STATE OF MICHIGAN
IN THE COURT OF CLAIMS

THE YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF KALAMAZOO, MICHIGAN on behalf of itself and its clients,

Plaintiff,

v

STATE OF MICHIGAN and **DEPARTMENT OF HEALTH AND HUMAN SERVICES,**

Defendants.
_____ /

Case No.

Hon.

BONSITU KITABA-GAVIGLIO (P78822)
PHILIP MAYOR (P81691)
DANIEL S. KOROBKIN (P72842)
American Civil Liberties Union Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6800
bkitaba@aclumich.org
pmayor@aclumich.org
dkorobkin@aclumich.org

RYAN MENDIAS*
BRIGITTE AMIRI*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633
rmendias@aclu.org
bamiri@aclu.org

KATHERINE CHENG*
Goodwin Procter LLP
1900 N Street, N.W.
Washington, DC 20036
(202) 346-4000
(202) 346-4444
katherinecheng@goodwinlaw.com

JENNIFER BRIGGS FISHER*
JESSICA HUANG*
Goodwin Procter LLP
Three Embarcadero Center, Suite 2800
San Francisco, CA 94111
(415) 733-6000
(415) 677-9041
jfisher@goodwinlaw.com
jhuang@goodwinlaw.com

**Pro hac vice applications forthcoming*

EXHIBITS TO

VERIFIED COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MANDAMUS RELIEF

INDEX OF EXHIBITS

EXHIBIT 1	*Doe v Wright*, unpublished opinion of the Cook Co, Ill Circuit Court, issued December 2, 1994 (Docket No. 91 CH 1958)
EXHIBIT 2	*Doe v Celani*, unpublished opinion of the Chittenden Co, Vt Superior Court, issued May 26, 1986 (Docket No. S81-84CnC)

EXHIBIT 1

Doe v Wright,
unpublished opinion of the Cook Co, Ill Circuit Court,
issued December 2, 1994 (Docket No. 91 CH 1958)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Jane Doe et al.,
Plaintiffs

v.

Robert Wright, Director,
Illinois Department of Public
Aid,
Defendant

No. 91 CH 1958

ORDER

This matter coming before the Court for ruling on the parties' Cross-Motions for summary judgment, the parties appearing through counsel, a IT IS HEREBY ORDERED THAT:

1. Plaintiffs Cross-Motion for Summary Judgment is granted, on the grounds that 305 ILCS 5/5-5 and 5/6-1 and their accompanying regulations are in violation of the Constitution of the State of Illinois.

2. Defendant is hereby enjoined from enforcing 305 ILCS 5/5-5 and 5/6-1 and their accompanying regulations ~~in any manner that~~ insofar as they deny reimbursement for abortion necessary to protect a woman's health although not necessary to preserve her life.

3. Defendant is ordered to provide reimbursement through the State's medical assistance programs for abortions necessary to protect a woman's health.

4. Defendant's Cr Motion for Summary Judgment is denied.

Atty No. 91922
Name S. Wisnicki for TLS
Attorney for
Address 303 N. LaSalle St.
City Chicago, IL 60601
Telephone (312) 201-9740

ENTER: DEC 2 1994, 19....

Judge, Judge's No.

printed on recycled paper

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT 2

Doe v Celani,
unpublished opinion of the Chittenden Co, Vt Superior Court,
issued May 26, 1986 (Docket No. S81-84CnC)

STATE OF VERMONT

CHITTENDEN COUNTY, ss.

JANE DOE On behalf of herself and all others similarly situated v. VERONICA CELANI, Commissioner of the Department of Social Welfare	CHITTENDEN SUPERIOR COURT DOCKET NO. S81-84CnC

OPINION AND ORDER

The Plaintiff seeks to enjoin the Defendant from denying Medicaid coverage to indigent Vermonters for medically necessary abortions.

The parties have submitted the case to the Court for a final decision on the legal issues raised by the pleadings and the Stipulation of Facts filed September 3, 1985.

On January 27, 1984, this Court preliminarily enjoined the Commissioner from denying Medicaid coverage to the named Plaintiff for a medically necessary abortion. On September 28, 1984, the preliminary injunctive relief was continued and extended to cover the class that Plaintiff represents. This class is defined as:

> [a]ll indigent pregnant women in Vermont who qualify for Medicaid and whose pregnancy is not life threatening but for whom an abortion is medically necessary and who desire an abortion.

The Commissioner's denial of Medicaid was based upon Department of Social Welfare Regulation M617, which states:

Providers will be reimbursed by Vermont Medicaid for abortions performed only under circumstances for which Federal Financial Participation is available.

Regulation M617 was adopted after the passage of the so-called Hyde Amendment to a federal appropriations bill. In its current version the Hyde Amendment limits federal reimbursement for abortions to situations where the life of the woman would be endangered if the fetus were carried to term.

Except for the restriction contained in Regulation M617 Vermont provides Medicaid coverage for all medically necessary non-experimental procedures and the Federal Government reimburses the State pursuant to Title XIX of the Social Security Act, 42 U.S.C.A. §§1396 - 1396q (West 1983 & Supp. 1985). But for the provisions of the Hyde Amendment, medically necessary abortions would qualify for reimbursement under the joint Federal-State Medicaid program according to the terms of both Title XIX and 33 V.S.A. §§2901-2903. Prior to passage of the first Hyde Amendment the Vermont Department of Social Welfare provided Medicaid coverage for medically necessary abortions.

Even without Regulation M617, Vermont would still receive full reimbursement for all medically necessary services, except non-life threatening abortions. See, e.g. Moe v. Secretary of Administration, 417 N.E.2d 387, 391 (Mass. 1981).

Plaintiff and all other members of the class by categorical definition are eligible for Medicaid. Plaintiff has one non-functioning kidney and one partially functioning transplanted

kidney. In Plaintiff's case, the continuation of her pregnancy posed serious medical risks. Her physician indicated that these risks included adverse effects on the viability of her transplanted kidney from spontaneous abortion; serious complications directly related to the pregnancy, such as, high blood pressure and seizures resulting from a further decrease in the functioning of her transplanted kidney (which is only partly functional) and, finally, kidney failure which would require dialysis treatment to sustain her life. This medical opinion was confirmed by a second physician. Both doctors indicated that an abortion was medically necessary.

The adoption of Regulation M617 sets up the only exception to the clearly established public policy of providing health care services to the indigent for all conditions requiring medically necessary non-experimental procedures. Indeed, it is clear that Regulation M617 is not so much an exception to the stated public policy of providing medically necessary services to the indigent, as it is a complete negation of that policy as it relates to one medically necessary service.

Vermont passed its medical assistance program, 33 V.S.A. §§2901 - 2904 in 1967 under Title XIX of the Federal Social Security Act. Title XIX was passed

> [f]or the purpose of enabling each State, as far as practicable under the conditions in such state, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, ...

42 U.S.C.A. §1396.

The Commissioner reads into the Vermont statute which

provides for a medical assistance program a federal appropriations restriction which opposes the legislative goal of the program.

Unlike some other jurisdictions, Vermont does not prefer childbirth over abortion as a matter of public policy. Defendant advances two reasons for Regulation M617. She maintains that without federal reimbursement she does not have administrative authority to fund medically necessary procedures for which federal reimbursement is unavailable. She also maintains that funding medically necessary abortions in non-life-threatening pregnancies would increase the State's financial contribution to the Medicaid program due to the denial of federal reimbursement.

It should be noted that under the facts as stipulated, if in one year all 264 abortions are paid for entirely out of state funds at a normal cost of $200.00, the cost to the State would be $52,800.00. If federal funding were available at the rate of 67.06 percent, which it is not, savings to the State would be $35,407.68. If those 264 pregnancies went to term and resulted in normal births, at a cost of $1,225.00, the total cost would be $323,400.00. With federal reimbursement available at 67.06 per cent the cost to the State of these procedures would be $106,527.96. Thus, the cost to the State of funding live births with federal reimbursement is slightly over three times the cost of State funding for abortions without federal funding.

The State has failed to demonstrate a connection between the regulation and the only public purpose claimed, that of saving money. The regulation's sole demonstrable effect is to negate the purpose of the enabling statute under which it was

promulgated. The only purpose to which Regulation M617 relates rationally is to favor childbirth over abortion. But the State disavows this as public policy of the State of Vermont. [1] This disavowal leaves the Commissioner with no rational reason for retaining or enforcing Regulation M617.

Clearly the Federal Constitution as interpreted by the United States Supreme Court in Harris v. McRae, 448 U.S. 297 (1980), does not provide protection to Plaintiff in this situation. The question therefore is whether or not Regulation M617 impermissibly impinges upon some protection afforded or right guaranteed by the Vermont Constitution. See, State v. Badger, 141 Vt. 430, 438 (1982).

Initially it should be noted that the Vermont Constitution provides more protection for the individual than the United States Constitution, and delineates rights not recognized or guaranteed by that document. These textual differences provide a valid basis for independent analysis, and a determination that greater protection is provided by the Vermont Constitution. State v. Jewett, 146 Vt. 221 (1985).

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[1] Were the state to assert favoring childbirth over abortion as a public policy Regulation M617 would fall as an impermissible infringement of constitutionally guaranteed rights. Beecham v. Leahy, 130 Vt. 164, 169 (1972); see, Right to Choose v. Byrne, 450 A.2d 925 (N.J. 1982); Moe v. Secretary of Administration, 417 N.E.2d 387 (Mass. 1981); Committee to Defend Reproductive Rights v. Myers, 29 Cal.3d 352, 172 Cal.Rptr 866, 625 P.2d 770 (1981); but see, Fischer v. Commonwealth, 502 A.2d 114 (Pa. 1985); cf. Planned Parenthood Association v. Department of Human Resources, 687 P.2d 785 (Ore. 1984).

Article One of Chapter One of the Vermont Constitution provides: "That all men are born equally free and independent and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending of life, liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; . . ."

The language in Article One was obviously influenced by that portion of the United States Declaration of Independence which states: "We hold these truths to be self-evident; that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. . . ."

It is significant that the United States Constitution contains no such language.

It is perhaps more significant that Article One of the Vermont Constitution is not an isolated statement in that document. Several other articles in Chapter One deal with equality and protection of rights, including Articles Four, Five, Six, Seven, Nine and Eighteen.

Of particular relevance is Article Seven, which provides in relevant part

> That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community, and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community;. . . .

Greater protection for the individual under the Vermont

Constitution also derives from the nature of state government exercising its reserved sovereign power to promote and protect the health and welfare of its inhabitants. See, Jewett at 227. The Ninth and Tenth Amendments of the Federal Constitution, recognizing the concern for the federal-state balance of power, explicitly recognize that additional rights and protections are retained by the people as inhabitants of the states. See, Id.

The Vermont Bill of Rights was adopted prior to the existence of the United States Constitution, and was retained in the Constitution of the State of Vermont after the United States Constitution was adopted and ratified in the state. The retention, unaltered in substance, of additional human rights guarantees and constraints on governmental action indicates a deliberate and still enduring intent on the part of Vermont to recognize greater protections and benefits for its inhabitants under the rule of law than those recognized federally. The Vermont Supreme Court has "never intimated that the meaning of the Vermont Constitution is identical to the federal document. Indeed, [it has] at times interpreted our constitution as protecting rights which were explicitly excluded from federal protection." Badger at 449.

While the Federal Constitution establishes minimum levels below which states cannot go in treating individuals, it has never been questioned but that states can, and often do, afford persons within their jurisdiction more protection for individual rights. See, e.g. McRae at 311, n. 16, PruneYard Shopping Center v. Robins, 447 U.S. 74, 81 (1980). States are free to provide

additional protections by statute, and are obligated to do so by the terms of their own constitutions. "[O]ne of the strengths of our federal system is that it provides a double source of protection for the rights of our citizens." Brennan, State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489, 503 (1977).

It is this Court's duty and function to examine for constitutionality and to determine the precise meaning of our own constitutional provisions provided "no federal proscriptions are transgressed," In re E.T.C., 141 Vt. 275, 278 (1982); and obligation to determine the constitutional validity of the regulation in question. Badger at 449; Vermont Woolen Corporation v. Wackerman, 122 Vt. 219, 225 (1960).

Article Seven protects individuals against the discriminatory provision of government benefits by proscribing any particular emolument or advantage granted to only part of a community, whether or not that benefit affects fundamental rights. Article One gives constitutional stature to individuals' unalienable rights to health in the form of happiness, safety and the ability to enjoy life. Article One also protects individuals against discriminatory government treatment affecting fundamental constitutionally protected rights.

The safety of all Vermonters is promoted by the ready availability of adequate health care and the delivery of necessary health services. There is, therefore, a direct relationship between the availability of medically necessary services and the constitutionally guaranteed unalienable right to pursue and

obtain happiness and safety and to enjoy life. Health is central to personal safety and happiness. From medical well-being one may well say all other benefits flow. Faced with a threat to one's health, one's safety is integrally at risk. When one seeks a health service which is medically necessary, one is seeking, by definition, what is indispensable for the protection of one's health and safety. In a health care provider's judgment, a medically necessary service is essential for the treatment of a condition which if left untreated would affect adversely one's health.

This case does not present an issue involving the freedom of choice to obtain an abortion so much as it concerns an unequal protection by the State of indigent inhabitants' unconstitutionally protected right to personal health, safety and happiness. At issue is the constitutional validity of Regulation M617 when tested against the constitutionally protected fundamental right to personal safety and the constitutional prohibition against unequal provision of governmental benefits.

Recognizing that many of our inhabitants are not in a position to financially pursue happiness and safety and to enjoy life, it has long been the policy of the state to provide the necessities of life to qualified indigent persons. See, e.g. 33 V.S.A. Chap. 38, §3001(4).

Congress recognized the financial burden such programs place on the states, and provided for reimbursement to the

states which established appropriate assistance programs, e.g. 42 U.S.C.A. §§1396 - 1396q.

Consistent with the objectives of providing greater access to health care for indigents, a state is free under federal law "to include in its Medicaid plan those medically necessary abortions for which federal reimbursement is unavailable." McRae at 311, n.16. Although this Court does not rely on federal law in reaching its decision it does note that no federal proscriptions have been transgressed in arriving at a decision. See, In re E.T.C. at 278.

The purpose of these assistance programs is to place the indigent in a position to obtain services on an equal basis with those more fortunate people who can obtain these services for themselves. The Vermont Medicaid program was established to "furnish medical assistance [to those] . . . whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C.A. §1396; 33 V.S.A. §2901.

Regulation M617 singles out one necessary medical service and denies access to indigents for reasons which have nothing to do with promoting access to health care. Regulation M617 discriminates not only against indigents versus non-indigents, but between indigents seeking the medical procedure in question and those indigents seeking any other medically necessary service, all of which are reimburseable to providers by the State. More particularly Regulation M617 creates a single instance where the availability of reimbursement is conditioned on whether a woman's life or her health is threatened.

Regulation M617 impinges directly on the constitutionally guaranteed right to safety. It increases the danger to health by precluding access by indigents to a necessary medical procedure. It also treats Vermonters unequally by singling out small group of people for denial of access to medically necessar care.

Once the State has established a program of emoluments and advantages to a community of Vermonters, under Article Seven, it must ensure that the establishment and administration of that program is carried out for the common benefit, protection and security of that community. This prohibits discrimination among the provision of benefits once those benefits are being provided

The Vermont Supreme Court has set a standard under Article by which to measure the constitutionality of regulatory legisla- tion. See, State v. Ludlow Supermarkets, Inc., 141 Vt.261 (198: The Court's general concern was "with the propriety of the legislature's exercise of its general police power, and whether that power has been exercised so as to affect all citizens equally." Ludlow Supermarkets at 265. That concern generated the following constitutional tests. "[I]nequalities [in impact are not fatal with respect to constitutional standards if the underlying policy supporting the regulation is a compelling one and the unbalanced impact is, as a practical matter, a necessar consequence of the most reasonable way of implementing that policy." State v. Ludlow Supermarkets, Inc., 141 Vt. 261, 265 (1982).

> Classifications are permissible only
>
> if a case of necessity can be established for overriding the prohibition of Article 7 by reference to the 'common benefit, protection, and security of the people.'
>
> Given the breadth of the police power, . . .its exercise, even in the presence of other generalized restraints on state action, may be supported if premised on an appropriate and overriding public interest.

Id. at 268.

The Commissioner has failed to establish a case of necessity by failing to show any compelling public policy which Regulation M617 implements. She has failed to establish any rational basis for the regulation. The only necessary consequence of Regulation M617, besides favoring childbirth over abortion, is piecemeal and selective dismantling of the legislative policy of providing medical assistance.

"[The] objective of favoring one part of the community over another is totally irreconcilable with the Vermont Constitution." Ludlow Supermarkets at 269. Once benefits are granted to a part of the community they must further a goal independent of the preference awarded. Id. This proposition applies to the selective withholding of benefits. One person's preference is another person's discrimination. Medical assistance furthers the independent goals of improving the level of health of Vermonters and lessening the impact of economic inequalities on the protection of fundamental rights to health, safety and enjoyment of life. By contrast, Regulation M617 bears no rational relation to any independent public policy goal.

The Commissioner maintains that under §§2901 and 2902 of the Vermont Medical Assistance Act, that state Medicaid funds can only be used to pay for services for which federal reimbursement is available. She argues that because the Hyde Amendment limits Medicaid funds to the states under Title XIX, by state law the Commissioner must follow suit. However, state law compels the opposite conclusion.

A Court's primary object in interpreting a statute is to ascertain and give effect to legislative purpose. Paquette v. Paquette, 146 Vt. 83, 86 (1985).

Absent compelling indications that administrators' construction is wrong the Court must follow those conclusions. Petition of Village of Hardwick Electric Department, 143 Vt. 437, 444 (1983), so long as they are "'reasonably related to the purposes of the enabling legislation.'" Farmers Production Credit Association of South Burlington v. State of Vermont, 144 Vt. 581, 584 (1984)[quoting Committee to Save the Bishop's House, Inc. v. Medical Center Hospital of Vermont, Inc., 137 Vt. 142, 150 (1979)].

3 V.S.A. §203 provides that "[t]he commissioner or board at the head of each department herein specified shall exercise only the powers and perform the duties imposed by law on such department." This statute together with 3 V.S.A. §212, (which creates and enumerates the various administrative departments) have been construed by the Vermont Supreme Court to mean that "the Legislature has established that authority in an administrative

department cannot arise through implication. An explicit grant of authority is required." Miner v. Chater, 137 Vt. 330, 333 (1979).

33 V.S.A. §2901 empowers the Commissioner of the Department of Social Welfare to administer a medical assistance program under Title XIX of the Social Security Act. Section 2901 provides that the Commissioner shall issue regulations not in conflict with federal regulations under Title XIX of the Social Security Act. It does not preclude the Commissioner from taking measures to protect individuals' health above and beyond federal ones.

33 V.S.A. §2902 provides: "In determining whether a person is medically indigent, the commissioner shall prescribe and use the minimum income standard or requirement for eligibility which will permit the receipt of federal matching funds under Title XIX of the Social Security Act."

Regulation M617 negates the clear legislative intent of the Vermont Medical Assistance Act, thereby providing compelling indications that the Commissioner has erred in her construction of the statute. A regulation such as M617 which creates an unjust result and which also runs contrary to a clear legislative purpose goes against the "fundamental rule in regard to any statute that no unjust or unreasonable result is presumed to have been contemplated by the Legislature." Nolan v. Davidson, 134 Vt. 295, 299 (1976).

The Commissioner interprets the statute to mean that she

has the power to withhold medical assistance based simply on the availability of federal funding. Nowhere does the statute so provide or imply. The fact that federal grants to state programs established under federal law can be limited and shaped by Congressional policies does not give state administrators power to ignore the mandate of state statutes. "[U]nder our constitutional system, administrative agencies are subject to the same checks and balances which apply to our three formal branches of government. An agency must operate for the purposes and within the bounds authorized by its enabling legislation, or this Court will intervene." In re Agency of Administration, State Buildings Division, 141 Vt. 68, 75 (1982). An administrative desire to synchronize funding with that reimburseable with federal funds, simply because a federal statute restricts reimbursement, is not within authorized bounds when that action is not expressly permitted by the enabling legislation.

Section 2902 merely says that the state definitions of a medically indigent person must be the same as federal guidelines provide in order for matching funds to be available. Section 2902 does not address limitations on medically necessary procedures for which a state may provide reimbursements to providers. Section 2902 only limits the "who" receiving medical assistance, it provides no authority for limiting the "what" of medically necessary services based on availability of federal funding.

Both Title XIX and 33 V.S.A. §§2901 and 2902 predate the Hyde Amendment and therefore cannot have contemplated that the

language at issue could have applied to limit funding based on selected procedures rather than on levels of income and resources. Indeed, Title XIX and 33 V.S.A. Chapter 36 were passed initially on a premise of universal access to all medically necessary procedures. The aberration to this universality, as embodied in the Hyde Amendment and Regulation M617 does nothing but further a social policy couched in terms of favoring childbirth over abortion at the expense of the health of the mother, which is antithetical to the medical assistance purpose of protecting health by equalizing and facilitating universal access to all medically necessary health care.

Nothing in Chapter 36 of 33 V.S.A. or Title XIX of the Federal Social Security Act suggests that federal matching funds for all other medically necessary services would be endangered if the State should choose independently to fund procedures for which federal funds are unavailable. The Commissioner points to no authority, state or federal, which compels the conclusion that independent state funding beyond that matched by federal funding endangers federal funding already available. There is no mandate in federal law which prohibits states from funding medically necessary abortions where the life of the mother is not threatened. The reverse, if anything, was implied by the Roe v. Wade, 410 U.S. 113 (1977), decision and its progeny. Maher v. Doe, 432 U.S. 464 (1977) and McRae held that no federal obligation existed to fund the right protected by the Federal Constitution to choose an abortion. Despite these holdings, the freedom of states to fund such abortions was explicitly

acknowledged, McRae at 311, n.16.

State funding for medically necessary abortions under Vermont's medical assistance program would have no effect on forfeiture of state eligibility for federal funds for reimbursable medical procedures. Therefore, Regulation M617 has no sound fiscal basis in light of the law and the facts stipulated to by the parties and adopted by the Court.

The only effect which the limitation on federal reimbursement embodied in the Hyde Amendment has, is to not provide federal reimbursement to abortions in instances of non-life threatening pregnancies. Absent Regulation M617, and despite the Hyde Amendment, Vermont would still receive federal reimbursement for a percentage of the costs of all other medically necessary services. See Moe v. Secretary of Administration and Finance, 417 N.E.2d 387, 391 (Mass. 1981)["Thus, the relief sought here would not jeopardize Federal reimbursement for other services provided by the Massachusetts Medicaid program."]

The onus is not on the Commissioner to find authority to fund medically necessary abortions, that funding is mandated by the language and purpose of the Medical Assistance Act and Title XIX. The onus on her is to provide a purpose for Regulation M617 which is expressly authorized and reasonably related to the purpose of medical assistance, Farmer's Production Credit Association at 584, Miner at 333. Patently that relation is missing and Defendant is exercising power beyond that delegated to her under the enabling act.

Regulation M617 operates contrary to the purpose of the Vermont Medical Assistance Act. "Article 5 of the bill of rights of this state expressly reserves to the legislature the right to regulate this [police] power. . . . But in exercising this right, the legislature cannot deprive a citizen of an essential right secured by the bill of rights or constitution,. . . ." State v. Hodgson, 66 Vt. 134 (1893), aff'd 168 U.S. 262 (1897). This exercise of administrative power violates Article Five of Chapter One of the Vermont Constitution in two ways. First, Regulation M617 impinges on the exclusive power of the Legislature to regulate the police power. Second, Regulation M617 exercises police power so as to deprive certain Vermonters of their constitutionally guaranteed rights to health and safety, and does so in a discriminatory manner.

Regulation M617 violates Vermont Constitutional principles of separation of powers and the accountability of officers of government to the people. The Commissioner's violation of 3 V.S.A. §§203 and 212 violates the principle of Chapter I, Article Six that to exercise authority which creates policy there must first be accountability to the people via popular elections, see, Welch v. Seery, 138 Vt. 126, 128 (1980). The cases decided under Chapter II, §2, 5 and 6, reach the same conclusions of unconstitutionality based on principles of separation of powers. State v. Auclair, 110 Vt. 147 (1939); Village of Waterbury v. Melendy, 109 Vt. 441 (1938). By contrast to Article Six of Chapter I, these Chapter II sections allow

direct recourse to the courts in the event of their violation.

The Commissioner's expansion of her authority with a result contrary to the purpose envisioned for that statute by the Legislature violates the separation of powers required by the Vermont Constitution in Chapter II, §5. Cf., State v. Jacobs, 144 Vt. 70, 75 (1984).

Plaintiff has failed to establish grounds to take her out of the scope of the general Vermont rule that attorneys' fees are not recoverable as an element of damages. Albright v. Fish, 138 Vt. 585, 590-91 (1980). Therefore, Plaintiff's request for attorneys' fees is denied.

ORDER

This Court finds Department of Social Welfare Regulation M617 unconstitutionally null and void. IT IS THEREFORE ORDERED: The State of Vermont, through its Department and Commissioner of Social Welfare is permanently enjoined from enforcing Regulation M617 or any other regulation which purports to deny reimbursement for medically necessary abortions.

Dated at Burlington, Vermont, this 23rd day of May, 1986.

Hilton H. Dier, Jr.
SUPERIOR JUDGE