

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
MEMPHIS DIVISION

FILED BY J&H D.C.  
05 SEP 09 AM 11:07

LOVE IN ACTION INTERNATIONAL, )  
INC., )

Plaintiff, )

v. )

PHIL BREDESEN, in his official capacity )  
as the Governor of the State of Tennessee; )  
VIRGINIA TROTTER BETTS, in her )  
official capacity as Commissioner of the )  
Tennessee Department of Mental Health )  
and Developmental Disabilities; )  
ARTHUR HYDE, in his official capacity as )  
Director of the Office of Licensure for the )  
Tennessee Department of Mental Health )  
and Developmental Disabilities, and in his )  
individual capacity; PHIL BROWN, in his )  
official capacity as West Tennessee )  
Licensure Coordinator for the Tennessee )  
Department of Mental Health and )  
Developmental Disabilities, and in his )  
individual capacity, )

Defendants. )

Case No. 05-2724 D V

CLERK OF DISTRICT COURT  
MEMPHIS, TENNESSEE

**VERIFIED COMPLAINT**

COMES NOW Plaintiff Love In Action International, Inc., and asks this Honorable Court to provide redress for and relief from deprivation of constitutional rights it has suffered and continues to suffer at the hands of Defendants.

**INTRODUCTION**

1. This is a civil rights complaint brought by Plaintiff Love In Action International, Inc. against Defendants Phil Bredesen, in his official capacity as Governor of the State of Tennessee, Virginia Trotter Betts, in her official capacity as Commissioner of the Tennessee

Department of Mental Health and Developmental Disabilities, Arthur Hyde, individually and in his official capacity as Director of the Office of Licensure for the Tennessee Department of Mental Health and Developmental Disabilities, and Phil Brown, individually and in his official capacity as West Tennessee Licensure Coordinator for the Tennessee Department of Mental Health and Developmental Disabilities, for grossly manipulating, misapplying and misusing state statutes and licensure rules to impose an unconstitutional license requirement on Love in Action International, Inc., a faith-based institution. Plaintiff seeks injunctive relief, declaratory relief, damages and attorney fees pursuant to 42 U.S.C. §§ 1983 and 1988.

2. This action is premised on the United States Constitution concerning the denial of Plaintiff's fundamental rights of due process, free exercise of religion, equal protection and free speech by the Defendants.

3. Defendants have deprived and will continue to deprive Plaintiff of its paramount rights and guarantees protected by the United States Constitution.

4. All allegations herein relate to the actions and policies of those entities, persons, their predecessors and/or successors while acting in capacity and representatives of the State of Tennessee and Tennessee Department of Mental Health and Developmental Disabilities. All acts alleged herein were committed by Defendants, each and every one of them, under the color of state law.

### **JURISDICTION AND VENUE**

5. This Court has original jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331 and 1343. Jurisdiction is supplied for the request for injunctive relief pursuant to 28 U.S.C. § 1343, the requested declaratory relief under 28 U.S.C. §§ 2201-02, the requested damages under 28 U.S.C. § 1343, and costs and attorneys fees under 42 U.S.C. § 1988(b).

6. Venue is proper in the Western District of Tennessee under 28 U.S.C. § 1391(b), because a substantial part of the actions or omissions giving rise to this case occurred within the Western District of Tennessee.

**PLAINTIFF**

7. Plaintiff Love In Action International, Inc. (“LIA”) is a 501(c)(3) non-profit religious organization located in Memphis, Tennessee.

**DEFENDANTS**

8. Defendant Phil Bredesen (“Gov. Bredesen”) is and was at all times relevant herein the Governor of the State of Tennessee. This Defendant is sued in his official capacity.

9. Defendant Virginia Trotter Betts (“Ms. Betts”) is and was at all times relevant herein the Commissioner of The Tennessee Department of Mental Health and Developmental Disabilities (“DMHDD”). This Defendant is sued in her official capacity.

10. Defendant Arthur Hyde (“Mr. Hyde”) is and was at all times relevant herein the Director of the DMHDD Office of Licensure. This Defendant is sued both individually and in his official capacity.

11. Defendant Phil Brown (“Mr. Brown”) is and was at all times relevant herein the West Tennessee Licensure Coordinator for the DMHDD. This Defendant is sued both individually and in his official capacity.

**STATEMENT OF FACTS**

**LIA’S MISSION:**

12. LIA was founded in 1973 by Frank Worthen as a Christian ministry. LIA moved its ministry to Memphis, Tennessee in 1994, and its current executive director is Reverend John J. Smid (“Rev. Smid”).

13. Doctrinally, LIA believes that the Bible is the infallible Word of God and its board of directors and staff hold to the firm conviction that scripture is final truth and authority concerning all matters of morality, as well the hope and healing for morality in dilemma. As a ministry, they are convicted that any sexual act outside of the scriptural context of Holy Matrimony between a man and a woman is sinful and immoral. Pursuant to these convictions, LIA upholds redemption by virtue of saving faith in Jesus Christ.

14. Particularly, the ministry of LIA is dedicated to “the prevention or remediation of unhealthy and destructive behaviors facing families, adults, and adolescents.” Such “unhealthy and destructive behaviors,” according to belief system and religious convictions of LIA, include promiscuity, pornography, and homosexuality.

#### **LIA’S MINISTRY:**

15. LIA pursues its mission through various in-house ministries, one of which, “The Source,” allows for residential ministry. The Source is a ministry of discipleship that is designed to help those who are struggling with various types of broken and destructive behaviors, including promiscuity, pornography, and homosexuality.

16. The Source provides for 4-day or 2-week (non-residential) and 28-day or 3-month (residential) programs designed to help men and women live sexually and relationally pure lives thorough Jesus Christ.

17. LIA is an independent Christian ministry that is not owned by, operated for, or affiliated with, any specific religious denomination. It is supported my various churches and individuals.

18. LIA charges individuals who participate in its ministries a service fee that covers approximately 50% of the costs.

19. The remainder of ministry costs and funding is provided through donations from individuals and churches nationwide.

20. LIA provides The Source program at two locations: 7010 Snyder and 3838 Clemmer Drive, both located in Memphis, Tennessee.

21. The Source program includes room, board, and discipleship ministry. Residence and board are supplied in an effort to foster and facilitate the discipleship aspect of the program. LIA considers mentoring to be more effective in the residential context.

22. With The Source program, no long-term residence is permitted.

23. Individuals who participate in LIA's The Source ministry do so voluntarily.

24. The Source participants are engaged in daily activities and have voluntarily agreed to participate for a designated time period, but the participants are free to come and go from the facility as they please.

25. LIA regularly requests that the participants of The Source program, who are taking prescription medication, give said medication to LIA staff when they arrive for the purpose of storing all medications in one central location. LIA seeks to avoid theft of and tampering with medication.

26. LIA staff allows participants in The Source program access to their own medications on a daily basis, bottle and all contents, in order that the participant may take the medication as directed by his/her physician. LIA does not supervise or oversee how the medication is dispensed.

27. Individuals are screened by LIA's application prior to their involvement with the ministry.

28. Of the many screening questions posed by LIA's application, one involves whether the individual has ever been diagnosed with or treated for various mental health conditions, such as anorexia, bulimia, anxiety attacks, depression and schizophrenia.

29. LIA asks individuals whether they have been diagnosed with or treated for a mental illness to determine if LIA's ministry would undermine or conflict with the individual's care by a licensed mental health professional. If so, LIA will deny admittance to any of its programs.

30. LIA's ministry is not designed to treat mental illness, nor do they make any attempt to treat mental illness.

31. On a routine basis, LIA accepts a significant number of individuals who happen to have a mental illness and wish to voluntarily participate in LIA's discipling ministries. Primarily, this would involve participants who are taking anti-depressant medication at the time of their stay. All such individuals, that are accepted in the program, must be able to take care of themselves. The percentage of "mentally ill" individuals vary, but typically, two or more mentally ill individuals reside on LIA property at any given time for the purpose going through The Source program.

32. LIA will only agree to admit individuals with mental illness if LIA's discipling ministry will not conflict with the individual's care from a licensed mental health professional.

33. LIA is not designed to provide any supportive living services for individuals with mental illness, nor do they attempt to provide any supportive living services to any such individuals going through any of their programs. Per policy, LIA will not accept a mentally ill individual who requires supportive living services.

34. LIA does not seek to provide supportive living services for any of its participants. The room, board, organized meals, and structured spiritual discussions found in The Source program is not intended nor do they act to supply supportive living services. Rather, these items serve the discipleship nature of the Christian ministry. For LIA, and its ministry, residential stay is critical for mentoring purposes.

**ADVENT OF STATE INVOLVEMENT:**

35. Since its inception in 1973, LIA has enjoyed a sustaining and effective Christian ministry, gaining worldwide recognition for the help it provides to those who have suffered from sexual brokenness. And has received and continues to receive referrals from many reputable organizations.

36. Until recently, LIA has maintained its Christian ministry free of any state interference or intrusion. LIA has never been approached by any state agency regarding the propriety of their care. And until recently, LIA has never been approached by any state agency regarding licensure or regulation, as it would concern any aspect of its ministry.

37. However, beginning in June of 2005, as a direct result of political pressure exerted by certain groups and individuals who oppose LIA's religious viewpoint on the issue of homosexuality, the State of Tennessee, through various departments, has pursued multiple avenues intended to limit LIA's ministry.

38. In late May and early June of this year, an adolescent participant in a LIA day-time program known as "Refuge" made a few "blog" entries on his own personal web page. Therein, he discussed a disagreement with his parents regarding the morality of homosexual behavior, and decried his parents' decision to send him to the LIA Refuge program. All of the adolescent's entries were made prior to him actually participating in the program.

39. Shortly thereafter, these blog entries made by the adolescent were forwarded on the internet many times over, and came to the attention of numerous groups and individuals who disagree with LIA's religious viewpoint on homosexuality.

40. One such group, Queer Action Coalition ("QAC") was created and formed for the specific purpose of opposing LIA. When members of QAC learned of LIA's existence and purpose, they formed a coalition to challenge LIA's ministry. Members of QAC publicized the blog entries to other groups that support the homosexual lifestyle. QAC also organized protests and pickets in vicinity of LIA's locations.

41. Another group became involved, Parents and Friends for Lesbians and Gays ("PFLAG"), and joined the effort opposing LIA's ministry.

42. Very soon after these blogs became public, Rev. Smid received hundreds of hate emails from numerous individuals who oppose their religious viewpoint. This included emails from various members of both QAC and PFLAG.

43. Many of the emails sent to Rev. Smid from members of QAC and PFLAG stated their explicit intention to restrict LIA's ministry or cause it to cease altogether. Members from both groups, among others, expressly stated a goal to cause LIA's demise.

#### **EFFORTS TO REGULATE LIA:**

44. In their efforts to bring this goal to fruition, upon information and belief, members of both QAC and PFLAG besieged the governor's office and various state agencies for the State of Tennessee, demanding that LIA come under state regulation or be forced to cease operation.

45. As a direct consequence of the pleas made by QAC and PFLAG, as well as other lobbying efforts, various departments of the State of Tennessee began to investigate LIA.

46. Within a couple weeks of publicity surrounding the blog entries, LIA was contacted by the Tennessee Department of Children's Services ("DCS"). Contact was made in response to a spurious allegation of child abuse.

47. An investigation by DCS was conducted on June 14, 2005. After thoroughly reviewing the matter, DCS deemed the allegation unfounded and discontinued its investigation.

48. Shortly thereafter, Tennessee Department of Health ("TDH") sent a letter to LIA, dated June 29, 2005, claiming that LIA is in violation of state law for failing to have licensure for alcohol and drug treatment. In the body of this letter, LIA was warned to either succumb to licensure or immediately cease operation.

49. The allegations set forth in the June 29, 2005, letter were refuted by LIA, and an on-site investigation by TDH took place on July 25, 2005.

50. As a result of that investigation, and review of the information obtained, a determination was made by TDH that LIA is a faith-based organization and would not be required to obtain a license for alcohol and drug treatment. On August 17, 2005, TDH forwarded a letter reflecting its determination in this regard.

#### **INVESTIGATION BY DMHDD:**

51. DMHDD is a department of the Tennessee state government, created by TENN. CODE ANN. § 33-1-201 (2005). This department operates and functions under the executive branch of the State of Tennessee. DMHDD is granted authority by statutory legislation, namely TENN. CODE ANN. § 33-2-401 *et seq.*, to license "services and facilities operated for the provision of mental health, developmental disability, and personal support services."

52. On July 11, 2005, Mr. Hyde, on behalf of DMHDD, sent a letter to LIA, demanding licensure for the treatment of mental health. Of particular concern, DMHDD noted

that the LIA application asks individuals whether they have been diagnosed with depression and/or schizophrenia. Purportedly, this indicated to DMHDD that LIA could be providing mental health services. DMHDD also specified some language found on the LIA website that could be construed as providing treatment for mental health issues.

53. Further, in the body of the July 11, 2005, letter, DMHDD lists a series of inquiries that are geared toward determining if LIA is engaged in a private practice or not. No time limit is set forth in the letter as to when these questions are to be answered by LIA.

54. On July 17, 2005, Tommy Corman, an employee with LIA, contacted Mr. Hyde for the purpose of addressing DMHDD's concerns. Mr. Hyde advised that there was no need to answer the series of inquiries set out in the July 11 letter. Mr. Hyde just sought clarification of the website and application questions. Mr. Hyde stated that clarification of these matters would resolve the issue.

55. By letter dated August 2, 2005, Rev. Smid wrote Mr. Hyde and clarified the terminology found on the website. So as to avoid any future misunderstandings, Rev. Smid made changes to the website and advised of those changes.

56. In this same letter, Rev. Smid also addresses the concern regarding the application question about diagnosis with depression and schizophrenia. He states in said letter that the application question is pertinent because they do not wish to work with individuals outside of their scope of ministry. Also, Rev. Smid invites the DMHDD to contact Tommy Corman should there be any further questions.

57. Then, on or about August 19, 2005, Mr. Brown made an unannounced visit to LIA's offices in Memphis, Tennessee. When Mr. Brown first arrived, he was very curt with the

receptionist and demanded to see Rev. Smid immediately. Rev. Smid was forced to conclude a prescheduled meeting prematurely to satisfy Mr. Brown's demand.

58. From his visit, Mr. Brown determined that one or more individuals who are mentally ill, as defined by the state, may be living at one or both of the facilities.

59. Soon after Mr. Brown's visit, Mr. Hyde sent LIA another letter, dated August 23, 2005, claiming that LIA was "operating two (2) unlicensed Mental Health Supportive Living Facilities."

60. Mr. Hyde's letter declined to elaborate why DMHDD concluded that LIA would be required to secure a license under its department.

61. In his August 23<sup>rd</sup> letter, Mr. Hyde only alleged that LIA was providing room, board, and personal care services to more than one (1) mentally ill individual.

62. Mr. Hyde informed LIA of DMHDD's belief that LIA is in violation of TENN. CODE ANN. § 33-2-405 by operating a mental health facility without a license.

63. Contrary to DMHDD's determination, relevant statutes and licensure rules reflect that LIA should not fall under the strictures of DMHDD.

64. T.C.A. § 33-2-403, which provides statutory authority for the existence and enforcement capacity of DMHDD, sets out that "the department has authority to license services and facilities *operated for the provision of mental health...services.*" LIA is not "operat[ing] for the provision of mental health services."

65. Similarly, T.C.A. § 33-2-405(a) provides: "It is unlawful for a person, partnership, association or corporation to own or operate a *service or facility that provides mental health ... services* within the meaning of this title without having obtained a license as required by this part." LIA does not own a facility that provides mental health "services."

66. Section 33-2-402(8) of the Tennessee Code defines “service” as

any activity to *prevent, treat, or ameliorate mental illness*, serious emotional disturbance, or developmental disabilities, and includes diagnosis, evaluation, residential assistance, training, habilitation, rehabilitation, counseling, case coordination, or supervision of persons with mental illness, serious emotional disturbance, or developmental disabilities.

LIA is not “preventing, treating or ameliorating mental illness” as part of its ministry.

67. Mr. Hyde’s letter accuses LIA of being “Mental health Supportive Living Facility.” But, this is neither the purpose nor function of LIA.

68. DMHDD Rule 0940-5-1-.04(6) defines “Mental Health Supportive Living Facility” as “[a] residential facility which provides room, board, and personal care services on a long term placement basis to two (2) or more mentally ill individuals unrelated to the owner or operator of the facility.”

69. DMHDD Rule 0940-5-1-.01(25) defines “personal care service” as

Protective care of a resident who does not require chronic or convalescent medical or nursing care. Personal care involves responsibility for the safety of the resident when in the building. Protective care may include a daily awareness by the management of the resident's functioning, his or her whereabouts, the making and reminding a resident of appointments, the ability and readiness to intervene if a crisis arises for a resident, and supervision in areas of nutrition and medication.

70. DMHDD Rule 0940-5-1-.01(21) defines “mentally ill individual” as “[a]n individual who suffers from a psychiatric disorder, alcoholism, or drug dependence, but excluding an individual whose only mental disability is mental retardation.”

71. LIA does not allow for any long-term placement for any participant in its program, which is a specific prerequisite set out in DMHDD Rule 0940-5-1-.04(6). Nor does LIA provide personal care services to mentally ill individuals as described in this licensure rules.

72. Mr. Hyde also informed LIA that the refusal to cease operation of the facilities at issue within seven (7) business days of receipt of the August 23<sup>rd</sup> letter would result in DMHDD seeking injunctive relief against LIA.

73. LIA did not receive Mr. Hyde's August 23<sup>rd</sup> letter until September 14, 2005, well past the seven (7) day deadline.

74. On or about September 14, 2005, LIA's counsel responded to Mr. Hyde's letter by calling and sending a letter to DMHDD's counsel, Jonathan Stephens, esq., seeking an opportunity to review and evaluate the matter.

75. On or about September 15, 2005, Mr. Stephens wrote to LIA's counsel, stating that LIA had until September 23, 2005 to cease operations of its facilities.

76. Mr. Stephens' September 15<sup>th</sup> letter failed to define the precise reasons why LIA is allegedly in violation of Tennessee law.

77. On September 19, 2005, LIA's counsel had a telephone conference with DMHDD officials to discuss the licensing issue, a conversation that included Mr. Hyde, Mr. Brown, and Mr. Stephens.

78. During that telephone conference, on September 19, 2005, LIA attempted to explain the nature of its ministry to DMHDD and sought to obtain a resolution to the licensing matter.

79. LIA explained that it does not treat mental illness nor does it provide supportive living services for those with mental illness. LIA also explained that any individuals with mental illness who voluntarily participate in LIA's programs understand that they will not receive treatment or supportive living services for mental illness.

80. LIA demonstrated to DMHDD that LIA falls outside the scope of the mental health statutes and licensure rules.

81. LIA also asked DMHDD to specifically explain the manner in which LIA could be considered an unlicensed mental health facility.

82. For reason, DMHDD stated that they determined LIA provides room, board and personal care services for mentally ill individuals.

83. In elaborating on this charge, DMHDD expressed that LIA allows more than one mentally ill individual to reside in its facility, which, according to DMHDD, would be anyone who is diagnosed with a psychiatric disorder and/or is taking any type of medication designed to deal with a mental health issue, such as Prozac or any other anti-depressant. Elaborating further, Mr. Brown said he observed that LIA has meals at a certain time, keeps medication in a central location, and is prepared to send suicidal participants to the proper authorities. According to the DMHDD, these matters qualified as “personal care services.”

84. LIA stressed to DMHDD that the LIA provision of room, board and a semi-structured environment to participants who may happen to be on Prozac does not make it a mental health supportive living facility.

85. In specifically addressing the issue about retaining medication, LIA expressed a willingness to change its current policy if such would alleviate the department’s concerns. Yet, DMHDD indicated that the very existence of a structure in the program, coupled with room and board, would be sufficient to force LIA under the jurisdiction of DMHDD.

86. For the purpose of discussing the matter further, LIA and DMHDD agreed to an in-person meeting on September 21, 2005 at the LIA facility.

**DETERMINATION OF DMHDD:**

87. On September 21, 2005, LIA representatives, LIA's counsel, Mr. Hyde, Mr. Brown, and Ms. Cindy Tyler, esq. of DMHDD's legal office, met at LIA's facility.

88. During this September 21<sup>st</sup> meeting, LIA once again explained how its ministry does not fall under the purview of DMHDD's licensing authority. LIA explained that it does not "own or operate a service or facility that provides a mental health service."

89. Noting the definition of "service" in Tennessee Code, LIA explained that it does not provide any services that prevent, treat or ameliorate mental illness. LIA also demonstrated that it does not provide personal care services. LIA further demonstrated that it does not accept long-term participants as contemplated by the licensure rule.

90. Despite the irrefutable information, DMHDD maintained that LIA must be licensed or cease operations.

91. During this meeting, DMHDD outlined six specific actions LIA must adopt to avoid regulation by DMHDD. DMHDD insisted that LIA:

- a. stop "supervising" the medications of individuals at its facility (including any level of control over the medications);
- b. stop monitoring the whereabouts of individuals participating in a specific ministry;
- c. stop restricting access to individuals participating in the ministry;
- d. stop supplying referrals to licensed medical professionals;
- e. stop accepting individuals who require personal care; and
- f. discharge any individuals currently participating in the ministry who require personal care.

92. At the September 21<sup>st</sup> meeting, LIA informed DMHDD that many of these required actions are based on inaccurate presumptions.

93. The only “control” LIA has ever had over a participant’s medication is the mere storage of the medication for security purposes.

94. Participants in the program are free to come and go as they wish. It was explained that they have a schedule of activities and programs, but they are not required to participate in all of the activities.

95. As a matter of policy, LIA has never accepted any participants that require personal care. Thus, there would be no need to discharge any such participants.

96. DMHDD clarified that any involvement with medications, including the keeping of medications for safety purposes, would constitute “supervision” of medication according to their construction of the licensure rule.

97. Once again, LIA offered to compromise its current handling of medication, but this offer did not cause DMHDD to waiver.

98. DMHDD insisted that room, board and knowledge of the general whereabouts of participants would be sufficient to qualify as “personal care services” of mentally ill individuals.

99. Despite all of the assurances made by LIA regarding its faith-based ministry, purpose, and practice, DMHDD officials were resolute and refused to end their pursuit of licensure for LIA.

100. During this meeting, LIA repeatedly asked DMHDD to cite examples where licensure has been requested of entities that are similarly situated to LIA, that being, entities, whether faith-based or not, that house and provide structured care to individuals who are

mentally ill individuals, but the purpose of the entity is unrelated to mental health services (like LIA). DMHDD could offer no such examples.

101. Homeless shelters were specifically mentioned during the meeting, since mentally ill individuals regularly reside in such venues and structured environment is provided. DMHDD could not cite one incident in which a homeless shelter was required to have licensure under their department.

102. It was also pointed out in the meeting that another Christian ministry, Salvation Army, supplies housing and structured care to individuals who are “mentally ill,” and yet, are not required to have a license. DMHDD acknowledged this circumstance, but offered no reason why LIA is being treated differently.

103. At the conclusion of the meeting, DMHDD agreed to let LIA have until September 30, 2005 to weigh its options. As of September 30, 2005, DMHDD and Defendants named herein would require LIA to no longer admit individuals who meet the “mentally ill” description in their ministry, without licensure. Otherwise, DMHDD would take action to close the facility.

104. LIA advised the DMHDD officials during the September 21<sup>st</sup> meeting that it currently had two individuals at their facility who could be considered “mentally ill,” and anticipated having only one, as of September 30, 2005.

105. Later that day, on September 21, 2005, counsel for LIA sent DMHDD a letter reflecting the understanding that LIA would have until September 30, 2005, in which to weigh its options. LIA confirmed that it would only have one “mentally ill” individual on site as of September 30, 2005.

106. In response to that letter, on September 23, 2005, Ms. Tyler wrote a letter stating that LIA did indeed only have one week, until September 30, 2005, in which to comply with the DMHDD's licensure requirements.

107. In this September 23, 2005, letter, Ms. Tyler states: "I must stress TDMHDD's firm conclusion that LIA, as currently operating, should be licensed." She continues: "We will file a cease and desist order against LIA on September 30, 2005, if it is determined that your client continues to operate as an unlicensed mental health supporting living facility. Under T.C.A. § 32-2-405, operating without a license is a class B misdemeanor (no greater than six months or a fine not exceeding five hundred dollars ("500") (T.C.A. § 40-35-111)); each day of the operation without a license is a separate offense."

108. Thus, after numerous communications, and exchanges, and attempts to satisfy DMHDD, Defendants persist in their position that LIA will need licensure. DMHDD continues to challenge LIA's ability to freely exercise the deeply held religious beliefs of its staff by administering discipling care and counseling to individuals with destructive and broken behaviors.

#### **IMPACT OF DMHDD'S DETERMINATION ON LIA:**

109. Defendants have refused and continue to refuse to recognize that LIA's ministry falls well outside the scope of Tennessee mental health licensing law.

110. Defendants have refused and continue to refuse that Tennessee law recognizes many organizations that are exempt from the mental health licensing laws.

111. As a result of Defendants' actions, LIA's name in the community is being tarnished and LIA is already losing individuals who wish to participate in its program.

112. This loss of program participants is causing LIA to lose service fees.

113. As a result of Defendants' actions, LIA is already \$80,000.00 below budget for the year.

114. It is not an option for LIA to refuse help to individuals that happen to be mentally ill when the ministry would not interfere with any treatment for the mental illness and the individual does not require personal care. In LIA's experience, it is very common in today's society for someone to take an anti-depressant. As part of their religious ministry, LIA is called to accept all who would benefit from their help.

115. Licensure is not an option for LIA. The costs required for licensure, application and annual fees are cost prohibitive for LIA, with LIA being a non-profit organization. Moreover, it is repugnant to LIA's mission and purpose to have its ministry regulated by the State. Although LIA is and always will be subject to state criminal and civil laws, direct regulation and restriction by the State of their religious activities would compromise LIA's very purpose.

116. If forced to cease operations on September 30, 2005, LIA will have to interrupt and relocate approximately thirteen (13) individuals currently participating in its faith-based ministry.

117. If forced to cease operations, LIA will have to turn away countless individuals seeking to participate in its faith-based ministry.

118. If forced to cease operations, LIA's eight (8) employees will lose their jobs, causing hardship to their families.

119. If forced to cease operations, LIA's four (4) house managers will have to move out and be relocated, causing hardship to their families.

120. If forced to cease operations, LIA will be unable to pay the mortgages it has on its main building and two houses.

121. If forced to cease operations, LIA will be unable to pay its insurance premiums.

122. If forced to cease operations, LIA will tarnish and harm relationships it has with other businesses that provide LIA with services.

123. If forced to cease operations, LIA will lose the financial support of its donors and have to terminate all ministries that it is engaged in.

124. But for Defendants' allegations that LIA must be licensed, LIA would continue its faith-based ministry.

125. Despite sustained and earnest efforts by LIA to resolve the matter short of litigation, no substantive response was received from Defendants, and this litigation became necessary.

126. As of September 30, 2005, and every day following thereafter, up and until legal relief is obtained, LIA is forced to forgo its religious mission.

#### **ACTIONS OF DEFENDANTS:**

127. Mr. Brown has at all times relevant herein been involved in violating LIA's constitutional rights by compelling licensure under the threat of criminal penalty.

128. Mr. Hyde has at all times relevant herein been involved in violating LIA's constitutional rights by compelling licensure under the threat of criminal penalty.

129. Upon information and belief, Gov. Bredesen is aware of situation with LIA and had authority to stop DMHDD officials from requiring licensure in this instance, but declined to do so.

130. Upon information and belief, Ms. Betts is aware of situation with LIA and had authority to stop DMHDD officials from requiring a license from LIA, but failed to do so.

131. Also, upon information and belief, Ms. Betts exercised official authority over Mr. Hyde and Mr. Brown during some or all of the time relevant to this action.

132. Upon information and belief, Mr. Hyde exercised official authority over Mr. Brown during some or all of the time relevant to this action.

### **ALLEGATIONS OF LAW**

133. Each and all of the acts herein alleged of Defendants, their officers, agents, servants, employees, or persons acting at the behest or direction, were done and are continuing to be done under the color of state law, including the statutes, regulations, customs, policies and usages of the State of Tennessee.

134. At all times relevant to this action, the following portions of Tennessee Code § 33-2-403 was in effect:

(a) The department has the authority to license services and facilities operated for the provision of mental health, developmental disability, and personal support services. Notwithstanding any references in this part to the licensing of "facilities" or "services," only proprietorships, partnerships, associations, governmental agencies, or corporations may be listed on license applications or licenses as the licensed entity.

(b) The following are exempt from licensing under this part:

(1) Private practitioners who are both:

(A) Authorized to practice by the boards of healing arts; and

(B) Only in private practice in that capacity;

(2) A person providing service or support to only one (1) person with mental illness, serious emotional disturbance, or developmental disabilities;

(3) An individual providing service or support only to members of the person's own family or relatives;

- (4) An individual providing service or support that is not subject to licensing under any other title of the code and doing so only on a part-time basis as defined in department rules;
- (5) Foster homes which accept placements only from agencies of state government or licensed child-placing agencies;
- (6) Services or facilities providing employee assistance programs;
- (7) Services or facilities providing only employment placement;
- (8) Facilities that are appropriately licensed by the department of health as a:
  - (A) Hospital whose primary purpose is not the provision of mental health or developmental disabilities services; or
  - (B) Satellite hospital, as defined by rules of the department of health, whose primary purpose is the provision of mental health or developmental disabilities services, and which the department of mental health and developmental disabilities verifies to the department of health as satisfying standards under this chapter; and
- (9) Facilities that are operated by the department of education, the department of correction, the department of human services, or the department of children's services and that affirmatively state that the primary purpose of the facility is other than the provision of mental health or developmental disabilities service.

135. At all times relevant to this action, the following portions of Tennessee Code § 33-2-405 was in effect:

- (a) It is unlawful for a person, partnership, association or corporation to own or operate a service or facility that provides mental health, developmental disability, or personal support service within the meaning of this title without having obtained a license as required by this part.
- (b) A violation of this requirement is a Class B misdemeanor.
- (c) Each day of operation without a license constitutes a separate offense.

136. (8) "Service" includes any activity to prevent, treat, or ameliorate mental illness, serious emotional disturbance, or developmental disabilities, and includes diagnosis, evaluation, residential assistance, training, habilitation, rehabilitation, counseling, case coordination, or supervision of persons with mental illness, serious emotional disturbance, or developmental disabilities.

**FIRST CAUSE OF ACTION**

**VIOLATION OF DUE PROCESS**

137. LIA re-alleges and incorporates herein, as though fully set forth herein, all previous numbered paragraphs of this Verified Complaint.

138. The Due Process Clause, as set out in the Fourteenth Amendment to the United States Constitution, and applicable to the states, provides for fundamental due process under the law.

139. Defendants' requirement of licensure under DMHDD constitutes an unconstitutional infringement on LIA's right to due process of law in that the application of T.C.A. §§ 33-2-402, 403 and 405 is arbitrary, capricious, and contrary to face of Tennessee statutes themselves. The application of these statutes is too vague to give persons of reasonable intelligence fair notice of its effect and scope, in violation of the Fourteenth Amendment to the United States Constitution.

140. As a direct and a proximate result of Defendants' actions and policies, and for fear of substantial penalties and individual arrests, LIA is chilled and deterred from exercising its constitutional rights, forcing it to forgo its ministry.

141. Tennessee law does not have a remedy that will adequately redress LIA's deprivation of constitutional rights.

142. LIA has suffered irreparable harm as a result of Defendants' refusal to allow LIA to operate its faith-based ministry.

WHEREFORE, LIA respectfully prays that the Court grant the equitable and legal relief as set forth hereinafter in the prayer for relief.

**SECOND CAUSE OF ACTION**

## **VIOLATION OF FREE EXERCISE OF RELIGION**

143. LIA re-alleges and incorporates herein, as though fully set forth herein, all previous numbered paragraphs of this Verified Complaint.

144. The Free Exercise Clause, as set out in the First Amendment to the United States Constitution, and made applicable to the states through the Fourteenth Amendment, provides protection for the free exercise of religion and prohibits the infringement thereof.

145. Defendants have refused to allow LIA to operate its faith-based ministry in accordance with its religious tenets and beliefs.

146. Defendants have required LIA to choose between ceasing the operation of its faith-based ministry or seek a license from Defendants that would regulate and compromise its faith-based ministry.

147. Tennessee law provides exemptions for other organizations housing mentally ill individuals, but does not provide a similar exemption for religious organizations.

148. Tennessee mental health law is not neutral and is not generally applicable.

149. Tennessee law and Defendants have not provided any compelling interest for the regulation of faith-based ministries and have not tailored the statutes and DMHDD rules to be the least restrictive means of licensure.

150. LIA must alter its religious nature before Defendants will allow it to continue operations.

151. As a direct and proximate result of Defendants' actions and policies, and for fear of substantial penalties and individual arrests, LIA is chilled and deterred from freely exercising constitutionally protected religion.

152. Tennessee law does not have a remedy that will adequately redress LIA's deprivation of constitutional rights.

153. LIA has suffered irreparable harm as a result of Defendants' refusal to allow LIA to operate its faith-based ministry.

WHEREFORE, LIA respectfully prays that the Court grant the equitable and legal relief as set forth hereinafter in the prayer for relief.

### **THIRD CAUSE OF ACTION**

#### **VIOLATION OF EQUAL PROTECTION**

154. LIA re-alleges and incorporates herein, as though fully set forth herein, all previous numbered paragraphs of the Verified Complaint.

155. The Equal Protection Clause, as set out in the Fourteenth Amendment to the United States Constitution, provides for a right to be treated equally under the law.

156. Under their rules and practice, Defendants allow other entities similarly situated to LIA to carry out their operations without licensure. Although such entities provide the same services that purportedly bring LIA under licensure, that being room, board, and structured care, these entities do not so fall under the same regulation.

157. Defendants treat LIA disparately at least in part because of LIA's religious purpose and religious viewpoints.

158. Defendants have no legitimate reason for treating entities similarly situated to LIA differently.

159. As a direct and proximate result of Defendants' actions and policies, and for fear of substantial penalties and individual arrests, LIA is chilled and deterred from operating equally under the law.

160. Tennessee law does not have a remedy that will adequately address LIA's deprivation of constitutional rights.

161. LIA has suffered irreparable harm as a result of Defendants' refusal to allow LIA to operate its faith-based ministry.

WHEREFORE, LIA respectfully requests that the Court grant the equitable and legal relief as set forth hereinafter in the prayer for relief.

#### **FOURTH CAUSE OF ACTION**

#### **VIOLATION OF FREE SPEECH**

162. LIA re-alleges and incorporates herein, as though fully set forth herein, all previous numbered paragraphs of this Verified Complaint.

163. The Free Speech Clause, as set out in the First Amendment to the United States Constitution, and made applicable to the states by the Fourteenth Amendment, provides for the protection of speech.

164. Defendants' policy and practice adversely impacts protected speech by censoring and threatening to censor religious speech of LIA.

165. Defendants' policy and practice imposes a content-based restriction on LIA's religious speech by precluding communications to individuals the state depicts as "mentally ill."

166. Defendants' specific action prohibiting LIA from communicating referrals to participants concerning preferred psychiatric, psychological, and other mental health professionals is a further restriction on expression.

167. As a direct and proximate result of Defendants' actions and policies, and for fear of substantial penalties and individual arrests, LIA is chilled and deterred from free expression.

168. Tennessee law does not have a remedy that will adequately redress LIA's deprivation of constitutional rights.

169. LIA has suffered irreparable harm as a result of Defendants' refusal to allow LIA to operate its faith-based ministry.

WHEREFORE, LIA respectfully prays that the Court grant the equitable and legal relief as set forth hereinafter in the prayer for relief.

**PRAYER FOR RELIEF**

Plaintiff LIA respectfully requests the following relief:

A. That this Court preliminarily and permanently enjoin Defendants, their agents, servants, employees, officials, or any other persona acting in concert with them or on their behalf, from enforcing Tennessee's mental health statutes against LIA so as to require licensure;

B. That this Court enter a Declaratory Judgment stating that DMHDD's requirement that LIA obtain a license to operate its faith-based ministry violates the First and Fourteenth Amendments to the United States Constitution;

C. That this Court award nominal damages to vindicate the past constitutional injury suffered by LIA;

D. That this Court award damages in an amount to be determined by the finder of fact in accordance with the proof, plus interest at the legal rate until paid;

E. That this Court award LIA's costs and expenses of this action, including a reasonable attorneys' fee award, in accordance with 42 U.S.C. § 1988, and other applicable law;

F. That this Court grant such other relief as the Court deems equitable, just, and proper; and,

G. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment.

Respectfully submitted,



By:  
NATHAN W. KELLUM  
TN Bar # 13482; MS Bar #8813  
Alliance Defense Fund  
P.O. Box 11159  
Memphis, TN 38111  
(901) 323-6672  
(901) 323-6674 - Fax

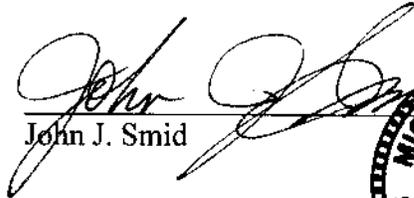
BENJAMIN BULL (*of counsel*)  
Arizona Bar No. 009940  
DAVID J. HACKER\*  
IL Bar # 6283022  
(\*Motion for Special Admission concurrently filed)  
ALLIANCE DEFENSE FUND  
15333 N. Pima Rd., Suite 165  
Scottsdale, AZ 85260  
Phone: (480) 444-0020  
Fax: (480) 444-0028

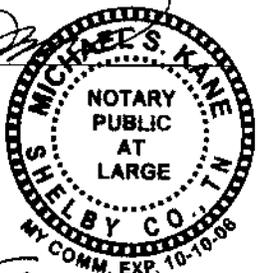
Attorneys for Plaintiff

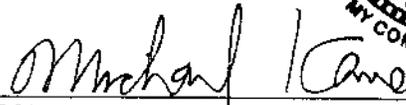
**VERIFICATION OF COMPLAINT**

I, John J. Smid, a citizen of the United States, a resident of Shelby County, Tennessee, and as Executive Director and representative of Plaintiff Love In Action International, Inc., hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.

Date: September 29th, 2005.

  
\_\_\_\_\_  
John J. Smid



  
\_\_\_\_\_  
NOTARY PUBLIC

Sworn to and subscribed before me this the 29th day of September, 2005.

My Commission expires:

10/10/06