

new. Plaintiffs further seek a declaration that possession of up to thirty sets of injection equipment – whether used or new – is legal in Connecticut.

2. The state of Connecticut established Syringe Exchange Programs (“Exchange Programs”) in 1990, prompted by growing rates of HIV infection and AIDS-related deaths among members of the injecting drug user community and their partners and children – a crisis that reached epidemic proportions in the late 1980's. When the State Legislature mandated the program, it explicitly decriminalized possession of “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) (1999). However, this law has been undermined by officers of the Bridgeport Police Department, who continue to search, arrest and seize individuals possessing lawful amounts of injection equipment, which is then often destroyed.

3. Although Connecticut’s Exchange Programs have already been proven to decrease the rates of HIV infection and infection of other blood-borne diseases by at least one third, fear of police harassment and arrest discourages injecting drug users from carrying injection equipment for exchange. If users are afraid to exchange injection equipment, then they will share and discard contaminated equipment, putting not only themselves but also their sexual partners, their children and community members who might encounter improperly discarded equipment at risk for infection from blood-borne diseases and death from AIDS.

4. Defendants’ harassment and illegal arrests of members of the plaintiff class is undermining the state mandated exchange program in Bridgeport, and placing at risk the plaintiff class and citizens of Bridgeport for infection from blood-borne diseases, including HIV and hepatitis. In arresting and seizing the property of plaintiffs in the absence of any illegal conduct, defendants have also unlawfully infringed upon the constitutional rights of plaintiff class members. These harms will continue as long as defendants persist in harassing, arresting, and seizing or destroying the property of injecting drug users, based solely on their lawful possession of injection equipment.

II.

PARTIES

PLAINTIFFS

5. Plaintiff JOHN DOE is a twenty-three year old resident of Bridgeport, Connecticut, and a participant in the Bridgeport Exchange Program (“the Exchange Program”). Mr. Doe uses the Exchange to obtain sterile injection equipment in order to protect himself and others from blood-borne diseases, such as HIV and Hepatitis B and C. Mr. Doe has built relationships with the service providers on the van and relies on them for information crucial to his health and life, such as prevention of HIV transmission and drug treatment options and facilities. During each visit to the Exchange van, Mr. Doe must negotiate harassment by the Bridgeport police, either in the form of stops, searches, arrest, seizure or destruction of his injection equipment and identification card, or the imminent threat of such actions. Police presence is a well known and consistent factor in the user community, and indeed, the intimidating presence of the police prevents many users from even going to the Exchange van and obtaining sterile equipment.

6. Plaintiff JOHN ROE is also a participant of the Bridgeport Exchange Program. Typical of many drug users, Mr. Roe has struggled through periods of recovery from drug addiction and relapse. Through his relationship with workers at the Exchange, Mr. Roe has received referrals for drug treatment programs and hopes to continue on the path to full recovery with the help of Exchange workers.

7. Plaintiff CONNECTICUT HARM REDUCTION COALITION (“the Coalition”) is a Connecticut non-profit association with over 50 members who reside in the state of Connecticut. Established in 1998, the Coalition seeks to educate, train and advocate for pragmatic public health oriented models of drug use prevention, treatment, and policy and works to address the needs of individuals, families and communities in Connecticut. The Coalition enjoys a broad membership base that ranges from drug treatment providers to exchange program

workers, respected academic researchers on drug use and HIV prevention to church members and former drug users who advocate for the rights and protections of the user community.

DEFENDANTS

8. Defendant BRIDGEPORT POLICE DEPARTMENT forms a part of the Bridgeport municipal government, an entity created and authorized under the laws of the State of Connecticut. The city is authorized by law to maintain a police department which acts as the city's agent in the area of law enforcement.

9. Defendant WILBUR L. CHAPMAN is sued in his official capacity as Chief of the Bridgeport Police Department, and is responsible for the policies, practices and customs of the Bridgeport Police Department. He is and was, at all relevant times, responsible for the hiring, screening, training, retention, supervision, discipline, counseling and control of the police officers under his command.

CLASS ALLEGATIONS

10. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated pursuant to Fed. R. Civ. P. 23(a) and (b)(2). The class proposed by plaintiffs consists of all injecting drug users, present and future, in the State of Connecticut.

11. The requirements of Rule 23(a) and (b)(2) are met in that the class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claim of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately represent the interests of the class because they are represented by counsel with extensive experience in class action litigation and constitutional litigation; and the parties opposing the class have acted on grounds generally applicable to the class, thereby making final injunctive and corresponding declaratory relief with respect to the class as a whole.

III.

JURISDICTION AND VENUE

12. This court has jurisdiction over all causes of action herein pursuant to 28 U.S.C. §§1331 and 1361. A cause of action for plaintiffs is created by 42 U.S.C. §1983.

13. Venue is proper in this court under 28 U.S.C. §1391(e).

IV. FACTUAL BACKGROUND

A. Non-sterile Injection Equipment Kills Thousands of People Each Year by Spreading HIV/AIDS And Other Blood-borne Diseases

14. AIDS is the leading cause of death among men and women between the ages of 20 and 49. In the United States, AIDS has killed approximately 420,000 people since 1981, including at least 17,000 in 1998 alone. Currently between 650,000 and 900,000 United States residents are living with HIV, the virus that causes AIDS. There is no cure for HIV/AIDS.

15. For most, if not all, injecting drug users, injection equipment consists of syringes, cotton pads, and a small receptacle for mixing the drug with water or citric acid. This container is called a “cooker.” Shared injection equipment passes blood-borne diseases from one drug user to another.

16. The practice of sharing contaminated injection equipment accounts for more than half of all new HIV infections, and 31% of new AIDS cases diagnosed in the U.S. in 1998, making it a leading cause of AIDS/HIV.

17. Injection drug users are also at serious risk of contracting Hepatitis B and Hepatitis C. Hepatitis B infects between 140,000 and 320,000 people every year, and kills between 5,000 and 6,000 people in the United States. Hepatitis C infects about 36,000 people in the United States every year, killing 8,000 to 10,000 of those infected.

18. The devastating impact of dirty injection equipment is not confined to injecting drug users. Blood-borne diseases may be spread to a non-injecting drug user through sexual transmission. Women infected with HIV (either through their own injection drug use or that of their partner) can transmit the virus to their children neonatally, at birth, or through breast-feeding. As of August 1997, AIDS was the second leading cause of death in African-American

children under five and was the leading cause of death in Hispanic children that age. Thus, non-sterile injection equipment poses a risk to communities beyond injecting drug users.

19. In addition to the human costs, contaminated syringes have a substantial negative financial impact. It costs the public approximately \$120,000 per year to treat one individual who has contracted HIV through shared injection equipment. Sharing of injection equipment results in the infection of about 40,000 people per year, costing this country billions of dollars.

20. The best way to prevent the transmission of HIV and other blood-borne diseases among injecting drug users is to stop people from injecting drugs altogether. The reality, however, is that because of their addiction, some drug users cannot or will not stop using drugs. Furthermore, even for those drug users who want help to quit, there are not enough spaces in treatment programs. Because of this shortage, addicts are often forced to remain on waiting lists for months for appropriate treatment programs. In addition, most treatment programs are not able to provide services to women with children, compounding the treatment shortfall.

B. Exchange Programs Prevent the Spread of Disease and Save Lives.

21. Exchange programs combat the spread of AIDS and other blood-borne diseases by providing sterile injection equipment in exchange for used equipment. Exchange programs typically provide sterile syringes, cookers, cotton pads, alcohol wipes, and bottled water for rinsing syringes. By providing this equipment in exchange for used equipment, exchange programs increase access to sterile equipment and remove contaminated equipment from circulation in the larger community. The theory behind these programs is simple: HIV and other blood-borne diseases cannot be transmitted by sterile injection equipment.

22. An increase in sterile injection equipment availability is correlated with a reduction in HIV transmission rates among users. Exchange programs in Connecticut and throughout the country have reduced HIV transmission rates by one-third to two-fifths. For example, the establishment of the New Haven exchange program was associated with a 33% drop in HIV transmission rates among injecting drug users. Exchange programs reduce the spread of HIV by increasing the availability of sterile injection equipment, as well as increasing

access to medical services and treatment alternatives for users. Furthermore, exchange programs achieve these benefits without increasing drug use. Studies by organizations such as the National Academy of Sciences (“NAS”) have found no credible evidence of an increase in drug use among exchange program participants as a result of legal access to sterile injection equipment. In fact, the NAS has found that exchange programs actually increase the number of user referrals to drug treatment, and those recruited into treatment programs tend to stay in them.

23. In addition to operating as bridges to drug treatment, exchange programs provide drug screening and treatment and a variety of health and social services, including primary medical care, special needs medical care, HIV testing, condoms, job training, and access to food assistance and other services.

24. Exchange programs are extremely cost effective. While it costs an average city about \$160,000 to run an exchange program (about \$20 per user per year), one syringe-infected AIDS victim will require upwards of \$120,000 per year in public health expenditures. By preventing only two drug users from contracting HIV, an exchange program more than covers its costs.

25. Exchange programs have been instituted in most industrialized and developing countries and are considered to be the best method for reducing the spread of HIV among injecting drug users and their partners. For injecting drug users who cannot or will not stop injecting drugs, using sterile injection equipment is the safest and most effective way of limiting HIV transmission.

26. In light of the significant benefits provided by exchange programs to injecting drug users and non-users, the American Bar Association (“ABA”) has adopted a policy supporting the removal of legal barriers to exchange programs.

27. Many other organizations, including most medical and public health organizations in the United States, have endorsed the establishment of exchange programs. These include:

- The American Medical Association
- The U.S. Conference of Mayors

- The National Research Council
- The National Academy of Sciences
- The Institute of Medicine
- The National Institute on Drug Abuse
- The American Society of Addiction Medicine
- The National Association of State Alcohol and Drug Abuse Directors
- The United States Department of Health and Human Services
- Then National Commission on AIDS
- The United States Centers for Disease Control and Prevention
- The National Institutes of Health
- The American Public Health Association
- The American Nurses Association
- The Association of State and Territorial Health Officers
- The American Academy of Pediatrics
- The Council of State and Territorial Epidemiologists
- The Human Rights Campaign; and
- The National Alliance of State and Territorial AIDS Directors.C. **Bridgeport's**

Exchange Program

28. In 1990, the State of Connecticut passed Conn. Gen. Stat. § 19a-124, mandating the establishment of exchange programs in the following three cities: New Haven, Hartford, and Bridgeport. A crucial catalyst in the exchange programs' establishment was the tremendous increase in hospital admissions in the late 1980s of men and women who contracted HIV not through sexual activities, but by intravenous use of drugs.

29. Connecticut's exchange program was the first in the United States to link its efforts to an objective evaluation mechanism: Dr. Robert Kaplan and Dr. Robert Heimer were selected as the principal investigators on the state-mandated evaluation of the program. Dr. Heimer is a highly esteemed and respected professor of epidemiology, pharmacology and public

health at Yale University's School of Medicine. Dr. Kaplan, also a member of the Yale faculty, specializes in statistical evaluation methods. Their research concluded that an increase in sterile injection equipment correlated with a reduction in HIV transmission rates among injecting drug users. In addition, their research revealed that when sterile injection equipment is more difficult to obtain, re-use of syringes is increased, and those syringes are more likely to contain blood from individuals infected with HIV or hepatitis viruses. These findings are widely accepted in the public health field and have been used as the basis for the passage of laws permitting better access to sterile injection equipment in many states, including California, Maryland, Massachusetts, New York, Philadelphia and Rhode Island.

30. The Bridgeport Exchange Program is operated by and housed in the Bridgeport Health Department. The Exchange operates every day of the week during well-publicized hours. Clients may come to the Health Department during business hours for counseling, addiction treatment referrals, and to exchange injection equipment, or they may do so at the Exchange van, which travels to specified locations in Bridgeport. As with other exchange programs, the Bridgeport Exchange provides sterile injection equipment in return for used equipment, as well as a range of ancillary services, including counseling and referrals to treatment.

D. Police Response and Interference With the Bridgeport Exchange Program

31. Recognizing that an exchange program requires both participants and those administering the program to handle used and contaminated injection equipment (when it is returned for exchange), the Connecticut Legislature also modified the drug paraphernalia statute. Conn. Gen. Stat. § 21a-240 exempts “hypodermic syringes, needles, and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body” from the classification of “drug paraphernalia” as long as this equipment is not possessed “in a quantity greater than thirty.” More simply, a person possessing up to thirty sets of injection equipment cannot be prosecuted for possessing drug paraphernalia.

32. In spite of this clear statutory modification, the defendant Bridgeport Police Department is not operating according to Connecticut law: injecting drug users are

systematically stopped, searched and arrested under the drug paraphernalia statute, based solely on their possession of injection drug equipment. On occasion, police officers will claim that the injection equipment, if previously used, contains residual amounts of narcotics, and will add a charge for narcotics possession.

33. Over the course of the Bridgeport Exchange Program's existence, both participants and administrators have reported that the police regularly harass and abuse participants based solely on their lawful possession of injection equipment. Recently, the abuse has escalated to unprecedented intensity. The Bridgeport police regularly stop Exchange Program participants after they leave the program's van, often confiscating or destroying the injection equipment just exchanged, or tearing up a participant's program identification card. Program participants are arrested and incarcerated by the police for legally possessing injection equipment.

34. Fear of police harassment, arrest and incarceration causes drug users not to carry injection equipment. This increases the likelihood that they will share or re-use equipment, or that users will access equipment from unreliable sources, such as street dealers, who may sell a syringe as new even though it has been used. Users have a great fear of being put in jail for many hours or overnight, because their bodies begin the painful process of withdrawal. In this manner, fear of the police action causes users to engage in risky behavior such as syringe sharing, even though the addict knows it to be dangerous. One study funded by the National Institute on Drug Abuse has shown that as many as 55 % of injecting drug users were concerned about possible arrest due to drug paraphernalia laws and that 65 % reported not carrying syringes due to the fear of arrest. Injecting drug users who are afraid of being arrested while carrying drug paraphernalia are 1.74 times more likely to share syringes, and 2.08 times more likely to share injection supplies than other users.

35. This fear of arrest has resulted in the unsanitary and dangerous disposal of contaminated injection equipment. Injecting drug users will go to considerable lengths to avoid possible arrest while carrying syringes, including hiding them in semi-public places (i.e., bushes

and abandoned buildings), having other users hold syringes for them, and injecting with previously used injection equipment.

36. The Bridgeport Police Department has repeatedly declined offers by the Exchange Program administrators to instruct officers about Connecticut laws mandating syringe exchange and legalizing possession of injection equipment in quantities up to thirty.

37. For society as a whole to benefit from the beneficial HIV/AIDS-reducing effects of exchange programs, the fear of harassment, arrest and incarceration by the police for participation in these programs must be eliminated.

E. The Illegal Arrests of Mr. Doe and Mr. Roe

Mr. Doe's September 11, 2000 illegal search and arrest

38. During the early afternoon hours of September 11, 2000, two Bridgeport police officers, stopped, searched and arrested Mr. Doe for possession of drug paraphernalia, in spite of the fact that he was not engaged in illegal activity, and that these officers did not have probable cause to believe that any illegal activity had occurred.

39. Mr. Doe was sitting with his cousin in Bridgeport's Seaside Park when the two officers drove their police car over the curb, stopping short of where the two were sitting. One officer announced that they had received a report of unidentified individuals "getting high in the park's bathroom." Mr. Doe admitted to having injection equipment on his person, but no drugs, and denied having used any drugs in the park. Despite these admissions, and with no additional information upon which to base fear of immediate danger, escape or destruction of potential evidence, the officers ordered Mr. Doe to empty his pockets and to remove his shoes and socks, after which they subjected him to a pat-down search.

40. One officer demanded Mr. Doe accompany him into the bathroom and led him over to the toilet, where the officer pointed to a cooker resting at the bottom of the toilet bowl. Mr. Doe truthfully denied that the cooker in the toilet belonged to him. The officer forced Mr. Doe to reach into the visibly dirty toilet bowl and pick the cooker up with his bare hands.

41. The officers charged Mr. Doe with criminal possession of drug paraphernalia, in spite of the fact that Mr. Doe was in lawful possession of the injection equipment. They issued a summons for him to appear in court. One officer's parting remarks to Mr. Doe were "don't come to this park anymore," and "every time I see you I will arrest you."

42. Mr. Doe appeared in court as required by the summons. The prosecution declined to pursue the charges, entering a resolution of *nolle prosequi* on November 7, 2000.

The Illegal Arrest of Mr. Roe

43. On Thursday, October 5, 2000, at about 10:30 a.m., John Roe was arrested based solely upon his lawful possession of injection equipment. He was charged with violation of state paraphernalia law and narcotics law, based on the officers' allegation that his injection equipment might contain residual amounts of narcotics.

44. Mr. Roe remained in custody for nine days based on these charges.

45. The events leading to Mr. Roe's arrest are as follows: he returned to his home on the morning of October 5, 2000. As he walked along Shelton Street with a person whose name he does not know, a Bridgeport police car pulled in front of them. Immediately, at least 3 other police cars materialized, surrounding the two men. Two officers jumped out of their car and rushed towards Mr. Roe and the unknown person. One of the officers yelled, "Where's the stuff? Where's the stuff?" Mr. Roe immediately put his hands in the air and told the officers that although he had "two needles" in his pockets, he did not have any drugs on him. Mr. Roe also told the officers that he had his Bridgeport Exchange Program participant identification card in his pocket, which proved that he was a registered participant with the program. As one officer patted down Mr. Roe, he retorted that "we don't give a fuck" when Mr. Roe told him about the Exchange Program identification card. Again, Mr. Roe told the officers that he did not have any drugs on his person. Yet, the second officer yelled at him that since "the needles are used, we got you on possession, too!"

46. The officers confiscated Mr. Roe's lawful injection equipment and took him to the narcotics squad holding facility. When the officers escorted Mr. Roe inside, one of them

ordered that Mr. Roe be strip searched. According to the police report of the strip search, no contraband was found on Mr. Roe's person.

47. The police charged Mr. Roe with criminal possession of drug paraphernalia despite the fact that Mr. Roe possessed a statutorily permissible quantity of injection equipment. The police also charged Mr. Roe with criminal possession of a narcotic substance based on their suspicion that there might be drug residue in Mr. Roe's hypodermic needle. The officers did not test the syringes before charging Mr. Roe with criminal possession of a narcotic substance.

48. Nine days after his illegal arrest, Mr. Roe was released on bail from the Bridgeport Correction Facility. The prosecution declined to pursue the charges, entering a resolution of *nolle prosequi* on October 19, 2000.

V.

CLAIM FOR RELIEF

49. Plaintiffs reallege and incorporate by reference ¶¶ 1 through 48 as if fully set forth herein.

50. The Fourth Amendment to the U.S. Constitution provides in relevant part: "The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

51. The actions of Bridgeport Police officers in searching and arresting Mr. Doe and Mr. Roe, as well as similar searches and arrests of members of the plaintiff class, were performed under color of law and were prompted solely upon lawful conduct.

52. As a direct result of these acts, defendants have deprived plaintiffs Doe and Roe, as well as other members of the plaintiff class, of their rights secured by the Fourth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. § 1983.

VI.

IRREPARABLE HARM

53. Plaintiffs and members of the plaintiff class have suffered and will continue to suffer irreparable harm due to the continued harassment and arrest, and the threat of such action, by defendants' police officers based solely upon lawful possession of injection equipment.

54. Plaintiffs and members of the plaintiff class face the immediate, high risk of contracting HIV and other lethal, incurable diseases from their inability to secure sterile injection equipment, leading in turn to infection and the eventual death of the sexual partners and newborn children of plaintiffs and members of the plaintiff class.

55. Residents of Bridgeport face the immediate, high risk of contracting HIV and other lethal, incurable diseases from their contact with improperly discarded injection equipment abandoned due to drug users' fear of arrest for possession of injection equipment.

56. Plaintiffs have a constitutional right to be free of unreasonable search and seizure by defendants and not to be arrested and prosecuted for lawful activity. The denial of plaintiffs' constitutional rights constitutes per se irreparable harm.

VII.

PRAYER FOR RELIEF

WHEREFORE,

Plaintiffs accordingly pray for the following relief:

A. A preliminary and permanent injunction enjoining defendants, their agents, employees, assigns, and all persons acting in concert or participating with them from searching, stopping, arresting, punishing or penalizing in any way, or threatening to search, stop, arrest, punish or penalize in any way, any person based solely upon that person's possession of up to thirty sets of injection equipment, whether previously used or sterile.

B. A declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that Connecticut law does not make illegal the possession of up to thirty sets of injection equipment, whether previously used or sterile.

C. Allow Plaintiffs' reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988;

D. Such other relief as this Court may deem necessary and proper.

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Respectfully submitted,

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