitted to solitary confinement. The experience triggered painful memories of being molested. On another occasion, B.P. was placed in solitary confinement after staff read her mail without authorization and interpreted something she wrote as being suicidal. B.P. was held in isolation on "Suicide Alert" for 24 hours until a psychologist finally came to speak with her the next day and determined that she was not suicidal. The experience made B.P. feel mistreated and powerless.

17. Although she has tried to stay out of trouble during her time at Brownwood, B.P. remains fearful that she could be sent to solitary confinement for a minor or pretextual reason, because she sees such referrals happen all the time. Brownwood staff constantly use the threat of solitary confinement as a way to control girls' behavior, by saying things like, "Be quiet or I'm going to send you to security."

18. B.P. finished high school at Brownwood in January 2009 and plans to attend college when she is released. She was selected and served for over a year as a TYC Youth Ombudsperson for the Brownwood facility. She was recently removed from

this position. She believes that her removal may be connected to her participation in this lawsuit.

**B. Defendants**

19. Defendant Cherie Townsend is the Executive Director of TYC. She is responsible for ensuring that children and youth in TYC custody are provided appropriate supervision and treatment, and are protected from abuse. Defendant Townsend is responsible for formulating, implementing, and approving policies and decisions affecting children and youth confined in Brownwood.

20. Defendant James Smith is the Director of Residential and Community Services of TYC. He is responsible for directing and overseeing the operation of TYC residential facilities, including the provision of appropriate supervision and treatment to children and youth incarcerated in such facilities, and their protection from abuse. Defendant Smith is responsible for formulating, implementing, and approving policies and decisions affecting children and youth confined in Brownwood, and for training, directing, and supervising staff at Brownwood and other TYC youth prisons.

21. Defendant Thomas Adamski is the superintendent of Brownwood State School. He is responsible for formulating, implementing, and approving policies and decisions affecting children and youth confined in Brownwood, and for training, directing, and supervising staff at Brownwood. Defendant Adamski is also responsible for the day-to-day administration of Brownwood.

22. The policies, practices, and conditions described herein result from specific decisions, official policies, or customs of defendants. Each defendant has actual or constructive knowledge of the policies, practices, and conditions alleged here. Each

defendant has acted, and continues to act, under color of state law with respect to all matters alleged here. All defendants are sued in their official capacities.

### **STATEMENT OF FACTS**

23. Brownwood State School, also known as the Ron Jackson State Juvenile Correctional Complex, is a “high security” youth prison located in central Texas. Brownwood serves as the intake or reception site for all girls committed to TYC custody, and is also the permanent placement for nearly all girls held in custody. Approximately 150 girls are currently confined in Brownwood. TYC has alternated between confining only girls in Brownwood, and confining boys and girls in separate sections of the facility.

24. Girls between the ages of ten and sixteen who are adjudicated delinquent for acts ranging from minor property offenses to serious person offenses can be ordered into confinement in Brownwood. Girls confined in Brownwood fit the national profile of incarcerated girls in that the majority of them have childhood histories of often prolonged and severe physical, sexual, and/or emotional abuse. The vast majority of girls confined in Brownwood have diagnosed psychiatric conditions, and often multiple diagnoses.

25. Nevertheless, defendants routinely subject girls confined in Brownwood to profoundly injurious policies, practices, and conditions. As a proximate result of defendants’ policies, practices, acts, and omissions, plaintiffs have suffered, do suffer, and will continue to suffer immediate and irreparable injury. Plaintiffs have no adequate or complete remedy at law to redress the wrongs described here, and they will continue to be irreparably injured by the policies, practices, acts, and omissions of defendants unless this Court grants the injunctive relief that plaintiffs seek.

**A. Punitive Solitary Confinement of Girls**

26. Defendants punish plaintiffs by subjecting them to solitary confinement in one or more isolation units euphemistically termed the “Security Program” or “security.” Defendants do not limit the use of solitary confinement to those instances in which plaintiffs pose an immediate threat of physical injury, and every other possible intervention has been tried but has failed. Defendants also fail to release girls from isolation even when the girls are in control of their actions. Instead, defendants regularly impose punitive solitary confinement on girls for major and minor misbehavior. Solitary confinement is also imposed on girls who attempt suicide, commit self-harm, or merely state the desire to commit suicide or self-harm. In such instances, solitary confinement is imposed in lieu of all or part of the counseling and other therapeutic programming that girls in danger of self-harm should receive.

27. Terms of solitary confinement vary from brief periods to terms of months, and girls are often subjected to multiple successive periods of isolation. Depending on the purported reason for imposition of solitary confinement and other factors, the degree of isolation imposed on girls is total or less than total.

28. Conditions in solitary confinement are stressful, degrading, and debilitating. Girls are confined alone in oppressively cold concrete and cinderblock cells. The cells contain nothing other than a metal slab intended for use as a bed, and in some cases a metal toilet. At night, thin mattresses are placed over the metal slabs. Mattresses are often confiscated during the day, leaving girls with no place to sit or lie except on the concrete floor or the metal slab. Solitary confinement cells are lit twenty-four hours a day. The lights are dimmed at night, but not shut off. Girls held in solitary confinement

are denied any personal possessions and suffer enforced idleness. Often, girls lie curled in the fetal position on the floor of the cell or the metal slab. At other times, they beat their heads, hands, or feet against the cell walls.

29. Girls in solitary confinement are targeted for the excessive use of force during the process of being referred or admitted to security unit, and for self-harm or behavior in the security unit such as crying out or striking the cell walls or doors. In response to such behavior TYC workers, including male workers, dressed in riot gear and wielding shields, charge into the girls' cells. Girls are pressed into one section of the cells using the shields, or pepper sprayed in their faces, including their eyes, or bound by their hands and feet with metal handcuffs and/or leather restraints. Often, TYC workers employ a combination of these abusive practices. At other times, TYC workers simply observe girls committing self-harm and do nothing to intervene.

30. Girls subjected to solitary confinement for actual or potential self-harm are forced to remove all of their clothing, including their undergarments, and to wear a "suicide gown" made of a stiff material that does not provide adequate coverage or warmth.

31. The solitary confinement of plaintiffs is cruel, inhuman, and degrading, and causes severe psychological injury. Girls held in solitary confinement experience extreme feelings of abandonment, loneliness, anxiety, rage, worthlessness, and despair. Such experiences frequently trigger or exacerbate potentially debilitating emotional and psychological problems. Solitary confinement does not prevent girls from harming themselves; instead, isolation reinforces their impulse to self-harm. Girls in solitary confinement frequently attempt suicide or commit self-mutilation, most often by cutting

or biting their own arms or legs or by banging their heads or other body parts against the cinderblock walls or concrete floors of the isolation cells. Solitary confinement also worsens girls' behavior, thereby triggering a cycle of additional punitive confinement.

32. Since the filing of this action in June 2008, TYC workers and administrators have sometimes failed entirely to respond to suicidal behavior and other self-harm by girls. In some instances, girls who attempt to hang themselves have been simply observed passively by TYC workers, and no therapeutic intervention of any kind is attempted until after the girls lose consciousness. This TYC practice poses an imminent danger of death or serious bodily harm.

33. As a result of defendants' continuing policies and practices of subjecting girls to punitive solitary confinement, girls suffer physical injuries, including injuries inflicted while being forced to enter solitary confinement; injuries inflicted while their clothing is being forcibly removed by TYC workers; injuries inflicted during the application of physical, mechanical, or chemical force; and self-inflicted injuries. These practices also impose an excessive risk of substantive harm, including the possibility of death.

**B. Excessive and Unwarranted Strip-Searching and Pat-Searching of Girls**

34. Girls confined in Brownwood have been subjected to routine, and at times frequent, strip searches. Before this action was filed on June 12, 2008, girls were strip-searched every time they were brought to solitary confinement and sometimes when they were taken out of solitary confinement. This practice was applied to all girls, including girls subjected to solitary confinement for attempting suicide, committing self-harm, or expressing a desire to commit suicide or self-harm. Girls were also strip-searched when

leaving work assignments located within Brownwood, when returning from family visits, and at other times when there was no individualized suspicion that they were carrying dangerous contraband. When girls refused strip searches or refused to take off their clothes and put on a “suicide gown,” they were threatened with force or otherwise coercively subjected to searches.

35. After this action was filed, the practice of routine strip searches upon placement in solitary confinement was discontinued at Brownwood; strip searches are still conducted on an individualized basis. As recently as June 2009, all girls sent to solitary confinement—even those referred for minor misbehavior—were forced to removed their bra and underwear while being watched by female security staff. The current practice at Brownwood with respect to strip searches is not codified in statute or regulation, permitting reversion at any time to the routine use of strip searches. Girls who refuse to take off their clothes and put on a “suicide gown,” are still threatened with force or otherwise coercively subjected to the removal of their clothing.

36. Strip-searching and pat-searching girls, especially those who are known to have a history of sexual, physical, and/or emotional abuse, is degrading and humiliating, and causes profound emotional damage. Defendants know, or reasonably should know, that the majority of girls confined in Brownwood have histories of sexual, physical, and/or emotional abuse. Defendants are further aware that such abuse often begin early in the girls’ childhoods, is severe and sustained, and results in trauma causally related to the delinquent behavior for which girls’ are incarcerated. Defendants know, or reasonably should know, that exacerbating girls’ trauma will hinder or render impossible girls’ effective rehabilitation, and that it is likely to cause emotional damage.

Nevertheless, invasive searches are routinely conducted even when there is no reasonable basis to suspect that a girl is carrying any dangerous contraband.

### **CLASS ACTION ALLEGATIONS**

37. Plaintiffs bring this action on their own behalf and on behalf of all similarly situated persons pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class that plaintiffs seek to represent consists of all girls and young women who are now, or in the future will be, confined in Brownwood State School.

38. This case is appropriate for certification as a class action because the class is so numerous and fluid that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; and the representative parties and their counsel will fairly and adequately protect the interests of the class. In addition, defendants have acted on grounds generally applicable to the class, such that final injunctive relief and/or declaratory relief is appropriate with respect to the class as a whole.

39. The injuries suffered by the named plaintiffs and the members of the plaintiff class as a result of the policies and practices of defendants are capable of repetition, yet may evade review, thereby rendering class relief appropriate.

### **CAUSES OF ACTION**

#### **Count 1** (Due Process)

40. Defendants' policies, practices, acts, and omissions, and the conditions of confinement maintained in Brownwood State School, specifically those concerning the imposition of solitary confinement and strip searches and/or pat searches, constitute a substantial departure from accepted professional judgment and standards, and deny

incarcerated girls their right to receive treatment in the least restrictive setting. These policies, practices, acts, and omissions, and conditions of confinement subject plaintiffs to denial of due process of law, in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

**Count 2**  
(Cruel and Unusual Punishment)

41. Defendants, through the policies, practices, acts, and omissions, and the conditions of confinement maintained in Brownwood State School, specifically those concerning the imposition of solitary confinement and strip searches and/or pat searches, knowingly subject plaintiffs to a substantial risk of serious mental, emotional, and physical harm, thereby subjecting plaintiffs to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

42. Defendants' policies, practices, acts, and omissions, and the conditions of confinement maintained in Brownwood State School constitute and evidence deliberate indifference to the plaintiffs' constitutional rights.

**Count 3**  
(Bodily Integrity/Privacy)

43. The routine conduct of strip searches and pat searches, including forcible searches and searching of girls who attempt suicide, commit self-harm, or express a desire to commit suicide or self-harm, is unreasonable, and excessively and unjustifiably invades the bodily privacy of incarcerated girls. Such practice thereby violates plaintiffs' rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

**Count 4**  
(Customary International Law)

44. In light of incarcerated girls' special status as children; the frequent presence of sexual, physical, and/or emotional abuse or other trauma in their childhood histories, of which defendants have knowledge; and their existing psychiatric conditions, of which defendants also have knowledge, defendants' practices and policies of subjecting girls to punitive solitary confinement under harsh conditions, accompanied by unjustified strip searches and/or pat searches as described above, violate customary international law as reflected in numerous human rights treaties and other instruments, including *inter alia*, Articles 3, 19, 23, 34, 37 and 39 of the Convention on the Rights of the Child and Articles 7 and 10 of the International Covenant on Civil and Political Rights, which afford special measures of protection to children and prohibit all forms of torture and other forms of cruel, inhuman, or degrading treatment or punishment.

45. Defendants' violations of customary international law are actionable in this Court pursuant to 42 U.S.C. § 1983 in that customary international law has been held, since the Constitution's adoption, to be a part of the laws of the United States.

**PRAYER FOR RELIEF**

Wherefore, plaintiffs respectfully request that this Court grant the following relief:

- a. Permit the named plaintiffs to proceed using pseudonyms;
- b. Certify this case as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- c. Declare that defendants have violated rights guaranteed plaintiffs by the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution

and customary international law by subjecting plaintiffs to the policies, practices, and conditions of confinement described here;

- d. Permanently enjoin defendants, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from engaging in the unlawful acts described here;
- e. Retain jurisdiction over defendants until such time as the Court is satisfied that the unlawful policies, practices, acts, and omissions complained of here no longer exist and will not recur;
- f. Award plaintiffs reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988;
- g. Grant such other and further relief as this Court deems just and proper under the circumstances.

Dated: August 20, 2009

Respectfully submitted,

BY: /s/ Gretchen S. Sween

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