

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL**

**In re: BRANDON J. RAUB**

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**NO.** \_\_\_\_\_

**MOTION TO SUSPEND AND/OR MODIFY INVOLUNTARY ADMISSION ORDER**  
**PENDING APPEAL UNDER § 37.2-821**

COMES NOW Brandon J. Raub (“Raub”), by counsel, pursuant to Virginia Code § 37.2-821(A), and moves the Court for an order that, pending resolution of the instant appeal, (1) suspends the District Court’s August 20, 2012 involuntary admission order, and/or (2) modifies such order by requiring that Raub immediately be transferred back to John Randolph Hospital so that he may fully participate in his own defense. In support of this motion, Raub states as follows upon information and belief:

1. On August 16, 2012, Raub was taken into emergency custody by the Chesterfield County Police at approximately 3:30 p.m., purportedly without prior authorization pursuant to Va. Code § 37.2-808(G), and was transported to the Chesterfield County jail.
2. At approximately 7:40 p.m. that evening, Raub was briefly “evaluated” at the Chesterfield County jail by Community Services Board (“CSB”) social worker Michael Campbell, who thereafter prepared a petition for involuntary admission for treatment.
3. At 12:11 a.m. on Friday, August 17, 2012, magistrate Michael S. Znotens entered a temporary detention order pursuant to Va. Code § 37.2-809, ordering that Raub be transported to John Randolph Hospital in Hopewell, Virginia for further evaluation and treatment.

4. On Sunday, August 19, 2012, Raub was briefly “evaluated” by Dr. James A. Correll, a psychologist, at John Randolph Hospital.

5. On Monday, August 20, 2012, at 10:30 a.m., a hearing was conducted before the Hopewell General District Court, following which the special justice ordered that Raub be involuntarily admitted for a period of 30 days pursuant to Virginia Code § 37.2-817(C). The order provided that Raub be admitted to the VA Hospital in Salem, Virginia.

6. Raub was not immediately transferred to the VA Hospital in Salem. Instead, he was kept at John Randolph Hospital until the evening of Tuesday, August 21, 2012, at which time he transferred to the VA facility in Salem.

7. On Wednesday, August 22, 2012, Raub, by counsel, timely filed a notice of appeal in this Court pursuant to Va. Code § 37.2-821. Raub’s counsel is diligently working to arrange a hearing on his appeal as required by § 37.2-821.

8. Until such appeal is heard, the Court should enter an order suspending the District Court’s August 20, 2012 order for the following reasons:

a. The August 20, 2012 Order is Void. The government’s power to involuntarily admit an individual for evaluation of a mental illness is a creation of statute. Because an order providing for such admission deprives a citizen of his liberty, to protect citizens from an overreaching government the Virginia legislature has created a specific, detailed procedure, set forth in Virginia Code § 37.2-800 *et seq.*, that must be followed before an individual can be involuntarily admitted. In the present case, that procedure was not followed. As such, the District Court’s August 20, 2012 order is void *ab initio*.

The August 20, 2012 order was entered while Raub was the subject of an unlawful detention and is based almost entirely on information and evaluations improperly obtained

during that unlawful detention. Pursuant to Va. Code § 37.2-808, a person placed in emergency custody may only be held for four hours unless a temporary detention order (“TDO”) is entered during that period. Here, no TDO was entered until 12:11 a.m. on Friday, August, 17 – more than eight hours after Raub was taken into custody by Chesterfield County Police. Thus, the TDO was improperly entered because it was entered while Raub was being unlawfully detained in clear and direct violation of the involuntary admission statute. Further, Raub was not evaluated by CSB social worker Michael Campbell in relation to the government’s pursuit of a TDO until 7:40 p.m. on August 16, 2012 – again, more than four hours after he was taken into custody. Thus, the brief evaluation performed by Mr. Campbell was conducted during an unlawful detention and cannot serve as the basis for the TDO or the August 20, 2012 order.

Because the TDO was not obtained in compliance with the statute and is thus void, Raub’s detention through the August 20, 2012 hearing was also unlawful. Accordingly, the involuntary admission order entered by the District Court on August 20, 2012 was improperly entered while Raub was being unlawfully detained in clear and direct violation of the involuntary admission statute. Moreover, the evaluation performed by Dr. Correll on Sunday, August 19, was also conducted during an unlawful detention, and thus cannot serve as the basis for the District Court’s August 20, 2012 order. Without Mr. Campbell or Dr. Correll’s unlawfully obtained reports, the District Court lacked any basis (much less clear and convincing evidence) to conclude that Raub (i) has a mental illness, and (ii) that there was a substantial likelihood that, as a result of such mental illness, Raub will, in the near future, cause serious physical harm to others, as Va. Code § 37.2-817(C) specifically requires.

b. The District Court’s Order is Otherwise Not Supported by Clear and Convincing Evidence. Beyond the aforementioned fatal procedural deficiencies in the District

Court's August 20, 2012 order, the order should be suspended pending resolution of the present appeal because even if the reports of Dr. Correll and Mr. Campbell were properly considered by the District Court, those reports are so conclusory in nature that they utterly fail to provide clear and convincing evidence that (i) Raub has a mental illness, and (ii) that there was a substantial likelihood that, as a result of such mental illness, Raub will, in the near future cause serious physical harm to others.

c. The District Court's Order Violates Raub's First Amendment Rights.

Further, to the extent the District Court's August 20, 2012 order and/or the opinions of Dr. Correll and Mr. Campbell are based primarily on Raub's Facebook posts, Raub's continued involuntary admission constitutes an unconstitutional abridgement of his First Amendment right to freedom of speech.

9. In the event the Court does not suspend the District Court's August 20, 2012 order, Raub respectfully requests that the Court modify such order by requiring that Raub be transferred from the VA Hospital in Salem, Virginia back to John Randolph Hospital in Hopewell until after Raub's pending appeal has been heard. This modification is necessary for the following reasons:

a. Raub is a resident of Chesterfield County, Virginia and his attorneys are located in Richmond, Virginia.

b. Salem, Virginia is approximately 188 miles from Richmond, a drive of approximately three and half hours.


c. In preparing his appeal, Raub's attorneys need regular, face-to-face access to Raub so that Raub can effectively provide information and otherwise participate in his own defense. Raub's transfer to Salem from Hopewell seriously and prejudicially restricts this effort.

WHEREFORE Brandon J. Raub, by counsel, respectfully requests that the Court issue an order that, pending resolution of the instant appeal, (1) suspends the District Court's August 20, 2012 order, and/or (2) modifies such order by requiring that Raub immediately be transferred back to John Randolph Hospital so that he may fully participate in his own defense.

Dated: August 22, 2012

Respectfully submitted,

BRANDON J. RAUB

By:   
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*Attorneys for Brandon J. Raub, in affiliation  
with The Rutherford Institute*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of August, 2012, I forwarded a copy of the  
aforementioned document via facsimile and first class mail to:

District 19 Community Services Board  
20 West Bank Street, Suite 7  
Petersburg, Virginia 23803-3279

