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United States District Court, N.D. California.

Clementina DOE, et al., Plaintiffs,
v.
Pete WILSON, et al., Defendants.

No. C 97–2427 SI. | Dec. 16, 1997.

Opinion

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

ILLSTON, J.

***1** On December 5, 1997 this Court heard argument on defendants' motion to dismiss. Having carefully considered the papers submitted and the arguments of counsel, the Court concludes that it is unable to grant the requested relief as a matter of federal severability law, and that therefore plaintiffs have failed to demonstrate that the requested relief is likely to redress their injuries. As such, the Court hereby GRANTS defendants' motion to dismiss for failure to demonstrate standing.[1]

1 In addition to defendants' motions to dismiss under Rule 12(b)(1) and 12(b)(6), plaintiffs filed a motion for class certification, a motion for summary adjudication and an alternative motion for a preliminary injunction. In light of the disposition of the motions to dismiss, the Court does not reach the class certification, summary adjudication or preliminary injunction questions.

BACKGROUND

1. Statutory Background

This case arises out of Congress' recent enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Reform Act" or the "Act"), Pub.L. No. 104–193, 110 Stat. 2105 (1996). Section 411(a) of the Welfare Reform Act makes undocumented aliens ineligible for state-funded public benefits, except for emergency care, certain immunizations, and treatment of communicable diseases. Section 411(d) of the Act allows states to override this provision by enacting state legislation manifesting a clear intent to do so. Section 411(d) provides:

> A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under [§ 411(a)] only through the enactment of a State law after the date of the enactment of this Act which affirmatively provides for such eligibility.

110 Stat. at 2269. If a state chooses not to enact legislation to override section 411(a), then section 411(a) remains in effect, and state and local entities are prohibited from providing public benefits to undocumented aliens. The effective date for section 411 was August 22, 1996, the date of the Welfare Reform Act's enactment.

Prior to the enactment of the Welfare Reform Act, the State of California provided nonemergency prenatal care to undocumented aliens under section 14007.5(d)[2] of the California Welfare and Institutions Code, a portion of its Medi–Cal program funded exclusively by the state. After the passage of the Welfare Reform Act, California Department of Health Service officials prepared regulations designed to bring California into compliance with section 411(a) by denying such prenatal care. On December 4, 1996, this regulatory package was signed on behalf of the Department's Director, defendant Belshe. Since that date, the text of the regulations has been changed twice, and was most recently made available for public comment on August 28, 1997. Pursuant to this regulatory package, new section 50302.1 of Title 22 of the California Code of Regulations implements Welfare Reform Act section 411 by denying state-funded prenatal care to aliens other than qualified aliens, nonimmigrant aliens, or aliens paroled into the United States under Section 212(d)(5) of the Immigration and Naturalization Act. These regulations are to take effect with respect to new applicants for prenatal care services on January 1, 1998. Prenatal care for current recipients is to be terminated beginning February 1, 1998.

2 California Welfare and Institutions Code § 14007.5(d) provides in relevant part that:

> [A]ny alien who is otherwise eligible for Medi–Cal services, but who does not meet the [satisfactory immigration status] requirements under subdivision (b) or (c), shall only be eligible for care and services that are necessary for the treatment of an emergency medical condition and medical care directly related to the emergency, as defined in federal law, and for medically necessary pregnancy-related services.

2. The instant Case

***2** On June 27, 1997 plaintiffs filed this state-wide class action suit on behalf of approximately 70,000 indigent, immigrant women residing in California who are eligible for prenatal care services under California Welfare and Institutions Code § 14007.5(d), but who will become ineligible for such services if the DHS regulations are implemented. The named plaintiffs are eight women, all of whom were pregnant at the time of the filing of the first amended complaint on July 15, 1997. Most of the women have a history of health problems in their families, and plaintiffs allege that "[t]hese women depend on the prenatal care services they are currently receiving in order to ensure healthy pregnancies and deliveries." Pl's Motion for Class Certification, 2:3–4. In addition, three organizations (Community Health Foundation of East Los Angeles, California Primary Care Association, and California Medical Association) are named as plaintiffs in this action.

Plaintiffs do not challenge the constitutionality of section 411(a); indeed, plaintiffs concede that under Congress' plenary power to regulate immigration, Congress could have chosen to prohibit the states entirely from providing benefits to undocumented immigrants. *See* Pl's Opposition, 19:17–20.[3]

[3] Defendants assert that "there can be no dispute that the prohibition against public benefits for undocumented aliens represents a permissible exercise of Congress' authority under Article I." Federal Def's Motion, 25:15–17. Congress' "plenary authority" over aliens is attributed to "various sources," including the Immigration Clause (U.S. Const., art. 1, § 8, cl. 4, authorizing Congress "[t]o establish a[ ] uniform Rule of Naturalization"), the Commerce Clause (U.S. Const., art I, § 8, cl. 3, authorizing Congress "[t]o regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes"), the "Federal Government's 'broad authority over foreign affairs,' " citing *Toll v. Moreno,* 458 U.S. 1, 10, 102 S.Ct. 2977, 73 L.Ed.2d 563 (1982), and "ancient principles of the international law of nation-states," citing *Kleindienst v. Mandel,* 408 U.S. 753, 765, 92 S.Ct. 2576, 33 L.Ed.2d 683 (1972). Federal Def's Motion, 25–27. In support of their contention that Congress has the power to limit or foreclose the ability of aliens, both legal and undocumented, to obtain public assistance under programs funded exclusively by the states, defendants cite to *Toll, supra, Nyquist v. Mauclet,* 432 U.S. 1, 10, 97 S.Ct. 2120, 53 L.Ed.2d 63 (1977), and *Plyler v. Doe,* 457 U.S. 202, 224–226, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982), each of which involved a successful challenge under the Equal Protection Clause to state laws restricting or denying public benefits to aliens. Plaintiffs do not address these points, challenging only the "re-enactment" provision of section 411(d).

Rather, plaintiffs challenge as unconstitutional that part of the state override provision in section 411(d) which requires states to enact new legislation in order to override section 411(a). Plaintiffs contend that by requiring a state to "re-enact legislation in order to exercise its delegated authority to provide prenatal services to undocumented women," Congress has impermissibly usurped a central aspect of state sovereignty: the state's right to select its own lawmaking process. *Id.* at 2:9–10. Plaintiffs allege that the reenactment language of section 411(d) violates the Tenth Amendment[4] and the Guarantee Clauses[5] of the Constitution in that it "interferes directly and substantially" with the "state's chosen lawmaking process." *Id.* at 1:24–26. Plaintiffs have also alleged a cause of action under 42 U.S.C. § 1983 based upon the alleged constitutional violations.

[4] U.S. Const. amend. X: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

[5] U.S. Const. art. IV, § 4: "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

Plaintiffs have sued Pete Wilson, Governor of California; S. Kimberly Belshe, Director of the California Department of Health Services; Department of Health Services ("DHS"); and the United States Government. Plaintiffs seek to enjoin the State from implementing the DHS regulations. Plaintiffs also seek a declaratory judgment that the reenactment language of section 411(d) is unconstitutional.

On October 10, 1997 both the state defendants and the United States filed motions to dismiss under FRCP 12(b)(1) and 12(b)(6). On November 14, plaintiffs filed an opposition to defendants' motions and a counter motion for summary adjudication or in the alternative for a preliminary injunction. Plaintiffs also filed a motion for class certification. Defendants have opposed both of plaintiffs' motions.

LEGAL STANDARD

***3** A motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction may either "attack the allegations of the complaint or may be made as a 'speaking motion' attacking the existence of subject matter jurisdiction in fact." *Thornhill Publishing Co. v. General Tel. and Electronics,* 594 F.2d 730,733 (9th Cir.1979) (citing *Land v. Dollar,* 330 U.S. 731, 735 n. 4, 67 S.Ct. 1009, 91 L.Ed. 1209. (1947)). Where the jurisdictional issue is separable from the merits of the case, the court need only consider evidence related to the jurisdiction issue, and rule on that issue, resolving factual disputes as necessary. *See id.,* (citing *Berardinelli v. Castle & Cooke, Inc.,* 587 F.2d 37 (9th Cir.1978)).

In deciding a Rule 12(b)(1) motion which mounts a factual attack on jurisdiction, "no presumption of truthfulness attaches to plaintiffs allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Moreover, the plaintiff will have the burden of proof that jurisdiction does in fact exist." *Mortensen v. First Fed. Savings & Loan Ass'n,* 549 F.2d 884, 891 (3d Cir.1977).

DISCUSSION

Defendants have filed motions to dismiss pursuant to both Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). Before reaching the defendants' 12(b)(6) arguments, the Court must first determine whether the plaintiffs have properly demonstrated the "irreducible constitutional minimum of standing." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). Defendants argue that plaintiffs lack standing to challenge the validity of section 411(d) for numerous reasons, and for the most part, the state defendants and the United States advance similar and overlapping arguments. As this Court is persuaded that plaintiffs lack standing on the ground that the remedy sought is not likely to redress the injuries caused by defendants, this Court does not address defendants' other standing arguments.

Defendants argue that plaintiffs have failed to demonstrate an essential element of standing: that "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.' " *Id.* at 561 (quoting *Simon v. Eastern Ky. Welfare Rights Organization,* 426 U.S. 26, 38, 43, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976)). This requirement, known as redressability, is necessary to ensure that federal court jurisdiction is limited to adjudicating actual cases or controversies. "Absent such a showing, exercise of its power by a federal court would be gratuitous and thus inconsistent with the Art[icle] III limitation." *Simon v. Eastern Ky. Welfare Rights Organization,* 426 U.S. at 38.

Defendants contend that this lawsuit cannot redress plaintiffs' injuries because plaintiffs challenge the reenactment language of section 411(d) of the Welfare Reform Act, and do not challenge section 411(a). "Even if plaintiffs' challenge were to succeed, and section 411(d) were to be declared invalid, undocumented aliens would still be ineligible for prenatal care pursuant to section 411(a)." State Def's Motion, 15:24–16:2. Defendants argue that because it is section 411(a), the validity of which plaintiffs do not contest, that prevents an undocumented alien from receiving public benefits, enjoining the operation of section 411(d) "would not force California to restore any benefits preempted by § 411(a)." *Id.* at 15: 12–13. Indeed, defendants argue, "[a]n injunction would *prevent* California from restoring the benefits by rendering inoperative the only means for doing so prescribed by Congress." Federal Def's Motion, 14:12–14.

***4** Plaintiffs respond by arguing that they seek to invalidate only the second half of section 411(d) containing the "reenactment clause."[6] Plaintiffs contend that only the second half of section 411(d) violates the Constitution by "prevent[ing] states like California from simply continuing pre-existing state-enacted programs such as Cal.Welf. & Inst.Code § 14007.5." Pl's Opposition, 3:16–17. Plaintiffs argue that the Court should therefore sever the "reenactment clause" from section 411(d), and leave the balance of 411(d) intact. Striking this language would redress plaintiffs' injuries because California would be able to continue providing prenatal care services to undocumented immigrants without having to pass new legislation. Plaintiffs argue that as a matter of federal severability law this Court can grant the requested relief.

[6] Section 411(d) currently reads: "A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under [§ 411(a)] only through the enactment of a State law after the date of the enactment of this Act which affirmatively provides for such eligibility." Plaintiffs' request is that the section be revised, so that it would read as follows: "A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under [[§ 411(a)]."

The Supreme Court has stated that federal statutes are presumed to be severable unless it is evident that Congress would not have independently enacted the unobjectionable language if it had known in advance that the objectionable portions of the statute would be stricken. *See Alaska Airlines, Inc. v. Brock,* 480 U.S. 678, 686, 107

S.Ct. 1476, 94 L.Ed.2d 661 (1987); *INS v. Chadha,* 462 U.S. 919, 931–32, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983). In determining Congressional intent on severability, courts should first look to the statute's severability clause, if any. In addition, courts should examine the statute's legislative history and other Congressional statements regarding Congress' purpose in enacting the statute. This analysis is the same when examining severability in the context of determining redressability.[7]

[7] For example, in *INS v. Chadha,* 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983), the Supreme Court analyzed whether a statute was severable in order to determine whether the plaintiff had established redressability. *Chadha* involved a constitutional challenge to a specific provision of the immigration and Nationality Act authorizing one House of Congress, by resolution, to invalidate a decision of the Executive Branch to allow a particular deportable alien to remain in the United States. Congress filed an *amicus curiae* brief arguing that the challenged provision, section 244(c)(2), was not severable from section 244, and that therefore if section 244(c)(2) was found unconstitutional, all of section 244 would fall. If section 244 in its entirety were violative of the Constitution, the Executive Branch would no longer have the power to suspend a deportation, and the alien/appellant in the case would be deported. "From this Congress argues that Chadha lacks standing to challenge the constitutionality of the one-House veto provision because he could receive no relief even if his constitutional challenge proves successful." *Id.* at 932. The Court proceeded to examine the statute's severability clause and the legislative history of the Act and concluded that section 244(c)(2) was severable, and thus that the plaintiff/appellant had demonstrated redressability.

The Welfare Reform Act's severability clause is section 433(c), which states:

> If any provision of [Title IV] or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this title and the application of the provisions of such to any person or circumstance shall not be affected thereby.

110 Stat. at 2275. Although plaintiffs do not elaborate on their severability clause argument, apparently plaintiffs contend that the first and second halves of the single sentence comprising section 411(d) are separate "provisions" within the meaning of section 433(c), and that therefore this Court can sever the second half of section 411(d) without violating the severability clause.

Defendants, on the other hand, construe all of section 411(d) as one "provision" within the meaning of the Act's severability clause. Defendants contend that subsections (a) through (d) of section 411 are each separate "provisions," and argue that if section 411(d) were declared unconstitutional because of the reenactment language, sections 411(a)–(c) would remain unaffected.

Defendants argue that the second half of section 411(d) is not internally severable from the first half as a matter of statutory construction. Section 411(d) is a single sentence, unbroken by commas and expressing a single thought; to sever the second half of the sentence would substantially alter the meaning of the section. Defendants argue that section 411(d) "set[s] forth the conditions under which otherwise preempted benefits may be restored." Federal Def's Opposition, 5:19–20. Defendants argue that the phrase "only through the enactment of a State law after the date of enactment of this Act which affirmatively provides for such eligibility" is not a separate "reenactment clause," but rather is prepositional phrase with no meaning apart from the entire sentence in which it appears.

***5** Plaintiffs argue that severing the second half of section 411(d) is not only permissible under the Act's severability clause, but that it would also be consistent with Congressional intent. Plaintiffs argue that Congress' "obvious purpose" and "overall intent" in enacting section 411 was "both to enact a presumptive rule of ineligibility (in section 411(a)) while permitting states to decide to override that presumptive rule (in section 411(d))." Pl's Opposition, 7:23–25. As such, plaintiffs argue that severing only the reenactment clause preserves that purpose and intent, while striking the entirety of section 411(d) would not. In fact, plaintiffs argue that aside from excising the reenactment clause alone, the only other measure that would preserve Congress' intent would be to strike both section 411(a) and section 411(d). Doing so, plaintiffs argue, would preserve Congress' intent that states have the option of setting eligibility as they choose for state-funded benefits. Plaintiffs reference the legislative history of the Welfare Reform Act, in which Congress rejected a version of section 411 that did not allow states the override option, as evidence of Congress' intent to both establish a rule of presumptive ineligibility and to preserve the states' option to provide benefits.

Defendants argue that to rewrite section 411(d) in the manner suggested by plaintiffs would frustrate Congress' intent in passing the Welfare Reform Act. For support, defendants cite the introductory section of the Act in which Congress set forth the national policy on immigration. This section states: "It continues to be the immigration policy of the United States that ... aliens within the Nation's borders not depend on public resources to meet their needs ... and ... the availability of public benefits not constitute an incentive for immigration

to the United States.... It is a compelling interest to remove the incentive for illegal immigration provided by the availability of public benefits." State Def's Opposition, 9:9–24 (quoting Welfare Reform Act § 400 [8 U.S.C. § 1601]). These declarations of Congressional purpose, defendants argue, demonstrate that Congress' clear intent in enacting section 411 of the Welfare Reform Act was to restrict the availability of public benefits to aliens. This intent would be frustrated, and the proscriptions and preemptive effect of section 411(a) eviscerated, if section 411(d) were severed in the manner suggested by plaintiffs. If the statute simply means that undocumented aliens are ineligible for state benefits unless state law (already) provides that they are eligible, the statute has not accomplished its purpose: "Section 411's intended denial of state public benefits to undocumented aliens would become a nullity, completely undermining Congress' purpose in enacting section 411...." State Def's Opposition, 11:6–8. Congress clearly intended to preempt existing state laws providing public benefits to undocumented aliens, and to edit section 411(d) as the plaintiffs request would eliminate section 411(a)'s preemptive effect.[8]

[8] Plaintiffs argued at the hearing on this matter that excising the reenactment language of section 411(d) would not render section 411(a) a nullity, since section 411(a) would still establish a presumptive rule of ineligibility which would apply whenever a state did not have a law expressly providing public benefits for undocumented aliens. Whatever its merits in the abstract, this argument fails entirely in California, where the state has had such legislation in effect for some time. It is that legislation which Congress sought to preempt, subject only to affirmative reenactment after the passage of the Welfare Reform Act.

***6** The Court finds that plaintiffs have failed to establish that the remedy sought would likely redress plaintiffs' injuries. *See Lujan v. Defenders of Wildlife,* 504 U.S. at 561. If section 411(d) in its entirety were found unconstitutional, section 411(a) would remain in effect and plaintiffs would still be denied access to the state-funded prenatal care services they seek. To provide plaintiffs any relief, the Court would be required to sever the second half of section 411(d) while leaving the general override provision in effect. The Court finds that to do so would violate rules of statutory construction and would be contrary to expressed Congressional intent. The explicit language of the Welfare Reform Act's severability clause states that if "any provision ... is held to be unconstitutional" the remainder of the Act "shall not be affected thereby." 110 Stat. at 2275. It is clear to the Court that section 411(d) is a "provision"; it does not appear that the last half of section 411(d) is a "provision" within the meaning of the Act's severability clause. Even if plaintiffs' interpretation of the severability clause were correct, it appears to the Court that Congress would not have enacted the section 411(d) override without the reenactment language. Defendants have provided lengthy accounts of the legislative history of the Welfare Reform Act, and the Congressional findings that prompted its passage. This legislative history, together with the explicit language of the Welfare Reform Act, make it clear that Congress intended to deny undocumented immigrants public benefits in order to remove an incentive for illegal immigration. *See* § 400, 110 Stat. at 2260 (setting forth legislative findings of fact in Welfare Reform Act). The revision suggested by plaintiffs would not further this Congressional intent, since in states like California section 411 would then have no effect at all.

Alternatively, plaintiffs request that if this Court finds it cannot strike only a portion of section 411(d), it should strike sections 411(a) and (d) in their entirety, despite the fact that plaintiffs do not challenge the constitutionality of section 411(a) and in fact concede its constitutionality. *See* Pl's Opposition, 19: 17–20. To strike section 411(a) because of an alleged infirmity of section 411(d) would violate the express language of the Welfare Reform Act's severability clause, section 433(c), as well as run afoul of Congress' intent to deny undocumented aliens public benefits.

For these reasons, plaintiffs cannot establish that they would likely have their injuries redressed if the Court were to grant the requested injunctive and declaratory relief. If this Court found the reenactment language of section 411(d) unconstitutional, the Court could grant relief only by severing section 411(d) in its entirety. Section 411(a) would remain in effect, and the State of California would continue to be prohibited from providing prenatal care services to undocumented immigrants.

CONCLUSION

***7** For the foregoing reasons and good cause shown, the Court hereby GRANTS defendants' motion to dismiss for failure to establish standing.

IT IS SO ORDERED.