

2017 WL 11680163

Only the Westlaw citation is currently available.
United States District Court, S.D. Florida.

C.V. BY AND THROUGH his next friends Michael
and Johnette WAHLQUIST, et al., Plaintiffs,

v.

Justin SENIOR, in his official capacity as
Secretary of the Agency for Health Care
Administration, et al., Defendants.
United States of America, Plaintiff,

v.

State of Florida, Defendant.

CASE NO. 12-60460-CIV-ZLOCH

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Signed 03/10/2017

Attorneys and Law Firms

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ORDER

WILLIAM J. ZLOCH, Senior United States District Judge

*1 THIS MATTER is before the Court upon the Report & Recommendation (DE 617), filed herein by United States Magistrate Judge Patrick M. Hunt, the State's Motion To Dismiss Count 5 As Moot (DE 573), and the State's Motion To Dismiss T.H.'s Claims As Moot (DE 607). Private Plaintiff T.H. (hereinafter, "T.H.") objects to said Report. See DE 621. The State Defendants¹ do not. The

Court has conducted a de novo review of the entire record herein and is otherwise fully advised in the premises.

The Court adopts the reasoning and conclusions set forth in the Magistrate Judge's Report (DE 617). For the benefit of the Parties, the Court provides two additional comments as follows. Relying on Hunter v. Chiles, 944 F. Supp. 914 (S.D. Fla. 1996), T.H. now argues that the State unlawfully denies private duty nursing services to adults based on their age. Whatever the merits of that assertion, neither T.H. nor any of the other Private Plaintiffs have alleged the type of age discrimination claim advanced in Hunter. As the Court has explained before, the Second Amended Complaint (DE 62) only challenges policies applicable to children. See DE 596. Hunter has no bearing on the issues in this case.

Next, the Magistrate Judge recommended that Count 5 be dismissed in its entirety because none of the remaining Private Plaintiffs reside in an institution. Objecting to this conclusion, T.H. argues that a challenge to the State's pre-admission screening process "does not necessarily have to be brought by institutionalized plaintiffs." DE 621, at 10. While that may be true, it is beside the point. The Second Amended Complaint (DE 62) makes clear that only Plaintiffs residing in an institution assert Count 5 against the State Defendants. None of the non-institutionalized Plaintiffs allege an existing or imminent injury in fact flowing from the State's pre-admission screening process—one of the requisite irreducible constitutional minimums of Article III standing. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. Plaintiff's Objection To Magistrate's Recommended Order (DE 621) be and the same is hereby **OVERRULED**;

2. The Report & Recommendation (DE 617) filed herein by United States Magistrate Judge Patrick M. Hunt be and the same is hereby approved, adopted, and ratified by the Court;

3. The State's Motion To Dismiss Count 5 As Moot (DE 573) be and the same is hereby **GRANTED**;

4. The State's Motion To Dismiss T.H.'s Claims As Moot (DE 607) be and the same is hereby **GRANTED**;

*2 5. The above-styled cause be and the same is hereby **DISMISSED** without prejudice as to Plaintiff T.H. in that the Court lacks subject matter jurisdiction over the same; and

6. Count 5, as well as as Paragraphs 309d, 309e, 317d, and 317e, of the Second Amended Complaint (DE 62) be and the same are hereby **DISMISSED** without prejudice in that the Court lacks subject matter jurisdiction over the same.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 10th day of March, 2017.

All Citations

Not Reported in Fed. Supp., 2017 WL 11680163

Footnotes

¹ Defendants Justin Senior, in his official capacity as Secretary of the Agency for Health Care Administration, Celeste Philip, M.D., in her official capacity as the Surgeon General of the State of Florida and Secretary of the Florida Department of Health, and Cassandra Pasley, in her official capacity as Director of the Florida Department of Health's Children's Medical Service, are referred to herein collectively as the "State Defendants."