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**COURT RULES THAT CHILDREN IN FOSTER CARE LAWSUIT HAVE ASSERTED
CONSTITUTIONAL RIGHTS; LAWSUIT AGAINST STATE FOSTER CARE SYSTEM
TO PROCEED**

Charleston, WV– A federal district court judge in West Virginia today ruled in a three-year-old federal class action lawsuit that plaintiffs in the state’s beleaguered foster care system can move forward with their federal claims against that system.

Earlier, the federal judge, Thomas Johnston, the Chief Judge of the District Court, had refused to hear the case, ruling on narrow jurisdictional grounds that he should abstain. But the Fourth Circuit Court of Appeals reversed that decision and sent the case back to the district court, directing the court to address the children’s constitutional and federal statutory claims. The court has now done so, on Friday, ruling that the children have a federal constitutional right to have both their physical and emotional well-being protected while in foster care.

As the district court noted, “Although physical injuries mend, emotional trauma inflicted during a child’s tender years has ‘an indelible effect’ from which they may never recover.” The Court went on to state that “Plaintiffs are in Defendants’ custody because Defendants sought to prevent Plaintiffs’ abuse and neglect. Due process imposes a corresponding duty on Defendants to ensure that Plaintiffs are neither abused nor neglected while in their custody.”

The Court also upheld plaintiffs’ claims under the American with Disabilities Act and the Rehabilitation Act, which prohibit states from discriminating against children with disabilities. The court rejected defendants “narrow reading” of the laws and held that West Virginia violates the “integration mandate” of those laws, resulting in unnecessary institutionalization of children with disabilities and the failure of the state to ensure that children with disabilities receive the full benefits of the foster care system.

The district court rejected plaintiffs’ claims under another constitutional provision, and under a federal statute setting foster care standards.

The lawsuit will now proceed in federal court. Marcia Robinson Lowry, the Executive Director of A Better Childhood, and lead attorney for plaintiffs, said, “We are very pleased that the judge has recognized the significance of our claims, and look forward to proving them in court.” Co-counsel are Disability Rights of West Virginia, and the law firm of Shaffer & Shaffer.