

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

<p>JOHN DOE, JOHN ROE, and CONNECTICUT HARM REDUCTION COALITION</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BRIDGEPORT POLICE DEPARTMENT and WILBUR L. CHAPMAN, CHIEF OF THE BRIDGEPORT POLICE DEPARTMENT, in his official capacity only</p> <p style="text-align: center;">Defendants.</p> <hr/>		<p>CIVIL NO.</p>

**MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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## I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs, two Connecticut residents and the Connecticut Harm Reduction Coalition, seek a temporary restraining order and preliminary injunction enjoining the Bridgeport Police Department (the “Department”) from continuing their current practice of arresting and seizing citizens who regularly possess equipment for intravenous drug injection. These arrests and seizures violate plaintiffs’ constitutional rights on an ongoing basis, threaten their life and health and the life and health of the broader Bridgeport community, and undermine enacted state law. The police have no probable cause for the arrests because possession of up to 30 sets of injection drug equipment is explicitly protected by Connecticut law.

Plaintiffs document herein the Department’s long-term, widespread custom of making arrests for possession of injection equipment, despite state law to the contrary. As a result of the Department’s arrests, injection drug users (“users”) are afraid to carry safe injection equipment, driving them to share equipment and to discard used equipment. The Department’s policy thus dramatically increases the likelihood that users (and eventually the sexual partners and newborn children of users) will contract potentially lethal blood-borne diseases such as HIV, the virus that causes AIDS, and hepatitis, as well as the danger that Bridgeport residents will encounter used equipment contaminated with a lethal virus. The harm caused by AIDS, for which there is no cure, is plainly irreparable. Every day that the Department arrests people for possession of injection equipment is another day that hundreds of people will risk contracting incurable, life-threatening viruses.

The state of Connecticut mandated the establishment of a Syringe Exchange Program (“Exchange”) to be run by municipal health departments beginning in 1990. *See* Conn. Gen. Stat. § 19a-124 (1990).<sup>1</sup> In conjunction with the statute establishing the Exchange, the legislature also modified the statute criminalizing possession of drug paraphernalia to allow possession of ten or fewer “hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body.” Conn. Gen. Stat. § 21a-240(20)(ix) (1990). The statute was further modified in 1999 to allow for possession of up to 30 sets of injection drug equipment. *See* Conn. Gen. Stat. § 21a-240(20)(ix) (1999).

Connecticut decriminalized possession of injection drug equipment and created its Exchanges to combat high rates of HIV transmission among injecting drugs users in the 1980s. *See* Dec. of Dr. Robert Heimer, at ¶ 11; 33 Conn. Sen. Proceedings, S-311, at 3314 (1990) (“We have an [AIDS] epidemic and we need to deal with it as quickly as we can and as effectively as we can.”) (Sen. Matthews); *id.* at 3338 (“The big picture is, people are contracting AIDS. . . . Many people with AIDS, get AIDS with the use of needles, dirty needles.”) (Sen. Morton). Used

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<sup>1</sup> All referenced Connecticut Statutes are included in the attached Appendix.  
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injection equipment is contaminated with blood and can transfer HIV in that blood to a subsequent user. *See* Heimer Dec. at ¶ 26. Other blood-borne diseases, particularly hepatitis B and C, are also frequently transmitted via shared injection equipment. *Id* at ¶ 27. Using new, sterile injection equipment is recognized as the best way to prevent active users from contracting and spreading HIV by the Centers for Disease Control, the U.S. Department of Public Health, the National Institute on Drug Abuse, and the Substance Abuse and the Mental Health Services Administrator. *See id.* at ¶ 21. By offering clean, sterile injection equipment, Exchanges are critical to reducing the spread of HIV among users. *See id* at ¶ 24; *see also* Dec. of Dr. Ricky Bluthenthal, at ¶ 9.

Although Connecticut has mandated the creation of the Bridgeport Exchange (a program run by the Bridgeport Public Health Department), the Bridgeport police have routinely subjected the Exchange's clients, as well as other Bridgeport users who do not use the Exchange, to interference based solely on their completely legitimate possession of safe injection equipment. Exchange workers and the Bridgeport Health Department have sought repeatedly, without success, to educate officers about Exchanges and the laws regarding possession of injection equipment, either at the police academy or in post-academy training sessions. Declaration of Mark Kinzley at ¶ 11; Declaration of Anthony Givens at ¶ 8.

Many of defendants' police officers misunderstand the role of the Exchange and continue to view possession of injection equipment as a criminal offense. For many years, Exchange clients have reported being stopped by Bridgeport police officers upon leaving the exchange. *See* Kinzley Dec. at ¶ 9; Declaration of Robin Clark-Smith at ¶ 6; Givens Dec. at ¶ 7. The police officers demand that clients turn over their syringes, break the syringes, and destroy the client's Exchange participant identification cards, which are issued by the Health Department. *See* Kinzley Dec. at ¶ 9; Givens Dec. at ¶ 7. Plaintiffs and members of the proposed class suffer from these practices on an ongoing basis. When the officers break the syringes they not only leave the clients without safe equipment to inject with but also deny them use of the Exchange,

because a client must turn in used equipment to get clean equipment from the Exchange. *See* Kinzley Dec. at ¶ 8; Clark-Smith Dec. at ¶ 7.

Beyond loss of injection equipment and identification cards, each named plaintiff has been arrested for possession of injection drug equipment, despite the legality of this equipment under Connecticut law. *See* Declaration of John Doe at ¶ 16; Declaration of John Roe at ¶ 13. Plaintiff Roe, moreover, spent eight days in jail following his arrest. Numerous other members of the plaintiff class have reported to Exchange workers that they were arrested for possession of injection equipment. *See* Clark-Smith Dec. at ¶ 8. While these arrests have occurred for many years, their frequency has increased over the past two months. *See id.* The police activity undermines the purpose of the Exchange legislation, discouraging clients from using sterile injection equipment or exchanging used equipment, and thereby contributes to the problem of transmission of lethal blood-borne viruses such as HIV and hepatitis. *See id.* Crucially, it also represents a violation of an individual's constitutional rights, since the arrests are made without a valid basis in law.

The straightforward facts of this case show that defendants have violated plaintiffs' constitutional rights to be free of unreasonable searches and seizures under the Fourth Amendment. Plaintiffs were arrested for possession of drug paraphernalia and, in the case of Mr. Roe, drug possession. The injection equipment they possessed, however, was specifically exempted from the paraphernalia laws by Conn. Gen. Stat. § 21a-240(20)(ix). Presumably the arrest of Mr. Roe was based on a suspicion that his equipment contained trace amounts of drugs. But the arrest of people possessing used equipment frustrates the clear intent of the Connecticut legislature to establish the Exchanges. *See* Conn. Gen. Stat. § 19a-124. The Department's policy is otherwise futile. Prosecution for these trace amounts is difficult and, as in Mr. Roe's case, the charges are usually dropped. *See* Roe Dec. at ¶13; Kinzley Dec. at ¶ 9.

The law legalizing possession of injection equipment was passed a decade ago, and its existence has been consistently proclaimed by the Bridgeport Health Department and reported in the media. The only explanation for these arrests is either animus toward members of the

plaintiff class or a systematic lack of training of police officers concerning the laws of Connecticut. A temporary restraining order and preliminary injunction would save lives by assuring the user community that they can participate in the state's own Exchange program without fear of unconstitutional arrests.

## **II. FACTUAL BACKGROUND**

### **A. Public Health Rationale for Exchange Programs**

HIV, a blood-borne virus that causes AIDS, was detected among injection drug users early in the AIDS epidemic. The first HIV prevention efforts were, however, directed mainly at safer sex practices and eliminating the virus from the hospital blood supply. Although the first syringe exchange was established in Amsterdam, the Netherlands, in 1984, it was not until 1986 that the prevalence of HIV among injection drug users began to catch the attention of public health officials in the U.S., and not until 1988 that the first official syringe exchange was created. *See* Robert Heimer, *Syringe Exchange Programs*, 113 Public Health Reports 68, 68 (June 1998, Supp. 1), attached as Exh. F to Heimer Dec.

By 1990, however, HIV transmission among injecting drug users had become, directly or indirectly, a leading source of new HIV infections. Today, approximately half of all new HIV infections can be traced to injection drug use. *See* Lindesmith Center, *Needle and Syringe Availability* at 1, attached as Exh J to Heimer Dec. ("Lindesmith" hereinafter). In response to this growing public health crisis, politicians and public health officials began seriously to consider syringe exchange as a method of saving lives and preventing the transmission of HIV. Thus, in November 1990, the Connecticut legislature created an experimental, state-funded Exchange in New Haven. The effectiveness of Exchanges was not yet proven, and the legislature demanded that objective, scientific research be used to evaluate the New Haven Exchange; the state would only continue funding if independent experts determined the Exchange worked to reduce HIV transmission without increasing drug use. *See* Heimer Dec. at ¶ 11; 33 Conn. Sen. Proceedings, S-311, at 3315 (1990) (Sen. Matthews). Drs. Robert Heimer and

E.H. Kaplan of Yale were commissioned to examine the effects of the Exchange on HIV transmission. *See* Heimer Dec. at ¶ 11.

Exchanges provide three types of services to clients. First, they provide new, clean, sterile injection equipment, such as syringes, cookers, cottons, and water. *See* Givens Dec. at ¶ 4. They also provide some basic hygiene supplies, such as alcohol wipes, which reduce secondary infections associated with injection. *See* Bluthenthal Dec. at ¶ 12. Second, Exchanges provide information about safe injection practices and how to prevent transmission of HIV and other blood-borne diseases, and sometimes also provide basic health care services. *See* Heimer Dec. at ¶ 4. Finally, the Exchanges provide information about drug treatment and can assist clients when they are ready to enter treatment facilities. *See id* at ¶ 31.

The New Haven Exchange, like those that have been established in its wake, made a dramatic, immediate, positive impact. The Exchange saved lives and improved public health in three ways. Most dramatically, the rate of new HIV infections among users in New Haven dropped by one-third.<sup>2</sup> Exchanges save lives; shared injection equipment puts life at risk. Second, having clean injection equipment would have made little difference if clients had not been aware of the risks of using shared equipment and how to inject safely. Thus the Exchange taught clients about how HIV was transmitted, and introduced to other aspects of safer injection practices, such as following hygienic injection practices to prevent bacterial infections. *See id*. Finally, outreach workers at the Exchange were able to gain the trust of clients, providing a uniquely effective environment for moving drug users into treatment without increasing drug use. *See* Kinzley Dec. at ¶ 5. These positive results impressed the Connecticut legislature, which made the New Haven program permanent and created Exchanges in Hartford, Bridgeport and other cities. *See* Conn. Gen. Stat. 19a-124.

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<sup>2</sup> Heimer Decl. at ¶ 30. In addition to the peer-reviewed publication of this information, three independent statistical reviewers have examined the New Haven study and have judged the model sound and declared that it may actually understate the positive impact of Exchanges. *See* D. Vlahov and B. Junge, “The Role of Needle Exchange Programs in HIV Prevention,” 113 Public Health Reports, 78 (June 1998 Supp. 1), attached as Exh. C to Heimer Dec.

The documented success of the New Haven Exchange program changed the way public health officials looked at HIV transmission across the nation. Dr. Heimer's research, and similar studies of other Exchanges in Connecticut and elsewhere, brought syringe exchange to the forefront of HIV public health measures, and injection equipment exchanges remain one of the most effective ways of reducing HIV transmission. *See* Heimer Dec. at ¶ 19. Exchange programs are supported by the National Institutes of Health, the Centers for Disease Control, the American Medical Association, the American Public Health Association, the Surgeon General, the American Bar Association, the American Academy of Pediatrics, American Psychiatric Association, American Society of Addiction Medicine, American Pharmaceutical Association, Presidential AIDS Advisory Commission, and the World Health Organization. *See* Lindesmith at 2 & n.2.

Initial fears that Exchanges might increase the number of drug users or increase drug use among current users proved unfounded. Several studies indicate that access to safe injection equipment does not increase drug use,<sup>3</sup> while no study has found an increase in drug use among Exchange clients. *See* Lindesmith at 3; *see also* 33 Conn. H. Proceedings, H-575, at 7808 (1990) (Rep. Grabarz) (“communities with exchange programs report no increase in the number of [users]”). In addition, Exchanges help reduce the prevalence of improperly discarded syringes. *See id.* The main safe-injection alternative to new, sterile injection equipment, rinsing with bleach, “has not been associated with reductions in HIV prevalence.” R. Heimer, *Syringe Exchange Programs*, 113 Public Health Reports 68, 69 (June 1998, Supp. 1), attached to Heimer Dec. as Exh F; 33 Conn. H. Proceedings, H-575, at 7835 (1990) (Rep. Gyle). Finally, the Connecticut legislature established the exchange program in order to provide users who wish to enter treatment a safe method of injection during the several months they must wait to enter one of the state's oversubscribed drug treatment programs. *See* 33 Conn. H. Proceedings, H-575, at 7819 (1990) (Rep. McNally); Conn. Joint Standing Comm. on Public Health, 327-617, at 361 (1990) (testimony of Yale School of Medicine Prof. Dr. Jack Hughes). In short, Connecticut has

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<sup>3</sup> *See* Vlahov and Junge, *supra*, at 77 (attached as Exh. C to Heimer Dec.)  
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concluded that its exchange program serves the important public health imperative of reducing the spread of infectious disease.

**B. The Effect of Police Interference with Exchange Programs**

Plaintiff Doe’s case demonstrates the importance of the Exchange in clients’ lives. Doe was just a teenager when his then-girlfriend suddenly died. The shock of her death threw his life into turmoil, one result of which was that he began using heroin, to which he is now addicted. *See Doe Dec.* at ¶ 3. Doe was fortunate – he knew about the Exchange when he began using heroin, and has been a consistent client for four years.<sup>4</sup> *See id.* at ¶ 4. Over this time, he has developed relationships with several of the outreach workers, through whom he has learned about treatment options. *See id.* at ¶ 5. As Doe states, “I may have made some mistakes in the past, but I want to have a chance to undo them and to begin life again” – something he can do only if he avoids contracting a fatal or debilitating disease. *Id.* at ¶ 3.

Doe’s history of harassment and arrest by the Bridgeport Police, described in detail below, is not unique, but his willingness to risk arrest to maintain safe injection practices is less common. One study found that 65% of users reported not carrying syringes because they feared arrest. *See Bluthenthal Dec.* at ¶ 15. These users are more than twice as likely to share syringes than those who do not fear arrest. *See id.* at ¶ 14. While knowledge of HIV and AIDS dangers among users is high, the typical user is focused on preventing the painful process of withdrawal. *See Kinzley Dec.* at ¶5; *Heimer Dec.* at ¶ 23. Users know that one false move can land them in jail, and that within a few hours in jail – even if the charges are dropped – the painful process of withdrawal will begin. *See Kinsley Dec.* at ¶ 10; *Heimer Dec.* at ¶ 23. Users who fear arrest stop visiting the Exchange, begin reusing syringes, and thereby end up in a situation where they transmit or contract HIV. *See Bluthenthal Dec.* at ¶ 13. Police harassment discourages users from employing safe injection practices. *See Heimer Dec.* at ¶ 23; *Bluthenthal Dec.* at ¶ 14; *Kinzley Dec.* at ¶ 10. As one user put starkly explained, “I would rather get AIDS than go to

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<sup>4</sup> New injectors who are adolescent or young adults are at extremely high risk for HIV infection. Vlahov and Junge, *supra*, at 77.

jail.” Ricky Bluthenthal et. al., *Collateral Damage in the War on Drugs*, 10 International J. of Drug Policy 25, 28 (1999) (attached as Exh. D to Heimer Dec.). Based on their knowledge of Department practices, users are much more likely to share syringes and discard syringes in public places where third parties might injure themselves and risk infection. *See* 33 Conn. H. Proceedings, H-575, at 7809 (1990) (Rep. Grabarz).

**C. Bridgeport Police Department Interference with Bridgeport Exchange Program**

The defendant Police Department undermines a crucial public health initiative and endangers the health of users and the larger Bridgeport community, as well as violating constitutional rights, by making illegal arrests based on syringe possession. For the past eight years, the Department has stopped, searched, and arrested people for possession of syringes. *See* Kinzley Dec. at ¶ 8-9; Clark-Smith Dec. at ¶ 6; Givens Dec. at ¶ 7. These arrests have involved many different officers and have occurred at various locations in the city. The arrests have continued despite many attempts by Exchange workers to educate the police on the legality of Exchanges and syringe possession. *See* Givens Dec. at ¶ 8. The police have refused to allow Exchange workers to address police officers in their formal training sessions. *See* Kinsley Dec. at ¶ 11. While some police officers understand the status of the Exchange and safe injection equipment, many officers continue to harass and arrest users for possession of injection equipment, in violation of the statute directly on point. *See* Kinzley Dec. at ¶ 8-9; Clark-Smith Dec. at ¶ 6; Givens Dec. at ¶ 7. This pattern of illegal arrests has continued for many years and is not being controlled by training. Only a court order can put an immediate stop to this practice and protect the health of thousands of users in Bridgeport.

Officers use the fear of arrest to discourage clients from carrying syringes. For instance, the officer who arrested Mr. Doe on September 11, 2000, told Mr. Doe he would arrest him every time he saw Mr. Doe in the area of the park. *See* Doe Dec. at ¶ 16. That this threat was more than mere words is evidenced by the officer’s subsequent behavior. During the week of September 25, 2000, Doe was stopped again by a Bridgeport police officer. This time, he was

not charged with a crime, but the officer told Doe that he would be arrested if the officer found Doe in the neighborhood again. *See* Doe Dec. at ¶ 17. This incident, along with the prior arrest, made Doe afraid to carry injection equipment. *See id.* Although no arrest was made or summons issued, he was subject to a seizure as defined by the Supreme Court. *See Terry v. Ohio*, 392 U.S. 1 (1968). There is thus a credible and direct threat to Doe’s continued constitutional right to be free of searches and seizures absent probable cause. Equally important, the entire user community knows about this verified police practice and fears arrest. *See* Givens Dec. at ¶ 9; Kinzley Dec. at ¶ 8.

### **III. ARGUMENT**

The standard for issuing a temporary restraining order is well-settled: a party seeking a TRO must demonstrate irreparable harm should the relief not be granted, and “either (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits and a balance of hardships tipping decidedly toward the party seeking injunctive relief.” *Able v.*

*United States*, 44 F.3d 128, 130 (2d Cir. 1995).<sup>5</sup>

The Department continues to treat injection equipment as if the AIDS crisis and the resulting change in Connecticut statutory law never occurred. The safe exchange of injection drug equipment saves lives. Defendants on-going interference with the efforts to distribute safe injection equipment and recover used equipment poses a direct, immediate threat to the lives of plaintiffs, their sexual partners, future newborn children, and Bridgeport residents who risk contact with improperly discarded injection equipment. This harm is severe and incurable. The harm to plaintiffs is compounded by the unconstitutional nature of defendants' actions.

Plaintiffs demonstrate a high likelihood of success on the merits of their claims. The Connecticut legislature redefined paraphernalia in 1990 to allow possession of injection equipment and created a governmental program requiring Exchange clients to return used syringes to Exchanges. The Department's policy of arrest and seizure undermines enacted Connecticut law and violates plaintiffs' constitutional rights.

**A. Plaintiffs Have Suffered Irreparable Harm**

**1. Continued Illegal Arrests Threaten the Health of Plaintiffs and Threaten to Worsen a Public Health Crisis**

This matter could not be more urgent. Plaintiffs, and those similarly situated, risk obvious and incurable harm to their health each and every day the Department's policy of arrest and seizure for the possession of injection equipment is allowed to continue. A court can and should enjoin behavior that has caused an injury suffered in the past if it has "continuing present

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<sup>5</sup> In the Second Circuit, the same standards apply to both temporary restraining orders and preliminary injunctions. *See Local 1814, Int'l Longshoremen's Assoc. v. New York Shipping Assoc., Inc.*, 965 F.2d 1224, 1228 (2d Cir. 1992).

Where government action is taken pursuant to statutory authority within the public interest, the party seeking equitable relief must meet the tougher "likelihood of success" standard. *See Molloy v. MTA*, 94 F.3d 808, 811 (2d Cir. 1996). Here, the Department's pattern of arrest and seizure is not authorized by any statute; in fact, it frustrates laws establishing the Exchanges and exempting possession of less than thirty sets of injection equipment from paraphernalia laws. For that very reason, plaintiffs can show a strong likelihood of success on the merits of their claim. They can also meet the lower standard, a fortiori, by showing that the balance of harms tips in their favor, since the Department's policy of arrest and seizure endangers lives.

adverse effects,” *National Congress for Puerto Rican Rights v. City of New York*, 75 F. Supp. 2d 154, 160 (S.D.N.Y. 1999), including where police threaten on-going violations of Fourth Amendment rights. *See, e.g., Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486 (9th Cir. 1996).

Here, the “continuing present adverse effects” of the past violations are a matter of life and death. First, plaintiffs have suffered actual repeated incidents of illegal searches and seizures, causing them to fear the consequences of retaining or carrying injection equipment. Second, plaintiffs’ experience applies to a large group of people who have suffered similar unconstitutional seizures and experienced similar fears over the course of the past eight years. *See infra* at 9 (citing Declarations of Mark Kinzley, Robin Clark-Smith, and Anthony Givens). Users are extremely sensitive to the possibility of arrest. *See Heimer Decl.* at ¶ 23. As numerous studies demonstrate, fear of arrest or police harassment will cause users not to carry syringes. *See id.*; *see also Bluthenthal Dec.* at ¶ 13.<sup>6</sup>

When users do not carry syringes, they are much more likely to either share syringes or purchase syringes from unreliable sources, such as street dealers who may sell used syringes. *See Heimer Decl.* at ¶ 23. Shared syringes represent a great potential harm to the individual, and this harm is irreparable. Contracting HIV means that the user is almost certain to develop AIDS and suffer the chronic and life-threatening consequences of a disease *for which there is no cure.*<sup>7</sup>

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<sup>6</sup> National Institute on Drug Abuse studies indicate that 65% of IDUs do not carry syringes due to fear of arrest. *See* Ricky Bluthenthal, et. al, *Collateral Damage in the War on Drugs: HIV Risk Behaviors Among Injection Drug Users*, 10 Int’l J. on Drug Policy 25, 31-33 (1999) (attached as Exh. D to Heimer Dec.). Users understand that sharing syringes is dangerous, but the very nature of addiction causes users to focus on getting regular access to drugs in order to avoid withdrawal. The possibility of being arrested is thus a serious threat to plaintiffs and other users and undermines the public policy purposes behind syringe exchange. *See Bluthenthal Decl.* at ¶ 14. Even if charges are eventually dropped, the user knows that a night, or even a few hours, in jail can mean entering the painful process of withdrawal. The long-term risk of infection by blood-borne disease pales in comparison to this immediate, acute pain.

<sup>7</sup> AIDS is the second leading cause of death among men and women between 25 and 44. *See Lindesmith, Syringe Availability*, Exh. J to Heimer Dec. at 1.

Approximately half of new HIV infections occur among IDUs, their sexual partners, and offspring. *See* Lindesmith, *Syringe Availability*, Exh. J to Heimer Dec. at 1.

Fear of carrying injection equipment creates dangers beyond the drug users themselves. Users will go to considerable lengths to avoid possible arrest while carrying drug paraphernalia, including hiding syringes in semi-public places (e.g., bushes and buildings), having other users hold syringes for them, and flushing syringes down toilets. *See* Ricky Bluthenthal, *Collateral Damage in the War on Drugs*, Exh. D to Heimer Dec. at 33. Improperly discarded syringes represent a threat to the public health, both to other users and to non-users.

Further, users who contract HIV from shared needles will likely pass on the virus to others. Users can transmit HIV to sexual partners, a particularly severe risk given that many users work in the sex trade. *See* Givens Dec. at ¶ 5. Women can transmit HIV to children neonatally, at birth, or through breast feeding.

Finally, though not strictly an irreparable harm, equitable relief should contemplate the considerable financial toll wrought by the preventable HIV infections caused by shared injection equipment.<sup>8</sup>

Every day that users face the threat of arrest for possession of injection equipment results in drug users practicing unsafe injection methods, threatening their own lives and those of third parties, undermining Connecticut's clear statutory intention of making clean, sterile injection equipment available, and costing the public vast sums to care for AIDS cases that need never have happened.

**2. The Deprivation of Plaintiffs' Constitutional Rights by Police Actions Constitutes Irreparable Harm**

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<sup>8</sup> Peter Lurie and Ernest Drucker estimate that if the federal government had adopted syringe exchange as a national program in 1987, it would have saved between \$224 and \$538 million in health expenditures to treat AIDS by 1995. Since then, the cost of treating an AIDS patient has risen dramatically, from the \$55,640 figure Lurie and Drucker used to over \$100,000 today. *See* Peter Lurie and Ernest Drucker, "An Opportunity Lost: HIV Infections Associated With Lack of A National Needle-Exchange Program in the USA," 349 *The Lancet* 604 (March 1997), attached as Exh. B to Heimer Dec.

The Department's violation of plaintiffs' Fourth Amendment rights, as with any constitutional injury, causes irreparable harm. "When an alleged deprivation of a constitutional right is invoked, most courts hold that no further showing of irreparable injury is necessary." *Brewer v. West Irondequoit Cent. Sch. Dist.*, 212 F.3d 738, 744 (2d Cir. 2000) (finding irreparable an alleged violation of the Fourteenth Amendment); *see also Covino v. Patrissi*, 967 F.2d 73, 77 (2d Cir. 1992) (finding irreparable an alleged violation of the Fourth Amendment). The Fourth Amendment to the United States Constitution prohibits unreasonable search or seizure of a person. This prohibition against unreasonable searches and seizures applies to the states through the Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961). An arrest is considered a seizure for Fourth Amendment purposes, *see California v. Hodari D.*, 499 U.S. 621, 624 (1991). "The right to be free from arrest or prosecution in the absence of probable cause" the Second Circuit has held, "is a long established constitutional right." *Ricciuti v. N.Y.C. Transit Authority*, 124 F.3d 123, 128 (2d Cir. 1997). Plaintiffs in this case have suffered the violation of a well-recognized constitutional right and therefore meet the requirement of irreparable harm.

**B. Plaintiffs Have a Strong Likelihood of Success on Their Claim that the Police Department May Not Make Arrests Based on the Possession of Injection Equipment**

**1. The Definition of Drug Paraphernalia Specifically Exempts Injection Drug Equipment from the Definition of Paraphernalia**

Conn. Gen. Stat. § 21a-240(20)(a) specifically exempts possession of drug injection equipment in a quantity less than 30. *See* Conn. Gen. Stat. § 21a-240(20)(a)(ix) (exempting from the paraphernalia laws "hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body"). It follows that an arrest for possession of drug paraphernalia based on possession of injection equipment in a quantity less than 30 is barred by § 21a-240. The plain language of § 21a-240(20)(ix) entitles plaintiffs to relief.

**2. The Syringe Exchange Legislation Decriminalizes Possession of Trace Amounts of Narcotics Found in Used Syringes**

Defendants may claim that arrests for possession of injection equipment are justified by the possible existence of drug residue on used equipment because the residue qualifies as drug possession. Indeed, Mr. Roe was arrested and held in jail for eight days for drug possession on the basis of injection equipment which the arresting officer believed had been previously used. (Eventually, the charges against Mr. Roe were dropped). *See* Roe Dec. at ¶¶ 13-17. But the Department’s policy, if accepted, would gut the statute mandating Exchange laws.

In mandating the operation of Exchanges, Connecticut law plainly contemplates that users will obtain new injection equipment only if they return used injection equipment. Conn. Gen. Stat. § 19a-124. By definition, an Exchange can operate only if users possess injection equipment that contains trace, residual amounts of the previously injected substance. In mandating the operation of Exchanges, the Legislature equally authorized possession of new and used injection equipment.

Arrests for “drug possession” such as suffered by Mr. Roe pose an direct, irreconcilable conflict with the Exchange law, leading to absurd consequences. First, the Exchange legislation, coupled with defendants’ application of narcotics laws, would encourage *and* penalize the same behavior, carrying a used syringe. The Exchange statute mandates a syringe exchange program: “The Department of Health *shall* establish needle and syringe exchange programs.” Conn. Gen. Stat. § 19a-124 (emphasis added). By definition, establishing an *Exchange* requires clients to handle used syringes that they return, and these syringes inevitably contain trace amounts of narcotics.<sup>9</sup> Experts who testified in support of the statute before the Connecticut legislature’s Public Health Committee made the obvious point that establishing an exchange program without

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<sup>9</sup> Even rinsing with bleach does not guarantee that some amount of blood or drugs does not remain in the syringe. It is, moreover, impossible to determine whether a syringe is new or used simply by looking at it. *See* Heimer Dec. at ¶ 20. The police therefore cannot know by looking at a syringe whether it has been used, and cannot tell by looking at a rinsed syringe whether some small quantum of drug might have survived cleaning. Allowing police to arrest on the basis that equipment may be used and therefore contain trace amounts of drugs thus opens the door to police arrests for simple possession of safe injection equipment, which is clearly in violation of the intent and letter of the state statute.

decriminalizing syringe possession would make little sense. *See* Conn. Joint Standing Comm. on Public Health, 327-617, at 363 (1990) (testimony of Yale School of Medicine Professor Dr. Jack Hughes); *see also id.* at 401 (testimony of Dr. Alvin Novick, Chairman of the Mayor’s Task Force on AIDS in New Haven). Despite this evidence of the legislature’s intent, and in the face of plain logic, the Department seems to believe that Connecticut has mandated and funded a municipal public health program while continuing to penalize those who participate in the program as envisioned.<sup>10</sup>

A second, related absurdity of the Department’s policy is that the *state and city employees* who operate Exchanges could be held criminally liable for their possession of used injection equipment under Conn. Gen. Stat. § 21a-279(a). Under the Department’s policy of arresting a person who possesses used injection equipment, the Exchange workers who handle used injection equipment would also necessarily run afoul of the law. Yet, the legislature has commanded these public health care workers to possess used injection equipment as part of their job in a state-mandated program. It would be absurd to assume that state employees could be arrested for carrying out their legally mandated duties.<sup>11</sup>

Finally, the Department’s interpretation as applied to safe injection equipment clearly undermines the purpose of the Exchange legislation. The legislature enacted the Exchange

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<sup>10</sup> As the Connecticut Supreme Court recently held, the legislature does not mandate programs only to undermine them through technical loopholes. *See Commission on Human Rights & Opportunities v. Sullivan Assocs.*, 250 Conn. 763, 777 (1999) (denying an interpretation of the state housing anti-discrimination statute which appeared to allow landlords the ability to deny housing to low income renters by refusing to use a special lease required by those receiving housing assistance).

<sup>11</sup> A possible source of the Department’s interpretation is *State v. McCarthy*, 25 Conn. App. 624 (1991), *cert. denied*, 220 Conn. 925 (holding that usability is not a prerequisite for a conviction under the drug possession statute). The *McCarthy* court upheld a possession conviction based on less than a milligram of cocaine collected from “bits and pieces” of a “white powdery substance from the dashboard, the front passenger seat and the rear seats” of defendant’s car. *McCarthy*, 25 Conn. App. at 625. The drugs in *McCarthy* were visible, though not enough to serve as an effective “dose.” *McCarthy* did not, however, involve or address in any way the very different issue of microscopic amounts of drug residue inside a hypodermic needle, detectable only by laboratory analysis, where the injection equipment is specifically authorized by law as a necessary part of the state-mandated Exchange program.

statute to encourage users to participate in Exchanges and thereby reduce the spread of AIDS and other blood-borne diseases. *See* Heimer Dec. at ¶ 11. During the debates preceding passage of the statute, the Connecticut Senate noted that a needle exchange had been operating illegally in New Haven even prior to 1990. “Fortunately,” one Senator remarked, “our [police] authorities in New Haven have looked the other way [because] they think there is a higher purpose being served by allowing that to happen.” 33 Conn. Sen. Proceedings, S-311, at 3329 (1990) (Sen. Morris). The purpose of the statute was to “legalize what is presently happening” in New Haven, in all its aspects. *Id.* Arresting Exchange participants who carry used equipment will therefore criminalize an aspect of needle exchange programs that the Connecticut legislature specifically sought to authorize.

Indeed, the Department’s policy frustrates nearly every rationale for the Connecticut Exchange program. Syringe exchange programs encourage clients to use new syringes. *See* 33 Conn. H. Proceedings, H-575, at 7809 (1990) (“The reported inciden[ce] of needle sharing drops dramatically . . . among people who are participating in needle exchange programs.”) (Rep. Grabarz). Using new syringes significantly reduces the transmission of blood-borne diseases, including AIDS and hepatitis. *See* Heimer Dec. at ¶ 17. In addition, Exchanges encourage clients to bring their used syringes to a safe place for disposal, eliminating a danger to public health in the form of improper disposal of used syringes. *See id.*; 33 Conn. H. Proceedings, H-575, at 7809-10 (1990) (Rep. Grabarz). The program also reduces risks to third parties – the users’ spouse, for example – who otherwise might contract AIDS from the user. *See* 33 Conn. Sen. Proceedings, S-311, at 3339 (1990) (Sen. Morton). Exchanges have proven remarkably successful in decreasing the rate of transmission of AIDS among users, and New Haven’s pioneering Exchange has been held up as a national model for other Exchanges. *See* Heimer Dec. at ¶ 19. The possession statute, as interpreted by the Department, on the other hand, would punish clients for participating in this program, endangering clients’ lives and undermining a clear legislative mandate.

Given the clear language of the Exchange statute and its legislative history, the Department's policy of arrest and seizure for the possession of safe injection equipment frustrates the clear intent of the Connecticut legislature in establishing the Exchange program.

**C. Balance of Hardships and the Public Interest**

As documented extensively above, users are suffering greatly at the hands of the Bridgeport police. They risk their lives by engaging in unsafe injection practices, and are suffering unconstitutional arrests. Against this, the Police Department can offer little justification for denial of injunctive relief. Since possession of safe injection equipment is legal, the Department is prevented only from carrying out illegal, unconstitutional searches and seizures. Injunctive relief, moreover, would not prevent the police from stopping the trade in illegal drugs by other, constitutional means, such as arresting those who possess or sell illegal narcotics. The Department can have no interest in continuing an unconstitutional practice.

In contrast, once a person has HIV, their lives are utterly transformed. The social costs of HIV and AIDS are staggering, and the cost to the individual, who may well die from AIDS, is simply incalculable and irreparable. The State of Connecticut has recognized its public interest in preventing the spread of HIV by users through enactment of laws exempting injection equipment from the paraphernalia laws. In contrast, defendants serve no public purpose by making unconstitutional arrests and seizures. Granting plaintiff's requested relief would further Connecticut's enacted public purpose.

**IV. CONCLUSION**

For the reasons stated above, plaintiffs request that the Court grant their motion for a temporary restraining order and preliminary injunction.

Dated: November 9, 2000

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading/document was served on, Barbara Massaro, counsel for the defendants on November, \_\_\_\_, 2000, as shown below:

- \_\_\_\_\_ By first class mail to: Bridgeport City Attorney, 999 Broad Street, Bridgeport, CT 06604.
- \_\_\_\_\_ By Federal Express overnight courier to: Bridgeport City Attorney, 999 Broad Street, Bridgeport, CT 06604.
- \_\_\_\_\_ By facsimile transmission to (203) 576-8252 (without appendices).

\_\_\_\_\_  
HARRY WILLIAMS