

Docket No. HHD CV 09 5034410 S

SUPERIOR COURT

HONG PHAM, Individually and on behalf of herself and all others similarly situated

JUDICIAL DISTRICT OF HARTFORD

V.

MICHAEL P. STARKOWSKI

DECEMBER 18, 2009

MEMORANDUM OF DECISION

This is an action by a recipient of public assistance seeking to represent a class of persons whose state funded medical benefits were terminated on December 1, 2009. The proposed class of plaintiffs<sup>1</sup> consists of impoverished legal immigrants with significant medical needs, residing in the state of Connecticut for less than five years and who were terminated, effective December 1, 2009, from the State Medical Assistance for Noncitizens (SMANC) program. On December 1, 2009, the named plaintiff, Hong Pham, commenced this action against the defendant, Michael P. Starkowski, in his official capacity as commissioner of the state department of social services (DSS), seeking to enjoin the state from terminating benefits to herself and all members of the proposed class. The named plaintiff claims the enactment of Public Acts, Spec. Sess., September, 2009, No. 09-05 violates the proposed class members' right to equal protection of the

<sup>1</sup> The named plaintiff proposes the following class: all legal noncitizens residing in the United States for less than five years, who meet all requirements of the federal Medicaid program other than those related to citizenship or presence in the United States for more than five years, and who would be eligible for state funded medical assistance but for the implementation of Public Acts, Spec. Sess., September, 2009, No. 09-05. It is undisputed that the named plaintiff is a member of this class.

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laws as guaranteed by the Fourteenth Amendment to the United States Constitution<sup>2</sup> and article first, § 20, of the Constitution of Connecticut.<sup>3</sup>

The complaint alleges the following facts. Prior to December 1, 2009, all members of the proposed class received medical assistance from the state of Connecticut through the SMANC program. However, in response to budgetary concerns, the general assembly passed Spec. Sess. P.A. 09-05, which eliminated much of the SMANC program and changed the statute governing the State Administered General Assistance (SAGA) Medical program effectively excluding the proposed class members from qualifying. In response to the passage of Spec. Sess. P.A. 09-05, the defendant mailed notices to approximately 4823 lawful permanent residents and other legal residents notifying them that due to the elimination of the SMANC program, their state funded medical assistance would be terminated effective December 1, 2009.<sup>4</sup> Although the letter explained that an individual could continue to receive medical assistance if he could demonstrate eligibility under another program, it is undisputed that the members of the proposed class cannot do so. Accordingly, they are left without medical assistance after December 1, 2009.

The complaint alleges the elimination of the SMANC program for members of the proposed class and their exclusion from the SAGA Medical program, by the enactment of Spec. Sess. P.A. 09-05, is solely based on their alienage. Because benefits are being denied to the

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<sup>2</sup> The Fourteenth Amendment to the United States Constitution provides in relevant part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*" (Emphasis added.)

<sup>3</sup> Article first, § 20, of the constitution of Connecticut, as amended by articles five and twenty-one of the amendments, provides: "No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability."

<sup>4</sup> An individual did not lose medical benefits under SMANC on December 1, 2009 if he or she requested an administrative hearing on the issue of eligibility. In that instance, the recipient continues to receive coverage under SMANC until a decision is issued by the hearing officer. A DSS administrative hearing on the issue of eligibility for SMANC and other programs is available to any individual who requests one. Nevertheless, as of December 8, 2009, only 143 of the approximately 4823 recipients notified had requested a hearing. Because the proposed class

proposed class members solely based on their alienage, the complaint alleges the state's action violates the Equal Protection clauses of the state and federal Constitutions.

On December 1, 2009, the named plaintiff filed a motion for class certification pursuant to Practice Book §§ 9-7<sup>5</sup> and 9-8.<sup>6</sup> A memorandum in support accompanied the motion. A hearing on the permanent injunction took place on December 9, 2009. On December 10, 2009, pursuant to Practice Book § 5-1, the defendant filed a motion for leave to file a supplemental brief "in order to address two claims that arose orally for the first time near the end of oral argument [at the December 9th hearing.]" The court granted the motion, and the defendant filed its sur-reply brief on December 11, 2009. In particular, the defendant raised the issue of subject matter jurisdiction with respect to the court's authority to order injunctive relief retroactive to the termination date of the SMANC program. The named plaintiff filed a response to the defendant's sur-reply on December 14, 2009.

## I

### LEGISLATIVE BACKGROUND

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of individuals is, by definition, ineligible for any other program, it is undisputed that even the individuals who requested a hearing will inevitably lose their benefits.

<sup>5</sup> Practice Book § 9-7 provides: "One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

<sup>6</sup> As in effect at the time of the motion, Practice Book § 9-8 provides: "An action may be maintained as a class action if the prerequisites of Section 9-7 are satisfied and the judicial authority finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

The named plaintiff argues that this motion is subject to Practice Book § 9-8, as amended. On June 22, 2009, the judges of the Superior Court revised section 9-8 of the Practice Book. However, by the named plaintiff's own admission, the amendment is not effective until January 1, 2010. As such, because this motion was brought prior to the effective date of the amendments, the court finds 2009 version of Practice Book § 9-8 controls.

This action involves claims relating to the federal Medicaid,<sup>7</sup> and state SMANC and SAGA Medical programs. Before turning to the merits of the case, a brief discussion of these programs, their history and their relationship to one another is necessary to understand the issues fully.

A

#### Federal Medicaid

Federal Medicaid is an optional program, enacted in 1965, whereby the federal government provides federal matching funds to the states for use in furnishing medical assistance to certain categories of needy recipients. As a condition of receipt, the states must comply with the requirements set forth in Title XIX of the Social Security Act and its implementing regulations. Although federal law sets forth certain requirements and prohibitions on a state's receipt of federal funds, it also provides certain options the state can elect to cover.<sup>8</sup> Each state submits its own state plan specifying the terms and conditions of the state's participation in the program. Accordingly, each state plan is unique to that state. Prior to 1996, federal Medicaid coverage was available to anyone deemed "categorically needy" (i.e., disabled, blind, elderly, a child, pregnant, or the parent of a dependant child) without regard to citizenship or United States residency. See 42 C.F.R. § 435.406 (a) (1990).

On August 22, 1996, Congress enacted legislation significantly impacting federal Medicaid coverage for select individuals. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and Title IV in particular, was designed to "end welfare as we know it" and to further a national immigration policy of self sufficiency. In the preamble

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<sup>7</sup> For purposes of this discussion, the term "federal Medicaid" is used to refer to federally subsidized Medicaid codified at 42 U.S.C. § 1396 et seq.

<sup>8</sup> For example, Connecticut has elected the "209 (b) option" by choosing to extend federal Medicaid benefits to elderly and disabled individuals whose income exceeds the established income standards but nonetheless have

to Title IV, Congress stressed that its goals in revamping the federal Medicaid program were to discourage aliens from immigrating to the United States for purposes of availing themselves of public assistance. See *id.* Congress stated that meeting these goals was a “compelling government interest.” See *id.*, § 1601 (6), (7)

By enacting Title IV, Congress restricted alien eligibility for federally funded public assistance benefits, including federal Medicaid, and invited states to follow suit with their own state funded medical assistance programs. Title IV divides aliens into two categories: qualified aliens and non-qualified aliens. See 8 U.S.C. § 1641. Qualified aliens include aliens lawfully admitted for permanent residence (green card holders) and certain others authorized by the statute. See 8 U.S.C. § 1641 (b)-(c). Any alien not considered a qualified alien, including illegal aliens and aliens permanently residing under color of law, is a non-qualified alien under the statute. It is undisputed that the plaintiffs are all qualified aliens.

Title IV renders all non-qualified aliens ineligible for federal Medicaid. 8 U.S.C. § 1611 (a). Qualified aliens are then divided into two groups: those lawfully residing in the United States before August 22, 1996; and those arriving lawfully sometime thereafter. Federal Medicaid must be provided to some of the qualified aliens in the first group. For individuals in the second group, i.e., qualified aliens arriving in the United States after August 22, 1996, federal Medicaid is largely unavailable until an individual has been in the United States for five years. See 8 U.S.C. § 1613 (a).<sup>9</sup> Furthermore, Title IV authorizes states to extend the ineligibility period beyond five years for these qualified aliens. 8 U.S.C. § 1613 (a). In the present case, it is undisputed that all members of the proposed class fall into the second category of qualified

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significant medical expenses that reduce their income to established standards. See 42 U.S.C. § 1396a (f) (209 (b) option); General Statutes § 17b-282 (enacting the option).

<sup>9</sup> Connecticut’s adoption of the federal Medicaid requirement pertaining to qualified aliens who have been in the United States for less than five years is codified at General Statutes § 17b-257a.

aliens because they arrived after August 22, 1996 and have been in the United States for less than five years. As such, they are ineligible for federal Medicaid.

B

State Funded Medical Assistance

As a condition of the receipt of federal funding, PRWORA also imposed certain requirements on state funded programs. In particular, PRWORA renders non-qualified aliens ineligible for state funded medical assistance. Nevertheless, Title IV allows states to provide state funded medical assistance to non-qualified aliens if the state, after August 22, 1996, enacts a new law that affirmatively provides for their eligibility. See 8 U.S.C. § 1621 (d).

With regard to solely state funded medical assistance for most qualified aliens residing in the United States for less than five years, Title IV allows the states to decide whether and to what extent benefits are offered. See 8 U.S.C. § 1622 (a) (“Notwithstanding any other provision of law and except as provided in subsection [b] of this section, a State is authorized to determine the eligibility for any State public benefits of an alien who is a qualified alien [as defined in section 1641 of this title], a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. § 1101 et seq.], or an alien who is paroled into the United States under section 212 (d) (5) of such Act [8 U.S.C. § 1182 (d) (5)] for less than one year . . . .”) Thus, the states may elect to offer state funded medical assistance to all, some, or no qualified aliens residing in the United States for less than five years. In the context of this case, then, Connecticut decides whether, and to what extent, state funded medical assistance is available to such qualified aliens, including the members of the proposed class.

In addition to the federal Medicaid program, Connecticut maintains two state funded medical assistance programs for eligible residents: SAGA Medical<sup>10</sup> and SMANC.<sup>11</sup> As discussed above, because Connecticut receives federal funding under the federal Medicaid program, these programs are subject to the provisions of 8 U.S.C. §§ 1621-1625 and the implementing regulations. Under § 1622, Connecticut can, with certain exceptions, decide whether to extend benefits under SMANC and SAGA Medical to qualified aliens.

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### SMANC

SMANC was designed to assist categorically eligible qualified aliens who do not qualify for federal Medicaid because they have been in the United States for less than five years. Effectively, Connecticut's enactment of SMANC in 1997 affirmatively provided state funded medical assistance for those qualified aliens written out of federal Medicaid by virtue of PRWORA. Prior to the enactment of Spec. Sess. P.A. 09-05, an individual qualified for SMANC if he was ineligible for federal Medicaid solely because he arrived in the United States within the last five years. In layman's terms, legal immigrants could obtain SMANC benefits if they were: (1) needy; (2) had been in the United States for less than five years; and (3) either: (a) over the age of 65; (b) under the age of 21; (b) the parent of a dependant child; (c) pregnant; or (d) disabled. Benefits provided to recipients were similar to those provided by federal Medicaid. All this changed with the legislature's enactment of Spec. Sess. P.A. 09-05, terminating SMANC for most recipients, including the plaintiffs.

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<sup>10</sup> General Statutes § 17b-192 (a) (Rev. to 2009), which governs SAGA Medical, provided in relevant part: "The Commissioner of Social Services shall implement a state medical assistance component of the state-administered general assistance program for persons ineligible for Medicaid. [Subject to certain exceptions, e]ligibility criteria concerning income shall be the same as the medically needy component of the Medicaid program . . . ."

<sup>11</sup> General Statutes § 17b-257b (Rev. to 2009), which governs SMANC, provided in relevant part: "[Q]ualified aliens . . . who have not been determined eligible for Medicaid or for state-administered general assistance medical

## SAGA Medical

SAGA Medical provides assistance to individuals with insufficient income and assets to meet their basic needs and who are not categorically eligible for federal Medicaid. Eligibility for SAGA Medical is not conditioned on citizenship or a specified period of residency in the United States. Qualified aliens can obtain SAGA Medical benefits by meeting the eligibility requirements regardless of when they arrived in the United States.

Prior to Spec. Sess. P.A. 09-05, the text of the statute governing SAGA Medical provided that coverage was available to "persons ineligible for [federal] Medicaid." General Statutes § 17b-192 (a) (Rev. to 2009). Section 55 of Spec. Sess. P.A. 09-05 amended the language of the statute to provide benefits only to "persons who do not meet the categorical eligibility criteria for [federal] Medicaid on the basis of age, blindness, disability, pregnancy, being a parent or other caretaker relative of a dependent child, being a child under the age of twenty-one, or having been screened for breast or cervical cancer under the Centers for Disease Control and Prevention's National Breast and Cervical Cancer Early Detection Program and are found to need treatment for either breast or cervical cancer." It is undisputed that the language of the statute, as amended, bars the proposed class members from qualifying for SAGA Medical coverage because they meet the categorical requirements for the federal Medicaid program.

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aid prior to July 1, 1997, shall be eligible for state-funded assistance or the HUSKY Plan, Part B subsequent to six months from establishing residency in this state."

## II

### DISCUSSION

The court turns to the motions at hand. In part II A, the court will address the defendant's argument that the relief requested by the plaintiff is barred by the doctrines of sovereign immunity and the Eleventh Amendment to the United States Constitution. The court will turn to the plaintiff's motion for class certification in part II B. The remainder of this Memorandum of Decision will address the merits of the complaint.

#### A.

#### SOVERIGN IMMUNITY AND ELEVENTH AMENDMENT ISSUES

The defendant argues the doctrines of sovereign immunity and Eleventh Amendment immunity<sup>12</sup> jurisdictionally bar the plaintiffs' request for retroactive injunctive relief.<sup>13</sup> Although an exception to the doctrines of sovereign and Eleventh Amendment immunity exists where a plaintiff seeks declaratory or injunctive relief based upon a finding that a state official administered a program in an unconstitutional manner, the defendant claims only prospective relief is available. The defendant also argues that since retroactive relief would require the defendant to pay any claims for covered services provided during the period between the

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<sup>12</sup> The defendant claims the doctrine of sovereign immunity bars the proposed class's request for retroactive relief as to their state constitutional claim, and the Eleventh Amendment bars their request for retroactive relief as to their federal constitutional claim. Defendant's Eleventh Amendment claims are irrelevant, as it is well settled that "the Eleventh Amendment does not apply in state courts." *Hilton v. South Carolina Public Railways Commission*, 502 U.S. 197, 204-205, 112 S. Ct. 560, 116 L. Ed. 2d 560 (1991); *Sullins v. Rodriguez*, 281 Conn. 128, 137 n.10, 913 A.2d 415 (2007).

<sup>13</sup> The defendant does not challenge the court's jurisdiction to issue prospective relief (i.e., relief from the date of the court's decision) should the court find in favor of the proposed plaintiff class.

termination of the SMANC program and the date of the court's decision, any such relief would constitute monetary relief, which sovereign immunity would preclude.

In their reply, the plaintiffs argue their claims are not barred by the doctrine of sovereign immunity because their claim for injunctive relief on the basis of a constitutional violation is a longstanding exception to the doctrine. Additionally, the plaintiffs assert they do not seek monetary relief.

"[T]he doctrine of sovereign immunity implicates subject matter jurisdiction . . . ."  
(Internal quotation marks omitted.) *Beecher v. Mohegan Tribe of Indians of Connecticut*, 282 Conn. 130, 134, 918 A.2d 880 (2007). "[A] subject matter jurisdictional defect may not be waived . . . [or jurisdiction] conferred by the parties, explicitly or implicitly. . . . [The question of subject matter jurisdiction] . . . once raised, either by a party or by the court itself . . . must be answered before the court may decide the case." (Internal quotation marks omitted.) *Batte-Holmgren v. Commissioner of Public Health*, 281 Conn. 277, 283, 914 A.2d 996 (2007). "[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised."  
(Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 432, 430 n.12, 829 A.2d 801 (2003).

"The principle that the state cannot be sued without its consent, or sovereign immunity, is well established under our case law. . . . It has deep roots in this state and our legal system in general, finding its origin in ancient common law. . . . Not only have we recognized the state's immunity as an entity, but [w]e have also recognized that because the state can act only through its officers and agents, a suit against a state officer concerning a matter in which the officer represents the state is, in effect, against the state. . . . Exceptions to this doctrine are few and narrowly construed under our jurisprudence.

“[T]he sovereign immunity enjoyed by the state is not absolute. There are [three] exceptions: (1) when the legislature, either expressly or by force of a necessary implication, statutorily waives the state's sovereign immunity; *Martinez v. Dept. of Public Safety*, 263 Conn. 74, 86, 818 A.2d 758 (2003); (2) when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights; *Doe v. Heintz*, 204 Conn. 17, 31, 526 A.2d 1318 (1987); and (3) when an action seeks declaratory or injunctive relief on the basis of a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority. *Antinerella v. Rioux*, 229 Conn. 479, 497, 642 A.2d 699 (1994), overruled in part by *Miller v. Egan*, 265 Conn. 301, 325, 828 A.2d 549 (2003). . . . For a claim made pursuant to the second exception, complaining of unconstitutional acts, we require that [t]he allegations of such a complaint and the factual underpinnings if placed in issue . . . clearly demonstrate an incursion upon constitutionally protected interests. . . . In the absence of a proper factual basis in the complaint to support the applicability of [an exception], the granting of a motion to dismiss on sovereign immunity grounds is proper.” (Citations omitted; internal quotation marks omitted.) *Columbia Air Services, Inc. v. Dept. of Transportation*, 293 Conn. 342, 349-50, 977 A.2d 636 (2009).

Although sovereign immunity is not a defense to claims for declaratory or injunctive relief, it is a well established defense to a claim for monetary damages. See *Miller v. Egan*, supra, 265 Conn. 315-16. Absent legislative authority, no monetary award against the state or its officials will be permitted. *Id.*, 316. Thus, in situations where, based on a state officer's allegedly wrongful or unconstitutional conduct, the plaintiff sought both injunctive relief and monetary damages, courts have treated the two issues separately. See, e.g., *Barde v. Board of Trustees*, 207 Conn. 59, 60-61, 539 A.2d 1000 (1988); *Heintz*, supra, 204

Conn. 36-37; *Fetterman v. University of Connecticut*, 192 Conn. 539, 553, 473 A.2d 1176 (1984).

In *Miller v. Egan*, supra, 265 Conn. 314, our Supreme Court explained “[s]overeign immunity rests on the principle and on the hazard that the subjection of the state and federal governments to private litigation might constitute a serious interference with the performance of their functions and with their control over their respective instrumentalities, funds and property. . . . Because a court may tailor declaratory and injunctive relief so as to minimize any such interference, and in order to afford an opportunity for voluntary compliance with the judgment, actions that seek injunctive or declaratory relief against a state officer acting in excess of statutory authority or pursuant to an unconstitutional statute do not conflict with the policies underlying the doctrine of sovereign immunity.” (Citation omitted; internal quotation marks omitted.)

The defendant’s assertion that no monetary damages are permitted without the state’s consent is correct. However, the court rejects the defendant’s claim to the extent it implies somehow that, should this court decide in favor of the proposed class of plaintiffs, the defendant may refuse payment for requests received after the date of this order on the basis of Spec. Sess. P.A. 09-05, §§ 55, 64. An injunction, by its very nature, is prospective and designed to prevent future harm. Prevention of future harm often requires prospective compliance with the law. The difference between retroactive relief, which is not permissible, and prospective compliance with the law, which is permissible, can become somewhat murky where unconstitutional conduct is alleged. Consistent with federal precedent, this court takes the view that prospective compliance permits courts to enjoin state officers to conform their conduct to requirements of the Constitution, notwithstanding a direct and substantial impact on the state treasury. See *Milliken*

v. *Bradley*, 433 U.S. 267, 289, 97 S. Ct. 2749, 53 L. Ed. 2d. 745 (1977). In other words, although the court may not order back payment, it may enjoin the defendant from enforcing an unconstitutional law from the date of the order. This is so even if it requires payment from the state treasury. The court therefore finds that proposed class of plaintiffs' claims for relief are not barred by sovereign immunity.

B

CLASS CERTIFICATION

The court turns now to the plaintiff's motion for certification of all legal noncitizens residing in the United States for less than five years, who meet all requirements of the federal Medicaid program other than those related to citizenship or presence in the United States for more than five years, and who would be eligible for state funded medical assistance but for the implementation of Public Acts, Spec. Sess., September, 2009, No. 09-05. "Class certification is a procedural mechanism enabling representative parties to litigate on behalf of a class of unnamed persons, who are not joined in the action." *Collins v. Anthem Health Plans, Inc.*, 266 Conn. 12, 836 A.2d 1124 (2003) (*Collins I*). The class mechanism is designed to increase efficiency, prevent the proliferation of lawsuits, and eliminate duplicate efforts and expenses. See *id.* "A trial court must undertake a rigorous analysis to determine whether the plaintiffs have borne the burden of demonstrating that the class certification requirements of Practice Book §§ 9-7 and 9-8 have been met. . . . A trial court nonetheless has broad discretion in determining whether a suit should proceed as a class action." (Citations omitted; internal quotation marks omitted.) *Collins v. Anthem Health Plans, Inc.*, 275 Conn. 309, 320-21, 880 A.2d 106 (2005) (*Collins II*).<sup>14</sup>

<sup>14</sup> Both parties stipulated to certification of the proposed plaintiff class. Nevertheless, this court "must undertake a rigorous analysis to determine whether the plaintiffs have borne the burden of demonstrating that the class

“In determining whether to certify the class, a [trial] court is bound to take the substantive allegations of the complaint as true. . . . That does not mean, however, that a court is limited to the pleadings when determining whether the requirements for class certification have been met. On the contrary, [our Supreme Court has stated] that [t]he class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the [plaintiffs’] cause of action . . . and that it [sometimes] may be necessary for the court to probe behind the pleadings before coming to rest on the certification question. . . . In determining the propriety of a class action, [however] the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of [the class action rules] are met. . . . Although no party has a right to proceed via the class mechanism . . . doubts regarding the propriety of class certification should be resolved in favor of certification. . . .

“The rules of practice set forth a two step process for trial courts to follow in determining whether an action or claim qualifies for class action status. First, a court must ascertain whether the four prerequisites to a class action, as specified in Practice Book § 9-7, are satisfied. These prerequisites are: (1) numerosity – that the class is too numerous to make joinder of all members feasible; (2) commonality – that the members have similar claims of law and fact; (3) typicality – that the [representative] plaintiff’s claims are typical of the claims of the class; and (4) adequacy of representation – that the interests of the class are protected adequately. . . .

“Second, if the foregoing criteria are satisfied, the court must then evaluate whether the certification requirements of Practice Book § 9-8 are satisfied. These requirements are: (1) predominance – that questions of law or fact common to the members of the class predominate

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certification requirements of Practice Book §§ 9-7 and 9-8 have been met.” (Internal quotation marks omitted.) *Collins v. Anthem Health Plans, Inc.*, 275 Conn. 309, 320-21, 880 A.2d 106 (2005) (*Collins II*). This is true notwithstanding a defendant’s failure to object to class certification because the court is bound to protect the

over any questions affecting only individual members; and (2) superiority – that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. . . .

Because our class certification requirements are similar to those embodied in rule 23 of the Federal Rules of Civil Procedure, and our jurisprudence governing class actions is relatively undeveloped, we look to federal case law for guidance in construing the provisions of Practice Book §§ 9-7 and 9-8.” (Citations omitted; internal quotation marks omitted.) *Id.*, 321-23.

Before turning to the requirements of Practice Book §§ 9-7 and 9-8, this court notes that three groups of individuals who fall within the proposed class definition did not have their benefits terminated by Spec. Sess. P.A. 09-05. These individuals are: (1) pregnant women; (2) children and young adults under the age of 21; and (3) those who, as of September 8, 2009, were in receipt of, or had an application pending for, home care services or nursing facility care. See Spec. Sess. P.A. 09-05, §§ 20, 64. As such, the court excludes these individuals from the class for purposes of the analysis and certification.<sup>15</sup> See *Robidoux*, supra, 987 F.2d 937 (“A court is not bound by the class definition proposed in the complaint and should not dismiss the action simply because the complaint seeks to define the class too broadly.”)

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#### Numerosity

“[I]t is clear that a proper determination of numerosity is not through application of any rigid formula, but rather, by a flexible inquiry taking into account the entirety of the particular action. There is no magic number for determining whether, in a particular case, joinder of all putative parties will be impracticable . . . . [Rather] [t]he issue is one to be resolved in light of

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interests of the proposed class members. This requires, in all circumstances, an examination of whether the requirements of Practice Book §§ 9-7 and 9-8 are met.

the facts and circumstances of the case. . . . Furthermore, [t]he numerosity requirement . . . does not mandate that joinder of all parties be impossible — only that the difficulty or inconvenience of joining all members of the class make use of the class action appropriate.” (Citations omitted; internal quotation marks omitted.) *New Hartford v. Connecticut Resources Recovery Authority*, 291 Conn. 433, 475-76, 970 A.2d 593 (2009).

As to the issue of impracticability, a court properly takes into account, among other relevant considerations, “judicial economy arising from the avoidance of a multiplicity of actions, geographic dispersion of class members, financial resources of class members, the ability of claimants to institute individual suits, and requests for prospective injunctive relief which would involve future class members.” *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993). In particular, where also numerous, low-income recipients of public assistance commonly meet the requirement of impracticability because of their disbursement throughout the state, limited financial resources, lack of legal sophistication, and fluctuating membership. See *id.*; see also *Taylor v. Housing Authority of New Haven*, United States District Court, Docket No. 3:08cv557 (D. Conn. March 9, 2009); *Matyasovszky v. Housing Authority of Bridgeport*, United States District Court, Docket No. 3:03cv968 (D. Conn. January 2, 2005); *Raymond v. Rowland*, United States District Court, Docket No. 3:03cv0118 (D. Conn. March 12, 2004); *Carr v. Wilson-Coker*, United States District Court, Docket No. 3:00CV01050 (D. Conn. March 30, 2001).

In the present case, the proposed class is numerous and relevant considerations of judicial economy, geography, and resources make joinder of all parties impracticable. According to DSS documentation, the proposed plaintiff class includes approximately 3400 members, spread across

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<sup>15</sup> After the exclusions referred to above, the only remaining members of the proposed class who did not lose their medical benefits under SMANC on December 1, 2009 were those who requested an administrative hearing on the

the state, whose benefits were terminated as of December 1, 2009. These members are, by definition, impoverished, often disabled or elderly, and relatively new to our state. It is not a stretch to presume that many of the members of the proposed class are also new to the English language and lack legal sophistication. As such, the members of the class are unlikely to join in this suit or institute individual suits, and the numerosity requirement is satisfied.

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### Commonality

“Commonality” requires only that there is at least one question common to the class. *Collins II*, supra, 275 Conn. 323. “The commonality requirement is satisfied as long as the members of the class have allegedly been affected by a general policy of the defendant, and the general policy is the focus of the litigation.” (Internal quotation marks omitted.) *Id.*, 324.

In this case, termination of the SMANC program and exclusion from the SAGA Medical program pursuant to Spec. Sess. P.A. 09-05 affected all members of the proposed class. The changes to these programs are the central focus of the litigation, as the issue is whether the defendant’s refusal to provide benefits, pursuant to Spec. Sess. P.A. 09-05, violates the Equal Protection clauses of the federal and state Constitutions. Because the class has at least one question in common and that question is the focus of the litigation, the commonality requirement is satisfied.<sup>16</sup>

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### Typicality

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issue of eligibility.

<sup>16</sup> The court notes, however, that the commonality requirement would not be satisfied with respect to the members of the proposed class who continue to receive coverage under SMANC after December 1, 2009 were they included in the class. The named plaintiff’s claim, which is based on the denial of benefits, would not be common to these individuals.

The third requirement under Practice Book § 9-7 “requires that the claims of the class representatives be typical of those of the class, and is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability.” (Internal quotation marks omitted.) *Collins I*, supra, 266 Conn. 34. “The typicality criterion does not require that the factual background of each named plaintiff's claim be identical to that of all class members; rather, it requires that the disputed issue of law or fact occupy essentially the same degree of centrality to the named plaintiff's claim as to that of other members of the proposed class.” (Internal quotation marks omitted.) *Id.* “When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims.” *Robidoux*, supra, 987 F.2d 936-37.

In the present case, the alleged unconstitutional conduct affected both the named plaintiff and the class sought to be represented. That is, the denial of benefits to the plaintiff and the class, which serves as the basis of the claim, arises from the enactment of P.A. 09-05 and their status as legal immigrants fitting within federal Medicaid's categorical eligibility requirements. That the named plaintiff and other class members may have qualified for SMANC based on different categorical eligibility criteria does not defeat the class certification. Because it is alleged that the named plaintiff and the class members were affected by the same unlawful conduct, the typicality requirement is satisfied.

4

#### Adequacy of Representation

“The adequacy-of-representation requirement addresses concerns about the competency of class counsel and conflicts of interest.” (Internal quotation marks omitted.) *Collins II*, supra,

275 Conn. 326. It requires courts to ask whether a representative plaintiff's interests are antagonistic to the interest of other members of the class. *Collins I*, supra, 266 Conn. 54. "The adequacy requirement is [generally] met [when] the representatives: (1) have common interests with the unnamed class members; and (2) will vigorously prosecute the class action through qualified counsel." (Internal quotation marks omitted.) *Collins II*, supra, 275 Conn. 326.

The adequacy of representation requirement is satisfied in the present case because class counsel is competent and the named plaintiff does not have any interests antagonistic to the interests of proposed class members.<sup>17</sup> Counsel has extensive experience in both class action and individual affirmative litigation in federal and state court on behalf of impoverished individuals challenging state and federal governmental actions depriving them of public assistance benefits. Furthermore, taking the substantive allegations of the complaint as true, the interests of the named plaintiff are harmonious with those of the proposed class. The named plaintiff seeks enforcement of her state and federal constitutional rights to equal protection to enjoin the defendant from terminating state funded medical assistance benefits to all plaintiffs.

5

#### Predominance

Since the plaintiff satisfies the requirements of Practice Book § 9-7, the court turns its inquiry to those enumerated in Practice Book § 9-8. The predominance inquiry is similar to that of commonality, but far more demanding. *Collins I*, supra, 266 Conn. 48. "[T]he fundamental purpose of the predominance inquiry is to determine whether the economies of class action certification can be achieved . . . without sacrificing procedural fairness or bringing about other

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<sup>17</sup> Again, the court's conclusion may have been different if it were to include those individuals who continued to receive coverage under SMANC after December 1, 2009. In such circumstances, the named plaintiff's interests may be antagonistic to those still in receipt of SMANC benefits after the enactment of P.A. '09-05. In particular, it may

undesirable results.” (Internal quotation marks omitted.) *Collins II*, supra, 275 Conn. 329.

“Class-wide issues predominate if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof.” (Internal quotation marks omitted.) *Collins I*, supra, 48.

“In order to determine whether common questions predominate, [a court must] . . . examine the [causes] of action asserted in the complaint on behalf of the putative class. . . . Whether an issue predominates can only be determined after considering what value the resolution of the class-wide issue will have in each class member's underlying cause of action. . . . Common issues of fact and law predominate if they ha[ve] a direct impact on every class member's effort to establish liability and on every class member's entitlement to injunctive and monetary relief. . . . [When], after adjudication of the classwide issues, [the] plaintiffs must still introduce a great deal of individualized proof or argue a number of individualized legal points to establish most or all of the elements of their individual[ized] claims, such claims are not suitable for class certification. . . .” (Citations omitted; internal quotation marks omitted.) *Collins II*, supra, 275 Conn. 329-330.

In deciding whether common questions of law or fact predominate in any given case, the court should engage in a three part inquiry. “First, the court should review the elements of the causes of action that the plaintiffs seek to assert on behalf of the putative class. . . . Second, the court should determine whether generalized evidence could be used to prove those elements on a class-wide basis or whether individualized proof will be needed to establish each class member's entitlement to monetary or injunctive relief. . . . Third, the court should weigh the common

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not be advantageous for them to seek to enjoin the defendant from implementing the provisions of Spec. Sess. P.A. 09-05.

issues that are subject to generalized proof against the issues requiring individualized proof in order to determine which predominate. . . . Only when common questions of law or fact will be the object of most of the efforts of the litigants and the court will the predominance test be satisfied.” (Citations omitted; internal quotation marks omitted.) *Id.*, 331-32.

In the present case, the undisputed the issue at hand, the constitutionality of Spec. Sess. P.A. 09-05, is a question of law. In fact, both parties declined to introduce additional evidence at the hearing. There is very little, if any, need for individualized proof. When the individualized proof is weighed against the issues common to the class, the common issues clearly predominate, and the predominance test is satisfied.

6

#### Superiority

The superiority requirement is closely intertwined with the predominance requirement because oftentimes “[o]nce predominance is determined, considerations of superiority and manageability should fall into their logical place.” (Internal quotation marks omitted.) *Collins II*, *supra*, 275 Conn. 347. That is, “[i]f the predominance criterion is satisfied, courts generally will find that the class action is a superior mechanism . . . . It is also true, however, that the more individualized issues that predominate, the less superior and more unmanageable a class action will be.” *Id.* In determining whether the class action is a superior mechanism for the case at hand, the court should consider “(A) the interest of the members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular

forum; [and] (D) the difficulties likely to be encountered in the management of a class action.” (Internal quotation marks omitted.) *Id.*, 346; citing Fed. R. Civ. P. 23 (b) (3).

A class action is the superior mechanism where, as in the present case, the plaintiffs seek to enjoin the state from terminating state funded benefits to the class pursuant to an alleged unconstitutional statute. This court is unable to identify any interest in the members of the proposed class to control individually the prosecution or defense of separate actions. As explained above, each member of the proposed class is free to assert his own individual claim in an administrative appeal on the issue of eligibility for benefits. Because the proposed class, by its very definition, is ineligible for benefits pursuant to any program, all of the members of the proposed class would likely assert the same claims relating to unconstitutionality. Furthermore, as to the second factor, this court is unaware of any litigation, other than the pending administrative appeals on the issue of eligibility, commenced by members of the proposed plaintiff class concerning the present controversy. Thirdly, this court notes that this forum is particularly desirable as a central location since the class of plaintiffs is limited to individuals residing in Connecticut. Lastly, entertaining a class action in this case will not result in management difficulties due to the predominance of common issues and lack of individualized proof.

For the foregoing reasons, the plaintiff's motion for class certification is granted with respect to the following class definition: All legal non-citizens who: (1) have been in the United States for less than five years; (2) are not pregnant; (3) are over the age of twenty-one; (4) meet all requirements for the federal Medicaid program other than those relating to citizenship or presence in the United States for more than five years; (5) as of September 8, 2009, were not in receipt of, or had an application pending for, home care services or nursing facility care; and (6)

would be eligible for state funded medical assistance but for the implementation of Spec. Sess. P.A. 09-05, §§ 55, 64.

C.

#### STANDARD FOR A PERMANENT INJUNCTION

Because both parties have stipulated on the record in open court that they wish the court to treat the plaintiffs' request as one for a permanent injunction, the court will confine its analysis accordingly. "A party seeking injunctive relief has the burden of alleging and proving irreparable harm and lack of an adequate remedy at law." (Internal quotation marks omitted.) *Brennan v. Brennan Associates*, 293 Conn. 60, 86, 977 A.2d 107 (2009). In the context of a permanent injunction, irreparable harm is shown by success on the merits. In this case, because the defendant concedes the plaintiffs lack an adequate remedy at law, the court's inquiry is limited to the issue of whether the plaintiffs have established a constitutional violation. For the reasons discussed below, the court concludes that the plaintiffs have met their burden, and that §§ 55 and 64 of Spec. Sess. P.A. 09-05 violate the Equal Protection Clause of the Fourteenth Amendment.

D.

#### THE FOURTEENTH AMENDMENT AND EQUAL PROTECTION GENERALLY

"It is . . . well established that a validly enacted statute carries with it a strong presumption of constitutionality, [and that] those who challenge its constitutionality must sustain the heavy burden of proving its unconstitutionality beyond a reasonable doubt. . . . The court will indulge in every presumption in favor of the statute's constitutionality. . . . Therefore, [w]hen a question of constitutionality is raised, courts must approach it with caution, examine it with care, and sustain the legislation unless its invalidity is clear." (Internal quotation marks

omitted.) *Kerrigan v. Commissioner of Public Health*, 289 Conn. 135, 155, 957 A.2d 407 (2008).

“[T]he concept of equal protection [under both the state and federal constitutions] has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. . . . Conversely, the equal protection clause places no restrictions on the state's authority to treat dissimilar persons in a dissimilar manner. . . . Thus, [t]o implicate the equal protection [clause] . . . it is necessary that the state statute . . . in question, either on its face or in practice, treat persons standing in the same relation to it differently. . . . [Accordingly], the analytical predicate [of an equal protection claim] is a determination of who are the persons [purporting to be] similarly situated. . . . The similarly situated inquiry focuses on whether the [plaintiff is] similarly situated to another group for purposes of the challenged government action. . . . Thus, [t]his initial inquiry is not whether persons are similarly situated for all purposes, but whether they are similarly situated for purposes of the law challenged.” (Citations omitted; internal quotation marks omitted.) *Id.*, 157-58.

“When a statute is challenged on equal protection grounds . . . the reviewing court must first determine the standard by which the challenged statute's constitutional validity will be determined. If, in distinguishing between classes, the statute either intrudes on the exercise of a fundamental right or burdens a suspect class of persons, the court will apply a strict scrutiny standard [under which] the state must demonstrate that the challenged statute is necessary to the achievement of a compelling state interest. . . . If the statute does not touch upon either a fundamental right or a suspect class, its classification need only be rationally related to some legitimate government purpose in order to withstand an equal protection challenge.” (Internal

quotation marks omitted.) *Contractor's Supply of Waterbury, LLC v. Commissioner of Environmental Protection*, 283 Conn. 86, 92-93, 925 A.2d 1071 (2007).

“[T]he United States Supreme Court has determined that in order to carry out the constitutional mandate of equality a less deferential standard must be applied to certain presumptively invidious classifications such as alienage, race, and national origin. . . . The court has determined that [t]hese factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy- a view that those in the burdened class are not as worthy or deserving as others. For these reasons and because such discrimination is unlikely to be soon rectified by legislative means, these laws are subjected to strict scrutiny and will be sustained only if they are suitably tailored to serve a compelling state interest.” (Citation omitted; internal quotation marks omitted.) *Barannikova v. Greenwich*, 229 Conn. 664, 675-76; 643 A.2d 251 (1994).

With these general principles in mind, the court will now address the plaintiffs' constitutional claims.

E

## THE APPLICABLE STANDARD OF REVIEW

1.

### SMANC

The critical issue in this case is whether the actions of the General Assembly, in passing Spec. Sess. P.A. 09-05, are subject to strict scrutiny or rational basis review. In determining the standard of review, the court first must determine who is similarly situated to the plaintiffs for purposes of the law challenged. See *Kerrigan*, supra, 289 Conn. 157-158. This requires the plaintiff to “identify and relate specific instances where *persons situated similarly in all relevant*

*respects* were treated differently . . . . Entities are situated similarly in all relevant aspects if a prudent person, looking objectively at the incidents, would think them roughly equivalent and the protagonists similarly situated. Much as in the lawyer's art of distinguishing cases, the relevant aspects are those factual elements which determine whether reasoned analogy supports, or demands, a like result. Exact correlation is neither likely nor necessary, but the cases must be fair congeners. In other words, apples should be compared to apples." (Citations omitted; internal quotation marks omitted.) *Kelo v. New London*, 261 Conn. 1, 103 n.98, 843 A.2d 500 (2004).

In this case, the plaintiffs identified citizens similarly situated to the plaintiffs in all relevant respects apart from their alienage. These similarly situated individuals received differing treatment because, unlike the plaintiffs, they are eligible for publicly funded medical assistance in the form of federal Medicaid.

Once the plaintiffs identify a group of similarly situated individuals treated differently, the court must discern the basis for the classification. With state legislation, the court will apply a strict scrutiny standard where the classification burdens a suspect class.<sup>18</sup> See *Barannikova*, supra, 229 Conn. 677. Presumptively invidious classifications, such as alienage, constitute a suspect class. See *id.*, 675. These presumptively invidious classifications "are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy — a view that those in the burdened class are not as worth or deserving as others. For these reasons and because such discrimination is unlikely to be soon rectified by legislative means, these laws are subjected to strict scrutiny and will be sustained only if they are suitably tailored to serve a compelling state interest."

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<sup>18</sup>On the other hand, *federal* legislation makes a classification based on alienage receives rational basis review. See *Barannikova v. Greenwich*, 229 Conn. 664, 679, 643 A.2d 251 (1994).

(Internal quotation marks omitted.) *Id.*, 676. Because the state legislative classification in this case distinguishes between citizens and aliens, it classifies based on alienage and requires a strict scrutiny standard of review.

The defendant urges this court to apply the far less stringent rational basis rule. His first argument is based on two decisions, *Doe v. Commissioner of Transitional Assistance*, 437 Mass. 521, 777 N.E.2d 404 (2002) and *Soskin v. Reinertson*, 353 F.3d 1242 (10th Cir. 2004). The defendant relies heavily on these cases to support the proposition that, because SMANC provides benefits only to aliens, the elimination of the program “does not treat similarly situated citizens who meet federal categorical requirements differently from aliens because *only aliens* are eligible to participate in SMANC.” (“Defendant’s Sur-Reply Brief,” December 11, 2009, at 3.)

*Doe* involved another state benefit program available only to aliens and the Massachusetts legislature’s effort – post-PRWORA- to impose eligibility limitations on some recipients. The statute under consideration therefore discriminated between classes of aliens. The trial judge who found in favor of the Commonwealth on this issue held that “[w]hen a state legislature . . . acts as it did here to help needy immigrants by creating and funding a Supplemental program intended solely to provide welfare benefits to immigrants who were cut off from [welfare] funds by Congress in the 1996 Act, ‘heightened judicial solicitude’ is not needed. When a state law benignly benefits only aliens and does not in any way put citizens in a superior position to similarly situated aliens, then this Court believes that it should be examined through the rational basis test rather than strict scrutiny.” *Doe*, supra, 437 Mass. 524-525.

The Supreme Judicial Court upheld the decision to apply rational basis review. After recognizing the general rule that state laws discriminating on the basis of alienage are subject to strict scrutiny under a Fourteenth Amendment analysis; see *Graham v. Richardson*, 403 U.S.

365, 375-76, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971); the court in *Doe*, supra, 437 Mass. 526, found an exception to that rule for “state laws that merely adopt uniform Federal guidelines regarding the eligibility of aliens for benefits. . . . Judicial review of such laws has been limited to whether there is a rational relationship between the disparity of treatment between citizens and aliens and some legitimate governmental purpose (rational basis standard).” (Citations omitted.) The court therefore found, as the plaintiffs conceded, that there was a rational basis for the new statute. *Id.*, 527.

In *Soskin v. Reinertson*, supra, 353 F.3d 1242, the Court of Appeals for the Tenth Circuit addressed a challenge to a post-PRWORA, Colorado statute terminating optional Medicaid coverage previously available to some 3500 legal aliens. A prior state statute, passed in response to PRWORA, restored optional Medicaid coverage to some legal aliens who lost their benefits in 1996. This statute has much the same impact on Colorado’s aliens that the statute under review here has on aliens in Connecticut.

The *Soskin* court found the challenged statute was subject to rational basis review and therefore did not violate the Equal Protection Clause, relying heavily on the Massachusetts decision in *Doe v. Commissioner*. The court in *Soskin* was greatly persuaded by its finding that “[PRWORA] gives the states a measure of discretion.” *Id.*, 1255. As a result, the Colorado legislature acted within its authority from Congress, and its actions were therefore subject to rational basis analysis.

The majority found that PRWORA provided “specific Congressional authorization for the state’s action. . . .” *Soskin*, supra, 353 F.3d 1251. In support, the majority cited *Plyler v. Doe*, 457 U.S. 202, 219 n.19, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982), for its holding that “[w]ith respect to the actions of the Federal Government, alienage classifications may be

intimately related to the conduct of foreign policy, to the federal prerogative to control access to the United States, and to the plenary federal power to determine who has sufficiently manifested his allegiance to become a citizen of the Nation. No State may independently exercise a like power. But if the Federal Government has by uniform rule prescribed what it believes to be appropriate standards for the treatment of an alien subclass, the States may, of course, follow the federal direction.”

In his vigorous dissent, Justice Henry rejects the majority’s finding that PRWORA sets forth uniform rules that the states must follow in responding to its requirements. He cites with approval *Aliessa v. Novello*, 96 N.Y.2d 418, 754 N.E.2d 1085, 730 N.Y.S.2d 1 (2001), a decision of the New York Court of Appeals finding that Title IV of PRWORA improperly permits the states to act independently and inconsistently. In *Aliessa*, supra, 436, the court explained that “[T]itle IV goes significantly beyond what the *Graham* Court declared constitutionally questionable. In the name of national immigration policy, it impermissibly authorizes each State to decide whether to disqualify many otherwise eligible aliens from State Medicaid. [The New York law] is a product of this authorization. In light of *Graham* and its progeny, [T]itle IV can give [the New York law] no special insulation from strict scrutiny review. Thus, [the New York law] must be evaluated as any other State statute that classifies based on alienage.” (Citations omitted.)

*Aliessa* was followed in 2006 – after *Doe* and *Soskin* were decided – by the Maryland Supreme Court’s decision in *Ehrlich v. Perez*, 394 Md. 691, 908 A.2d 1220 (2006). *Ehrlich* involved a state attempt to eliminate a state funded program designed to serve substantially the same purpose as SMANC. The *Ehrlich* court, supra, 725-26, applied strict scrutiny, enjoining the state from enforcing the statute, holding PRWORA did not include uniform state rules

regarding a state's decision to eliminate the funding of a state funded medical assistance program to a sub-class of lawfully admitted resident aliens who are ineligible for federal Medicaid benefits.

This court agrees with the rulings in *Aliessa* and *Ehrlich*. Title IV of PRWORA simply does not provide the states with any sort of consistent guidance or clear limits as to what they can and cannot do in dealing with legal aliens who lost their eligibility for federal Medicaid. Of course, the federal law makes it clear that if states wish to reinstate some or all of the benefits this class of legal aliens previously enjoyed, the states must pay for it themselves.

In his second argument, the defendant claims rational review is appropriate, notwithstanding PRWORA's lack of uniformity, based on other sources of Congressional power. In support, he relies on *Soskin* for the proposition that Congress's other sources of power, which do not require uniformity, allow it to authorize the states to classify based on alienage. The defendant's argument flies in the face of well established precedent that "Congress has no affirmative power to authorize the States to violate the Fourteenth Amendment . . . ." *Saenz v. Roe*, 526 U.S. 489, 508, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999); *Graham*, supra, 403 U.S. 382.

In support of rational basis review, the defendant also argues the court's constitutional analysis is constrained to a single statute. In determining who is similarly situated, the defendant claims the court may only look at the SMANC statute, as amended by § 64 of Spec. Sess. P.A. 09-05, in determining who is similarly situated. Under this approach, the defendant maintains that those similarly situated to the plaintiffs are the individuals still covered by SMANC after the amendment (i.e., recipients of nursing and home care). Because these recipients are aliens, the defendant argues the classification is not based on alienage, and the appropriate standard is

rational basis review. This court is not convinced. A analysis of equal protection is not so constrained. A court may look at a statutory scheme in determining who is similarly situated. See, e.g., *Kerrigan*, supra, 289 Conn. 135 (ruling on the constitutionality of statutory scheme consigning same sex couples to civil unions as opposed to marriage in the context of Connecticut's Equal Protection clause).

The court finds § 64 of Spec. Sess. P.A. 09-05 subject to strict scrutiny review. The only state interest advanced in support of § 64 has been the state's need, in this time of severe fiscal constraints, to save money wherever it can. It is well settled, under both federal and Connecticut law, that government cost savings are not a compelling state interest for strict scrutiny purposes. *Graham*, supra, 403 U.S. 376; *Barannikova*, supra, 229 Conn. 691.

The court therefore finds that § 64 of Spec. Sess. P.A. 09-05 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.<sup>19</sup>

2

## SAGA MEDICAL

Section 55 of Spec. Sess. P.A. 09-05 bars persons "categorically eligible" for federal Medicaid from obtaining SAGA Medical benefits. The plaintiffs qualify for federal Medicaid, except that they have resided in the United States for less than five years. Because of § 64, they

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<sup>19</sup> The Plaintiffs also claimed Spec. Sess. P.A. 05-09 violates article first, § 20 of the Constitution of Connecticut. Because it has found that the challenged sections of Spec. Sess. P.A. 09-05 are unconstitutional under the United States Constitution, the court does not reach the state constitutional claims. Defendant argued that article first, § 20, specifies national origin and ancestry – but not alienage – as reasons to apply strict scrutiny analysis and that Spec. Sess. P.A. 09-05 therefore does not violate our state Constitution. If the court had reached this issue, it would have found our Supreme Court's decision in *Kerrigan*, supra, 289 Conn. 135, provides strong support for plaintiffs' position on this issue. The *Kerrigan* court held that not all suspect classes are enumerated in article first, § 20: *Id.*, 163. It further held that heightened scrutiny (either strict or intermediate) is appropriate for a non-enumerated class where the class has suffered a history of invidious discrimination and the group's distinguishing characteristics have no relationship to their ability or inability to contribute to society. *Id.*, 165-171. Under these circumstances, this court does not doubt that alienage would be treated as a suspect class in any state constitutional challenge. See also *id.*, 155 ("[I]t is beyond debate that federal constitutional and statutory law establishes a minimum national standard for the exercise of individual rights and does not inhibit state governments from affording higher levels of protection for such rights.")

are no longer eligible for SMANC benefits, a program which has, as a practical matter, ceased to exist. Sections 55 and 64, in combination, have created a situation where low-income citizens who are ineligible for federal Medicaid are still eligible for SAGA Medical, but the members of the plaintiff class, who differ only because they are aliens, are not. The defendant argues that this is not set forth in § 55, but it is clear that the result is to deprive the plaintiffs of all non-emergency health care solely because they are aliens.

The court therefore finds that § 55 of Spec. Sess. P.A. 09-05 also violates the Equal Protection Clause of the Fourteenth Amendment, for the same reasons it finds § 64 to be unconstitutional. The plaintiffs, who are undisputedly indigent, will suffer irreparable harm if they are denied access to health benefits, so injunctive relief is entirely appropriate. See *Goldberg v. Kelly*, 397 U.S. 254, 264, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970).

The court finds all the issues in favor of the plaintiffs and hereby permanently enjoins the defendant from enforcing §§ 55 and 64 of Spec. Sess. P.A. 09-05.

It is so ordered.



Miller, J.

Copies mailed 12/18/09 to:  
- S. Garten/G. Bass/N. Yorio  
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- Rptr. Jud. Decisions

