

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO.

DIVISION “ ”

**URSULA NEWELL-DAVIS AND
SIVAD HOME AND COMMUNITY SERVICES, LLC**

VERSUS

**LOUISIANA DEPARTMENT OF HEALTH AND
BRUCE GREENSTEIN, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF THE LOUISIANA DEPARTMENT OF HEALTH**

FILED:

_____ **DEPUTY CLERK** _____

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Ursula Newell-Davis and Sivad Home and Community Services, LLC, file this Petition for Declaratory and Injunctive Relief against Defendants Louisiana Department of Health and Bruce Greenstein, in his official capacity as Secretary of the Louisiana Department of Health.

INTRODUCTION

1. This case concerns a budding New Orleans entrepreneur who seeks to earn a living by providing respite care—short-term caregiving support—to families of special needs children. But the state is denying her right to start that business and earn a living—the very right protected by Louisiana’s Right to Earn a Living Act. *See* La. R.S. § 49:968(F).

2. Plaintiff Ursula Newell-Davis is a New Orleans mother and social worker with over 25 years of experience.

3. She founded Sivad Home and Community Services, LLC, (Sivad) to put her education, experience, and deep commitment to her community into practice by offering safe and affordable respite care to families in need.

4. Yet, despite her qualifications—and a demonstrable need for these services in New Orleans—the Louisiana Department of Health (the Department) has wielded its Facility Need Review (FNR) regulations to block her from even applying for licensure.

5. Under FNR, Ms. Newell-Davis must first persuade a government committee that her services are “needed” before the State will even consider her qualifications or allow her to proceed to the licensing process.

6. She did so. Her application included over one hundred pages of supporting material, including sworn declarations from families seeking her services and a report commissioned by the Department itself.

7. But the committee rejected her application anyway, concluding that her services were not “needed.”

8. That determination had nothing to do with Ms. Newell-Davis’s competence or fitness. Instead, it reflected the committee’s own subjective judgment overriding the expressed needs of New Orleans families.

9. The consequences are concrete. Families are denied access to a qualified and trusted provider, and Ms. Newell-Davis is barred from pursuing her chosen profession.

10. Louisiana law does not permit that result. The Right to Earn a Living Act, which took effect in 2023, forbids this type of arbitrary restriction.

11. Under the Act, the burden is on the Department—not Plaintiffs—to prove that its regulatory scheme is “necessary and narrowly tailored to fulfill legitimate public health, safety, welfare, or fiduciary objectives.” La. R.S. § 49:968(F). The Department cannot meet that burden.

12. Plaintiffs therefore seek (1) a declaratory judgment that the challenged regulations are an invalid and inapplicable burden on Plaintiffs’ entry into the in-home respite care profession; and (2) a permanent injunction against further enforcement; and costs and reasonable attorney fees.

JURISDICTION AND VENUE

13. This Court has subject-matter jurisdiction because Plaintiffs seek declaratory and injunctive relief pursuant to Louisiana Code of Civil Procedure articles 1871 and 3601.

14. This Court also has subject-matter jurisdiction because Plaintiffs seek declaratory and injunctive relief pursuant to La. R.S. §§ 49:968(A)(1) and 49:968(F).

15. Subject matter jurisdiction also arises under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. This Court has general jurisdiction pursuant to La. Const. art. V, § 16(A) and has jurisdiction over this complaint for declaratory and injunctive relief pursuant to Louisiana Code of Civil Procedure articles 1871 and 3601.

16. Venue is proper in this Court pursuant to La. R.S. §§ 13:5104(A) and 49:968(A)(1).

PARTIES

Plaintiffs

17. Plaintiff Ursula Newell-Davis is a United States citizen and resident of Orleans Parish. Ms. Newell-Davis is the founder and sole owner of Plaintiff Sivad Home and Community Services, LLC, which is a limited liability company registered in Louisiana.

18. Plaintiff Sivad Home and Community Services, LLC is a business that, if not for the challenged FNR law and regulation, would provide in-home respite care for families with special needs children in New Orleans and the surrounding areas.

Defendants

19. Defendant Louisiana Department of Health is a department of the executive branch of the State of Louisiana. The Department is responsible for administering and enforcing the statute and regulation challenged in this action. The Department, by and through its actions and policies, has caused and continues to cause the injuries alleged herein.

20. Defendant Bruce Greenstein is the Secretary of the Louisiana Department of Health and is charged with the implementation and enforcement of the challenge statute and regulations. Defendant Greenstein has explicit statutory authorization to relieve Plaintiffs from the FNR process, but he has declined to do so. Defendant Greenstein is sued in his official capacity only.

FACTUAL ALLEGATIONS

Ms. Newell-Davis's Plan to Provide In-Home Respite Care to New Orleans Families

21. Plaintiff Ursula Newell-Davis has dedicated decades to serving her community. She holds her bachelor's and master's degrees in social work from Southern University at New Orleans.

22. Social work is Ms. Newell-Davis's calling and career, and entrepreneurship is her most effective vehicle to pursue that career.

23. Ms. Newell-Davis has engaged in many aspects of social work, including providing end-of-life support and supporting behavioral health.

24. For the past eight years, as a consultant, Ms. Newell-Davis has taught special-needs providers best practices for working with children with disabilities. She has also trained institutional staff on how to remain compliant with Medicaid laws and regulations.

25. Through her years of social work, as well as raising a special needs child herself, Ms. Newell-Davis understands the need and critical role of in-home respite care for parents and families with vulnerable children.

26. She further understands that this need is not merely a numbers game: families need care from providers that they trust, regardless of whether untrusted alternatives are available.

27. Ms. Newell-Davis has established relationships with families who have sought her out specifically because they needed someone whom they and their children trust. Further, those families are unable to connect with other alternative respite providers, demonstrating the unmet needs of her community.

28. Ms. Newell-Davis often encounters families where adult guardians struggle to find supervision for their special needs children. A lack of access to respite care in her community forces these families to choose between giving up their job, or their free time, or leaving their children unattended.

29. Thus, many children find themselves home alone after school. And because of their disabilities, they have trouble completing basic tasks such as feeding or cleaning themselves. Because they are impressionable, they are targeted for initiation into or victimization by gangs and other criminal activity.

30. Having lost her son to gun violence, Ms. Newell-Davis is especially passionate about ensuring that children are safe and preventing others from making choices that can lead to crime.

31. Ms. Newell-Davis founded Sivad to offer New Orleans families—particularly those she has worked with as a social worker—respite services in their own homes. Her services would provide temporary relief to parents, family members, and other caregivers of children with disabilities or other challenges.

32. Ms. Newell-Davis would ensure these children are safe and would guide them to develop their basic life skills. And she would comply with all relevant licensure regulations that ensure her competency.

33. But the FNR regulations arbitrarily deny Ms. Newell-Davis the right to pursue this profession and thus deny these children her much-needed services.

Challenged Occupational Regulations

34. Louisiana law establishes an FNR process which requires certain healthcare providers to prove to a government board that there is a “need” for their services before they may apply for licensure. La. R.S. § 40:2116.

35. Although the statute was primarily intended to restrict expensive healthcare facility investments, Louisiana’s FNR statute also encompasses home- and community-based service providers (HCBSs), which require neither facilities nor large capital outlays. La. R.S. § 40:2116(B)(1).

36. Unlike true facility-based healthcare providers, the secretary of the Louisiana Department of Health is permitted by statute to exempt certain HCBS modules of care from the facility need review process. La. R.S. § 40:2116(B)(1).

37. Included among HCBSs are respite care services, which are defined as “an intermittent service designed to provide temporary relief to unpaid, informal caregivers of the elderly, and/or persons with disabilities, pursuant to a HCBS provider license.” 48 La. Admin. Code Pt I, § 12501.

38. Before operating, a respite care provider must (1) obtain FNR approval, and, if able to surmount FNR, they must then (2) secure a license as a “Home and Community Based Services” provider. La. Admin. Code Pt I, §§ 12501, 12523(A).

39. While the FNR process only entails the government’s determination of “need,” the subsequent licensure requirement relates to health and safety. Plaintiffs do not challenge the license requirement, but rather only the validity of the FNR regulations applicable to in-home respite care providers.

40. The FNR regulations applicable to respite care providers create not only a substantial burden for Ms. Newell-Davis, but have also, in effect, categorically prohibited her from entering the profession of respite care.

41. Applicants must submit materials to the FNR committee “to determine if there is a need for additional providers, facilities, or beds to be licensed by LDH and/or enrolled to participate in the Title XIX [Medicare] program.” 48 La. Admin. Code Pt I, § 12503(C).

42. Along with a \$200 application fee, applicants must submit a form along with “any written documentation or evidence the applicant believes supports its FNR application.” 48 La. Admin. Code Pt I, § 12503(D).

43. The statute and regulations do not define “need” and include no objective criteria that applicants are required to prove. Instead, applicants are asked to include “written documentation or evidence” including without limitation:

- a. Any data/documents regarding waiting lists for the proposed services in the applicant’s service area.
- b. Any letters from healthcare facilities, medical professionals or others, who have clients/patients/recipients awaiting the proposed services in the applicant’s service area.
- c. Any data/documentation of complaints about clients/patients/recipients not being able to access the proposed services in the applicant’s service area.
- d. Any data/documentation about population groups that do not have access to the proposed services in the applicant’s service area, to whom the applicant will provide such services.
- e. Other data/documentation about the need in the applicant’s service area for the proposed services.
- f. Other data/documentation about the probability of serious adverse consequences to recipient’s ability to access healthcare if the applicant was not allowed to be licensed.

44. The regulations direct the FNR committee to approve a respite care provider only if “the data contained in the application, and other evidence effectively establishes the probability of serious, adverse consequences to recipients’ ability to access healthcare if the provider is not allowed to be licensed.” 48 La. Admin. Code Pt I, § 12523(C)(2).

45. The entire burden is on the applicant to meet this standard. 48 La. Admin. Code Pt I, § 12523(C)(4).

46. The FNR committee is prohibited from approving an FNR application if the applicant “fails to provide such data and evidence.” *Id.*

47. Neither statute nor regulation provide a definition for the term “serious, adverse consequences.”

48. Nor does either provide any objective criteria to assess the “probability” of those consequences.

49. It is within the FNR committee’s sole discretion to determine at any given moment what those terms mean, and thus what the standard for approval is.

50. This results in an ever-moving target for applicants with arbitrary enforcement and conflicting results.

51. Previous litigation revealed that a member of the FNR committee was scarcely able to correctly identify the outcome of prior applications forty percent (40%) of the time. A random coin flip would have produced a more accurate result.

52. This former FNR committee member testified that an application that did not discuss “serious, adverse consequences” would be denied, despite previous litigation revealing multiple instances where such applications were approved.

53. Despite an application containing statements from individuals seeking care that they could not access that care, this former committee member testified he would deny that application on his *belief* that there were other providers in the area. But, that application had in fact been granted.

54. And the FNR committee has expended energy verifying information on behalf of incumbent providers who submit sparse applications, while brusquely denying applications from new entrants who provide binders of supporting material.

55. When an FNR approval is denied, applicants may appeal and pay a \$500 fee or may request supplemental review and submit additional evidence showing a need for their services. *Id.* at §§ 12505(B)(4), 12541(B)(5).

56. The discretionary application of this vague and arbitrary FNR process to Ms. Newell-Davis’s module of respite care is an occupational regulation within the intent of Louisiana’s Right to Earn a Living Act that “on its face” and “in its effect burdens entry into a profession, trade, or occupation.” *See* La. R.S. § 49:968(F).

Plaintiffs' Efforts to Receive FNR Approval or Exemption

57. Defendants first denied Ms. Newell-Davis's FNR applications on February 19, 2020.

58. Ms. Newell-Davis litigated the FNR's first denial of her application, arguing that Louisiana's FNR laws violated various provisions of the United States and Louisiana Constitutions. *Newell-Davis v. Phillips*, No. 22-30166, 2023 WL 1880000, at *1 (5th Cir. Feb. 10, 2023), cert. denied, 144 S. Ct. 98 (2023).

59. After being denied, Ms. Newell-Davis continued to provide behavior management counseling to children and adolescents through employment at a mental health clinic.

60. Unable to pursue her dream of starting a respite business, Ms. Newell-Davis became the managing owner of a hot chicken restaurant, where she employs people with special needs in a continued effort to serve her community.

61. Ms. Newell-Davis applied again to the FNR committee on January 6, 2025.

62. Her application was denied again on August 12, 2025.

63. Defendants did not base either decision on Ms. Newell-Davis's qualifications. Rather, both times Defendants rejected the application by claiming that Ms. Newell-Davis failed to demonstrate there was a "need" for an additional respite care business in the proposed service area.

64. Following the FNR committee's first denial of Ms. Newell-Davis's application, at least one mother had to relinquish custody of a special needs child because she could not receive the needed respite care that, but for the FNR's denial, Ms. Newell-Davis would have personally provided.

65. In connection with the most recent application, Ms. Newell-Davis submitted substantial evidence establishing a need for services.

66. Defendants disregarded declarations, under penalty of perjury, from four mothers testifying to the difficulties they faced in finding reliable respite providers.

67. Defendants ignored that half of families whose child required case management from Louisiana's developmental disability agency reported that they were unable to receive respite services that they needed.

68. Defendants even discounted an expert report they, themselves, commissioned, which revealed that providers are so “overwhelmed and inattentive” that at least thirty-six percent (36%) of providers could not be reached by phone; furthermore, of those providers who did answer the phone, forty-four percent (44%) were not accepting clients from the population that Plaintiffs would serve.

69. Defendants gave no weight to their own report which concluded that, “[i]f you [are] a family member of a child on a Medicaid waiver in New Orleans and you want[] to find a respite provider . . . you would be almost twice as likely not to be able to reach [a] provider as you would be to find a provider that would serve your child.”

70. Ms. Newell-Davis also included sworn testimony from Defendants’ FNR Program Manager, who stated in her “[p]ersonal and professional opinion” that “there is always a need” for more respite providers.

71. Ms. Newell-Davis’s letter to the FNR committee summarizing her application is attached hereto as Exhibit “A.”

72. As with the FNR committee’s arbitrary enforcement of its standardless and vague terms revealed in previous litigation, the FNR committee continues to adjust its requirements on whim.

73. Defendant Greenstein has statutory authority to exempt Ms. Newell-Davis’s profession as an in-home respite provider from the FNR process, *see* La. R.S. § 40:2116(B)(1).

74. Following the second denial of her application, on October 8, 2025, Ms. Newell-Davis sent a letter pursuant to La. R.S. § 49:968(D) requesting that Defendant Greenstein exercise this authority. That letter is attached hereto as Exhibit “B.”

75. Defendant Greenstein never responded and thus Ms. Newell-Davis’s intended module of care is not exempted from FNR.

76. Because the applicability of the FNR regulation to Ms. Newell-Davis’s profession remains in effect, Defendants continue to arbitrarily and oppressively burden her entry into the profession of in-home respite care, without narrowly tailoring that burden to fulfill a legitimate objective.

CLAIMS FOR RELIEF

First Cause of Action

La. Admin. Code tit 48, § 12523 Violates Louisiana's Right to Earn a Living Act as Applied to Plaintiffs' In-Home Respite Care Business (by all Plaintiffs against all Defendants)

77. Plaintiffs allege and incorporate by reference each and every allegation set forth in the preceding paragraphs of this Complaint.

78. Louisiana's Right to Earn a Living Act provides, in relevant part: "With respect to the challenge of an occupational regulation, the plaintiff shall prevail if the court finds by a preponderance of evidence that the challenged occupational regulation on its face or in its effect burdens entry into a profession, trade, or occupation, and that an agency has failed to prove by a preponderance of evidence that the challenged occupational regulation is demonstrated to be necessary and narrowly tailored to fulfill legitimate fiduciary, public health, safety, or welfare objectives[.]" La. R.S. § 49:968(F).

79. Defendant Greenstein is authorized to exempt from the FNR process the exact module of care that Plaintiffs seek to provide. Instead, Defendants promulgated La. Admin. Code tit 48, § 12523 and continue to enforce it against Plaintiffs.

80. La. Admin. Code tit 48, § 12523 is an occupational regulation.

81. La. Admin. Code tit 48, § 12523 on its face and in effect burdens Plaintiffs' entry into their profession of in-home respite care.

82. The health, safety, and welfare of multiple children have been compromised and irreparably damaged by the arbitrary and irrational denial of Plaintiffs' operation by the FNR process.

83. Defendants cannot prove that La. Admin. Code tit 48, § 12523 is necessary to fulfill legitimate fiduciary, public health, safety, or welfare objectives.

84. Defendants cannot prove that the arbitrary and standardless La. Admin. Code tit 48, § 12523 is narrowly tailored to fulfill legitimate fiduciary, public health, safety, or welfare objectives as applied to Plaintiffs' in-home respite care business.

85. Plaintiffs are therefore entitled to declaratory and permanent injunctive relief against the continued enforcement of La. Admin. Code tit 48, § 12523.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. An entry of judgment declaring that Louisiana’s FNR regulations established by La. Admin. Code tit. 48, §§ 12503(C)(2), 12523 et seq., is an invalid occupational regulation as applied to Plaintiffs, because it burdens entry into the profession of in-home respite care and Defendants cannot meet their burden required by Louisiana’s Right to Earn a Living Act, La. Stat. Ann. § 49:968(F);
- b. An entry of a permanent injunction against Defendants prohibiting the enforcement of these regulatory provisions against Plaintiffs, as well as any and all other implementing administrative rules and regulations, and the practices and policies by which Defendants enforce these provisions; and
- c. An award of attorney fees, costs, and expenses in this action pursuant to La. Stat. Ann. § 49:968(F) and an award of further legal and equitable relief as this Court may deem just and proper.

DATED: March 18, 2026.

Respectfully Submitted:



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