

The Jerome N. Frank Legal Services Organization
YALE LAW SCHOOL

Written Testimony of Ana Muñoz and Jeffrey Kahn, Worker and Immigrant Rights
Advocacy Clinic, Jerome N. Frank Legal Services Organization, Yale Law School,
in Opposition to H.B. 5911
For Public Hearing of the Human Services Committee

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Our names are Ana Munoz and Jeffrey Kahn. We are law student interns in the Worker and Immigrant Rights Advocacy Clinic, a part of Yale Law School's Jerome N. Frank Legal Services Organization. We write to express the clinic's reservations regarding **House Bill 5911, *An Act Limiting Eligibility for the State-Administered Medical Assistance Program to Individuals Not Categorically Eligible for Medicaid***. It is our opinion that House Bill 5911 violates the Equal Protection Clause of the Fourteenth Amendment and threatens to deny certain groups of citizens much-needed medical benefits.

1. The proposed legislation likely violates constitutional principles and will subject the State to costly litigation.

It is our opinion that House Bill 5911 violates the Equal Protection Clause of the Fourteenth Amendment by offering state benefits to American Citizens while simultaneously denying those benefits to Legal Permanent Residents (LPRs). By eliminating eligibility for LPRs who are categorically eligible for Medicaid but who may be technically ineligible based on sponsor-deeming rules, the Bill intentionally discriminates against a suspect class—LPRs—in violation of the Constitution. Federal Constitutional precedent, State Constitutional precedent, and published opinions by Connecticut's Attorney General support this argument.

House Bill 5911 is designed specifically to deny LPRs benefits under the medical component of the state-administered general assistance program (SAGA). SAGA has provided a safety net for immigrants denied eligibility under post-1996 federal benefits laws. House Bill 5911 will discontinue this function of SAGA, a function that meets the explicit goals of similar state programs designed to provide benefits to LPRs where the federal government has ceased to do so—e.g. SMANC and state-funded food stamps. Not only is it bad policy for the State to deny legal immigrants health care, but it is also unconstitutional.

In *Graham v. Richardson*, the United States Supreme Court held that alienage-based classifications in state welfare programs are suspect classifications, which automatically trigger strict scrutiny. *Graham v. Richardson*, 401 U.S. 365, 371 (1971). Specifically, the Court held that "classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny. Aliens as a class are a prime example of a 'discrete and insular' minority for whom such heightened judicial solicitude is appropriate." *Id* (internal citations omitted). The Court then overturned the statutes in question on equal protection grounds.

In *Barannikova v. Town of Greenwich*, the Connecticut Supreme Court examined a challenge to Connecticut state regulations that required sponsor-deeming in determining eligibility of alien's applying for state general assistance benefits. 643 A2d 251, 255 (Conn. 1994). Following *Graham* and its progeny, the Connecticut Supreme Court held that "state or local laws that classify on the basis of alienage to determine eligibility to receive economic benefits are inherently suspect and are thus subject to strict judicial scrutiny under the equal protection clause of the fourteenth amendment." *Id.* at 259. Applying strict scrutiny review, the Connecticut Supreme Court found that the state's claim that the "deeming scheme is justified by a desire to preserve the economic welfare of the state is not compelling and is inadequate to withstand . . . [an] equal protection challenge." *Id.* at 265. The decision also noted that even if a state statute or regulation mirrors a federal statute, strict scrutiny still applies to the state statute or regulation. *Id.* at 263.¹

In 2004, the Connecticut Attorney General issued an opinion to the President Pro Tempore of the State Senate, espousing the constitutional interpretation put forth in *Graham* and *Barannikova* outlined above. Specifically, the Attorney General noted that State constitutional law has not shifted following the enactment by Congress of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"). *Opinion No. 2004-002*, February 24, 2004. The Attorney General opined that state laws discriminating against legal permanent residents while offering identical benefits to citizens would still most likely be struck down on equal protection grounds. In 2007, the Connecticut Attorney General reaffirmed this opinion. *Opinion No. 2007-020*, September 25, 2007, FN2.

For the foregoing reasons, we are of the opinion that House Bill 5911 is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. As such, it opens the State of Connecticut to costly litigation and would most likely be struck down by the courts on equal protection grounds.

2. The proposed legislation could deny benefits to needy Connecticut residents who are categorically eligible for Medicaid but are awaiting approval and disbursement of benefits.

¹ There have been several cases decided subsequent to *Graham* that have held that rational basis review is the appropriate review standard in federal programs and, in some cases, state-administered federal programs. *Soskin v. Reinertson*, 353 F.3d 1242 (10th Cir. 2004); *Mathews v. Diaz*, 426 U.S. 67 (1976). The facts of these cases are distinguished from those before the Committee today in that they deal primarily with federal or state-administered federal benefits programs as opposed to purely state benefits programs like SAGA. One lower court case that does deal with a similar set of facts to those before the Committee is *Doe v. Commissioner of Transitional Assistance*, a case in which the Supreme Judicial Court of Massachusetts held that intra-alien classifications used to limit benefits in state programs were only subject to rational basis review. 773 N.E.2d 404 (Mass. 2002). As noted above, however, the Connecticut Supreme Court has ruled to the contrary in *Barannikova*, and the Connecticut Attorney General has opined that the *Barannikova* holding is likely to persist. *Opinion No. 2004-002*, February 24, 2004. Furthermore, in *Aliessa v. Novello*, the New York Court of Appeals held that legislation authorizing discrimination based on alienage in the solely state-funded component of state and federal Medicaid will be subject to strict scrutiny even if authorized by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. 96 N.Y. 2d 418, 434 (N.Y. 2001). For these reasons, the application of strict scrutiny review of alienage-based classifications in Connecticut state programs is likely to remain unaffected by these non-controlling, post-1996 decisions.

House Bill 5911 would terminate benefits to people merely on the basis of whether they meet Medicaid's eligibility requirements because of age, disability, pregnancy, caretaker status, or certain cancer diagnoses. House Bill 5911 does not take into account whether these Connecticut residents are actually receiving Medicaid. Some of our neediest community members may qualify for Medicaid under these criteria, but may not be receiving benefits because they are awaiting approval for Medicaid from the Department of Social Services (DSS). This population includes people who are transitioning from SAGA to Medicaid and naturalized citizens in the process of locating documentation of their legal status.

House Bill 5911 may deprive people of basic medical care during the period in which they have become eligible for federal benefits, but have not yet been approved to receive those federal funds. According to federal regulations, DSS has 90 days to act upon a Medicaid application from someone who has become disabled, and 45 days to act upon a Medicaid application from other groups newly qualified for Medicaid because of factors like age or caretaker status. 42 C.F.R. § 435.91. The plain language of House Bill 5911 implies that people who are eligible for Medicaid, but are caught in this approval window, can no longer receive SAGA. Such a system results in a perverse consequence: Connecticut residents dealing with a dramatic change in their lives, such as a new disability, may be deprived of medical benefits at the very moment they need medical care the most.

House Bill 5911 may also leave naturalized citizens without benefits during the time it takes to meet complicated documentation requirements of their citizenship. Federal law requires that Medicaid recipients provide documentation of their citizenship status. 42 U.S.C. § 1396b. For some, documentation may be hard to track down or provide. For example, people who leave their homes in haste may leave documentation behind. A victim of domestic violence, a fire, or a natural disaster may not have ready access to paper copies of legal documents like a passport or naturalization certificate. For these citizens, and others in a similar position, obtaining documents to verify their citizenship, and prove their eligibility for Medicaid may take weeks or months. In the meantime, they remain technically eligible for Medicaid, and thus, ineligible for SAGA under House Bill 5911. During this time, needy citizens may have to live without medical benefits.

In sum, this bill raises serious constitutional concerns and may leave needy citizens awaiting bureaucratic approval without medical benefits at the time they need them the most. We urge you to not to pass House Bill 5911.

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