IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

H.P. AND R.N., by their next friend, SUSAN PIERCE and DISABILITY RIGHTS CENTER, INC.

Plaintiffs

VS.

KURT KNICKREHM, in his official capacity as the Director of the Arkansas Department of Human Services; DR. JAMES C. GREEN, in his official capacity as Director of Developmental Disabilities Services; and KAY BARNES, RON CARMACK, DON A. DUNN, GROVER MILTON EVANS, WESLEY KLUCK, RANDY LANN, AND SUZANN McCOMMON, in their official capacities as members of the Board of Developmental Disabilities Services

Defendants

NO: 4:03CV812 SWW

ORDER

Plaintiffs, residents of state human development centers, by their next friend, Susan Pierce, and the Disability Rights Center, Inc.,[1] commenced this action pursuant to 42 U.S.C.

[1]Under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, States receive funding for programs directed to the Act's purpose of assuring that developmentally disabled persons and their families have access to services and support "that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life, through culturally competent programs . . . . " 42 U.S.C. § 15001(b). As a condition to funding, a state must have in effect a system to protect and advocate the rights of individuals with developmental disabilities. *See* 42 U.S.C. § 15043(a). Pursuant to this requirement, the Disabilities Rights Center ("DRC") provides advocacy for individuals with

§ 1983 claiming that Arkansas statutory provisions and administrative policies governing admission to and release from the state's human development centers violate due process and equal protection guarantees. Before the Court are (1) Separate Defendants Barnes, Carmack, Dunn, Evans, Kluck, Lann, and McCommon's motion to dismiss (docket entry #13), Plaintiffs' response (docket entry #25), and Separate Defendants' reply (docket entry #33); (2) Family and Friends of Care Facility Residents and Ellen Sue Gibson's motion to intervene (docket entry #29), Plaintiffs' response (docket entry #35), and the proposed intervenors' reply (docket entry #40); and (3) Family and Friends of Care Facility Residents and Ellen Sue Gibson's motion to redact names of individual plaintiffs (docket entry #29), Plaintiffs' response (docket entry #35), and Movants' reply (docket entry #35).

The Court has carefully considered each motion and supporting brief, as well as each response and reply. For the reasons stated below, the motion to dismiss will be granted in part and denied in part, the motion to intervene will be granted, and the motion to redact names will be denied.

I. Defendants' Motion to Dismiss

In reviewing a motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6), all facts alleged in the complaint are assumed to be true. The complaint must be reviewed in the light most favorable to the plaintiff and should not be dismissed unless it is clear beyond doubt that the plaintiff can prove no set of facts which would entitle him or her to relief.

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developmental disabilities in Arkansas. Under the Act, the DRC is directed to "pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals with in the State who are or who may be eligible for treatment, services or habilitation, or who are being considered for a change in . . . living arrangements . . . . " 42 U.S.C. § 15043(a)(2)(A)(i).

Hafley v. Lohman, 90 F.3d 264, 266 (8th Cir. 1996).

The Court may grant a motion to dismiss on the basis of a dispositive issue of law. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). However, a motion to dismiss is not a device for testing the truth of what is asserted or for determining whether the plaintiff has any evidence to back up his or her allegations. *ACLU Foundation v. Barr*, 952 F.2d 457, 467 (D.C. Cir. 1991). A motion to dismiss should be granted "as a practical matter . . . only in the unusual case in which a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." *Frey v. City of Herculaneum*, 44 F.3d 667, 671 (8th Cir. 1995) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)).

A. Background

Plaintiffs seek to have provisions of the Arkansas Mental Retardation Act governing admission to and discharge from human development centers, as well as admission and discharge policies of the Arkansas Division of Developmental Disabilities Services (DDS), declared unconstitutional. An overview of the pertinent statutory provisions and administrative policies follow.

The Arkansas Mental Retardation Act provides for the creation and maintenance of six human development centers for the care, custody, treatment, and training of mentally defective individuals. *See* Ark. Code Ann. § 20-48-403(a). An individual may be eligible for admission to a center if, due to developmental disability, the person is incapable of managing his or her affairs and requires special care. *See id.* § 20-48-404(1).

A parent or guardian of a mentally defective person may request that person be admitted to a center by submitting a petition to the Board of DDS ("Board"). *See id.* § 20-48-405. The

petition must include, among other information, a statement as to whether the parent or guardian desires voluntary admission or commitment. *See id.* Upon receipt of a petition, the Board conducts an investigation which includes an examination of the ostensibly mentally defective person by two physicians for the purpose of determining the mental status and condition of the individual. *See id.* § 20-48-404(2). The examining physicians must use standard mental and psychological tests and physical examinations to determine whether the individual is developmentally disabled and in need of special training. *See id.* § 20-48-404(2).

If the Board determines that statements in the petition for admission are true and the individual is incapable of managing his or her affairs and requires the special care provided at a center, the Board may permit the voluntary admission of the individual for such time as the Board deems necessary. "The admission shall be by action of the board without the necessity of any court procedure." *Id.* § 20-48-406(b).

Alternatively, the Board may determine that an individual should be admitted to a center by legal commitment only. *See id.* § 20-48-406(c). In such case, the Board must file a petition for commitment with the probate court of the county in which the individual resides. The probate court must hold a hearing to determine whether the individual should be committed to a center. An individual who enters a center by voluntary admission may be withdrawn from a center at any time pursuant to the application of the parent or guardian who has legal custody of the individual. *See id.* § 20-48-412. An individual committed by order of a probate court may not be discharged until, in the judgement of the board and center superintendent, his or her condition justifies discharge. *Id.*

Plaintiffs are both mildly mentally retarded. At the request of their guardians, they have

been admitted to state human development centers. Plaintiffs claim that Defendants violated their constitutional rights by institutionalizing them without providing constitutionally required procedural safeguards, including a judicial hearing. They also claim that their right to equal protection has been violated because Arkansas commitment procedures for mentally ill individuals differ from those that apply to the mentally retarded.

Plaintiffs sue each member of the Board,[2] Kurt Knickrehm, the Director of the Arkansas Department of Human Services, and James C. Green, the Director of DDS. Plaintiffs sue each Defendant in his or her official capacity only, seeking (1) a declaration that the complained-of admission procedures and policies[3] violate the Due Process and Equal Protection Clauses, (2) interim admission and release procedures that comport with minimal standards of due process and equal protection, and (3) an injunction requiring Defendants to hold judicial hearings for Plaintiffs within a reasonable period of time, and (4) attorney fees and costs.

B. Discussion

In support of their motion to dismiss, Defendants argue that (1) Plaintiffs lack standing, (2) pursuant to the *Rooker-Feldman* doctrine, the Court lacks jurisdiction to hear Plaintiffs' claims; (3) Plaintiffs fail to state viable equal protection claims; (4) Plaintiffs fail to state viable due process claims; and (5) as a matter of federalism and comity, this Court should abstain from

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[2]The Board member defendants include Kay Barnes, Ron Carmack, Don A. Dunn, Grover Evans, Wesley Kluck, Randy Lann, and Suzann McCommon.

[3]Control of the human development centers rests with the Board, which is authorized to make policy concerning the admission and discharge of development center residents. Plaintiffs attached to the complaint a copy of the Board's admission and discharge policies, which track the admission and discharge provisions set forth in Ark. Code Ann. § 20-48-404 through § 20-48-406.

accepting jurisdiction over Plaintiffs' claims. The Court will consider each argument separately.

Standing

A plaintiff invoking federal jurisdiction must establish "standing" to pursue a particular claim. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). As part of the standing requirement, a plaintiff must show, among other things not at issue here, that he or she has suffered "an injury in fact," which the Supreme Court has defined as an invasion of a concrete, legally cognizable interest. *Id.* at 560-61, 573 n. 8, 112 S.Ct. 2130, 2143 n. 8.

Defendants contend that Plaintiffs fail to allege an injury in fact because they do not assert that they "should not have been admitted to the human development center in the first place or that they wish to be discharged at the present time."[4] Without question, Plaintiffs have a concrete, substantial liberty interest in not being confined unnecessarily. *Parham v. J.R.*, 442 U.S. 584, 600, 99 S. Ct. 2493, 2503 (1979). Furthermore, Plaintiffs' right to due process is absolute and does not change according to whether their admission to state institutions was correct, justified, or necessary. *Carey v. Piphus*, 435 U.S. 247, 266, 98 S.Ct. 1042, 1054 (1978) (citations omitted). The Court concludes that Plaintiffs have alleged the invasion of a concrete, legally cognizable interest sufficient to establish they have suffered an injury in fact.

***Rooker-Feldman* Doctrine**

The *Rooker-Feldman* doctrine provides generally that (1) original federal jurisdiction over state court judgments is reserved to the United States Supreme Court and (2) federal district courts have no jurisdiction when the constitutional claims raised in a case are "inextricably

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[4]Docket entry #14, at 6. Plaintiffs do, in fact, allege that they have repeatedly requested to be released from state human development centers. *See* docket entry #23, ¶¶ 32, 41.

intertwined" with a state-court decision. *See Charchenko v. City of Stillwater*, 47 F.3d 981, 983 (8th Cir. 1995). A claim is inextricably intertwined with a state court decision if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. *Lemonds v. St. Louis County*, 222 F.3d 488, 493 (8th Cir. 2000) (citing *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25, 107 S. Ct. 1519, 1533 (1987) (Marshall, J., concurring). In other words, *Rooker-Feldman* precludes a federal action if the relief requested would effectively reverse a state court decision or void its ruling.

Defendants characterize this litigation as an attempt to deny Plaintiffs' guardians the right to make placement decisions for their wards. They argue that *Rooker-Feldman* bars Plaintiffs' claims because Plaintiffs are essentially challenging a state court's guardianship decision. If Plaintiffs prevail with their claims--that the admission and release procedures for the human development centers do not comport with the guarantees of due process and equal protection–their success would neither reverse nor void the state court decisions appointing guardians for Plaintiffs. The Court concludes that *Rooker-Feldman* does not preclude Plaintiffs' claims.

Equal Protection

In support of their equal protection claims, Plaintiffs allege as follows:

> Plaintiffs . . . are being denied equal protection of the law as guaranteed by the Fourteenth Amendment insofar as admission and discharge procedures for the state's human development centers set forth in Ark. Code Ann. § 20-48-401 *et seq*. . . . and DDS . . . policy . . . do not provide the same or similar procedures to them as are provided to individuals with mental illness who are admitted to a treatment program or facility pursuant to Ark. Code Ann. § 20-27-201 . . . .

Docket entry #23, ¶49.

Defendants assert that under the Supreme Court's decision in *Heller v. Doe*, 509 U.S. 312

(1993), the rational-basis standard of review applies to Plaintiffs' equal protection claims, and, pursuant to that standard, Plaintiffs' claims must fail. Under the rational-basis standard of review, if a state law classification is rationally related to a legitimate government interest, it will be upheld against an equal protection challenge. *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440, 105 S.Ct. 3249, 3254 (1985). However, legislation that uses a suspect classification[5] or impinges a fundamental constitutional right merits stricter scrutiny and will survive only if it is narrowly tailored to serve a compelling governmental interest. *Id.*

In *Heller v. Doe*, involuntarily committed mentally retarded individuals challenged the constitutionality of Kentucky's commitment procedures. Those procedures provided that in proceedings to commit individuals on the basis of mental retardation, the standard of proof was clear and convincing evidence, but to commit on the basis of mental illness, the standard was beyond a reasonable doubt. The plaintiffs charged that the disparity in standards had no rational basis and, therefore, violated the Equal Protection Clause.

At the district and appellate Court levels, the parties in *Heller* proceeded on the theory that rational-basis review governed the plaintiffs' equal protection claims. But before the United States Supreme Court, the plaintiffs argued, for the first time, that heightened scrutiny applied. Without deciding the correct legal standard, the Supreme Court refused to inject a new legal standard so late in the litigation and applied rational-basis review. Under that standard, the Court found a rational basis for the challenged commitment procedures.

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[5]In *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 105 S.Ct. 3249 (1985), the Court held that persons suffering from mental retardation do not constitute a suspect class.

Here, Defendants contend that pursuant to *Heller*, rational-basis review governs and requires dismissal of Plaintiffs' equal protection claims.[6] As previously explained, the *Heller* Court made no decision regarding the proper standard of review for equal protection claims involving the commitment of mentally retarded individuals. Further, for the reasons that follow, this Court finds it unnecessary to determine the standard of review governing such claims.

Dissimilar treatment of dissimilarly situated persons does not violate the Equal Protection Clause. *Klinger v. Department of Corrections*, 31 F.3d 727, 731 (8th Cir. 1994). For this reason, the initial inquiry in analyzing an equal protection claim is to determine whether the plaintiff is similarly situated to those who allegedly receive favorable treatment. *Id.* In this case, Plaintiffs do not allege that they are similarly situated to mentally ill individuals who are committed to state institutions.[7] Accordingly, Plaintiffs fail to allege a violation of the Equal Protection Clause.

Due Process

Defendants argue that Plaintiffs fail to state viable due process claims because (1) they fail to allege state action and (2) they failed to exhaust their administrative remedies. For the reasons that follow, these arguments must fail.

State Action Section 1983 provides a remedy when a person acting under color of state

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[6]Plaintiffs argue that the challenged admission and discharge procedures impact fundamental liberty interests and, therefore, are subject to heightened judicial scrutiny.

[7]In *Heller v. Doe*, 113 S. Ct. 2637 (1993), the Supreme Court noted several pertinent differences between mentally retarded and mentally ill individuals: (1) mental retardation, a developmental disability that becomes apparent before adulthood, is easier to diagnose than mental illness; (2) mental retardation is a permanent, relatively static, condition, but manifestations of mental illness may be sudden and past behavior may not be an adequate predictor of future action; and (3) treatment for the mentally ill is more invasive then "habilitation" for the mentally retarded. *See id.* at 2642-43.

law deprives an individual of a right secured by the Constitution or laws of the United States. *See* 42 U.S.C. § 1983. Here, Plaintiffs allege they were confined in a state institution, without a hearing, against their wishes, pursuant to a state law they claim is unconstitutional. Plaintiffs have alleged state action. *Parham v. J.R.*, 442 U.S. 548, 600, 99 S. Ct. 2493, 2503 (1979)("It is not disputed that . . . the state's involvement in the commitment decision constitutes state action under the Fourteenth Amendment.").

Exhaustion of State Remedies A procedural due process claim is not complete, and thus not ripe for adjudication in federal court, "unless and until the State fails to provide due process." *Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 983 (1990). Defendants propose that Plaintiffs' procedural due process claims are not ripe for review because Plaintiffs have failed to exhaust their state remedies by petitioning for termination of their guardianships. Because Plaintiffs do not wish to have their guardians removed, termination proceedings would not provide an adequate remedy.

Plaintiffs claim they have been deprived of their liberty pursuant to established state commitment procedures, which they contend violate the Due Process Clause. They allege that they are confined in state institutions with no chance of receiving a hearing regarding their confinement. Clearly, the complained-of state action is complete and Plaintiffs' procedural due process claims are ripe for review. Additionally, pursuant to *Zinermon v. Burch*, 494 U.S. 113, 132, 110 S.Ct. 975, 986-87 (1990), the constitutional adequacy of the challenged commitment procedures may be challenged under § 1983 regardless of whether a state postdeprivation remedy is also available.

Abstention

Defendants maintain that the Court should abstain from entertaining Plaintiffs' claims on the basis of the *Pullman* and *Younger* abstention doctrines. In *Younger v. Harris*, 401 U.S. 37, 43-45 (1971), the Supreme Court held that federal courts should abstain from interfering in ongoing state criminal proceedings. Since then, the *Younger* doctrine has been extended to pending state civil cases, *see Huffman v. Pursue, Ltd.* 420 U.S. 592, 603-07, 95 S.Ct. 1200, (1975), as well as pending state administrative proceedings which are judicial in nature. *See Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 627, 106 S.Ct. 2718 (1986).

"There are essentially three issues that must be addressed in determining whether to invoke the *Younger* abstention doctrine: (1) whether the action complained of constitutes an ongoing state judicial proceeding; (2) whether the proceedings implicate important state interests; and (3) whether there is an adequate opportunity in the state proceedings to raise constitutional challenges." *Night Clubs, Inc. v. City of Fort Smith,* 163 F.3d 475, 479 (8th Cir. 1998). If each question is answered affirmatively, a federal court should abstain unless it detects "bad faith, harassment, or some extraordinary circumstance that would make abstention inappropriate." *Middlesex County Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423. 435 (1982).*

Younger abstention is inapplicable in this case because the action complained of does not constitute "an ongoing state judicial proceeding." Defendants assert that because a state court appointed guardians for Plaintiffs, there are on-going judicial proceedings. However, nothing in the record indicates that Plaintiffs' guardianship proceedings are ongoing. More importantly, even if the matter of Plaintiffs' guardianships were properly characterized as ongoing state

judicial proceedings, Plaintiffs would have no opportunity to pursue their present claims in a guardianship proceeding.

The *Pullman* abstention doctrine, named for the Supreme Court's decision in *Railroad Commission of Tex. v. Pullman Co.*. 312 U.S. 496, 61 S. Ct. 643 (1941), permits federal court abstention on unsettled questions of state law that impact the resolution of federal constitutional claims. Under *Pullman* abstention, federal courts may defer to state court interpretation of state law only where an issue of state law is uncertain and fairly subject to an interpretation that would render unnecessary or substantially modify the federal constitutional question.[8]

In this case, abstention under *Pullman* is unwarranted because the challenged state laws are not unclear. The challenged provisions clearly provide that the Board may permit the voluntary admission of an individual to a human development center, at the request of a guardian, "without the necessity of any court procedure." Ark. Code Ann. § 20-48-406(b). Plaintiffs contend that the ability to commit mentally retarded wards without court procedure violates the Due Process Clause, and the Court can conceive of no interpretation of the challenged statutory provisions that would render unnecessary the resolution of Plaintiffs' due process claim.

Federal courts have an unflagging obligation to exercise jurisdiction in proper cases.

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[8]The Eighth Circuit has recognized five factors to consider when determining whether to abstain under the *Pullman* doctrine: (1) the effect abstention would have on the rights to be protected by considering the nature of both the right and necessary remedy; (2) available state remedies; (3) whether the challenged state law is unclear; (4) whether the challenged state law is fairly susceptible to an interpretation that would avoid any federal constitutional question; and (5) whether abstention will avoid unnecessary federal interference in state operations. *See George v. Parratt*, 602 F.2d 818, 820-22 (8th Cir.1979).

Only under narrow circumstances, in order to preserve traditional principles of equity, comity, and federalism, is abstention appropriate. The Court concludes that abstention is unwarranted in this case.

II. Motion to Intervene

The Families and Friends of Care Facility Residents, a non-profit corporation whose members include guardians and parents of individuals who reside or have resided in the state's human development centers, and Ellen Sue Gibson, the mother and guardian of Separate Plaintiff H.P. (hereinafter collectively referred to as "Movants"), filed a motion to intervene in this case (see docket entry #29). Plaintiffs filed a response objecting to intervention (docket entry #35), and Defendants filed responses stating they have no objection to intervention (docket entries #32, #34). For the reasons that follow, the motion to intervene will be granted.

Federal Rule of Civil Procedure 24(a)(2) provides that a party seeking mandatory intervention must make a timely[9] application establishing that (1) the proposed intervenor has a recognized interest in the subject matter of the litigation; (2) the interest might be impaired by the disposition of the case; and (3) the interest will not be adequately protected by the existing parties. A proposed intervenor must satisfy all three conditions.

In support of their motion, Movants state they have a vital interest in the care and placement of their children and wards. They reason that this interest might be impaired because

[9] Movants filed their motion to intervene early in the proceedings, less than one month after Plaintiffs filed their initial complaint. Plaintiffs do not dispute that Movants' motion for intervention is timely, and the Court finds that such is the case.

the additional commitment procedures sought by Plaintiffs[10] would make it more difficult and costly for Movants to obtain necessary services for their children and wards.

Without question, guardians have a legal obligation to further the interests of their wards, and parents have a substantial interest in their children's welfare. *Heller v. Doe*, 509 U.S. 312, 331, 113 S.Ct. 2637, 2648 (1993). However, Plaintiffs argue that the subject matter of this lawsuit–Plaintiffs' right to due process–is independent and separate from any interest Movants' may possess. The Court disagrees. As explained by the Supreme Court in *Parham v. J.R.*, 99 S. Ct. 2493 (1979), the interest in not being committed and a parent's or guardian's interest in and obligation for the welfare of their child or ward are inextricably linked, and the private interest at stake is a combination of these concerns. *Id.* at 2502. The Court agrees that Movants have a vital interest in the subject matter of this litigation, which might be impaired by disposition of the case.

Next, the Court must consider whether Movants' interests would be adequately protected by the existing parties. "The 'inadequate representation' condition is satisfied if the proposed intervenor shows that the representation of its interests by the current party or parties . . . 'may be' inadequate. The burden for making this showing 'should be treated as minimal.' Doubts regarding the propriety of permitting intervention should be resolved in favor of allowing it,

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[10]The additional procedures include a pre-deprivation judicial hearing, the right to be present at the hearing, the right to effective assistance of appointed counsel, the right to present evidence, the right to cross-examine witnesses, the right to view all petitions and reports, the right to subpoena witnesses, the right to periodic judicial review, the right to be placed in the least restrictive environment, the right to adequate and timely notice of rights, and a requirement that the state prove by clear and convincing evidence that persons sought to be committed pose a substantial risk of harm to themselves or others.

because this serves the judicial system's interest in resolving all related controversies in a single action." *Sierra Club v. Robertson*, 960 F.2d 83, 85-86 (8th Cir. 1992).

Plaintiffs argue that the State will adequately represent the Movants' interests. It is true that when a party to a lawsuit is an arm or agency of the government, the governmental entity is presumed to represent the interests of its citizens as *parens patriae*, or "parent of the country." *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir.1996). However, a proposed intervenor may rebut the presumption of adequate representation by showing that he or she stands to gain or lose from the litigation in a way different from the public at large. *Chiglo v. City of Preston*, 104 F.3d 185, 187-88 (8th Cir. 1997)("[T]he government only represents the citizen to the extent his interests coincide with the public interest."). It is clear that in this case, as parents and guardians of human development center residents, Movants have a much greater stake in the outcome of this case than the public at large. In sum, the Court finds that Movants' satisfy the conditions for intervention under Fed. R. Civ. P. 24(a)(2).

III. Motion to Redact Names

Pleadings and other filings submitted by Disability Rights Center attorneys, on behalf of Plaintiffs, reveal Plaintiffs' full names. Intervenors, the FFCFR and Ellen Sue Gibson, state that they do not consent to the use of Plaintiffs' names in this litigation. They contend that by using Plaintiffs' full names in documents filed with the Court, the Disability Rights Center has violated Plaintiffs' privacy rights.

Federal Rule of Civil Procedure 10(a) requires that every pleading contain a separate caption containing, among other things, the title of the action including the "names of all the parties." Additionally, Rule 17(a) states: "Every action shall be prosecuted in the name of the

real party in interest." There is precedent for departing from these rules and permitting a plaintiff to proceed under a pseudonym. *See Doe v. Stegall*, 653 F.2d 180 (5th Cir. 1981). However, given the strong First Amendment interest in public proceedings, before a party may proceed anonymously, it must be established that his or her interest in privacy is outweighted by the public's right to know. *Luckett v. Beaudet*, 21 F. Supp. 2d 1029 (D. Minn. 1998).

In support of their motion, Intervenors state generally that publication of Plaintiffs' names violates their right to privacy. However, Intervenors provide no information indicating that Plaintiffs have a legitimate expectation of privacy concerning information that would be revealed in this proceeding. Accordingly, the motion to redact will be denied.

IV. Conclusion

IT IS THEREFORE ORDERED that Separate Defendants' motion to dismiss (docket entry #13) is GRANTED IN PART AND DENIED IN PART. Plaintiffs' equal protection claims are dismissed without prejudice for failure to state a claim. Plaintiffs may proceed with their procedural due process claims.

IT IS FURTHER ORDERED that Family and Friends of Care Facility Residents and Ellen Sue Gibson's motion to intervene (docket entry #29-1) is hereby GRANTED.

IT IS FURTHER ORDERED that Family and Friends of Care Facility Residents and Ellen Sue Gibson's motion to redact names (docket entry #29-2) is DENIED.

IT IS FURTHER ORDERED that Attorney Griffin J. Stockley's motion to withdraw as counsel of record for Plaintiffs (docket entry #43)[11] is GRANTED. The Clerk of the Court is

[11]Attorney Stockley, one of Plaintiffs' attorneys of record, states he has accepted other employment and will be leaving the Disability Rights Center.

directed to remove Mr. Stockley as an attorney of record in this case.

IT IS SO ORDERED THIS 12th DAY OF FEBRUARY, 2004.

CHIEF JUDGE
UNITED STATES DISTRICT COURT

THIS DOCUMENT ENTERED ON
DOCKET SHEET IN COMPLIANCE
WITH RULE 58 AND/OR 79(a) FRCP
ON 2-13-04 BY

F I L E C O P Y

vjt

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

February 13, 2004

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:03-cv-00812.

True and correct copies of the attached were mailed by the clerk to the following:

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Date: 2/13/04

BY: V. Turner