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Director of Health Services,
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14 IN THE UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

17 MARTI VILLERY; MARGUERITE) CASE NO. CV 95-5714 JGD (SHx)
BRAUNSTEIN; ALEX FLORES, by and)
18 through his Guardian ad Litem,) DEFENDANTS' AMENDED REPLY TO
MARIA PEREZ; MARY HAYES; NEIL) PLAINTIFFS' OPPOSITION TO
19 DWORZACK, by and through his) DEFENDANTS' MOTION TO DISMISS
Guardian ad Litem, DIANE) FOR FAILURE TO STATE A CLAIM
20 DWORZACK, EDUARDO ACEVES; EUNICE) UPON WHICH RELIEF CAN BE
VIQUEZ; BONNIE HAGY; DIANA) GRANTED PURSUANT TO FEDERAL
21 MOLINO; KEITH CROSSWHITE, and) RULES OF CIVIL PROCEDURE,
JUDY MAGANA,) RULE 12(b)(6) AND (7), AND
22) FOR LACK OF SUBJECT MATTER
Plaintiffs,) JURISDICTION PURSUANT TO RULE
23) 12(b) (1)
v.)
24) DATE: September 25, 1995
BOARD OF SUPERVISORS OF THE) TIME: 1:30 p.m.
25 COUNTY OF LOS ANGELES, and) PLACE: Courtroom 890
ROBERT C. GATES, DIRECTOR OF THE)
26 LOS ANGELES COUNTY DEPARTMENT OF)
HEALTH SERVICES,)
27)
Defendants.)
28)

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1 I.
2 INTRODUCTION

3 Three basic defects in the complaint demonstrate the failure
4 to state facts sufficient to constitute a federal claim, and the
5 clear applicability of the abstention doctrine over the State and
6 due process claims.

7 First, the federal claims are not based on facts, but on
8 conclusory allegations of alleged future facts that do not exist,
9 need not occur and may never occur. Conclusory allegations fail
10 to state viable claims, and need not be accepted as true on a
11 notion to dismiss under Rule 12(b)(6). Western Mining Council v.
12 Natt, 643 F.2d 618, 624 (9th Cir. 1980), cert. denied, 454 U.S.
13 1031, 102 S.Ct. 567, 70 L.Ed2d 747 (1981) (Court need not accept as
14 true conclusionary allegations or legal characterizations, nor
15 unreasonable inferences or unwarranted deductions of fact).

16 Second, each of the plaintiffs' claims is based on numerous
17 erroneous, legally unsupported assumptions that the plaintiff
18 class has a legal entitlement under state statutes and various
19 federal laws to county paid out-patient, non-emergency medical
20 care (Opp., p. 23), or a "liberty" and/or "property" interest in
21 county paid out-patient medical care (Opp., p. 25), or a statutory
22 right to "necessary" medical care under California Welfare and
23 Institutions Code ("WIC") sections 17000 and 10000, or California
24 Health & Safety Code ("HSC") sections 1442.5 and 450 (Opp., p.
25 27), or that "minimum" legal standards apply to the "downsizing" of
26 county out-patient medical services (Opp., p.1:7,14). These
27 assumptions are erroneous as a matter of law. Therefore, the
28 claims based on these erroneous assumptions fail.

1 Third, plaintiffs assert that their federal and state claims
2 deal "only with the manner and extent" to which the County may
3 "proceed to dismantle" the County health care system. (Opp., p.
4 1). However, in the absence of discrimination, which is clearly
5 absent here: the federal laws they rely on do not purport to
6 regulate or control the manner in which, or extent to which county
7 out-patient facilities are to be closed, or out-patient medical
a services curtailed. Accordingly, the federal claims must be
9 dismissed.

10 The identity of the State claims and constitutional due
11 process claims in Tailfeather v. Board of Supervisors, LASC # BC
12 080929 and the instant lawsuit is express in the complaints filed
13 in both actions, which speak for themselves. The allegations in
14 these complaints, and the pendency of Tailfeather in the State
15 Court of Appeal are facts that cannot be disputed. Under Younger
16 v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971),
17 federal courts are required to abstain where, as here, state court
18 proceedings involving these parties and identical claims are
19 pending at the time the federal action was filed. Dubinka v.
20 Judges of Superior Court, 23 F.3d 218, 223 (9th Cir. 1994). When
21 a case falls within the proscription of Younger, as this case
22 clearly does, the federal action must be dismissed. World
23 Drinking Emporium v. City of Tempe, 820 F.2d 1079, 1081 (9th Cir.
24 1987). Under all of these facts, defendants' motion to dismiss
25 must be granted.

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1 II.

2 ARGUMENT

3 A. The Court Is Not Required To Accept Speculation And Conjecture
4 As True.

5 A motion to dismiss tests the propriety of a well-pleaded
6 complaint. Fleming v. Lind-Waldock & Co., 922 F.2d 20 (1st Cir.
7 1990). Alleged facts that are not well-pleaded do not have to be
8 accepted as true. Id. The Court is not required to assume the
9 truth of speculation or conjecture as to alleged future facts that
10 are not in existence, or assume the truth of inferences that do
11 not logically follow from well-pleaded facts. Western Mining
12 Council, supra; Clark v. Kizer, 758 F.Supp. 572, 575 (E.D. Cal.
13 1990) (inferences are not drawn out of the air, and it is the
14 opposing party's obligation to produce a factual predicate from
15 which the inference may be drawn.)

16 Plaintiffs' federal claims fail to allege facts respecting
17 the material elements of a claim. Instead, they are based on
18 speculation and conjecture concerning alleged future facts that
19 are not in existence, and do not logically follow from the facts
20 that are stated. These allegations do not have to be accepted as
21 true. Western Mining Council, supra.

22 The only facts alleged in the complaint are that on October
23 11, 1995, six County comprehensive health centers and 29 public
24 health centers will close, and all hospital out-patient services
25 will be "drastically" reduced (Compl., para. 1, (unless additional
26 federal, state, or private revenues are forthcoming to retain
27 services and operate facilities).) The health care curtailments
28 are to routine, non-emergency out-patient medical services. No

1 hospital in-patient services are to be cut, and no patient is to
2 be discharged from a County hospital. (Defendants' Request for
3 Judicial Notice ("Request"), Exh.L, p.260; Exh. N).

4 To a lesser extent, a smaller percentage of rehabilitative
5 services for disabled persons will be affected. Rancho Los Amigos
6 Medical Center ("Rancho"), the County's hospital specializing in
7 rehabilitative services for the disabled, is not to be closed,
a although some services are to be reduced, and in-patients may be
9 transferred from the skilled nursing facility on those premises to
10 other facilities. (Request, Exhs. L, M). Hospital emergency
11 rooms are open. Id.

12 Plaintiffs' federal claims begin where these facts end. The
13 inferences of future harm that are made from these facts are
14 wholly speculative and conclusory, and, in fact, are refuted by
15 the facts. Plaintiffs' allegations of future denials of care or
16 other extreme consequences, such as the disabled being "forced"
17 into institutions, do not logically follow from the facts, and at
18 best, express exaggerated fears that have not occurred and most
19 likely will never occur. These imaginings need not be accepted as
20 true.

21 These allegations are clearly erroneous in view of the facts
22 that the Medi-Cal recipient members of the plaintiff class,
23 disabled and non-disabled, have sources for publicly paid medical
24 care other than the County, and that County paid medical care for
25 the County General Relief ("GR") recipient class members will
26 continue, despite these curtailments, as a part of the welfare
27 benefits to which they are legally entitled under WIC section
28 17000.

1 Plaintiffs simply imagine that Medi-Cal recipients will be
2 "unable" to find private providers (Compl., paras. 13, 15), even
3 though there are numerous private Medi-Cal providers, and even
4 though, as recipients of Medi-Cal, private care is paid by the
5 State. The facts do not support the extreme view that unspecified
6 "specialty" services for the disabled will be "eliminated" by these
7 curtailments, "forcing" the disabled into institutions (Compl.,
a paras. 32, 37, 47). Rather, conditions of disability differ, the
9 expected curtailments to rehabilitative services for the disabled
10 are substantially less than the curtailments for the non-disabled,
11 and disabled persons are generally either entitled to Medi-Cal or
12 County GR, and as such, have access to alternative sources of
13 care. Fears and speculation are not sufficient to constitute a
14 claim. Fleming v. Lind-Waldock & Co., supra (complaint that
15 presents unsubstantiated inferences and conclusions is subject to
16 dismissal for failure to state a claim).

17 Similarly, the allegations of assumed denials of medical care
18 are bare assertions that do not logically follow from the
19 curtailments to be made. As such, they fail to establish the
20 elements of a claim for relief. More than bare assertions of
21 legal conclusions are required to satisfy federal pleading
22 requirements. Scheid v. Fanny Farmer Candy Shops, Inc., 859 F.2d
23 434, 436 (6th Cir. 1988) (complaint for age discrimination
24 insufficient in absence of allegation that employee was replaced
25 by a younger worker); Western Mining Council v. _____, supra
26 (dismissal proper since plaintiff's interpretation of a federal
27 statute is a conclusion not presumed to be true).

28 //

1 The conclusory allegations of rights or entitlements to
2 county paid out-patient medical care for persons not eligible for
3 County GR are wholly without legal support. Thus, the claims
4 based on such asserted rights fail as a matter of law. The
5 federal claims must also be dismissed insofar as they are based on
6 speculation as to the future effects of out-patient service
7 curtailments, since the extent and future effect of these
a curtailments is unknown, and will likely bear little resemblance
9 to the scenarios plaintiffs imagine. Conclusory averments about
10 what might occur are not allegations of fact, and need not be
11 accepted as true. Fleming v. Lind-Waldock & CO, supra.

12 Furthermore, the Court need not accept as true allegations
13 that contradict facts that may be judicially noticed, such as
14 official government acts and court documents. Mullis v. U.S.
15 Bankruptcy Ct., 828 F.2d 1385, 1394 (9th Cir. 1987); Mack v. South
16 Bay Beer Distrib., Inc., 798 F.2d 1279, 1282 (9th Cir. 1986).
17 Therefore, the Court may take judicial notice of the official acts
18 of defendant Board of Supervisors, and of the Tailfeather
19 pleadings. Judicial notice of such matters does not turn a motion
20 to dismiss for failure to state a claim into a summary judgment
21 notion. Mack v. South Bay Beer Distrib., Inc., supra.

22 The liberal reading accorded a complaint on Rule 12(b)(6)
23 motions is subject to the requirement that the facts demonstrating
24 a cause of action must be clearly alleged. Western
25 Council, supra. Plaintiffs cannot create a justiciable
26 controversy simply by misreading statutes and claiming as injury
27 fears born of their own errors. Id. The allegations of the
28 complaint are based on misread statutes, and assumed or imagined

1 injuries that do not logically follow from the facts. Thus, they
2 fail to establish a justiciable controversy. Accordingly,
3 defendants' motion to dismiss must be granted.

4 The motion to dismiss presents two legal questions: (1)
5 whether the closure of the six comprehensive out-patient clinics,
6 29 out of 39 public health clinics, and reduction in the level of
7 hospital, non-emergency, out-patient services violates any of the
a federal laws under which plaintiffs' claim the jurisdiction of
9 this Court (A.D.A., Medicare/Medicaid, EMTALA, Civil rights): (2)
10 whether abstention is required over the state law and due process
11 claims that have already been determined against plaintiffs in
12 Tailfeather, or, if not required, whether abstention is
13 appropriate under 28 U.S.C. section 1367. In the alternative, the
14 complaint should be dismissed as a non-justiciable political
15 question.

16 These determinations do not depend on speculation or fears as
17 to the future effects of County out-patient curtailments on the
18 individuals who use or have used County out-patient facilities.
19 Rather, they depend on whether or not the class, or any sub-group
20 of the class, has a legal right to county out-patient health
21 services. Neither the class, nor any sub-group of the class has
22 such a right. Therefore, the complaint must be dismissed.

23 **B. The Federal Claims Fail Because They Are Based On Unsupported,**
24 **Erroneous Assumptions Of Law.**

25 1. **No claim is stated for violation of the ADA.**

26 Plaintiffs contend that they have alleged facts sufficient to
27 establish that if Rancho is "divested" or "severely cut", persons
28 with disabilities will be denied services by reason of their

1 disability. This claim is expressly speculative. Therefore, it
2 fails to establish the elements of a claim under the ADA.

3 Defendants have shown in their motion to dismiss that the
4 curtailments in issue do not deny services to disabled persons by
5 reason of their disability, and that remaining services are
6 available equally to the disabled and the non-disabled.
7 Additionally, disabled class members who are Medi-Cal recipients
8 or GR recipients will not be denied medical care in the future as
9 a result of these cuts, since these plaintiffs will either
10 continue to receive County-paid medical care or have alternative
11 sources of publicly paid medical care. Therefore, this
12 speculative claim fails.

13 Plaintiffs' ADA claim lacks the requisite elements to state a
14 claim for relief. The disparate impact contention boils down to
15 the erroneous conclusion that disabled persons, simply because
16 they are disabled, will be disproportionately impacted by these
17 cuts because they will allegedly be denied the alleged "special"
18 services they allegedly need. This is erroneous. "Special"
19 services to the disabled are not being cut. Rather, non-
20 emergency, routine out-patient services are being cut.

21 Furthermore, although persons with disabilities may, based on
22 their disability, be inconvenienced to a greater extent than non-
23 disabled persons in accessing alternative sources of care, this
24 does not establish a violation of the ADA. The reduction of
25 County paid out-patient services falls equally on all county
26 residents. The disabled are not singled out for these cuts.

27 //

28 //

1 There is no allegation that federal access requirements for
2 the disabled are not in place at remaining facilities, since all
3 facilities are subject to the access requirements of the ADA.
4 Therefore, the curtailments do not deprive the disabled of access
5 to remaining facilities. Accordingly, the impact of less County
6 health facilities is the same for the disabled as it is for the
7 non-disabled.

a Plaintiffs' disparate impact claim is not based on a lack of
9 physical access to remaining facilities or loss of rehabilitative
10 services, that are "special" to the disabled. Rather, it is based
11 on the erroneous contention that disabled class members will need
12 "special" assistance, over and above physical access requirements,
13 in obtaining routine, non-emergency care in other facilities or
14 from other providers that non-disabled persons may not need. The
15 assumption that "special" assistance will not be provided for
16 routine care of the disabled is wholly speculative, and fails to
17 state a claim for disparate impact discrimination.

18 Some disabled class members may need "special" assistance for
19 routine, out-patient care, and others may not. Presumably,
20 "special" assistance required for routine examinations would be
21 provided to those persons needing such assistance as an aspect of
22 the practice of medicine. It does not follow that "special"
23 assistance will be denied by others, or in remaining County out-
24 patient facilities, simply because the amount of County non-
25 emergency, out-patient services is to be reduced.

26 Furthermore, it does not logically follow that if Rancho is
27 closed, appropriate medical care will not be available anywhere.
28 Private Medi-Cal and other providers remain in the County, subject

1 to disabled access requirements. Therefore, medical care,
2 including "special" services to the disabled as an aspect of such
3 care, is not being denied by the reduction of some services at
4 Rancho. For the same reasons, medical care will not necessarily
5 be denied if Rancho closes, a future fact that is not planned and
6 has not occurred. Accordingly, these allegations are speculative
7 and do not state a cognizable claim.

a Plaintiffs allege, on information and belief, that in the
9 absence of alleged "specialty" out-patient and rehabilitative
10 services, which are not absent, disabled "patients" will be
11 "forced" in the future to remain in acute care facilities, and
12 "reasonable accommodations" for patients with disabilities to
13 benefit from the remaining County health program will be
14 eliminated. (Compl., para. 47). They further allege, on
15 information and belief, that these reductions will make it
16 impossible in the future for patients to return home, and will
17 deny disabled patients special expertise. (Compl., para. 48).

1a These unsupported fears fail to state a claim for violation
19 of the ADA. They do not establish, and it cannot be inferred,
20 that the unspecified "special" accommodations allegedly currently
21 made for routine care to some disabled persons at Rancho will not
22 be applied to such persons in the remaining out-patient facilities
23 or by other providers. It does not follow that the curtailment of
24 non-emergency, out-patient services will cause disabled persons to
25 become institutionalized. It does not follow that special
26 expertise will be denied. To the contrary, all licensed
27 facilities and practitioners have the expertise necessary to care
28 for the disabled, as a function of licensure.

1 Presumably, institutionalization results from an individual's
2 inability to provide daily care for himself or herself, not from
3 curtailments in county paid out-patient care. It may become less
4 convenient for the disabled to secure alternative sources of out-
5 patient medical care when county services are curtailed, but this
6 does not mean that institutionalization is the inevitable result
7 to any disabled class member. Institutionalization depends on
8 individual facts, not on the number of out-patient facilities in
9 the community. Less extreme alternatives exist, particularly for
10 those persons covered by Medi-Cal, County GR, or entitled to State
11 paid IHHS ("In Home Supportive Services"). Indeed, under Helen L.
12 v. Didario, 46 F.3d 325 (3rd Cir. 1995), the State would be
13 required to provide IHHS to all persons eligible therefor.

14 Inconvenience in obtaining medical care that results simply
15 from the condition of being disabled does not establish a legal
16 violation, since the ADA does not require that more services be
17 provided to the disabled than are provided to the non-disabled.
18 Alexander v. Choate, 469 U.S. 287, 306, 105 S.Ct. 712, 83 L.Ed.2d
19 712 (1985). Thus, the ADA does not require special accommodations
20 to be made if these are in excess of the accommodations necessary
21 to provide the disabled the access to medical care that non-
22 disabled residents have.

23 The Board would be pleased to know of plaintiffs' high praise
24 for the services at Rancho. However, plaintiffs' fear that Rancho
25 services cannot be replicated elsewhere fails to state a claim
26 under the ADA, because it does not follow from budget cuts that
27 special accommodations will not or cannot be made in other
28 facilities, or even that "special" accommodations must be made.

1 Accordingly, plaintiffs fail to state facts sufficient to state a
2 claim under the ADA.

3 Furthermore, plaintiffs fail to allege, since they cannot
4 allege that they are being denied a benefit solely on the basis of
5 disability. Only some class members allege disabilities.
6 Therefore, even if these class members stated a claim under the
7 ADA, which they do not, such claim would not pertain to the non-
8 disabled members of the class. Therefore, non-disabled class
9 members lack standing to assert such claim. Lujan v. Defenders of
10 Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351
11 (1992) (3 pronged test for standing is (1) injury in fact which is
12 concrete and not conjectural; (2) a causal connection between the
13 injury and defendant's conduct; (3) a likelihood that the injury
14 will be redressed by a favorable decision).

15 Moreover, these claims conflict with non-disabled class
16 members' interests. In alleging that "special" services are
17 required, the disabled members of the plaintiff class essentially
18 seek more services than the non-disabled. The provision of more
19 services to the disabled under the County's limited revenues would
20 mean reducing services to the non-disabled even further, which
21 conflicts with the relief sought here. Therefore, this class sub-
22 group does not represent the interests of the class as a whole.

23 Furthermore, all Medi-Cal recipients are entitled to the same
24 health benefits, regardless of disability. Accordingly, disabled
25 class members who are Medi-Cal recipients lack standing to
26 complain against the County of alleged future denials of medical
27 care resulting from the discontinuance of County medical services.

28 //

1 First, plaintiffs lack standing to assert such a claim,
2 because they are not injured by the alleged violation, since they
3 are not hospital in-patients. Luian, supra. Second, the
4 regulations they cite generally require that procedures be adopted
5 that are acceptable to the State for the manner in which a patient
6 is discharged. Therefore, the State, not individual Medi-Cal
7 recipients, is the determiner of the adequacy of such procedures.
8 Individuals in particular counties could not establish compliance
9 with State regulatory requirements, which must be uniform
10 statewide.

11 Most importantly, since the Medicaid discharge regulations do
12 not apply to out-patient facilities or out-patient services as a
13 matter of law, they are not enforceable by out-patients under
14 section 1983, individually or otherwise. Therefore, these claims
15 wholly fail. Since the claim is based on regulations that are
16 specific to the discharge of hospital in-patients, they do not
17 apply to closures of out-patient facilities, or discontinuances of
18 out-patient services as a matter of law.

19 3. No claim is stated for breach of contract.

20 Since plaintiffs have failed to state a claim under the
21 Medicaid/Medicare/Medi-Cal discharge and transfer regulations as a
22 matter of law, their derivative claim for breach of contract, that
23 is based on violation of these same regulations, fails.

24 Plaintiffs erroneously allege that they are third party
25 beneficiaries to alleged contractual conditions of participation
26 allegedly between the County and State, which conditions
27 plaintiffs allege were breached by the County's alleged failure to
28 develop "timely and adequate" (in-patient) hospital discharge

1 Defendants have shown that such a contract, if one existed,
2 would be unenforceable against public policy under the laws
3 prohibiting government agencies from contracting away their police
4 power. Furthermore, such a contract would be unenforceable under
5 basic contract law requiring consideration for an enforceable
6 contract. It is hornbook law that a "contract" to perform an
7 obligation that is already legally required lacks consideration.
a Bailey v. Breetwor, 206 Cal.App.2d 287, 291-92 (1962).

9 According to plaintiffs, the Medicaid discharge and transfer
10 regulations are legal obligations. Therefore, they cannot be
11 contractual obligations as a matter of law. Accordingly, this
12 theory falls under basic, legal principles.

13 Most importantly, even if there were such a contract, it
14 would have no applicability, whatsoever, to curtailments in out-
15 patient services. Accordingly, this claim fails as a matter of
16 law.

17 4. No claim is stated under EMTALA.

18 Defendants have shown, in their motion to dismiss, that the
19 purpose of EMTALA is to prevent hospitals from dumping patients
20 who are unable to pay by refusing to provide emergency medical
21 treatment or by transferring patients before their emergency
22 conditions are stabilized. Brooks v. Maryland Gen. Hosp. Inc.,
23 996 F.2d 708, 710-11 (4th Cir. 1993). This has nothing to do with
24 curtailments to non-emergency, out-patient care.

25 Plaintiffs wholly fail to plead the elements of a claim under
26 EMTALA, which are (1) that plaintiffs went to defendants@
27 emergency department; (2) with an emergency condition and either
21 (3) the hospital did not adequately screen such persons to

1 determine the emergent condition, or (4) that such persons were
2 discharged or transferred before the emergency condition had been
3 stabilized. Huckaby v. East Alabama Medical Cents, 830 F.Supp
4 1399, 1401-1402 (N.D. Ala. 1993); Miller v. Medical Center of
5 Southwest Louisiana, 22 F.3d 626, 628 (5th Cir. 1994).

6 Accordingly, the claim wholly fails.

7 Plaintiffs erroneously allege that the "dismantling" of
a County out-patient clinic services will "cripple" County emergency
9 rooms. (Opp., p. 18:13). This speculative and conclusory
10 allegation need not be accepted as true. Fleming v. Lind-Waldock
11 & Co., supra. Furthermore, it is irrelevant. EMTALA, like HSC
12 section 1317 (pertaining to hospital emergency rooms), does not
13 require emergency rooms to increase capacity to take care of
14 increased demand. (42 U.S.C. section 1395dd(a) (EMTALA requires
15 emergency care only within the capability of the hospital
16 emergency department): Brooks v. Maryland Gen. Hosp. Inc., supra,
17 p. 710.)

18 Like HSC section 1317, it does not *require* emergency rooms to
19 provide non-emergency medical care. Like HSC section 1317, it
20 does not require any person or agency to operate emergency rooms,
21 or to see every patient seeking emergency services. Id. No
22 emergency room is required to provide services in excess of
23 capacity to do so. Id.

24 As observed by plaintiffs in their opposition at p.4:22,
25 "triage" standards in emergency rooms ensure the prompt treatment
26 of emergencies. Under triage, which initially screens patients to
27 determine severity of condition, the most emergent conditions are
28 *seen* first. These standards are basic to emergency room practice

1 and ensure that true emergencies are timely treated. Accordingly,
2 it does not follow that emergency rooms will be "crippled" by
3 curtailments to out-patient care. Most importantly, the
4 curtailments in issue do not apply to emergency rooms. Therefore,
5 this wholly speculative claim fails.

6 5. There is no substantive or procedural due process right
7 preventing these curtailments.

a Plaintiffs erroneously allege that they have a property
9 interest in the uninterrupted receipt of county-paid out-patient
10 medical care, and a liberty interest in not having these services
11 reduced or withdrawn. (Compl., para. 60). This is erroneous as a
12 matter of law. Defendants have shown, in their motion to dismiss,
13 that under State law, the operation of county medical facilities,
14 and provision of health services to the poor is a purely
15 discretionary function. (HSC sections 1442, 1445). There is no
16 property right to a discretionary function as a matter of law.
17 Punikai Clark, 720 F.2d 564 (9th Cir. 1983); Tailfeather,
18 supra.

19 Furthermore, as defendants have shown and plaintiffs concede,
20 the due process clause does not require courts to impede a
21 county's ability to provide safe facilities and to make
22 economically sound decisions that will allow it to provide the
23 best treatment for the greatest number of patients that resources
24 will allow. Punikaia v. Clark, supra, p. 568 (Opp. 21:22).

25 It is not safe to maintain out-patient facilities that cannot
26 be properly staffed or maintained. It is not economically sound
27 to attempt to provide medical services in excess of county
28 revenues. The due process clause does not require the Board to

1 S.Ct. 2376, 2380; 53 L.Ed.2d 4845 (1977); Committee to Defend
2 Reproductive Rights v. Myers, 29 Cal.3d 2'52, 262 (1981) (state has
3 no constitutional obligation to provide medical care to the poor);
4 Goodall v. Brite, 11 Cal.App.2d 540 (1936) (provision of County
5 paid medical care to those able to pay for such care violates the
6 Constitution). Therefore, these claims fail as a matter of law.

7 Griffith v. Detrich, 603 F.2d 118 (9th Cir. 1979) does not
a hold that any person has a property right to county paid,
9 discretionary non-emergency medical care. Rather, it follows
10 Goldbera v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287
11 (1970), that determined that persons receiving welfare under state
12 Laws providing an entitlement to welfare have a property interest
13 in the continued receipt of such benefits, that may not be
14 terminated without pre-termination notice and a hearing. This has
15 nothing to do with health services under state laws, such as HSC
16 sections 1442, and 1445, that provide no entitlement to these
17 services.¹

18 Plaintiffs erroneously contend that all class members have an
19 entitlement to medical care under WIC section 17000. This is
20 erroneous for all the reasons stated in the Order in Tailfeather.
21 Indeed, this issue was what Tailfeather was about, since the
22 plaintiff class there claimed a right to compel the Board to
23 increase non-emergency, out-patient services on the basis of the
24

25 'Under Goldberg v. Kelly, supra, County GR recipients have a
26 property right to continued GR benefits, such that these benefits
27 may not be terminated without notice and a pre-termination
28 hearing. Since medical care is one of the components of GR
benefits under WIC section 17000, GR recipients are entitled to
medical care under WIC section 17000. Since GR medical care will
continue, the County has complied with this duty.

1 same erroneous contention that WIC section 17000 provided an
2 entitlement to county paid medical care for all "poor" residents
3 in Los Angeles County. (Tailfeather Compl., para. 15, 28; Request,
4 Exh. D, pps. 24, 27). This contention was rejected by the Trial
5 Court in Tailfeather. (Request, Exh. A, pps. 2-4). Under
6 principles of abstention, comity, and finality of litigation, this
7 same contention should not be relitigated here.

a Plaintiffs' contention here that the class has an entitlement
9 to medical care under Griffith v. Detrich, supra; City of Lomita
10 v. County of Los Angeles, 148 Cal.App.3d 671 (1983); Board of
11 Supervisors v. Superior Court, 207 Cal.App.3d 552 (1989); Cooke v.
12 Superior Court, 213 Cal.App.3d 401 (1989), and Bay General
13 Hospital v. County of San Diego, 156 Cal.App.3d 944 (1984) (Opp.,
14 27:7) were also made and were rejected in Tailfeather. They are
15 clearly erroneous. It is useless and wasteful to re-litigate
16 these same contentions in any subsequent proceeding.

17 What plaintiffs omit to explain to this Court, as they did to
18 the Trial Court in Tailfeather, is that "Realignment" in 1991, and
19 Assembly Bill 1012 in 1992 (Request, Exh. M), changed prior laws
20 in order to reduce county health mandates within revenues
21 specified by the Legislature (WIC section 17608.10). Plaintiffs
22 cite pre-1991 case-law as authority for their contrary
23 contentions, as they did in Tailfeather, as if nothing had
24 changed. Plaintiffs were not successful in Tailfeather because
25 the law had changed. Their refusal to acknowledge critical
26 statutory changes was the fundamental defect in their Tailfeather
27 lawsuit, which they repeat here.

28 //

1 Defendants have shown that abolition of the Beilenson
2 community standard (former HSC section 1442.5(c)) in AB 1012 in
3 1992, that had required counties to provide indigent medical care
4 at the same level as available to private patients, eliminated any
5 requirements on counties to expend funds for indigent health care
6 in excess of Realignment limits. Thus, even if case-law predating
7 1991 stood for the proposition that counties were required to
a provide unlimited medical care to all county residents under WIC
9 section 17000 or any other statute, which it clearly did not; such
10 interpretations would have been superseded by the changes in law
11 in these new statutes. Therefore, plaintiffs were not successful
12 on these claims in Tailfeather.

13 The view that Realignment legislation limits county
14 requirements for health services to the fiscal level in that
15 legislation has now also been taken by the California Court of
16 Appeal in its recent decision in Gardner v. County of Los Angeles,
17 34 Cal.App.4th 200, 219 (1995). Obviously, the federal courts are
18 not necessarily conversant in California health and welfare laws,
19 or their history, and do not necessarily know about these laws or
20 the changes in these laws.

21 There is no utility or purpose in replicating California
22 history and explaining these legislative changes and their effects
23 all over again in a subsequent lawsuit in federal court, when the
24 state courts are already now considering them. These are clearly
25 important matters of state law, critically affecting the State and
26 counties. Therefore, this Court should abstain from exercising
27 jurisdiction over the due process claims.

28 //

1 6. No claim is stated for violation of Civil Rights.

2 Defendants have shown, in their motion to dismiss, that the
3 Civil Rights Act does not provide a cause of action against a
4 local government agency budget decision that "deprives"
5 individuals of services to which they have no legal right or
6 entitlement. Defendants have further shown that the plaintiff
7 class has no legal, or constitutional right, nor statutory
a entitlement to discretionary county-paid, non-emergency out-
9 patient care as a matter of law. Therefore, the actions of which
10 they complain have not deprived them of a civil right as a matter
11 of law. Accordingly, this claim wholly fails.

12 7. No claim is stated for declaratory relief.

13 Defendants have shown in their motion to dismiss that the
14 declaratory relief claim is duplicative of plaintiffs' other
15 claims, and fails to state a justiciable controversy because the
16 parties' respective rights and benefits depend on the
17 determination of these specific claims. Furthermore, the
18 declaratory relief claim is based on the same erroneous
19 assumptions that the plaintiff class has protected liberty and
20 property interests in county paid out-patient medical care.
21 (Opp., 25:16). Since these assumptions are erroneous as a matter
22 of law, the declaratory relief claim fails.

23 C. Plaintiffs Have No Legal Right To Direct How Or When County
24 Out-Patient Facilities Will Be Closed Or Out-Patient Services
25 Curtailed.

26 Plaintiffs' representation that they do not seek to stop the
27 curtailments in issue is not true, since they have filed this
28 complaint containing in excess of 10 claims, each of which seeks

1 to stop these curtailments. Moreover, plaintiffs' representation
2 that this action is limited to "the manner or extent" of these
3 curtailments fails to state a justiciable claim. How the County
4 goes about "dismantling" discretionary, out-patient services is a
5 political question. A lawsuit seeking to change the manner or
6 extent of health service curtailments challenges the Board's
7 decisions implementing budget reductions. Such actions are not
a justiciable. Thus, the complaint should be dismissed.

9 D. Abstention Is Required.

10 Our circuit has stated that abstention under Younger v.
11 Harris, supra, is appropriate in favor of a state court proceeding
12 if (1) there are ongoing state proceedings: (2) the proceedings
13 implicate important state interests: and (3) there is adequate
14 opportunity in the state proceedings to raise federal questions.
15 Dubinka v. Judges of Superior Court, supra, p. 223. These three
16 requirements for abstention are all present in this case.
17 Therefore, this Court should abstain from exercising jurisdiction
18 over the state and constitutional due process claims.

19 Younger abstention is not limited to ongoing state criminal
20 proceedings. World Famous Drinking Emporium v. City of Tempe, 820
21 F.2d 1079, 1082 (1987). It extends to civil proceedings provided
22 those proceedings implicate important state interests, such as the
23 State/county financing requirements for indigent health services
24 implicated here. Id. Where Younger abstention is appropriate, a
25 district court cannot refuse to abstain. Beltran v. State of
26 California, a71 F.2d 777, 782 (1988). To the contrary, Younger
27 abstention requires dismissal of the federal action. Id. Accord:
213 World Famous Drinking Emporium, supra, p. 1081 (when a case falls

1 within the proscription of Younger, a district court must dismiss
2 the federal action): Dubinka, supra (dismissal of complaint under
3 Younger abstention affirmed). Therefore, abstention is required.--

4 The first requirement for Younger abstention -- that there be
5 an ongoing state judicial proceedings -- is clearly met because at
6 the time the Villery complaint was filed in federal court, the
7 plaintiffs were all appellants in the pending appeal of
a Tailfeather. The Supreme Court has held that Younger abstention
9 applies to prevent federal intervention in a state judicial
10 proceeding in which, as in Tailfeather, a losing litigant has not
11 exhausted state appellate remedies. Dubinka, supra.

12 The second requirement -- that the state proceedings
13 implicate important state interests -- is also satisfied.
14 Tailfeather and this lawsuit are critical to the comprehensive
15 State statutory scheme for State/county financing of indigent
16 health services under reduced county mandates for health and
17 welfare programs. The issues in this lawsuit affect State and
18 county government, health and welfare programs, local public
19 revenues and State and county legislative determinations. These
20 are clearly critical issues for the State and counties.

21 The third requirement for Younger is met because plaintiffs
22 had an opportunity to raise their constitutional challenges in the
23 state proceedings, and did raise them there. The fact that a
24 State trial court has previously rejected these arguments does not
25 make Younger abstention inappropriate. Dubinka, supra, p. 224.

26 Even if Younger abstention did not apply, as it does:
27 abstention may be proper in other cases to avoid unnecessary
28 friction in federal-state relations, interference with important

1 state functions, and tentative decisions on questions of state
2 law. Pearl Investment Co. V. City of San Francisco, 774 F.2d
3 1460, 1462 (9th Cir. 1985). Abstention is proper in exceptional
4 cases where principles of comity and federalism justify postponing
5 the exercise of jurisdiction that Congress conferred upon federal
6 courts. Id.

7 These requirements are met here. These proceedings affect
8 critical state interests involving the financing of indigent
9 health care in the state and the reduction of county mandates to
10 permit counties to operate under reduced revenues. The losing
11 litigant in Tailfeather has not exhausted state appellate court
12 remedies. The undertaking of jurisdiction over these claims in
13 this case would cause unnecessary friction in federal-state
14 relations, given the critical state and local government issues,
15 and political questions involved and the decision in Tailfeather.

16 Abstention and principles of finality of litigation clearly
17 support abstention on the claims already litigated and determined
18 between the same parties in Tailfeather. Indeed, these principles
19 complement each other. Under principles of res judicata, a final
20 judgment precludes relitigation of the same issues between the
21 same parties determined in a prior action. Where, as here, the
22 judgment is pending, abstention applies. Dubinka, supra.

23 Defendants have shown that in Tailfeather, supra, as here,
24 the same plaintiff class unsuccessfully alleged that the County
25 had a mandatory duty to provide "necessary" medical care to
26 "indigent residents" of the County under WIC sections 17000 and
27 10000, HSC section 450, and alleged substantive and procedural due
28 process rights to continuing out-patient services (Tailfeather

1 Compl., paras. 2, 15, 17-19; Request, Exh. D, pps. 20, 24, 25,
2 33); and that here, plaintiffs again allege that the curtailments
3 in issue violate an alleged County duty to provide "necessary"
4 health care to residents of Los Angeles County with allegedly
5 insufficient resources to pay for such care, allegedly based on
6 the same statutes. (Compl., paras. 24(d), 73-79; Request, Exh. M).
7 There is no difference between these claims.

a Defendants have also shown that while the plaintiffs in
9 Tailfeather omitted to mention HSC section 1442.5 (the "Beilenson"
10 Act) in their Complaint in Tailfeather, defendants asserted this
11 section successfully to prohibit such a right (Request, Exh. A).
12 Therefore, this same claim has been litigated.

13 Defendants have further shown that in Tailfeather, plaintiffs
14 alleged that the alleged waiting times for county out-patient
15 medical care amounted to the denial of medical care, in alleged
16 violation of alleged liberty and property interests to continued
17 county paid out-patient medical care. (Tailfeather Compl., paras.
18 19, 38, 40; Request, Exh.D, pps. 25, 29-30). These are identical
19 to plaintiffs claims' here. (Compl., paras. 60, 64; see also
20 plaintiffs points and authorities in support of their cross-motion
21 for summary adjudication, Request, Exh. H, pps. 211 -215, in which
22 plaintiffs alleged a property interest in continuing medical care
23 under Griffith v. Detrich, supra, as they do here: and
24 constitutional due process limitations to the "manner in which"
25 the County "dispenses" medical care, as they do here. (Id., p.
26 213:11).)

27 There are no meaningful differences in these claims. They
28 assert the same alleged rights to the same alleged benefits under

1 the same alleged authorities. The cases cited for plaintiffs'
2 position here are the same as cited in Tailfeather. The alleged
3 legal principles for which these identical authorities were and
4 are cited are the same. The defenses are the same. The classes
5 are the same, which is undisputed. Most importantly, the Trial
6 Court in Tailfeather determined these issues in a judgment against
7 plaintiffs. Plaintiffs are not entitled to blithely ignore this
8 judgment by refileing these same claims in federal court. These
9 facts require Younger abstention over these claims.


10 The state law claims are not inextricably related to the
11 federal claims. Insofar as plaintiffs seek a different
12 determination of these issues for these claims, the doctrine of
13 abstention and principles of comity require deference to the state
14 courts on these issues, where they were originally filed.

15 For all the reasons stated above, defendants' motion to
16 dismiss must be granted.

17 DATED: September 21, 1995

18 Respectfully submitted,

19 DE WITT W. CLINTON
20 County Counsel

21 By 
22 ADA TREIGER
23 Senior Deputy County Counsel
24 Public Services Division

25 villery.rep

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27

28

29

30

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARTI VILLERY; MARGUERITE BRAUNSTEIN; ALEX FLORES, by and through his Guardian ad Litem, MARIA PEREZ; MARY HAYES; NEIL DWORZACK, by and through his Guardian ad Litem, DIANE DWORZACK; EDUARDO ACEVES; EUNICE VIQUEZ; BONNIE HAGY; DIANA MOLINO; KEITH CROSSWHITE, and JUDY MAGANA,

Plaintiffs,

v.

BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, AND ROBERT C. GATES, DIRECTOR OF THE LOS ANGELES COUNTY DEPARTMENT OF HEALTH SERVICES,

Defendants.

CASE NUMBER

CV 95-5714 JGD (SHx)

PROOF OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause.

On September 22, 1995, I served a true copy of:

DEFENDANTS' AMENDED REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE, RULE 12 (b)(6) AND (7), AND FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO RULE 12(b)(1)

by depositing copies in the United States Mail, in a sealed envelope with the postage fully prepaid and addressed to the following:

SEE ATTACHED LIST

Place of mailing: 500 W. Temple Street, Los Angeles, California 90012.
Executed on September 22, 1995, at Los Angeles, California.

** X I hereby certify that I am employed in the office of a member of
c 1 the Bar of this Court at whose direction the service was made.


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