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## I. INTRODUCTION AND SUMMARY OF ARGUMENT

The issues before this Court have narrowed considerably based on defendants' concessions and this Court's opinion in granting a temporary restraining order. The following issues are no longer in dispute. First, Exchange Programs save lives by reducing the spread of incurable blood-borne diseases such as HIV/AIDS and Hepatitis C. Second, for the Exchange program to be effective, participants must be able to carry both clean and used injection equipment. Third, any citizen may carry clean injection equipment in a quantity up to 30. Finally, arrests of Exchange participants based solely on possession of new or used injection equipment, or of other citizens for possession of new injection equipment, is without a basis in Connecticut law and therefore is unconstitutional.

Only one issue remains before this Court: should individuals who are not registered Exchange participants be protected from searches, stops, arrests, or other punishments based solely upon their possession of used injection equipment that may (but does not necessarily) contain trace amounts of narcotics? The definitive answer to this question is provided by the plain language of statutes, careful comparison of the 1990 and 1992 versions of the legislative framework, the manifest intention of the legislature, and the practical realities of implementing the relevant laws: any person's possession of injection drug equipment, whether new or used, is legal under Connecticut law.

In its initial response to the epidemic, the Connecticut Legislature passed a 1990 measure to establish a pilot syringe exchange program in New Haven, where injecting drug users could trade sterile equipment for used equipment, as well as obtain counseling and treatment referrals. P.A. 90-214, §2 (1990) (Exh. A).<sup>1</sup> This same statute exempted injection equipment from the

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<sup>1</sup> All referenced Connecticut statutes are attached hereto as Exhibits.

drug paraphernalia statute only for registered participants in the State’s one legal exchange program. Conn. Gen. Stat. 21a-267(d) (1990) (Exh. E) . Two years later, the Legislature expanded the State’s efforts to prevent HIV by enacting three statutory revisions: (1) it created three permanent exchange programs, Conn. Gen. Stat. 19a-124 (1992) (Exh. H); (2) it legalized distribution of syringes through the free exchange programs and through over the counter sales in pharmacies, Conn. Gen. Stat. 21a-65(b)(1992) (Exh. I); and (3) it broadened the exemption for possession of injection equipment to apply to all persons possessing injection equipment. Conn. Gen. Stat. § 21a-240(20)(ix) (1992) (Exh. K).

In granting a temporary restraining order, this Court correctly ruled – and defendants do not dispute – that “Conn. Gen. Stat. § 21a-240(20)(ix) exempts the possession of any hypodermic needles and syringes, whether sterile or previously-used, in a quantity no greater than thirty from criminal liability.” Order at 20. However, by confining the exemption for used injection equipment to Exchange Program participants, the Court’s ruling reflects a limitation of the now superseded 1990 version of the statute. Order at 24. The plain language of the current version of the statute, as well as a full reading of the legislative history and purpose, compels protection for all Connecticut residents rather than only the Exchange participants. Although the original 1990 exemption from drug paraphernalia was limited to exchange participants, the superseding 1992 legislation contains no such limitation, instead permitting without qualification the possession of sterile or used injection equipment.

Throughout the legislative discussion of the revised 1992 enactments, the Legislature indicated no intent to limit the legalized means – and the exemptions from criminal liability – of exchanging, distributing and possessing sterile or used injection equipment to those who were identifiably “involved in” exchange programs established under § 19a-124. On the contrary, the Legislature required that exchange programs be premised on anonymity, and then dispensed with

prescriptions (for which identification must be produced) for pharmaceutical sales or distributions of syringes. Most importantly, when the Legislature defined injection equipment – whether used or sterile – out of the of the drug paraphernalia laws entirely, rather than just exempt the exchange programs as was done in 1990, it made clear its intent to make sterile injection equipment available to as many injecting drug users as possible.

## **II. STANDARD OF REVIEW.**

This Court articulated the correct standard for granting a preliminary injunction, following the established case law of the Second Circuit. Order, 8-9. Defendant’s assertion that an injunction requires “clear and convincing proof” has no basis in precedent governing this Court. Instead, defendants invoke a sole case from the federal District Court in Oregon, which itself cites no authority and which has been followed by no other court. Defs’ Opp., at 7 (citing Armstrong Buick, Inc. v. General Motors Corp., 597 F. Supp. 932 (D. Or. 1984)). Indeed, the Circuit Court of Appeals with jurisdiction over Oregon has consistently followed a standard almost identical to that of the Second Circuit. See e.g., American-Arab Anti-Discrimination Committee v. Reno, 70 F.3d 1045, 1062 (9th Cir. 1995). In short, Defendants cite no authority for a “clear and convincing” standard in the Second Circuit, nor could plaintiffs discover any such authority.

## **III. STATUTORY INTERPRETATION OF § 21a-240 DOES NOT LIMIT PROTECTIONS FROM CRIMINAL LIABILITY TO EXCHANGE PROGRAM PARTICIPANTS.**

Statutory construction begins, as it must, “with the words of the statute itself,” Connecticut v. Gibbs, 254 Conn. 578, 602 (2000). The plain language of § 21a-240, the drug paraphernalia definitions statute, protects all persons from criminal liability for possessing thirty sets or fewer of injection equipment, whether used or sterile. Order at 20. Every element of the

broader statutory scheme, the legislative purpose, and the history of the statutory enactments uniformly bolsters this conclusion. “[L]ook[ing] to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter,” Commission on Human Rights and Opportunities v. Sullivan Assocs., 250 Conn. 763, 777 (1999), only one conclusion is possible: Connecticut law authorizes anyone to possess up to thirty sets of new or used injection equipment, even if the equipment contains microscopic traces of a controlled substance.

**A. The Plain Language of § 21a-240 Defines Up to Thirty Sets of Injection Equipment out of the Definition for Criminal Drug Paraphernalia.**

When the legislature legalized the possession of new and used injection equipment, it included only a single limitation: it restricted the quantity of injection equipment. Conn. Gen. Stat. § 21a-240(20)(ix) (1999) (hereinafter “Paraphernalia Definition”). The statute delimits no class of beneficiaries, and makes no reference to participants in Exchange programs or any other group. Absent strong evidence of legislative intent to limit the class of persons covered by this unambiguous statute, none should be implied. See Blodgett v. The New Britain Trust Co., 108 Conn. 715, 721 (1929) (“We have no authority to restrict the application of this statute to a particular class.”).

The plain language of the statute exempts from the definition of criminal drug paraphernalia in a quantity up to thirty “hypodermic syringes, needles, and other objects used, intended for use or designed for use in parenterally injecting controlled substances.” As this Court correctly concluded, the only plausible reading of this language protects both new and “used” syringes, i.e., syringes that have been previously utilized for injection of a controlled substance. Order, at 20.

Further confirming the Court’s plain language reading, the statutory section criminalizing possession of objects defined as “paraphernalia” states that “no person” shall legally possess paraphernalia. Conn. Gen. Stat. § 21a-267 (1999) (emphasis added). Since the paraphernalia statute covers all persons, the exemption from the paraphernalia statute found in the Definitions section should likewise be read in its plain language to cover all persons.

**B. History of Legislative Enactments Confirms the Plain Language of the Paraphernalia Definitions As Excluding Used Injection Equipment.**

**1. Amendments to the paraphernalia statute.**

The comparative history of the 1990 and 1992 amendments to the Paraphernalia Definition confirms that the statute exempts all persons from criminal prosecution for possession of new or used injection equipment. In 1990, the legislature amended the section of the paraphernalia statute imposing criminal penalties, adding a new subsection (d) that exempted “possession or delivery of needles and syringes as part of the demonstration needle and syringe exchange program.” P.A. 90-214, §2 (1990) (Exh. A); Conn. Gen. Stat. § 21a-267(d) (1990) (Exh. E). Only a participant in the exchange was shielded from paraphernalia charges and only for possession of injection equipment obtained from the exchange program. Notably, the Legislature left intact the definition of drug paraphernalia, making clear that any person not enrolled in the pilot exchange program or possessing injection equipment from sources outside the program would be subject to arrest for possession of injection equipment. Conn. Gen. Stat. § 21a-240(20)(a)(9) (1990) (Exh. D).

The Legislature retooled the paraphernalia exemption in its 1992 enactments. First, the section of the paraphernalia law imposing criminal penalties reverted to its original formulation, deleting subsection (d) and thereby reimposing penalties upon “all persons” who possess drug paraphernalia. P.A. 92-185, §3 (Exh. F); Conn. Gen. Stat. § 21a-267 (1992) (Exh. K). Second,

the Legislature changed the Paraphernalia Definition, excluding in quantities up to ten the possession of “hypodermic syringes, needles, and other objects used, intended for use or designed for use in parenterally injecting controlled substances.” P.A. 92-185, § 2 (Exh. F) (emphasis added); Conn. Gen. Stat. § 21a-240(20)(ix) (1992) (Exh. K).

The distinctive change in wording from 1990 to 1992 provides significant guidance in interpreting the current statutory scheme. When the legislature amends the language of a statute from one version of the statute to the next, courts must presume “that it intended to change the meaning of the statute and to accomplish some purpose.” State v. Johnson, 227 Conn. 534, 543 (1993); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 48:03 (6th Ed. 2000) (“The legal history of a statute, including prior statutes on the same subject, is a valuable guide”). Accordingly, the Court must presume the 1992 amendments manifested a different legislative intention than the 1990 provisions.

The Legislature’s intent in 1990 was plainly to create a limited exemption for specified individuals (exchange participants) from the paraphernalia law. In 1992, the focus changed from exempting individual exchange members to exempting injection equipment itself as part of the very definition of drug paraphernalia. In sum, it would ignore clear legislative intent to impose upon the Paraphernalia Definition an implicit limitation protecting only exchange members.

## **2. Amendments to the syringe sales statute.**

In addition to the revisions discussed above, the 1992 legislative enactments included a significant amendment to the statute governing retail sale of syringes, Conn. Gen. Stat. § 21a-65 (“Syringe Sale Statute”). In 1990, the Legislature amended the Syringe Sale Statute, adding a new subsection (a)(7) to allow non-prescription sales to the pilot “needle and syringe exchange program.” P.A. 90-214, §1 (Exh. A); Conn. Gen. Stat. § 21a-65(a) (7) (1990) (Exh. C). Beyond the enumerated list of permitted purchasers, the statute forbid any syringe sales “except upon a

prescription of a practitioner.” Conn. Gen. Stat. § 21a-65(b) (1990) (Exh. C). The 1992 enactments permitted for the first time the retail sale of syringes “in a quantity of ten or less without a prescription. . . .” P.A. 92-185, §1 (Exh. F); Conn. Gen. Stat. § 21a-65(b)(1992) (Exh. I). Read together with the concurrent amendment to the Paraphernalia Definition, the Legislature clearly intended the permit possession of new or used injection equipment, whether acquired from an exchange program or a retailer. The newly amended Syringe Sale statute permits retail sale of up to ten sets of injection equipment; the newly amended Paraphernalia Definition decriminalizes possession of these same ten sets of injection equipment, whether “used” or new. The language in both statutes is identical, each covering injection equipment in a “quantity of ten or less.”

To interpret the statutory schema as including within the Paraphernalia Definitions statute only Exchange participants leads to an inconsistent and absurd result: the retail sale of syringes to individuals would have been legalized, but individuals’ possession of syringes would have remained illegal. See Town of Southington v. Commercial Union Ins. Co., 254 Conn. 348, 357-58 (2000) (reading statute so as not to “thwart its intended purpose or lead to absurd results”).

### **3. Harmonizing the 1992 amendments.**

The 1992 enactments collectively sought to prevent HIV infection among Connecticut residents through an array of measures designed to increase the availability of sterile injection equipment. Infra, at 8 (discussing legislative purpose). First, the Legislature made permanent and expanded the exchange programs to reach the three cities with the highest rate of HIV infection. P.A. 92-3, §1 (Exh. G); Conn. Gen. Stat. § 19a-124 (1992) (Exh. H). Under Conn. Gen. Stat. §19a-124, the operation of these programs required the return of used injection equipment, which necessarily contains trace amounts of narcotics. See Pls’ Opening Br., at 15-

16. Thus, as a second measure, the Legislature amended the Paraphernalia Definition to allow possession of a certain quantity of “used” or new injection equipment. Conn. Gen. Stat. § 21a-240(20)(ix) (1992) (Exh. J). Again, in order for the exchange programs to be workable, this provision must be understood to decriminalize sterile injection equipment and used equipment containing narcotics residue. Third, the Legislature enacted the Syringe Sale Statute, allowing for distribution in venues going beyond the exchange programs. The language decriminalizing syringe sale is identical to the language decriminalizing paraphernalia possession.

The above provisions, enacted by the Legislature in 1992 as a comprehensive means of promoting availability of safe injection equipment, must be understood to decriminalize for all persons the possession of new injection equipment and used equipment containing narcotics residue. It is surely conceivable that the Legislature could have provided that, for exchange participants only, the definition of paraphernalia excluded new and used injection equipment, whereas for individuals purchasing retail syringes, the definition of paraphernalia excluded only new equipment. But the Legislature did not follow that path. In order to make exchange programs workable and in order to meet the statutory mandate of returning used injection equipment, the Legislature chose to exempt from the Paraphernalia Definition both new and used injection equipment. Moreover, it chose to do so in a single legislative enactment utilizing language in the Paraphernalia Definition that is identical to the wording of the Syringe Sales Statute. The only means of harmonizing the 1992 enactments – and of vindicating the overall legislative purpose – requires finding that all persons, whether they obtain their equipment from an exchange program or some other source, are permitted to possess new injection equipment or used injection equipment containing trace amounts of narcotics.

**C. The Discernible Legislative Purpose of the 1992 Enactments Supports Plaintiffs’ Plain Language Interpretation of the Paraphernalia Statute.**

Where, as here, the statutory language and legislative context make clear the Legislature's intent, a Court should treat with skepticism any floor debates or other less reliable indicia of legislative intent. See 2A Sutherland on Statutes § 48:13 (legislative debates are not generally admissible). Where legislative debates are most helpful is in determining the "history of the times or the evil which the legislation was intended to remedy." Id.; see also Burke v. Fleet Nat'l Bank, 252 Conn. 1, 17 (1999) (legislative hearings may be relevant to determining problem legislature sought to address). The legislative history here speaks clearly only on the general intent of the legislature: to halt the spread of AIDS.

By their nature, debates include conflicting points, inviting parties in subsequent litigation to troll selectively through a lengthy transcript for supporting points. Thus "[s]tatements by individual members about the meaning of provisions in a bill, made during the general debate on the bill following presentation by a standing committee, are generally held not to be admissible as aids in construing the statute." Id., at 17. Statements by a single legislator, in particular an opponent of the legislative enactment, provide a particularly weak basis for divining the Legislature's intent. Id. Beyond the uncontested point that the statutes were intended to reduce HIV transmission by increasing the availability of safe injection equipment, the floor debates as utilized by defendants provide little useful guidance in discerning the Legislature's intent.

**1. The 1992 enactments were intended to broaden the availability of safe injection equipment.**

The legislative purpose for the 1992 legislative package points consistently toward a goal of increasing the availability of safe injection equipment. In expanding the availability of injection equipment from one pilot exchange program to three permanent programs and pharmacy-based sales, the Legislature intended to reach new segments of the injecting drug user community: those who were not poor and so would not be likely to seek out the Exchange to

obtain free injection equipment.

Not all people that have AIDS or that are IV needle users, are homeless. Not all are indigent. Many, in fact, are white wealthy. This bill would allow them to actually pay for the [needles] themselves.

35 Conn. H. Proceedings, H-629, at 5271 (1992) (Rep. Collins).<sup>2</sup> Taken together, the decision to permit retail sales and to expand and make permanent the exchange programs comports with a legislative purpose of broadly promoting the availability of injection equipment.

**2. The Legislature did not express an intent to criminalize the possession used syringes by non-participants in exchange programs.**

In contrast to the clear overall purpose of the statute, the operational minutia of the 1992 enactments is not consistently addressed through the contemporaneous legislative history. For instance, defendants maintain that a confusing, inconclusive exchange on the House floor demonstrates that “the presence of residue in the paraphernalia would be a violation of the law.” Defs’ Opp., at 28. In fact, a close reading of the debate demonstrates nothing of the kind. Moreover, other statements during the debate support an opposite conclusion. On balance, the debate provides no evidence whatsoever for refuting the statutory interpretation based on the words of the statute themselves advanced by plaintiffs above.

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<sup>2</sup> See also comments of Representative Taylor:

I do not think that [exchange programs and pharmaceutical sales] are mutually exclusive. I think that they work hand in hand in terms of fighting the problem of spreading AIDS through the use of contaminated needles. There are some people, who for lack of funds, will not be able to go in and buy syringes in the drug store, even after the passage of this legislation. Without the exchange program, they’re going to continue to share needles and continue to pass AIDS, not only among intravenous drug users, but throughout the community of those who they come in contact with. I think that is rather shortsighted to think that one is a meaningful substitute for the other.

35 Conn. H. Proceedings, H-629, at 5348-49 (1992). Excerpts from the legislative debates referenced herein are attached as Exhibit L.

Turning first to the portions of the floor debate invoked by defendants, the exchange between Representatives Lescoe and Tulisano is ambiguous and internally inconsistent. Rep. Lescoe, an opponent of the bill, asks: “And then [a person] has in his possession the syringes, if a policeman should come around, can the person be arrested for possession of narcotics?” 35 Conn. H. Proceedings, H-629, at 5263-64. Rep. Tulisano responds: “it leaves drug paraphernalia, and whether or not I guess there’s residue.” *Id.*, at 5264. This response, forming part of a debate covering over 100 pages of transcript, admits confusion (“I guess”), but seems to suggest, contrary to the plain language of the Paraphernalia Definitions statute, that possession of a syringe remains criminal. Then, directly contradicting this exchange, Rep. Lescoe, states “the bill decriminalizes a sale in possession of hypodermic needles and syringes. So in essence, in a syringe they have more than likely some residue, there must be some traces of the drug, so they could be arrested. This does not decriminalize through the bill.” *Id.* To which Rep. Tulisano replies, “No, it does not decriminalize the use of drugs. . . . But I mean, it’s almost persia [sic] if you will, if you have the paraphernalia law that’s in fact a violation of the law.” *Id.*, at 5264-65 (emphasis added). Here, Rep. Tulisano reiterates that drug use (as opposed to possession of a syringe or residue inside the syringe) remains illegal, and he appears to say that arrest under Rep. Lescoe’s interpretation would be a “perversion” of the legislative intent. Two fair observers could come to very different conclusions about the meaning of this exchange, but this muddled history is wholly insufficient to override more reliable indicia of legislative intent provided by the statutory language and context discussed above. *See Weinberger v. Rossi*, 456 U.S. 25, 35 (1982) (“one isolated remark by a single Senator, ambiguous in meaning when examined in context, is insufficient to establish the kind of affirmative [legislative] expression necessary to evidence an intent” to override the plain statutory language).

Moreover, even if one accepts defendants’ reading of the Lescoe-Tulisano exchange,

other snippets of the floor debate reveal an opposite intent. For instance, the following exchange seems to indicate that possession of a syringe containing drug residue is not a crime under the proposed bill:

Rep. Cocco: So in reality, unless . . . there is some evidence that would leave the police to believe that drug activity was occurring, . . . despite the fact that they find syringes which are no longer drug paraphernalia if we pass this law, they cannot seize them and test the residue for substance abuse.

Rep. Tulisano: [I]f we pass the law and [the police] just happen to see [the syringes], that is correct. But I think that's one of the reasons we're trying to pass the law. Individuals who use intravenous drug equipment and may spread the AIDS infection, we're trying to get them to use the needles, that's correct. [T]he purpose of this is not to help get convictions. The [purpose] of decriminalization is a public health issue, as already has been stated, and we are weighing different aspects of our society at how to best achieve that point.

35 Conn. H. Proceedings, H-629, at 5300-01 (1992).

One can best make sense of the above exchanges, as well as defendants' other citations to the floor debates, by acknowledging that the Legislature sought to permit possession of injection equipment, while not legalizing the sale, use or possession in useable amounts of drugs. This rule is neither complicated nor alarming: a police officer may arrest a person with a bag of heroin, but not a person with a used syringe possibly containing scant molecules of heroin. This hardly authorizes drug dealers to create "new and innovative methods" of selling narcotics. Defs' Opp. at 30.

**3. The legislative history provides no support for defendants' claim that the Legislature intended to provide legal protections only to exchange participants in order to force drug users to utilize exchange services.**

Contrary to defendants' insistence, the legislative intent in enacting exchange programs was not to force injecting drug users into the exchange programs. Defs' Opp., at 24-26.

Defendants invoke a single Representative explained his support of the 1990 enactment based on

his understanding that the pilot exchange program would “lure” people into contact with treatment providers. See Defs’ Opp., at 26-27. As we explain above, the 1990 enactment provided legal protection only for exchange participants, so this notion of “luring” clients into counseling was not entirely fanciful. Yet, as defendants themselves point out, counseling was a secondary concern even in 1990:

In the Public Health Committee hearings there was testimony from Dr. Jack Hughes who spoke very clearly that the issue before the legislature at the present time was access to syringes. He particularly stated that the drug treatment or drug use issues were to be separated from the intent of the legislation which was strictly a public health issue.

Defs’ Opp., at 24-25 (emphasis added). Moreover, in 1992 the Legislature plainly rejected the notion of attempting to lure or coerce drug users into using exchange programs as the sole means of obtaining safe injection equipment. There, the Legislature grappled with the primacy of counseling. In permitting pharmacy sales, the Legislature considered whether pharmacies should be required to provide counseling – a proposal the pharmacists resisted as impracticable. 35 Conn. H. Proceedings, H-629, at 5285-97 (1992). In the end, the Legislature made a clear policy choice: the availability of sterile injection equipment was so important that it would be provided even in the absence of counseling. Pharmacies are not required to offer counseling or any other educational materials yet are allowed to sell syringes, refuting defendants’ argument that the law should be construed to force all drug users into exchange programs.

**D. A Ruling Limiting the Legal Possession of Used Syringes to Exchange Participants Would Lead to an Unworkable Result.**

Limiting protection from arrest to Exchange participants would lead to an unworkable result, contrary to a fundamental rule of statutory interpretation. 2A Sutherland on Statutes § 45:12, at 92; see also Town of Southington, 254 Conn. at 258. This unworkability manifests itself in two ways. First, the legislature mandated anonymous exchange, and any attempt to

identify participants threatens to undermine that legislative mandate. Second, police officers cannot practically distinguish between participants and non-participants in the Exchange Program.

**1. The Legislature premised the Exchange on anonymity to establish relationships with members of the injecting drug user community and to permit a perpetual increase of those serviced.**

The statute creating exchange programs mandates “free and anonymous exchange.” Conn. Gen. Stat. § 19a-124(a) (1999). The enrollment protocol for the programs therefore requires that no one is denied sterile injection equipment if he or she does not have a participant identification card. Supp. Decl. of Mark Kinzly, ¶7.

When the Legislature established the pilot program in 1990, it acknowledged the narrow reach of the exchange. The legislature struggled with how “to reach people [who were] so hard to reach.” 33 Conn. H. Proceedings, S-311, at 3314 (1990) (Sen. Matthews). In order to engage the isolated population of injecting drug users – a community isolated even from service providers – anonymity was critical. For instance, when an amendment to Conn. Gen. Stat. § 19a-124 was proposed that would have required exchange participants to show identification before receiving syringes, it was defeated. *Id.*, at 3311-13. An amendment to end the anonymity of potential exchange participants “would destroy the program entirely.” *Id.*, at 3313 (Sen. Matthews). The record in the present case amply confirms that potential clients will abandon the Exchange upon any suggestion that their identity will become known. Kinzly Supp. Decl., ¶3-4, 6.

**2. Police officers cannot practically distinguish between participants and non-participants in the Exchange Program.**

The overriding need for client anonymity precludes any police effort to ascertain whether or not a person possessing injection equipment is an Exchange participant. Defendants admit

that they arrest “individuals who do not demonstrate with identification that they are registered active participants.” Defs’ Opp., at 5. Yet, issuance of identification cards<sup>3</sup> provides no solution at all since some clients do not receive a card and the overwhelming majority of clients cannot or will not retain their cards.

A new Exchange client typically receives an Exchange Participation Card, which does not include the client’s name or other identifying information. Kinzly Supp. Decl., ¶3. Yet, clients often refuse to carry or keep an Exchange identification card of any sort, even one having only an anonymous identification number. Id., at ¶4-7. Only “about ten percent of Exchange participants retain the Cards issued by the Exchange.” Id., at ¶6. Some clients lose their Cards, a fact that is “unsurprising given the chaotic circumstances surrounding prolonged use of heroin and other injection drugs.” Id. Other Cards are “destroyed when they get wet, since the Exchange generally does not laminate the Cards.” Id. Some clients have reported that “police officers confiscate or destroy their Cards, including officers in cities outside of Bridgeport who have never heard of the Bridgeport Exchange.” Id. But the most important is “the fear that possession of the Card will reveal their drug use to relatives, friends, employers, and neighbors.” Id. The only reason a person would have an identification Card from the Bridgeport Syringe Exchange Program is because that person injects illegal drugs. Most exchange clients do not want to risk the discovery of their identification Card by a spouse, employer or other person from whom the client seeks to hide on-going drug use. Id. Regardless of how clients lose their cards, Exchange staff will not refuse to service them. Id., at ¶7.

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<sup>3</sup> At no point were identification cards issued as a means of determining who was a program “participant” and could receive program services and who could not. In fact, cards were originally issued merely to track the HIV infection status of used and returned syringes. Supp. Decl. of R. Heimer, ¶3, 6; 33 Conn. H. Proceedings, S-311, at 3314 (1990) (Sen. Matthews). The cards were issued with an identifying code name or number that was then placed on the returned syringe. Id.

Exchange staff have witnessed many specific cases of participants destroying or returning their Cards. For instance, one staff member recalls issuing a Card to a client who tore it up “the moment he stepped out of the van, exclaiming loudly that he did not want his wife to find out he was a drug user.” Id., at ¶7. A staff member also recalls another person who kept his Card for several weeks, but one day arrived at the van with his Card wrapped around his used syringes and fastened with a rubber band. He “shoved his Card into the sharps container along with his used syringes, explaining that he had just moved back into an apartment with his wife whom he feared would find out about his drug use.” Id., at ¶7.

Beyond the problem of retaining Cards, some Exchange participants do not receive Cards. First-time clients are suspicious of the “need for the intake interview, even to the point of leaving the van before the interview is completed.” Id., at ¶4. When a client threatens to leave, or otherwise declines the interview, Exchange staff will nonetheless offer counseling, information brochures, and will exchange used injection equipment for a sterile set. Refusing to provide these services and the equipment would risk HIV transmission. Instead, Exchange staff will attempt to perform the intake interview during the client’s next visit to the van. Id., at ¶4.

Other individuals never receive a Card because they participate indirectly in the Exchange, due to inherent limitations on the accessibility of the program to all injecting drug users. Id., at ¶8. Accessibility of the Exchange is restricted in the following ways. First, the operation of the van is confined to daylight hours, Monday through Friday. Id., at ¶9. Exchange staff know numerous individuals in and around Bridgeport who hold regular, day-time jobs, and therefore send friends to the Exchange with their used injection equipment. Id. In addition, “many individuals who wish to hide their drug use avoid visiting the Exchange because their mere presence indicates drug use.” Id.

Through indirect participation in the Exchange, an individual receives injection

equipment from the Exchange, and then distributes sterile equipment to others in exchange for their used equipment. Id., at ¶8. A significant number of those who participate indirectly in the Exchange also distribute information about drug treatment and health obtained from the Exchange. Id., at ¶10. The indirect participants are Exchange clients for all practical purposes, but are without identification cards.

Indirect participation in the Exchange Program provides a significant means of preventing HIV transmission. By operating outside the Exchange's normal hours, indirect exchange provides a unique benefit. For example, Exchange staff describe a Bridgeport resident, known as "Tom," who serves as a conduit to the Exchange for others. Id. A forty-five year old man living in the same house with his mother and girlfriend, Tom has lost his partner, other loved ones, and friends to AIDS-related deaths over the years. These losses were the catalyst for Tom's decision "to provide sterile injection equipment and other health-related services to individuals who cannot or will not participate in the official Exchange program." Id. Tom is available at all hours of the day and night in a neighborhood the Exchange van does not visit. He collects used injection equipment in a sharps container, delivers the used equipment to the official Exchange in return for sterile equipment, and then distributes the sterile equipment to those bringing in used equipment. Id. Further, he provides alcohol wipes, sterile cotton, and other safe injection equipment available through the van; offers the same written educational materials available on the van; and provides information about treatment options and refers individuals to the Bridgeport Health Department for treatment placement. Id.

#### **IV. DEFENDANTS' CLAIM FOR QUALIFIED IMMUNITY IS INAPPLICABLE AND GROUNDLESS BECAUSE PLAINTIFFS ARE ONLY SEEKING INJUNCTIVE AND DECLARATORY RELIEF.**

Defendants' claim to a defense of qualified immunity is inapplicable in this case, and thus without merit. See Def's Opp., at 10. Qualified immunity applies only to claims for damages, not

to claims for injunctive and declaratory relief presented in this suit. See, e.g., Giacalone v. Abrams, 850 F.2d 79, 84 (2d. Cir. 1988) (“[A] successful assertion of qualified immunity frees an official only from the burden of defending against personal liability for damages. The official still must participate in the ongoing suit to litigate the remaining equitable claims.”); Yang Jing Gan v. City of New York, 996 F.2d 522, 535 (2d Cir. 1993) (persons facing a “valid claim for prospective injunctive relief . . . would not . . . be entitled to a defense of absolute immunity . . . or qualified immunity”).

As part of defendants’ unnecessary effort to establish qualified immunity, they go to considerable lengths to assert their lack of blame for harms suffered by plaintiffs, arguing that defendants’ vindication requires plaintiffs to reveal their identity. Again, this argument fails in its fundamental premise because the defense of qualified immunity is inapplicable. The need for injunctive relief presents purely legal questions concerning the interpretation of a series of legislative enactments. As pointed out in the very case relied upon by defendants, injunctive relief “can be utilized even without a showing of past wrongs.” United States v. W.T. Grant Co., 345 U.S. 629, 633 (1953). In any event, defendants admit that they have made arrests of persons not possessing identification as Exchange participants – a fact more than sufficient to provide an injury in fact and to provide a fair basis for finding that such injury may be repeated in the future. Defs’ Opp., at 5, 8.

**V. CONCLUSION**

For the reasons stated above and in plaintiffs’ opening brief, plaintiffs request that this Court grant their motion for preliminary injunction, enjoining defendants from searching, stopping, arresting or punishing any person based solely upon that person’s possession of up to thirty sets of injection equipment, whether previously used or sterile.

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Dated: December 11, 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 December, \_\_\_\_, 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