

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2005-CP-40-02925

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

Plaintiffs,

v.

STATE OF SOUTH CAROLINA and
SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS,

Defendants.

ORDER

- (1) Allowing an additional Defendant
- (2) Denying State's Motion to Dismiss
- (3) Authorizing Class Certification

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In this action Plaintiffs allege that Defendants have violated Article I, § 15 and Article 12, § 2 of the South Carolina Constitution by failing to provide adequate medical care to mentally ill inmates in the custody of the South Carolina Department of Corrections ("SCDC"). As a result, Plaintiffs seek systemic declaratory and injunctive relief. Presently pending before the Court are three motions.

PLAINTIFFS' MOTION TO AMEND

Plaintiffs have moved to amend their Complaint by adding three individual defendants, each in his official capacity: The Honorable Jon Ozmint, SCDC's Director; the Honorable Glenn F. McConnell, President Pro Tempore of the South Carolina Senate; and the Honorable Robert W. Harrell, Jr., Speaker of the South Carolina House of Representatives.

The Court grants Plaintiffs' Motion to Amend with respect to Mr. Ozmint, as no objections were raised to his inclusion as a defendant. However, this Court has already dismissed the South Carolina General Assembly from this action. No basis exists to add as defendants

individual members of the General Assembly, or in this case, the presiding officers of the respective chambers of the General Assembly. The Court denies, therefore, Plaintiffs' Motion to Amend with respect to Senator McConnell and Representative Harrell.

**THE STATE'S MOTION TO DISMISS
AND ALTERNATIVE MOTION TO STRIKE**

Defendant State of South Carolina has moved, pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure, to dismiss all allegations against the State. Alternatively, the State has moved, pursuant to Rule 12(f), to strike certain matters from the complaint.

The State contends that no injunctive relief can be ordered directly against it, as opposed to an individual officer or employee of the State with authority as to the matters alleged. Since Mr. Ozmint has been added as a defendant, however, this ground has been rendered moot.

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The State's asserted defenses of legislative and sovereign immunity do not apply to Plaintiffs' claims, since Plaintiffs have not brought tort claims and do not seek monetary damages. The State asserts that the separation of powers doctrine bars this action to the extent that claims against the State are based upon legislative action. The Plaintiffs, however, have not asked the Court to require legislation. The Court disagrees with the State's assertion that the claims brought by Plaintiffs are non-justiciable political questions. The Plaintiffs have alleged constitutional violations and it is a judicial function to interpret and enforce the constitution.

The State's Alternative Motion to Strike paragraphs 20-81 of the Complaint is rendered moot by the Court's decision to grant Plaintiffs' Motion for Class Certification, hereinafter discussed. The State further asks the Court to strike any claims based on standards issued by the American Correctional Association or American Psychiatric Association. The State has failed to identify any such claims, however.

Based on these reasons, as well as on consideration of all the positions set forth in the parties' briefs and at oral arguments, the Court denies the State's Motion to Dismiss and Alternative Motion to Strike.

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

The Plaintiffs have moved, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, to certify a class of all inmates in SCDC custody who suffer from serious mental illness. Based on all material submitted in connection with this motion, the Court makes the following findings:

1. Numerosity. Rule 23(a) requires the Plaintiffs to show that the class would be so numerous that joinder of all members would be impracticable. *McGann v. Mungo*, 287 S.C. 561, 570, 340 S.E.2d 154, 158-59 (Ct. App. 1986). It is clear that in the present case the number of class members is sufficient to meet this standard.

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2. Commonality and Typicality. To meet the commonality requirement of Rule 23(a), the Plaintiffs must show questions of law or fact common to the class. A single common issue will suffice, if it is sufficiently important. *McGann*, 287 S.C. at 568, 340 S.E.2d at 158. To satisfy Rule 23(a)'s requirement of typicality, a party must show that the claims of the representative parties are typical of the claims of the class. The typicality requirement is satisfied when all class members share the same cause of action. *Middleton v. Sunstar Acceptance Corp*, 2000 WL 33385388 at *6 (S.C. Ct. Com. Pleas, Jan. 13, 2000). In the present case, all named plaintiffs and representative class members share the same two causes of action and thus share two common questions of law. In addition, all class members share common questions of fact related to the alleged systemic deficiencies in SCDC's mental health program. As a result, Plaintiffs satisfy the commonality and typicality requirements of rule 23(a).

3. Adequacy of Representation. In the present case, it is clear that the named representatives have an incentive to preserve these claims, that they have alleged injuries similar to the injuries alleged to have been suffered by the class, and that they have no interest that would be antagonistic to the members of the class. The Plaintiffs therefore meet Rule 23(a)'s requirement of adequacy of representation.

4. Notice. Inasmuch as this action seeks declaratory and injunctive relief only, Plaintiffs are not required to provide notice or opt out rights to class members. *Alexander S. v. McLawhorn*, C/A No.: 90-3062, slip op. at 6 (D.S.C. March 7, 1991); *Fontana v. Elrod*, 826 F.2d 739, 732 (7th cir. 1987); James F. Flanagan, *South Carolina Civil Procedure*, § 23:192 (2d ed. 1996).

5. Class Definition. Based on the reasons set forth above, as well as all material submitted by the parties to the Court in connection with this motion, the Court certifies a class consisting of all individuals who, at any time since June 20, 2005 (the date that Plaintiffs filed their Complaint), have been or will be confined in an institution or facility maintained or operated by the South Carolina Department of Corrections and who, at any time since June 20, 2005, have been or will be:

- 1) Assigned to an SCDC Intermediate Care Services ("ICS") unit; or
- 2) Hospitalized as an inpatient at Gilliam Psychiatric Hospital ("GPH") or Columbia Care Center ("CCC"); or
- 3) Diagnosed by a psychiatrist with any of the following mental illnesses:
 - a) Cognitive disorders (e.g., traumatic brain injuries, Cognitive Disorder Not Otherwise Specified);
 - b) Schizophrenia (all subtypes);
 - c) Schizoaffective Disorder (all subtypes);

- d) Paranoid Disorder (e.g., Delusional Disorders);
 - e) Major Depressive Disorder (all subtypes);
 - f) Bipolar Disorder (all subtypes);
 - g) Other Psychotic Disorders (e.g., Schizophreniform, Psychotic Disorder Not Otherwise Specified); or
- 4) Diagnosed by a psychiatrist with another mental disorder, not listed above, that has resulted in significant functional impairment, defined as:
- a) the inability to attend to and effectively perform the usual or necessary activities of daily living;
 - b) an extreme impairment of coping skills, rendering the patient exceptionally vulnerable to unintentional or intentional victimization and possible mismanagement; or
 - c) behaviors that are bizarre and/or dangerous to self or others.

The approved class definition is similar to a subclass definition approved in *Alexander S. v. McLawhorn*, C/A No.: 90-3062, slip op. at 14-15 (Mar. 31, 1992), as well as the definition recently approved in *Disability Advocates, Inc. v. New York State Office of Mental Health*, 02 Civ. 4002 (GEL) (Ap. 27, 2007).

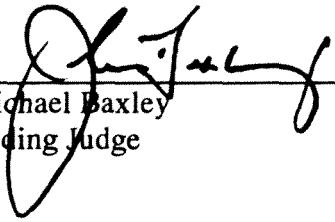
The Defendants have urged the Court to strike sections 3(g) and 4 of this definition. Defendants have offered no expert testimony, however, to rebut the affidavit testimony of Plaintiffs' expert, Dr. Jeffrey L. Metzner, that these sections are clinically appropriate and designed to include those patients with certain severe mental disorders that do not fit into the other categories listed. In addition, inclusion of these categories is consistent with the definitions approved in *Alexander S.* and *Disability Advocates*. Dr. Metzner's affidavit, *Alexander S.*, and *Disability Advocates* make it clear that the diagnoses contained in sections 3(g) and 4 fall within the scope of "serious mental illness." Excluding from the class patients who suffer from these conditions would be arbitrary and unjust.

CONCLUSION

Based on all material submitted and arguments made to the Court in connection with these motions, as well as on the reasons set forth above, Plaintiffs' Motion to Amend is hereby granted with respect to Mr. Ozmint, but denied with respect to Senator McConnell and Representative Harrell; the State's Motion to Dismiss and Alternative Motion to Strike are hereby denied; and Plaintiffs' Motion for Class Certification is hereby granted, as set forth above.

Upon the filing of this Order, Plaintiffs will file and serve a Third Amended Complaint, and Defendants shall have 45 days from the service thereof to answer or otherwise plead.

AND IT IS SO ORDERED.



J. Michael Baxley
Presiding Judge

Hartsville, South Carolina

November 1, 2007

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., attorneys for T.R., P.R., K.W., and A.M. on behalf of themselves and others similarly situated; and Protection and Advocacy for People with Disabilities, Inc. do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by depositing a copy via United States Postal Service to the following address(es):

Pleadings: **ORDER**

Counsel Served:

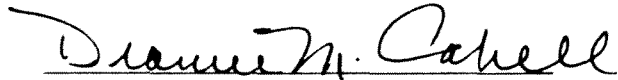
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Administrative Assistant

November 2, 2007