UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

RICHARD S., et al., Plaintiffs, vs. DEPARTMENT OF DEVELOPMENTAL SERVICES OF THE STATE OF CALIFORNIA, et al., Defendants, vs. BARBARA BELL, et al., Intervenors.	Case No. SA CV 97-219-GLT(ANx) ORDER ON MOTIONS FOR SUMMARY JUDGMENT

After the briefing on these motions, and shortly before oral argument, Richard S. died. Although his death was discussed briefly at oral argument, the parties have not had full opportunity to brief and argue the legal effect of his absence from the case. Therefore, the Court will rule on these motions without regard to the death of Richard S., and any party may later raise any appropriate issue concerning his absence from the case.[1/]

[1/] If, as one party urged at oral argument, the remaining plaintiffs are not truly "aggrieved persons," Richard S.'s death may leave no case or controversy.

Plaintiffs' Motion for Summary Judgment is DENIED.

Intervenors' Motion for Partial Summary Judgment is GRANTED as to the first ADA count of the SAC. The motion is also GRANTED as to the second claim for relief of the FACI and an appropriate injunction will issue. The motion is DENIED as to all other parts.

Defendants' Motion for Partial Summary Judgment is GRANTED as to the third and fourth § 1983 counts of the SAC. The motion is DENIED as to injunctive relief.[2/]

I. BACKGROUND

This case concerns the release of developmentally disabled adults from state developmental centers (DCs) into community placements. Community placements are typically less restrictive than the developmental centers, but are often less equipped to deal with difficult patients. It is the legislative policy of the state to "mainstream" the developmentally disabled out of hospitals and into "natural community settings." See Cal. Welf. & Inst. Code § 4500 et seq. (the Lanterman Act). The 1994 settlement in Coffelt v. Department of Developmental Services (S.F. Superior Court, Case No. 91641), required the California Department of Developmental Services (DDS) to reduce by one third the population of persons residing in developmental centers within five years.

Plaintiffs claim the community care providers were not prepared to deal with the rapid influx of patients. Plaintiffs Richard S., Cynthia R. and Valdina R. are patients at Fairview Developmental

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[2/] The State Defendants and Intervenors have filed evidentiary objections to various documents offered by Plaintiffs. These objections are SUSTAINED. The documents at issue are irrelevant to this motion and there was no need for the Court to consider them in making its decision.

Center (Fairview). William Cable, M.D. (guardian ad litem for Richard S.) was the Chief of the Medical Staff at Fairview. The State Defendants include the DDS, Fairview, the South Coast Regional Project, and four individual directors of these agencies.[3/] Also named as Defendants are five Regional Centers (RC Defendants).[4/]

Intervenors are three individuals with developmental disabilities and three organizations, all of whom seek to uphold the Coffelt settlement and ensure continued access to community homes. They argue Plaintiffs in this case are opposed to community placement and are improperly trying to limit such access. Plaintiffs and Intervenors both sought to represent a class of similarly situated disabled persons. The Court denied both of the conflicting requests for class certification.

Plaintiffs' Second Amended Complaint (SAC) alleges six counts under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., four counts under 42 U.S.C. § 1983, and seeks declaratory and injunctive relief. In 1997 the Court issued a preliminary injunction enjoining Defendants from releasing or transferring Fairview residents unless they either have capacity to object or are "represented" by a family member or conservator. Intervenors' First Amended Complaint in Intervention (FACI) alleges a § 1983 claim against Plaintiffs, a § 1983 claim against Defendants, an ADA claim against Plaintiffs, an

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[3/] The four individual State Defendants are Clifford Allenby (Director of the DDS), Hugh Kohler (Executive Director of Fairview), Lilia Tan Figueroa (Medical Director of Fairview), and Dawn Lemonds (Director of the South Coast Regional Project).

[4/] The five RC Defendants are the Harbor Regional Center, Regional Center of Orange County, San Diego Regional Center, South Central Los Angeles Regional Center, Westside Regional Center. Intervenors have dismissed their claims against these Defendants.

ADA claim against Defendants, and seeks injunctive relief.

Plaintiffs move for summary judgment on all claims in the SAC. Intervenors move for partial summary judgment on the first ADA count of the SAC, the first and third § 1983 counts of the SAC, and the second and fourth § 1983 counts of the FACI. The State Defendants, joined by the San Diego Regional Center,[5/] move for partial summary judgment on the third and fourth § 1983 counts of the SAC and on the issue of injunctive relief. The Regional Center of Orange County joins with the State Defendants' motion as to the issue of injunctive relief, and joins with the Intervenors' motion as to the first ADA count of the SAC.

II. DISCUSSION

Summary judgment is proper if "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. Proc. 56(c). A fact is material if it "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2509 (1986). A factual dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

The moving party in a summary judgment motion bears the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986). If the moving party makes this initial showing, the burden

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[5/] The San Diego Regional Center has moved for summary judgment on all counts of the SAC, but has offered no significant argument or evidence in support its motion other than its joinder with the State Defendants. The San Diego Regional Center's motion is DENIED as to all counts not addressed in the State Defendants' motion.

shifts to the nonmoving party to "designate specific facts showing that there is a genuine issue for trial." Id., 477 U.S. at 324, 106 S.Ct. at 2553 (citation omitted). In other words, the non-moving party must produce evidence that could cause reasonable jurors to disagree as to whether the facts claimed by the moving party are true.

In making a summary judgment determination, the Court must view the evidence presented in the light most favorable to the non-moving party, drawing "all justifiable inferences . . . in his favor." Anderson, 477 U.S. at 255, 106 S.Ct. at 2513. If the non-moving party fails to present a genuine issue of material fact, the Court must grant summary judgment. Celotex, 477 U.S. at 323-24, 106 S.Ct. at 2553. If, however, the evidence of a genuine issue of material fact is "merely colorable" or of insignificant probative value, summary judgment is appropriate. See Anderson, supra, 477 U.S. at 249-50, 106 S.Ct. at 2511.

A. Plaintiffs' ADA Claims

1. Violation of Integration Mandate

The first ADA count of the SAC alleges Defendants have violated the community "integration mandate" of the ADA. Plaintiffs contend they were prematurely discharged into the community when it was unsafe for them, and were in the process denied adequate medical advice and supervision. SAC ¶¶ 158-60. That may be actionable under other theories, but not under the integration mandate.

Discrimination against disabled individuals by public entities is prohibited. 42 U.S.C. § 12132. The implementing regulations, which expand on this prohibition, include the following provision: "A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals

with disabilities." 28 C.F.R. § 35.130(d).

In Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 119 S.Ct. 2176 (1999), the Supreme Court addressed this integration regulation. The plaintiffs in Olmstead were mentally disabled individuals who sought community placement. The Supreme Court held the denial of community placement could violate Title II by hindering integration. The Court stated "unjustified institutional isolation of persons with disabilities is a form of discrimination" because "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life" and because "confinement in an institution severely diminishes [their] everyday life activities." Id., 119 S.Ct. at 2187.

It does not follow from Olmstead that the converse is true: there is no basis for saying a premature discharge into the community is an ADA discrimination based on disability. There is no ADA provision that providing community placement is a discrimination. It may be a bad medical decision, or poor policy, but it is not discrimination based on disability.

The first ADA count of the SAC fails as a matter of law. Plaintiffs' motion is DENIED as to this count. Intervenors' motion is GRANTED as to this count. Partial summary judgment is GRANTED for the Regional Center of Orange County on this count.

2. Failure to Provide Conservators

The second and third ADA counts of the SAC allege Defendants violated the ADA by failing to properly care for Plaintiffs and discriminating among disabled persons by only considering some for community placement, and by only choosing people without conservators

for community placement. SAC ¶¶ 162-67. Plaintiffs' motion does not address most of these claims. Instead, they now argue Defendants violated the ADA by failing to provide conservators for all residents of DCs.[6/]

Plaintiffs argue the failure to provide conservators for Richard S. and other disabled persons is discriminatory because it denies those without conservators adequate representation in the procedures surrounding community placement.

The language of § 12132 prohibits denying benefits or discriminating "by reason of" a disability. Plaintiffs' evidence does not show that any residents of DCs are denied conservators "by reason of" their disabilities. All of the DC residents, whether or not they have conservators, are disabled. There has been no showing conservatorship is only denied to individuals with particular disabilities, or any other showing that would bring the challenged policies within the scope of § 12132.

Plaintiffs argue there is a generalized prohibition on discrimination "amongst the disabled." Nothing in the ADA, the regulations, or the Olmstead decision creates such a generalized cause of action for "discrimination amongst the disabled." The fact some disabled persons have conservators while others do not does not constitute discrimination under the ADA. Plaintiffs' argument fails as a matter of law.

Plaintiffs' own statement of uncontroverted facts does not necessarily support their claim of discrimination "amongst the

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[6/] Plaintiffs have not abandoned their "professional judgment" arguments, which were originally raised in these counts. They now raise these arguments in the context of their § 1983 claims, discussed below.

disabled." They concede "[e]ven those [DC] residents who have conservators are often under-represented during . . . important decision-making processes." PSUF ¶ 59. A material question exists as to whether the absence of conservatorships for some DC residents actually denies them any benefit or has any discriminatory effect.

Plaintiffs are not entitled to summary judgment on their argument denial of conservatorships violates the ADA. They have brought no other arguments in support of their second and third ADA counts. Plaintiffs' motion is DENIED as to these counts.

3. Retaliation Under 42 U.S.C. § 12203

Plaintiffs contend Defendants violated the retaliation provision of the ADA by taking retaliatory actions against Cable for his efforts on Plaintiffs' behalf to oppose their community placement. Defendants argue this Court, in Cable's related action, already considered and rejected such contentions when it denied Cable's request for a preliminary injunction barring his termination.

Plaintiffs have not suffered discrimination or coercion under § 12203 and so are not "aggrieved persons" under this statute. They have offered no evidence showing any actual harm to themselves resulting from the adverse actions against Cable, nor do they have standing to assert Cable's rights in this action.

A plaintiff "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties," especially where those third parties are capable of "asserting their own right in a proper case." Warth v. Seldin, 422 U.S. 490, 499, 510 (1975). Here Cable has already asserted his rights in a separate action, and it would be

inappropriate to allow Plaintiffs to litigate those rights here.[7/]

Plaintiffs' motion is DENIED as to the fourth ADA count of the SAC.

4. Conspiracy to Violate the ADA

Plaintiffs have presented no arguments or evidence in support of the fifth and sixth ADA counts of the ADA, which allege conspiracy to violate the ADA.[8/] In addition, these counts rely on elements of the counts discussed above. Plaintiffs' fifth ADA count depends in part on the theory of discrimination "amongst the disabled" which was rejected above. SAC ¶ 175. Plaintiffs' sixth ADA count is dependent on their § 12203 retaliation claim, also discussed above. Summary judgment is inappropriate and Plaintiffs' motion is DENIED on these two counts.

B. Plaintiffs' Section 1983 Claims

1. Due Process--"Professional Judgment"

Plaintiffs contend Defendants failed to exercise "professional judgment" when deciding to transfer them to community placements. Plaintiffs argue this was an infringement of their right to due process of the law under the Fourteenth Amendment and is actionable under 42 U.S.C. § 1983.[9/] Defendants contend professional judgment

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[7/] Even if standing were not a problem, litigating this claim in this action would create problems of res judicata and/or collateral estoppel in Cable's action.

[8/] Because Plaintiffs have moved for summary judgment on all the claims in the SAC, the Court reaches these counts even though they are not expressly addressed in the briefs.

[9/] Plaintiffs also allege their due process rights are infringed by the failure of the DDS to provide conservators. As stated above in the discussion of the related ADA argument, genuine issues exist as to whether Plaintiffs were actually

(continued...)

was exercised by a number of employees, and, while Cable may have dissented, they were not obligated to follow his viewpoint.

In Youngberg v. Romeo, 457 U.S. 307, 324 (1982) the Supreme Court held an involuntarily committed mentally disabled man had "constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by these interests." In reaching this holding, the Court considered the standard to be applied in reviewing decisions made by state mental health institutions.

The Court first noted "interference by the federal judiciary with the internal operations of these institutions should be minimized" and "there certainly is no reason to think judges or juries are better qualified than appropriate professionals in making such decisions." Id. at 322-23. It then concluded "[f]or these reasons, the decision, if made by a professional, is presumptively valid; liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment."[10/] Id. at 323.

Other courts have applied this professional judgment due process standard to community placement issues. See, e.g., Society for Good Will to Retarded Children v. Cuomo, 737 F.2d 1239 (2nd Cir. 1984); and

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[9/](...continued)
deprived of any benefits or rights. See PSUF ¶ 59. Summary judgment is inappropriate as to this issue.

[10/] The Court defined "professionals" as those with medical, nursing degrees, or other appropriate training, while also recognizing that some day-to-day care decisions necessarily must be made by less-trained employees under the supervision of professionals. Id. at 323 n.30.

Messier v. Southbury Training Sch., 183 F.R.D. 350, 357 (D.Conn. 1998). In those cases, unlike this one, the plaintiffs challenged state decisions refusing community placement. The Youngberg professional judgment standard would apparently apply equally here, however, even though Plaintiffs challenge decisions favoring community placement.

Plaintiffs have not shown the professional judgment standard was violated. They have offered evidence showing Cable objected to community placement of Plaintiffs, and evidence of some factors which they contend weighed against the community placements. They have not, however, offered evidence showing the decisions about Plaintiffs' placements were not made by professionals or evidence the decisionmakers made a "substantial departure from professional judgment, practice, or standards."

The evidence demonstrates that a substantial difference of opinion existed between Cable and his colleagues. Those colleagues, however, are also "professionals." Youngberg does not authorize courts to intervene to resolve disputes among the professional staff of state mental institutions.

Plaintiffs are asking this Court to substitute its judgment for the institutions' professional decisionmaking procedures. The Supreme Court has held such interference is to be minimized, and decisions should be left to appropriate professionals. Youngberg, supra, at 322-23. Here, Plaintiffs argue this Court should hold Cable's professional judgment to be superior to that of the other professionals at Fairview who reached different conclusions. Neither Youngberg nor any other decision provides authority for such a holding.

Plaintiffs criticize the interdisciplinary team decisionmaking procedure at Fairview. They do not, however, offer evidence showing how this procedure (in which several professionals examine every case) provides insufficient professional judgment, or how any such failure rises to the level of a denial of due process under Youngberg.

Moreover, Defendants have offered evidence to the contrary. Their evidence suggests the interdisciplinary team procedure provides Fairview residents with a broad-based range of professional opinions from various disciplines, the teams usually are able to reach consensus decisions, and adequate remedies exist for dissenting team members. Larsen Dec. ¶¶ 2, 4, 5.

Genuine triable issues exist whether professional judgment was exercised in Defendants' placement decisions, and summary judgment is inappropriate on this issue. Plaintiffs' motion is DENIED as to the first § 1983 count of the SAC.

2. Violation of Social Security Act

Plaintiffs argue Defendants have deprived them of rights conferred by the Social Security Act. Specifically, they argue Defendants have not given them notice of their right to a fair hearing before their transfers to community placements.

None of the parties challenge the applicability of the Medicaid portions of the Social Security Act to the programs at issue in this action. Defendants argue, however, that none of them are involved in administering California's Medicaid program and are not responsible for the provision of fair hearings. The Court agrees.

Under the "single state agency" requirement of 42 C.F.R. § 431.10(d)(2)-(3), a state's Medicaid program must designate a single agency to administer and supervise the program, and any other agencies

collaborating with that agency must not be able to "substitute their judgment for that of the Medicaid agency" in any Medicaid-related decisions.

California's "single state agency" is the Department of Health Services (DHS). See Plaintiff's Memo of P & A (Plaintiff's Motion) 22. DHS is not a Defendant in this action. If Plaintiffs wish to challenge any denial of hearings under the Medicaid provisions of the Social Security Act, they must bring an action against the proper agency.

The third § 1983 count of the SAC fails as a matter of law, since no claim can be stated against any Defendant in this action. Plaintiffs' motion is DENIED as to this count. State Defendants' motion is GRANTED as to this count.

3. Intervenors' Arguments--Fair Hearing

Based on different issues than those discussed in the previous two sections, Intervenors move for partial summary judgment on the first and third § 1983 counts of the SAC. They argue determination of the need for involuntary institutionalization can be made only in a court of law, and Plaintiffs' requested relief would conflict with this requirement. Intervenors wish to secure due process protections against being retained in a DC, while Plaintiffs wish to secure due process protections against being discharged from a DC.

Due process protections exist in both situations. As discussed above, Plaintiffs' concerns about discharges in violation of due process rights are addressed by the professional judgment standard of Youngberg. Applicable statutes also provide procedural protections that may satisfy due process requirements, though the Court need not resolve this question here.

Intervenors' concerns are valid, but as discussed below, they need not be reached in this case. In California, involuntary commitment to a DC requires a judicial hearing with due process protections similar to those in a criminal trial. In re Hop, 29 Cal.3d 82, 94 (1981); Conservatorship of Roulet, 23 Cal.3d 219 (1979).[11/]

The procedures involved in civil commitment to a DC, however, are not at issue in this action. Only the procedures involved in retention at a DC are at issue here, and the due process concerns are not necessarily the same. See Cramer v. Gillermina R., 125 Cal.App.3d 380, 393 (1981) (holding a full judicial adversarial hearing was not required before issuing an interim order to hold retarded individuals pending a judicial recommitment hearing). The Gillermina R. decision expressly points out that "procedures relevant to due process involving recommitment were not at issue in [In re Hop]." Gillermina R., additionally, dealt with a different statutory commitment scheme than In re Hop.

Though the Hop decision indicated the petitioner was entitled to a "prompt hearing" to determine whether continued confinement was warranted, it did not discuss whether its holding would extend to recommitment. Hop, supra, at 94. The literal holding of Hop applies only to initial commitments and petitions for a writ of habeas corpus.

Intervenors appear to argue developmentally disabled persons in

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[11/] This is a stricter standard than the minimum "clear and convincing evidence" standard set out by the United States Supreme Court in Addington v. Texas, 441 U.S. 418, 431-32 (1979). As the Court recognized in Addington, however, states are free to impose stricter due process safeguards against civil commitment. Id. at 430-31.

DCs are entitled to regular full judicial hearings as to whether they should continue to be housed there, and should be discharged to community placements absent judicial findings supporting continued institutionalization. The Court declines to rule on the validity of this argument. It is not necessary to decide here to what extent the procedural requirements of Hop apply to the retention of developmentally disabled persons in DCs.

Plaintiffs here contend they are entitled to administrative hearings which would ensure their rights to professional judgment and any other due process safeguards against improper community placement are not infringed. Such hearings would serve entirely different goals than the judicial hearings discussed by Intervenors, which are designed to protect due process rights against improper involuntary confinement.

The availability of one type of hearing does not necessarily foreclose the availability of the other--the due process rights at issue here do not cancel each other out. The Court need not decide at this time whether either sort of hearing is necessary or proper under state or federal law.

Intervenors have not shown Plaintiffs' requested relief to be invalid as a matter of law, nor have they shown any need for this Court to decide the matter. Intervenors' motion is DENIED as to the first and third § 1983 counts of the SAC.

4. Other § 1983 Counts

Plaintiffs have not at this time offered arguments or evidence supporting the second § 1983 count (equal protection) and fourth § 1983 count (denial of rights under the Developmental Disabilities Act (DDA)) of the SAC. Plaintiffs' motion is DENIED as to these

counts.

State Defendants move for judgment as a matter of law on the fourth § 1983 count of the SAC, arguing the SAC fails to allege facts and law tying the four individual State Defendants to any specific violations of the DDA.[12/] Plaintiff has offered no argument or evidence in opposition to this portion of State Defendants' motion. State Defendants' motion is GRANTED as to the fourth § 1983 count of the SAC.

C. Injunctive Relief

As discussed above in this Order, Plaintiffs' motion is denied as to all counts of the SAC. Plaintiffs have not achieved the "actual success" on the merits which would be required to support a permanent injunction. Sierra Club v. Penfold, 857 F.2d 1307, 1318 (9th Cir. 1988). Plaintiffs' motion is DENIED as to injunctive relief.

State Defendants move for judgment in their favor on the issue of injunctive relief. They contend there is no imminent threat of injury to any of the Plaintiffs because none of them are currently being considered for community placements.

The threat of irreparable injury is not a significant consideration when determining whether a permanent injunction should issue. As the Ninth Circuit observed in Sierra Club: "[W]hen actual success on the merits is shown, the inquiry is over and a party is entitled to relief as a matter of law irrespective of the amount of irreparable injury which may be shown." Id. at 1318 n. 16.

Though Defendants may not now be seeking community placements for

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[12/] As discussed in the Court's July 15, 1997 Order, the Eleventh Amendment bars Plaintiff from asserting § 1983 claims against state agencies. Only the four individual State Defendants are at issue here.

Plaintiffs, there is no way to be certain this will not change in the future. If Plaintiffs prevail on any of their surviving claims, injunctive relief protecting them against such a change may be appropriate. Judgment for State Defendants on the issue of permanent injunctive relief is not appropriate at this time, and their motion is DENIED as to this issue.

D. Intervenors' Claims

Intervenors move for partial summary judgment against State Defendants on the second claim for relief (violation of § 1983 based on denial of due process) and fourth claim for relief (violation of ADA integration mandate) of the FACI. Both claims challenge State Defendants' policy of refusing to place DC residents in the community if a family member, conservator, or legal representative objects. State Defendants concede in their papers and at oral argument that such a "veto" practice exists. State Defendants' Opp. (Intervenors' Motion) 2. They argue, however, that the practice is supported by California law and sound policy justifications.

State Defendants contend their policy is justified by language in the Lanterman Act, Cal. Welf. & Inst. Code § 4500 et seq. For example, Cal. Welf. & Inst. Code § 4502.1 provides agencies providing services to developmentally disabled people "shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator." Other sections, such as Cal. Welf. & Inst. Code § 4500.5, demonstrate some Legislative intent to include families in the decisionmaking process.

These provisions, however, are not a sufficient legal justification for State Defendants' apparent veto policy. The above-cited provisions and some other provisions of the Lanterman Act allow

claim. The rights conferred by the "integration mandate" of the ADA are more specific and fact-based, and Intervenors have made no factual showing.

The integration regulation of the ADA provides for "the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d) (emphasis added). Intervenors have argued their motion solely as a matter of law and have not offered any evidence of the needs of the individuals at issue here. The integration regulation cannot be violated unless a denial of community placement has occurred which is inappropriate to the needs of the individual involved. Absent some evidence this has occurred, the Court cannot find a violation of the ADA.

Summary judgment is inappropriate as to the fourth claim for relief of the FACI and Intervenors' motion is DENIED as to this claim.

DATED: March 24, 2000.

GARY L. TAYLOR
UNITED STATES DISTRICT JUDGE

the involvement of family members or conservators "where appropriate." The Lanterman Act, however, provides very few concrete rights to family members and conservators.[13/] Moreover, it reaffirms a fundamental principle which the courts have also repeatedly reaffirmed in decisions like In re Hop: "[p]ersons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California." Cal. Welf. & Inst. Code § 4502.

By giving parents, conservators, and other legal representatives veto authority to overrule DC residents' preferences and/or best interests, the State Defendants' policy allows such residents' rights to be, in effect, waived by third parties. No matter how well-meaning these third parties may be, such an automatic veto policy is not appropriate.

Summary judgment is appropriate on Intervenors' § 1983 due process claim enjoining any such veto policy. Views of third parties may be taken into consideration in a weighing process to reach an appropriate decision, but such views must not be conclusive.

Partial Summary Judgment is appropriate as a matter of law on this aspect of the second claim for relief of the FACI, and Intervenors' motion is GRANTED as to this portion of the claim. The Court will issue an appropriate injunction conforming to this Order.

Summary judgment is inappropriate, however, on Intervenors' ADA

[13/] Their consent is required for provisional placement in a regional center under § 4508 and for electroconvulsive therapy or behavior modification under § 4505. They are also entitled to certain information about a resident's status under § 4514.5. These are the only express rights conferred on family members, guardians, and conservators under the Lanternman Act.