

Haynes and Boone Secures Fifth Circuit Victory in Foster Care Class Action

October 25, 2018 Barry McNeil, Sakina Foster

PRACTICES Appellate, Class Action Defense, Litigation

Haynes Boone teamed with Yetter Coleman LLP and advocacy organization Children's Rights to win a favorable ruling in the U.S. Fifth Circuit Court of Appeals on behalf of more than 13,000 children in Texas foster care. The Haynes Boone team was led by Senior Counsel [Barry McNeil](#) and assisted by Partner [Sakina Rasheed Foster](#) and former colleague David Dodds.

The Fifth Circuit panel of Edith Brown Clement, Jerry Smith, and Patrick Higginbotham unanimously held that the State of Texas was in violation of the United States Constitution in its treatment of children in the foster care system. This ruling stems from a class action filed in 2011, alleging that the state's maintenance of its foster care system exposes children to a serious risk of abuse, neglect and harm to their physical and psychological well-being.

After years of litigation that culminated in a two-week bench trial involving 28 fact witnesses and 12 expert witnesses, the district court in 2015 entered a sweeping order that held that the Texas Department of Family and Protective Services (DFPS) had violated the constitutional rights of foster children within its care and protection. The district court granted a permanent injunction calling for significant changes to the system to address these violations, including more case workers, more oversight and more training.

The Fifth Circuit affirmed the district court's ruling that the state acted unconstitutionally but ordered that some aspects of the injunction be scaled back.

Judge Higginbotham, in a separate opinion concurring in part and dissenting in part, noted that he would have affirmed the district court's opinion and injunction in its entirety. Judge Higginbotham was particularly struck by the account of one child, typical of thousands of foster children. Just four months after entering foster care, the child was terribly abused by an older child. Over the coming years, the child was forced to move among 33 locations, attended 16 different schools and was assigned to a revolving door of 28 different case workers. Because of a lack of continuity or proper oversight, she lost two opportunities for adoption and never emerged from the foster care system until she aged out at 18. At one point, the child remarked that she "felt so sad that she no longer wanted to live."

The ruling by the Fifth Circuit is not only important to current and future foster children in Texas, but will also be significant for future litigants in other states, where foster children face similar physical and psychological damage as a result of too few case workers and too little oversight.

Haynes Boone has a longstanding, deeply rooted commitment to pro bono, believing that a meaningful professional career is much more than just handling major business transactions or trying complex lawsuits. The firm's lawyers actively use the law for helping those people and organizations who need it most but are least able to pay.