

Oklahoma SB811

An Unconstitutional Attempt to Delegate Counties' Duty to Provide Medical Care to Inmates

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On December 18, 2007, the Oklahoma Supreme Court decided the case of HCA Health Services of Oklahoma, Inc. v. Whetsel,² in which the Court unanimously held that counties in Oklahoma are “primarily liable for the cost of treating the prisoners’ pre-existing conditions.” The case arose from a dispute between the OU Medical Center and the Oklahoma County Sheriff’s office regarding the cost of care provided by the hospital to prisoners of the Oklahoma County Jail. The county had refused to pay numerous claims, alleging that the care related to injuries or illnesses that pre-existed the prisoners’ arrests. The Court observed that the Constitution requires all government agencies to “provide” care to their inmates. The Court concisely framed and answered the issue in the case as follows:

“The precise question of first impression to be answered here is whether the treatment for which County liability is borne includes pre-

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² 2007 OK 101, 173 P.3d 1203 (Okla. 2007).

arrest health conditions. We resolve the question by answering it in the affirmative.”³

The Court concluded by ruling that Counties are “primarily liable for the cost of treating the prisoners’ pre-existing conditions.”⁴

Within days of the Court’s ruling county sheriffs and commissioners across the state began a full court press on legislators to change the law. The Oklahoma Senate dusted off a bill that had been carried over from last term and with breakneck speed and little debate passed SB811. SB811 is an unconstitutional attempt to shirk the counties’ duty to provide medical care to inmates. It will result in more litigation and will ultimately be more costly than would a pragmatic and reasoned solution to this societal problem.

Clearly, providing medical care to inmates is not a politically popular cause. The opponents of providing the care can always point to the metaphorical poster-child of an inmate who has serious preexisting conditions that require extensive medical treatment unrelated to anything the government did or did not do to the prisoner during his or her incarceration. The legislative and the executive branch, both subject to the vagrancies of the electoral process, sometimes find it difficult to make hard and unpopular decisions. The courts of this country are often called upon to

³ Id. at ¶7.

⁴ Id. at ¶10.

protect those who do not have a powerful political voice. If SB811 becomes law, the courts will undoubtedly be called upon to step into that vacuum and the bill will be declared an unconstitutional effort by the state to impose its obligation on a private party.

The Counties' Constitutional Duty to Provide Medical Care to Inmates.

The prohibition of cruel and unusual punishment has been a part of western civilization since at least 900 A.D.⁵ It was incorporated in the Magna Carta, the English Declaration of Rights of 1689, and ultimately our Bill of Rights. The recognition that, as a society, we must restrict the hand of government in dealing with people we choose to imprison is part of our very DNA. However, before the dramatic increase in civil rights litigation in the wake of the United States Supreme Court's 1961 decision in *Monroe v Pape*,⁶ a prisoner was considered a "slave of the state"⁷ and the courts ignored claims regarding the conditions of his or her confinement. In 1976, the United States Supreme Court decided the case of *Estelle v. Gamble*.⁸ In *Estelle*, the Court held that "deliberate indifference to serious medical needs

⁵ See Anthony F. Granucci, "Nor Cruel and Unusual Punishments Inflicted:" The Original Meaning, 57 Cal.L.Rev. 839 (1969).

⁶ 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).

⁷*Ruffin v. Commonwealth*, 21Gratt.790, 1871 WL 4928 (Va. 1871).

⁸ 429 U.S. 97, 97 S.Ct. 285, 50 B.Ed.2d 251 (1976).

of prisoners constitutes the ‘unnecessary and wanton infliction of pain’” that can give rise to a claim of cruel and unusual punishment under the Eighth Amendment. The Estelle ruling has been interpreted as clearly establishing a governmental duty to provide medical care to prisoners for a serious medical need and creating a method for prisoners to sue their jailers for violations of the Eighth Amendment.

In *City of Revere v. Massachusetts General Hospital*,⁹ the United States Supreme Court again held that the Constitution requires that medical care be provided to inmates. While the Court in *Revere* left unresolved the issue of how the cost of such care should be allocated and instead left it to be decided as “a matter of state law,” the Court expressly held:

“If, of course, the governmental entity can obtain the medical care needed for a detainee only by paying for it, THEN IT MUST PAY.”

SB811 Attempts to Abrogate this Duty.

SB811 attempts to reduce the Constitutional requirement to actually provide care to something much less. The bill states that the inmate “shall be provided with the opportunity to receive necessary medical care.” The Constitutional duty is to actually PROVIDE care, not the “opportunity to receive necessary medical care.” SB811 attempts to allow the counties to

⁹ 463 U.S. 239, 103 S.Ct. 2979, 47 L.Ed.2d 605 (1983).

fulfill their Constitutional obligations to “provide” medical care by simply delivering the patients to the door of a hospital. This exact analysis of the Constitutional duty imposed by *Revere* was rejected by the Supreme Court of Arkansas in *Union County v. Warner Brown Hospital*.¹⁰ In rejecting this hyper-narrow analysis, the Arkansas Supreme Court stated as follows:

The county presumes its obligation under *City of Revere v. Massachusetts General Hospital*, *supra*, extended no farther than to deliver Wilson to a facility where medical treatment was available. But the trial court, correctly we believe, construed *Revere* as imposing an obligation on the governmental entity to supply the necessary treatment and if it can obtain such treatment only by paying for it, then it must do so.

Id. at 463.

In *Chattanooga–Hamilton County Hospital Authority v. Bradley County*, 66 S.W.3d 888 (Tenn. App. 2001), the Court held that the *Revere* obligation includes the requirement that a state or local government agency must provide the method for payment of those services in order to discharge its duty to provide medical care.

Revere is clear in this regard. While stating that the issue of the allocation of the costs associated with the medical care of the prisoners is a matter of state law, the Court ultimately states: “If, of course, the

¹⁰ 297 Ark. 460, 762 S.W.2d 798 (1989).

governmental entity can obtain the medical care needed for a detainee only by paying for it, then it must pay.” *Revere*, 463 U.S. at 245.

A county cannot unilaterally delegate to hospitals the county's Constitutional obligation to provide medical care to inmates. Hospitals have no obligation to step in and perform the a county's constitutional duties. Without an agreement to be paid for its services, a hospital's only obligation under the law is to provide appropriate screening and if necessary stabilizing care in its emergency rooms.¹¹ A hospital can, if it chooses, essentially close its doors to any non-emergency care for inmates of jails. The counties will then be forced to find a way to "provide" the Constitutionally required medical care to their inmates. The counties' Constitutional obligations are to actually provide the care, not merely to provide transportation. Such callous disregard to the needs of prisoners has been rejected by the United States Supreme Court since at least 1976 when the Court held that the Constitution prohibited "deliberate indifference to serious medical needs of prisoners."¹²

Financial Considerations Cannot Excuse Deliberate Indifference.

Recognizing that the costs of healthcare are significant and growing, state and local governments have attempted to either limit the nature of care

¹¹Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd.

¹² Estelle v Gamble, supra.

provided to prisoners or take other steps to greatly control the costs of providing prisoner healthcare. Perhaps SB811 is believed to be a legitimate effort to manage the costs associated with prisoner healthcare. However, as discussed above, the county's duty to provide healthcare is broader than merely providing transportation. The county has a Constitutional obligation to see that healthcare is in fact provided and, as the Supreme Court stated in *Revere*, if the only way to do that is to pay for it, "Then it must pay." Courts of this country have firmly rejected the concept that a lack of funds can justify Constitutional inadequate treatment of inmates.¹³ Two cases are particularly dramatic in this regard. The Second Circuit in a case call *Archer v. Dutcher*¹⁴ held that a pregnant female prisoner who alleged that her Constitutional rights had been violated by inadequate prison medical treatment that resulted in the loss of her baby had stated a viable claim for violation of her civil rights. One can certainly presume that the female prisoner's pregnancy preexisted her incarceration. Under SB811, the

¹³ *Howell v. Burden*, 12 F.3d 190 (11th Cir. 1994) (refusing to excuse prison for failing administer costly medication to asthmatic because of insufficient funds); *Durmer v. O'Carroll*, 991 F.2d 64 (3rd Cir. 1993) (rejecting argument that budgetary restraints could excuse a failure to adequately treat inmates); *Morales Felciano v. Rossello Gonzalez*, 13 F.Supp. 2d 151 (D. Pr. 1998) (budgetary limitations or inadequate resources can never be a valid justification for constitutional violations).

¹⁴ 733 F.2d 14 (2nd Cir. 1984).

counties would allege that they have no obligation to pay for any of that medical care and can satisfy their Constitutional obligations by merely providing transportation. In *Ancata v. Prison Health Services, Inc.*, 769 F.2d 700 (11th Cir. 1985), the court held that placing financial considerations ahead of the medical needs of the prisoner can equal “deliberate indifference” and thus give rise to a claim for violation of civil rights in violation of the Eighth Amendment.

Therefore, the counties’ complaints they have inadequate funds to provide and pay for medical care arising from preexisting conditions is no justification whatsoever for their failure to fulfill their Constitutional obligations.

Requiring Hospitals to Fulfill the County’s Duties is an Unconstitutional Taking of Property Without Just Compensation.

Both the Oklahoma and the United States Constitutions forbid the state from taking property from private citizens without just compensation.¹⁵ As discussed above, the counties have a Constitutional obligation to provide medical care to both prisoners and pre-trial detainees. If the counties cannot fulfill this obligation by attempting to make the hospitals to fulfill that duty on their behalf without being paid for it.

¹⁵ U.S. CONST. amend. V; OKLA. CONST. art. II, § 23.

Compelling a private entity to perform a government function without compensation has been held in other context to constitute an unconstitutional taking of property without just compensation.¹⁶

Conclusion

SB811 attempts to allow the counties of this state to serve as mere taxi cabs for their ill or injured prisoners. If the counties act as mere providers of transportation, that will constitute “deliberate indifference” and the counties will find themselves sued for violating the civil rights of their prisoners. The liability of the Counties for violating the civil rights of their prisoners will greatly exceed the costs of a practical and reasoned solution to the societal problem of providing medical care to those persons who society chooses to imprison. As one court has recently stated, “[i]ncarceration prevents a person from seeking medical treatment of his own choosing, so prisons must provide inmates with a minimum degree of medical care for serious medical needs.”¹⁷ The Constitution requires that prison officials do not ignore an inmate's serious medical needs. Serving as a mere delivery service does not fulfill the counties’ Constitutional obligation to provide necessary medical care to inmates or pre-trial detainees.

¹⁶Bias v. State, 1977 OK 122, 568 P.2d 1269; Ga. R.R. and Banking Co v. Smith, 128 U.S. 174 (1888); Budd v. New York, 143 U.S. 517 (1892).

¹⁷ Martin v. Debruyne, 880 F.Supp. 610 (N.D.Ind.,1995).

