

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID PICKUP, CHRISTOPHER H.
ROSIK, PH.D., JOSEPH NICOLSI, PH.D.,
ROBERT VAZZO, NATIONAL ASSOCIATION
FOR RESEARCH AND THERAPY OF
HOMOSEXUALITY, AMERICAN
ASSOCIATION OF CHRISTIAN COUNSELORS,
JOHN DOE 1, by and through JACK AND JANE
DOE 1, JACK DOE 1, individually, and JANE
DOE 1, individually, JOHN DOE 2, by and
through JACK AND JANE DOE 2, JACK
DOE 2, individually, and JANE DOE 2,
individually

Plaintiffs,

No. CIV S-12-2497 KJM-EFB

vs.

EDMUND G. BROWN, Jr., Governor of the
State of California, *in his official capacity*;
ANNA M. CABALLERO, Secretary of the State
and Consumer Services Agency of the State of
California, *in her official capacity*, KIM
MADSEN, Executive Officer of the California
Board of Behavioral Sciences, *in her official
capacity*; MICHAEL ERICKSON, PH.D.,
President of the California Board of Psychology,
in his official capacity; SHARON LEVINE,
President of the Medical Board of California, *in
her official capacity*.

Defendants.

ORDER

1 Plaintiffs have moved for the court to appoint Jack and Jane Does 1 and 2 as
2 guardians ad litem for their minor children John Does 1 and 2. (ECF 40.) The State defendants
3 have filed a response (ECF 59), and plaintiffs a reply (ECF 68). Plaintiffs also have filed a
4 motion to proceed using a pseudonym and for a protective order, which is unopposed. (ECF 5,
5 49.) For the reasons discussed below, the court GRANTS plaintiffs' requests.

6 I. Guardians Ad Litem

7 Federal Rule of Civil Procedure 17(c)(2) provides:

8 A minor or an incompetent person who does not have a duly
9 appointed representative may sue by a next friend or by a guardian
10 ad litem. The court must appoint a guardian ad litem – or issue
another appropriate order – to protect a minor or incompetent
person who is unrepresented in an action.

11 When the court determines that the interests of a minor or incompetent person are adequately
12 protected, an appointment under Rule 17(c)(2) is not necessarily required. *United States v. 30.64*
13 *Acres of Land, More or Less, Situated in Klickitat County, State of Wash.*, 795 F.2d 796, 805
14 (9th Cir. 1986); *M.S. v. Wermers*, 557 F.2d 170, 174 (8th Cir. 1977). For example, no guardian
15 ad litem was necessary in a case where a minor plaintiff “assert[ed] her own statutory and
16 constitutional rights independent of her parents, . . . [did] not seek monetary relief but raise[d]
17 statutory and constitutional claims aimed at declaratory and injunctive relief, . . . [and was]
18 represented by able and experienced counsel.” *T.H. v. Jones*, 425 F. Supp. 873, 877 (D. Utah
19 1975). *See also Jacobs v. Board of Sch. Com’rs*, 490 F.2d 601, 604 (7th Cir. 1973), *vacated on*
20 *other grounds by Board of Sch. Com’rs of City of Indianapolis v. Jacobs*, 420 U.S. 128 (1975)
21 (determining that district court did not abuse its discretion by refusing to appoint guardian ad
22 litem after considering that suit was based on constitutional issues and did not demand
23 significant monetary recovery).

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1 At the same time, with reference to Rule 17, this court's Local Rules provide:

2 Upon commencement of an action or upon initial appearance in
3 defense of an action by or on behalf of a minor or incompetent
4 person, the attorney representing the minor or incompetent person
5 shall present (1) appropriate evidence of the appointment of a
representative for the minor or incompetent person under state law
or (2) a motion for the appointment of a guardian ad litem by the
Court. See Fed. R. Civ. P. 17(c).

6 L.R. 202(a).

7 As plaintiffs have expressly requested the appointment of guardians ad litem for
8 John Does 1 and 2, the court considers the plaintiffs' request without considering whether the
9 interests of John Does 1 and 2 are otherwise protected. *See M.S.*, 557 F.2d at 174 (no authority
10 for proposition that district court's appointment of a guardian ad litem was determined to be an
11 abuse of discretion).

12 The appropriate choice for a child's guardian ad litem is typically his or her
13 parent. *See Burke v. Smith*, 252 F.3d 1260, 1264 (11th Cir. 2001); *Gonzalez v. Reno*, 86 F. Supp.
14 2d 1167, 1185 (S.D. Fla. 2000), *aff'd sub nom. Gonzalez v. Reno*, 212 F.3d 1338 (11th Cir.
15 2000). However, courts should not appoint parents as guardians ad litem when there is a conflict
16 between the interests of the minor children and those of the parents. *Compare M.S.*, 557 F.2d at
17 175 (parents were inappropriate guardians ad litem as minor plaintiff filed suit challenging law
18 requiring parental consent for access to contraceptives) *with Phelan v. Brentwood Union Sch.*
19 *Dist.*, No. C 12-00465 LB, 2012 WL 909294, at *2 (N.D. Cal. 2012) (no apparent conflict of
20 interest based on father and son's Fourth and Fourteenth amendment claims against son's school
21 and teacher from injuries son suffered at school).

22 Defendants have not asserted it is unnecessary for the court to appoint guardians
23 ad litem for John Does 1 and 2, but have pointed out the court's duty to consider whether a
24 conflict may exist between the children's interests and those of their parents. For example,
25 defendants say, John Does 1 and 2 may not understand the risks of sexual orientation change
26 efforts ("SOCE"), may be submitting themselves to therapy to avoid displeasing their families,

1 and may not be aware that other therapy options exist. (Defs.' Resp. to Pls.' Mot. to Appoint
2 Parents as Guardians Ad Litem, ECF 59.) On the record before it, the court does not find a
3 conflict between the interests of John Does 1 and 2 on the one hand, and those of their parents
4 Jack and Jane Does 1 and 2 on the other hand, such that Jack and Jane Does 1 and 2 are
5 unsuitable guardians ad litem. Plaintiffs' complaint alleges that the challenged statute, SB 1172,
6 interferes with Jack and Jane Does 1 and 2's constitutional rights by preventing them from
7 seeking SOCE for their children and burdens John Does 1 and 2's constitutional rights by
8 preventing them from receiving SOCE. (ECF 1.) John Doe 1 has provided the court with an
9 affidavit explaining his desire to continue SOCE. (ECF 28-9.) His parents have also provided
10 affidavits. (ECF 28-5, 28-7.) Although John Doe 2 has not provided his own affidavit, Jack and
11 Jane Doe 2 have provided affidavits indicating that John Doe 2 has expressed interest in SOCE
12 and wishes to continue with the treatment. (ECF 28-6, 28-8.) The absence of an affidavit from
13 John Doe 2 does not by itself raise a doubt regarding the allegations made in plaintiffs'
14 complaint, subject to Federal Rule of Civil Procedure 11, that John Doe 2 wishes to challenge
15 SB 1172 on the same grounds as John Doe 1. On the record before it, the court finds no conflict
16 of interest that prevents Jack and Jane Does 1 and 2 from being appointed as guardians ad litem
17 for their children.

18 II. Protective Order

19 Given defendants' nonopposition and the privacy interests of the minor plaintiffs
20 and their parents, the court grants the motion for a protective order as set forth below.

21 Accordingly, IT IS HEREBY ORDERED:

- 22 1. The court GRANTS plaintiffs' request (ECF 40) to appoint Jack and Jane
23 Does 1 and 2 as guardians ad litem for John Does 1 and 2, respectively.

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1 2. The court also GRANTS plaintiffs' unopposed motion (ECF 5) to proceed
2 using a pseudonym and for a protective order, as follows:

3 a. Plaintiffs shall be permitted to proceed in this action using the
4 pseudonyms John Doe 1, Jack Doe 1, Jane Doe 1, John Doe 2, Jack Doe 2,
5 and Jane Doe 2. The parties shall use the pseudonyms when referring to
6 plaintiffs in all pleadings, papers, hearings in open court, and other
7 statements and documents that are part of the public record.

8 b. If the plaintiffs' identities, addresses, or other identifying information
9 are disclosed in any deposition, responses to interrogatories, or other
10 discovery documents, then the party providing the information shall
11 identify it as confidential. Pages in the documents, which contain the
12 plaintiffs' identities or identifying information shall be labeled,
13 "CONFIDENTIAL," and those pages shall be separately bound into a
14 document marked "CONFIDENTIAL."

15 c. Before filing any pleadings or documents that contain the plaintiffs'
16 identities, addresses, or other identifying information, the filing party shall
17 seek sealing or redaction of the pleadings or documents as provided for in
18 this court's Local Rules. *See* L.R. 140, 141.

19 DATED: November 21, 2012.

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22 UNITED STATES DISTRICT JUDGE
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