

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2005-CP-40-2925

T.R., P.R., and K.W., on behalf of)
themselves and others similarly situated;)
and Protection and Advocacy for People)
with Disabilities, Inc.,)

Plaintiffs,)

v.)

South Carolina Department of Corrections)
and William R. Byars, Jr., as Agency)
Director of the South Carolina Department)
of Corrections)

Defendants.)

ORDER DENYING DEFENDANTS'
MOTION TO ALTER OR AMEND

I. **INTRODUCTION**

 This is an action brought by a class of inmates with serious mental illness and a not-for-profit organization, Protection and Advocacy for People with Disabilities, Inc., ("P&A"). Defendants are the South Carolina Department of Corrections ("SCDC") and, in his official capacity, the SCDC Director. Plaintiffs seek declaratory and injunctive relief, alleging that SCDC's mental health program is systemically deficient and violates the cruel and unusual punishment clause of Article I, § 15 of the South Carolina Constitution.

This action was filed in 2005 and tried non-jury over a six-week period in 2012. The parties presented 36 witnesses and entered well over 200 documents into evidence. SCDC argued that Plaintiffs' evidence was dated and that any deficiencies were relatively minor and had been corrected. The Court rejected both these positions in its January 8, 2014 Order Granting Judgment for Plaintiffs ("Final Order").

As detailed in the Final Order, the Court relied heavily on evidence from 2008-2012 in finding that systemic deficiencies in SCDC's mental health program expose mentally ill inmates to unacceptable risks of harm. The Court further found that SCDC knows and has known of these deficiencies and risks "since before this lawsuit was filed, and persisting thereafter until the time of trial and even to present date." Final Order at 33.

On January 21, 2014, Defendants filed a Motion to Alter or Amend pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure. After Plaintiffs filed a memorandum in response, the Court heard oral arguments on March 28, 2014 at the Richland County Courthouse. For the reasons set forth below, SCDC's motion is hereby denied, and the previous decision of this Court is confirmed in its entirety.

II. DISCUSSION

A. Standing of Plaintiff Class and Class Representative

The Plaintiff class consists of approximately 3,500 inmates with serious mental illness. Final Order at 1. By the time of trial, only one class representative remained in SCDC custody, a mentally ill inmate referred to as "T.R."

After six years of litigation and six weeks of trial, SCDC first raised the issue of the standing of the Plaintiff class and class representative during its closing argument.¹ SCDC bases its standing argument on *Lewis v. Casey*, 518 U.S. 343 (1996). South Carolina law, however, not federal law, governs standing in this case. The distinction is significant. Federal courts are courts of limited subject matter jurisdiction, where plaintiffs must overcome a presumption that the court lacks jurisdiction. 13 Wright Miller & Cooper, *Federal Practice and Procedure*:

¹ Fifteen mentally ill inmate members of the Plaintiff class testified over three days at trial. On the morning class representative T.R. was scheduled to testify, SCDC unexpectedly notified Plaintiffs' counsel that T.R. had not been transported to the courtroom along with the other inmate witnesses scheduled for that day. According to SCDC, T.R., who is chronically psychotic, stated he did not wish to testify in court that day.

Jurisdiction § 3522 at 103 (3d ed. 2008). By contrast, South Carolina courts are courts of general jurisdiction. *Limehouse v Hulsey*, 397 S.C. 49, 723 S.E. 2d 211, 218 (Ct. App. 2011).

In the courts of this state, standing may be acquired in any one of three ways: 1) by statute; 2) by constitutional standing; or 3) by the public importance exception to standing requirements. *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). As discussed below, the Plaintiff class and class representative have constitutional standing, as well as standing through the public importance exception.

1. **The Plaintiff Class and Class Representative Have Constitutional Standing.**

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As this Court recognized in its September 29, 2010 Order on Constitutional Standards (“Standards Order”), liability in an Article I, §15 case alleging systemic deficiencies does not depend on past harm; actual injury is established by evidence of a substantial risk of serious future harm.² Exposure to the risk, rather than past harm, is the relevant injury. Standards Order at 6-7, citing *Helling v. McKinney*, 509 U.S. 25 (1993); *Farmer v. Brennan*, 511 U.S. 825 (1994); *Shakka v. Smith*, 71 F.3d 162 (4th Cir. 1995).

SCDC's reliance on *Lewis* is misplaced. Not only does *Lewis* apply federal standing law, it did not involve an Eighth Amendment allegation of cruel and unusual punishment. Instead, plaintiffs in *Lewis* alleged that the defendant prison system denied them adequate access to the courts, in violation of the First, Sixth, and Fourteenth Amendments. The deliberate indifference standard, requiring a showing of the substantial risk of serious future harm, was not applicable. Instead, liability depended on a showing of past harm, "such as the inability to meet a filing deadline or to present a claim." 504 U.S. at 348-349.

² The Standards Order also held that the analysis for a case brought under Article I, §15 of the South Carolina Constitution is the same analysis used by federal courts for cases brought under the Eighth Amendment of the United States Constitution. Standards Order at 2-3.

The present case is quite different. As this Court stated in its July 28, 2013 letter to the parties:

Although T.R. himself never testified, Plaintiffs presented evidence at trial of systemic deficiencies in SCDC's mental health program that expose every inmate with serious mental illness – including specific reference to T.R. – to a substantial risk of serious future harm. Under this Court's Order on Constitutional Standards dated September 29, 2010, injury in an Eighth Amendment case alleging systemic deficiencies may be established by evidence of a substantial risk of serious future harm. Therefore, under this constitutional standard governing this case and the evidence presented at trial, T.R. and, by extension, the entire plaintiff class has standing to pursue their claims.

Although unnecessary to establish actual injury under Article I, §15, Plaintiffs also introduced evidence at trial of past injury suffered by T.R. Evidence showed that T. R. had "a history of extended lockup,"³ was currently housed at Gilliam Psychiatric Center ("GPH"), had been formerly housed in the Intermediate Care Services program ("ICS"), and had failed to receive confidential psychiatric assessments. Plaintiffs' Trial Ex. 9 at 13-15. During trial, Plaintiffs' experts provided detailed testimony on the systemic deficiencies of SCDC lockup units, GPH, and ICS. Plaintiffs' experts further testified that SCDC's failure to provide psychiatric assessments in confidential settings constituted inadequate mental health treatment. Even if actual injury required a showing of past harm, the evidence submitted about T.R. would be sufficient to confer standing.

2. The Public Importance Exception

South Carolina courts have long recognized the public importance exception to standing requirements. *ATC South*, 380 S.C. at 198, 669 S.E.2d at 341. "Standing is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." *Id.* (quoting *Davis v. Richland County Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007)). Whether an issue is of sufficient public importance

³ "Lockup" and "segregation" are synonymous terms meaning solitary confinement.

requires an "appropriate balance" by the court of "competing policy concerns." *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004).

While the nature of the public importance exception "resists a formulaic approach," the "key" to the analysis is "whether a resolution is needed for future guidance." *ATC South*, 380 S.C. at 199, 669 S.E.2d at 341. "It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." *Id.*

Over the years, South Carolina courts have held that the public importance exception conferred standing on plaintiffs in a variety of cases. *See, e.g., Davis* (county commissioners have standing to challenge the constitutionality of legislation that authorized their removal from office); *Sloan v. Dep't of Transportation*; 365 S.C. 299, 618 S.E.2d 876 (2005) (taxpayer had standing to sue Department over alleged statutory bidding violations); *Baird*, 333 S.C. at 530, 511 S.E.2d at 75 (doctors have standing to sue county to enjoin issuance of bonds for purchase and renovation of hospital); *Thompson v. S.C. Comm'n on Alcohol and Drug Abuse*, 267 S.C. 463, 229 S.E.2d 718 (1976) (law enforcement officials have standing to challenge constitutionality of the Uniform Alcohol and Intoxication Treatment Act).

It is difficult to think of a case more fitting for the public importance exception than the one at hand. An appropriate balance of policy concerns, as called for in *Sloan v. Sanford*, weighs heavily in favor of Plaintiffs, especially now, nearly nine years after the action was filed. To dismiss the case at this point would not only be a colossal waste of time and resources, it would constitute a terrible injustice to mentally ill prisoners. A comprehensive ruling by this Court is absolutely necessary as future guidance to the State on how it may operate its prisons within Constitutional bounds. As discussed above, the Plaintiff class and class representative have

constitutional standing, but even if they did not, the public importance exception would confer standing on them.

B. Standing of P&A

SCDC first challenged P&A's standing in its 2005 Motion to Dismiss, which this Court denied in an Order dated June 20, 2006, (the "2006 Order"). SCDC next raised the issue in its closing argument.

When a statute confers standing on a plaintiff, no further standing requirements need be met. *See Fowler v. Beasley*, 322 S.C. 463, 465, 472 S.E.2d 630, 632 (1996). In an order dated June 20, 2006, this Court ruled that S.C. Code § 43-33-350(1) conferred standing on P&A to bring and maintain this suit:

A review of South Carolina law reveals that SCP&A was specifically created pursuant to the dictates of the United States Public Law 94-103, for the express purpose to protect and advocate for the rights of developmentally disabled and handicapped persons by "pursuing legal, administrative, and other appropriate remedies to insure the protection of the rights of such persons..." S.C. Code Ann. 43-33-350(1). Defendants argue that under this mandate SCP&A may facilitate litigation, but may not be a party. This Court finds no controlling precedent to support Defendants' position. A plain reading of the statute, which is entitled "Powers and Duties of System" states that the organization is authorized to pursue legal remedies. Filing a lawsuit is the seeking of a legal remedy, and therefore Defendants' motion to dismiss Plaintiff SCP&A for lack of standing is respectfully denied.

June 20, 2006 Order at 1-2.

In addition to statutory standing, P&A has a form of constitutional standing known as "associational" standing, because its mentally ill inmate constituents have standing to sue in their own right,⁴ the interests at stake are germane to P&A's purpose, and neither the claims asserted nor relief requested require participation of P&A's individual members or constituents. *See*

⁴ Fifteen inmates with serious mental inmates testified at trial. Expert testimony and SCDC records were admitted specific to many others.

Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 551 S.E.2d 588, 589 (Ct. App. 2001).

Finally, even if it did not have statutory and associational standing, the public importance exception would confer standing on P&A.

C. Private Right of Action

SCDC argues that Plaintiffs have no private right of action by which to allege violations of the South Carolina Constitution. SCDC previously raised this argument in its 2005 Motion to Dismiss, in its Rule 41(b) motion at the close of Plaintiffs' case, and in its closing argument.

SCDC relies upon an unpublished South Carolina Court of Appeals opinion, *Gibbs v. S.C. Dep't of Prob., Parole, and Pardon Servs.*, 2002-UP-363, to support the proposition that there is no implied private right of action for violations of the South Carolina Constitution. As a threshold matter, unpublished opinions of the Court of Appeals have no precedential value. *Lanham v. Blue Cross Blue Shield of South Carolina, Inc.*, 338 S.C. 343, 349, 526 S.E.2d 253, 256 (Ct. App. 2000); Rule 220(a), SCACR. Even assuming, *arguendo*, that *Gibbs* had precedential value, SCDC's reliance upon its holding would still be misplaced. *Gibbs* addresses the narrow issue of whether an individual has an implied private right of action under the South Carolina Constitution to seek monetary damages. Plaintiffs seek only equitable relief. Accordingly, the *Gibbs* case is inapplicable here, and the court rejects SCDC's argument.

D. Separation of Powers

In 2005, both SCDC and the South Carolina General Assembly moved to dismiss this action on several grounds. In its August 16, 2006 Order, the Court granted the General Assembly's motion on grounds of separation of powers, but denied SCDC's. SCDC raised

separation of powers again in its 2012 Rule 41(b) motion, which the Court denied, and reasserted it in closing argument.

The Final Order sets forth the Court's basis for rejecting SCDC's separation of powers argument. *Id.* pp. 36-37. In addition, the August 16, 2006 Order rejects SCDC's separation of powers argument on grounds that, unlike the General Assembly, SCDC is expressly charged with management of the prison system and statutorily authorized to be sued. *Id.* at 12-14, *citing* S.C.Code Ann § 24-1-130, 140 (Supp. 2005). Moreover, SCDC is the agency authorized to request funding from the General Assembly, and to decide how to spend at least some of the funding it receives. For all these reasons, the Court rejects SCDC's argument on separation of powers.

E. Public Policy Limitations

SCDC raised this defense in its 2005 Motion to Dismiss, which the court denied, then again in closing arguments. SCDC contends that *Sullivan v. S.C. Department of Corrections*, 355 S.C. 437, 586 S.E. 2d 124 (2004) sets forth as South Carolina's public policy a "hands off" approach to courts with respect to South Carolina prisons. However, *Sullivan* bears little resemblance to the present case. It did not involve allegations of systemic deficiencies under Article I, § 15. In *Sullivan*, the Court ruled that Article XII, § 2 of the South Carolina Constitution did not require SCDC to provide the inmate plaintiff with enrollment in a particular sex offender program. 355 S.C. at 444, 586 S.E.2d at 127.

The present case presents a far different situation. As detailed in the Final Order, inmates with serious mental illness in South Carolina prisons are exposed to a substantial risk of serious harm by system-wide deficiencies in SCDC's mental health program. These deficiencies include inadequate mental health screening that fails to identify a large percentage of mentally ill

inmates; the use of force and long term segregation in lieu of treatment; a denial of access to many inmates of higher levels of mental health care; inadequate record keeping and medication administration; and a suicide prevention and crisis intervention program that involves placing inmates naked in filthy cells, shower stalls, interview booths, and other inappropriate settings for long periods of time without reasonable access to treatment. As further detailed in the Final Order, SCDC has known of the deficiencies of its program for years, but has failed to take adequate corrective measures.

This Court recognizes the importance of judicial restraint, but it cannot ignore the troubling facts of this case. A “hands off” approach towards prison management does not mean that prison officials have free rein to violate the constitutional rights of inmates. The court therefore rejects SCDC’s argument.

 F. Use of Force Against Mentally Ill Inmates

SCDC mischaracterizes the Final Order as prohibiting any use of force against mentally ill inmates, in violation of public policy, and cites *State v. Wilson*, 306 S.C. 498, 413 S.E.2d 19 (1992) in support. The Final Order, however, does not prohibit the use of force against mentally ill inmates. Instead, it concludes that SCDC’s use of disproportionate, unnecessary, and excessive force against mentally ill inmates, often in violation of SCDC’s own policies, violates Article I, § 15 of the South Carolina Constitution. Final Order at 16-21.

G. Political Question

SCDC argues that this case is a non-justiciable political question, an argument it raised in its 2005 Motion to Dismiss and again in its closing. The Court finds that the actions taken by SCDC in running its mental health programs do not represent policy judgments of the South Carolina General Assembly and that this case is not a non-justiciable political question.

H. Fourth Circuit Case Law

SCDC contends that the Final Order failed to give appropriate weight to Fourth Circuit federal case law, especially *Williams v. Branker*, 2012 WL 165035 (4th Cir. 2012). Instead, SCDC contends that the Final Order relies primarily on law from other federal circuits, which SCDC characterizes as inconsistent with Fourth Circuit interpretations of the Eighth Amendment.

As this Court has recognized, the appropriate standard of liability for Article I, § 15 of the South Carolina Constitution is the deliberate indifference standard used by federal courts in analyzing the Eighth Amendment of the United States Constitution. Standards Order at 2-3, citing *State v. Wilson*, 206 S.C. 498, 512, 413 S.E. 2d 19, 27 (1997). This Court is unaware of any split among the circuits as to the deliberate indifference standard. In its Final Order and Standards Order, this Court relied primarily on decisions applying the deliberate indifference standard to cases factually similar to this one, including cases from the courts of appeals of several different federal circuits. This Court has not cited *Williams* or some of the other cases offered by SCDC because they are dissimilar to the case at hand. *Williams*, for example, did not involve a class or an allegation of systemic deficiencies. Instead, it affirmed judgment on the pleadings against an individual inmate plaintiff who failed to allege that defendants actually knew of his exposure to the risk of harm: “Williams alleges no facts suggesting that appellees had actual knowledge of the risks to him.” *Id.* at 5. Defendants’ knowledge of the risk is an essential element of the subjective component of the deliberate indifference standard. As the *Williams* court concluded, Plaintiff’s failure to allege Defendants’ knowledge was, therefore “fatal to his claim.” *Id.*

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By contrast, in the present case Plaintiffs alleged and the Court found that SCDC had actual knowledge, for years prior to this lawsuit and continuing “to present date,” that all mentally ill inmates in South Carolina prisons are exposed through systemic deficiencies to a substantial risk of serious future harm.

I. Status of P.R. and K.W.

SCDC asks the Court to make note of the dismissal of P.R. and K.W. as “party plaintiffs.” It is undisputed that class representatives P.R. and K.W. were inmates in SCDC custody at the time this action was filed, but were no longer in SCDC custody at the time of trial. After discharge from SCDC, they remained members of the class, under the definition set forth in the Court’s Order of November 2, 2007, even if they were no longer class representatives.

J. Standard of Liability

SCDC argues that the Final Order applied the standard of liability applicable to Article XII, § 2 of the South Carolina Constitution, rather than that applicable to Article I § 15. The Court disagrees. *See* Standards Order and Final Order at 3-7.

K. Extreme Deprivations

SCDC claims that the Court failed to acknowledge that cruel and unusual punishment requires proof of “extreme deprivations.”

The Final Order states that to satisfy the objective component of the deliberate indifference standard, Plaintiffs must prove a “substantial” risk of harm that is “sufficiently serious”. Final Order at 4, *citing Farmer v. Brennan*, 511 U.S. 825, 834-37. Some courts have described the degree of seriousness required as one involving “extreme deprivations,” but these are not magic words. Other courts have used different but consistent language. Pages 4-5 of the Standards Order discuss in detail the degree of seriousness required to satisfy the objective

component. The Final Order details numerous examples of extreme deprivations mentally ill inmates have suffered because of SCDC's constitutionally deficient mental health program, including preventable and foreseeable deaths. As the Final Order makes clear, the future harm to which mentally ill inmates are exposed by SCDC's system is sufficiently serious to satisfy the deliberate indifference standard.

L. Plaintiffs' Experts and ACA Standards

SCDC contends the Court relied "exclusively" on Plaintiffs' experts and/or American Correctional Association ("ACA") standards. The Court did not do so. The Court simply found Plaintiffs' experts a great deal more credible than SCDC's. Final Order at 31. The Court did not rely exclusively on ACA standards, but did find them relevant and persuasive. However, the Court also relied on a great deal of other evidence – testimony by fact witnesses, documentary evidence, and admissions by SCDC.

M. Breadth of Remedies

The Court has ordered SCDC to submit a proposed remedial plan within 180 days of the Final Order, consistent with remedial factors and guidelines listed by the Court. Final Order at 38-44. SCDC argues the Court's remedies are excessive, but the Court disagrees, given the breadth and pervasiveness of the systemic deficiencies in SCDC's mental health program.

N. Inherent Authority of the Court

SCDC also argues that the Court erred in holding that it had the inherent authority "to see that the imprisonment of that inmate complies with constitutional mandates." Final Order at 37. The Court disagrees and again reaffirms that it has the duty and responsibility to see that imprisonment of inmates complies with constitutional requirements.

III. CONCLUSION

For the reasons set forth above, the Court denies Defendants' Motion to Alter or Amend.

IT IS SO ORDERED.



J. Michael Baxley
Complex Jurisdiction Judge
Fourth Judicial Circuit

Hartsville, SC

April 7, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: **2005CP4002925**

TRPRKW & AM

South Carolina Department of Corrections
State of South Carolina

Protection and Advocacy for People with
Disabilities Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Non Suit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 22 April 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Daniel J. Westbrook
Angela Gilbert Strickland

Stuart M. Andrews Jr.
Ashley K. White

William H. Davidson II
Robert E. Stepp
William Curry McDow
Andrew F. Lindemann

Kenneth P. Woodington
J. Emory Smith Jr.
Shelton W. Haile

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

