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Director of Health Services,
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14 IN THE UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

17 MARTI VILLERY; MARGUERITE) CASE NO. CV 95-5714 JGD (SHx)
BRAUNSTEIN; ALEX FLORES, by and)
18 through his Guardian ad Litem,)
MARIA PEREZ; MARY HAYES; NEIL) DEFENDANTS' POINTS AND
19 DWORZACK, by and through his) AUTHORITIES IN OPPOSITION TO
Guardian ad Litem, DIANE) PLAINTIFFS' MOTION FOR
20 DWORZACK, EDUARDO ACEVES; EUNICE) PRELIMINARY INJUNCTION
VIQUEZ; BONNIE HAGY; DIANA)
21 MOLINO; KEITH CROSSWHITE, and)
JUDY MAGANA,)
22) DATE: September 28, 1995
Plaintiffs,) TIME: 9:30 a.m.
23) COURTROOM: 890

24 v.)
25 BOARD OF SUPERVISORS OF THE)
COUNTY OF LOS ANGELES, and)
26 ROBERT C. GATES, DIRECTOR OF THE)
LOS ANGELES COUNTY DEPARTMENT OF)
HEALTH SERVICES,)
27)
28 Defendants.)

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I.
INTRODUCTION

Simply put, the preliminary injunction plaintiffs seek will result in the County of Los Angeles' insolvency to the irretrievable prejudice of the entire community. [Reed and Sicotte **decls.**, filed previously with defendants' ex parte papers]. With insufficient funds for County operations and services, all aspects of County government will decline below the minimum levels currently maintained. This will affect emergency, as well as non-emergency medical care, law enforcement, fire protection, stability and public order.

Existing levels of welfare payments to the thousands of County residents dependent on County General Relief ("GR") for **basic** subsistence will invariably be reduced. Protective services for abused children would be at risk. Roads and public areas could not be maintained. The City of Los Angeles and State of California would be beset with multiple petitions for aid from the most populous county in the State.

The relief plaintiffs seek -- county paid routine medical care for all residents, regardless of medical insurance or ability **to pay**, is simply impossible for any government. The federal government could not do this. President Clinton tried, and failed to establish a national health program. Medicare is beset with financial problems.

The State of California could not do this. Continuing service cuts have been made to Medi-Cal since 1967, just two years after Medi-Cal was established. **Morris v. Williams**, 67 **Cal.2d** 733 (1967). The extent of the cost of publicly paid routine medical

1 care in California became so great by 1982 that the California
2 Legislature eliminated the entire class of "medically indigent
3 adults" ("MIAs") from Medi-Cal because it could not continue to pay
4 these costs. (Cal. Stats. 1982, c. 328 (**secs.** 14005.4(g); 8.3;
5 see Exh. A, filed herewith under separate cover.)

6 California counties are not required to do this. In 1991, as
7 a function of the "Realignment" of funding and responsibilities
8 for State/County public service programs, including health care,
9 the California Legislature specified the maximum amount counties
10 would be required to apply to indigent health care. California
11 Welfare & Institutions Code ("WIC") section 17608.10. (See Exh.
12 **B**). In 1992, the Legislature eliminated any additional financial
13 requirements for indigent health care by abolishing former
14 California Health & Safety Code ("HSC") section 1442.5(c). (**AB**
15 1012; see Exh. M to defendants' Request for Judicial Notice
16 ("Request"), previously filed with defendants' Motion to Dismiss
17 papers). Indeed, as state political subdivisions, counties are
18 the least able of-all government entities to undertake such an
19 immense financial burden.

20 Los Angeles County cannot do this. The County budget for
21 Fiscal Year ("FY") 1995-96 reflects a \$1.2 billion overall
22 shortfall, and a \$655 million shortfall in the County's Department
23 of Health Services ("DHS"), necessitating the use of some
24 anticipated one-time funding and of approximately \$340 million in
25 health care curtailments that are the subject of this lawsuit.
26 (Reed **decl.**) Plaintiffs' blithe statement that "the County has
27 fiscal alternatives" to the health cuts in issue (plaintiffs'
28 points and authorities ("Ps & As") **9:9**) is simply wishful thinking

1 and wholly misplaced. Furthermore, County budget fiscal
2 alternatives, if any, are legislative and political subjects as to
3 which the decision of the Board is conclusive. Such political
4 questions are not justiciable. Marbury v. Madison, 5 U.S. 137,
5 165-66 (1803).

6 The balance of hardships and the law overwhelmingly favors
7 the County in this case. This is not a case of "some
8 administrative inconvenience or monetary loss to the government"
9 (Ps & As 38:14). Rather, the very ability of government to
10 function is at stake. (Reed and Sicotte decls.) There may or may
11 not be "preventable human suffering" (Ps & As 38:16) where there
12 are only a few County facilities still open that will provide
13 routine medical care free of charge. However, this is a national
14 problem. It is not, and cannot be a County problem, in view of
15 the vast resources necessary to provide these services and the
16 steadily diminishing County revenues since Proposition 13 in 1978.

17 The motion for preliminary injunction must be denied. The
18 harm to the entire community of Los Angeles County would be
19 extreme if it were granted. In contrast, the alleged future,
20 individual harms plaintiffs fear are premature and speculative.
21 They may never happen if any of the Board's continued efforts for
22 additional revenues, or operation of outpatient facilities under
23 public/private contracts are realized. (Reed and Hum decls.,
24 filed with the County's ex parte papers). Speculative injury does
25 not constitute irreparable injury sufficient to warrant the
26 granting of a preliminary injunction. Caribbean Marine Services
27 Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

28 It is too soon to give up on these efforts. It is much too

1 soon, and would be completely devastating, to destroy by
2 preliminary injunction the last chance the Board has to keep these
3 facilities open and running with the help of additional revenues
4 or contracting with the private sector. For all of these critical
5 reasons, the motion for preliminary injunction must be denied.

6 II.

7 **STATEMENT OF FACTS**

8 A. **Introduction.**

9 This lawsuit concerns the 1995-96 Los Angeles County budget
10 which contained severely reduced funds for non-emergency,
11 outpatient services because of a \$655 million shortfall in the
12 DHS, resulting mainly from loss of federal revenues for health
13 services. (Reed **decl.**, ¶ 8). Thus, the County was forced to
14 reduce the level of non-emergency, out-patient health services
15 within the remaining budget of \$2.2 billion. (This amount
16 includes "matching" state funds pursuant to WIC section 17608.10
17 ("Realignment").) (Reed **decl.**, ¶s 9 and 10.) Budgeted funds are
18 sufficient to allow the Board to maintain in-patient hospital
19 services, emergency services and core public health services,
20 including those for the treatment of TB, sexually transmitted
21 diseases, acute communicable diseases, immunizations, HIV testing,
22 and basic health officer functions, and some hospital-based out-
23 patient services. **Id.**

24 Defendant, Board of Supervisors of the County of Los Angeles
25 ("Board") properly reallocated priorities, after extensive
26 examination of the facts, public hearings, and the in-pat and
27 recommendations of a specially appointed, independent Health
28 Crisis Task Force, by choosing to close most outpatient clinics

1 and discontinue most out-patient services in County hospitals in
2 order to keep County in-patient hospital services, the community
3 trauma network, and all County emergency rooms in operation. (See
4 Margolin decl.; previously filed with defendants' ex parte papers,
5 ¶s 6-18.)

6 Under the County budget adopted on August 1, 1995, out-
7 patient services in free standing clinics will cease on October 1,
8 1995, except for 10 outpatient facilities distributed through the
9 County, that the Board has continued in operation to provide
10 public health services. (Request, Exh. N.) Out-patient services
11 in County hospitals are to be cut 75%. These curtailments were
12 essentially consistent with the recommendations of the Health
13 Crisis Task Force. (Margolin decl., ¶s 6-18.) While the cutbacks
14 are being made later than recommended by County fiscal staff, they
15 are proceeding in an orderly manner consistent with prudence, good
16 judgment, and legal requirements for employee lay-offs.

17 No federal or state laws prohibit the County from
18 implementing cutbacks in discretionary public services, or
19 employee lay-offs, according to its reduced budget. Rather than
20 seeking compliance with non-existent legal obligations for orderly
21 service cutbacks, plaintiffs seek to block these curtailments, no
22 matter what the law or the fiscal consequences to the people of
23 the County.

24 Since the County budget for FY 1995-96 has already been
25 adopted, this lawsuit, in effect, seeks a mandatory injunction
26 requiring the Board to undo the budget and make new budget
27 decisions funding non-emergency, outpatient health services above
28 all other County operations and public services. Thus, their goal

1 **conflicts** with the Task Force and staff recommendations and the
2 Board's considered judgment. Accordingly, plaintiffs seek to
3 disrupt the status quo, on the flimsiest of motives which they
4 falsely assert will only affect the "process" of reducing
5 services: and the most speculative of future harms that may never
6 occur, even though this could cause the County to become insolvent
7 by as early as October 15, 1995 (Sicotte **decl.**), and would
8 prejudice the Board's current efforts to keep these facilities
9 open through public/private partnerships (Hum **decl.**, filed
10 previously).

11 The subject of this lawsuit is across-the-board curtailments
12 of general routine, non-emergency, out-patient services through
13 closures of approximately 2/3 of County free standing out-patient
14 facilities and the discontinuance of 75% of hospital out-patient
15 **services**. No particular medical conditions are singled out for
16 exclusion. Rather, the level of **all** services is being reduced.
17 No individual is singled out for exclusion. Rather, **all** County
18 residents seeking these services are equally inconvenienced.

19 It would be virtually impossible to compare individual
20 circumstances on a patient-by-patient basis to determine who would
21 be the most inconvenienced by these cuts. Plaintiffs' wholly
22 unsupported assertion that patients with disabilities, whatever
23 conditions that undefined term includes, generally will be
24 disproportionately affected is simply not true, and ignores the
25 individual circumstances of all other users of County medical
26 facilities, all of whom are presumably suffering from a serious
27 medical problem that has led them to seek these services.

28 The County in all respects continues to perform its legal

1 duties to the three categories of patients specified by plaintiffs
2 on p. 1, lines 15-19 of their Ps & As -- patients with
3 disabilities: in-patients in County hospitals; and those
4 "indigent" patients entitled to welfare benefits under WIC section
5 17000 (Exh. D). As determined after extensive litigation between
6 these same parties in Tailfeather v. Board of Supervisors, LASC #
7 BC 080929, the only "indigents" who are entitled to any level of
8 County medical services under State law are recipients of County
9 General Relief ("GR"). The County is not required to pay for
10 medical care for all persons who believe themselves to be
11 "indigent" or "medically indigent". (Judicial notice of
12 Tailfeather was requested in County's previously filed Motion to
13 Dismiss papers, and is hereby also requested for the purposes of
14 these preliminary injunction proceedings.)

15 Only persons eligible for GR under the County's standards are
16 eligible for County paid medical care under WIC section 17000.
17 (See Tailfeather Order Granting Summary Judgment to County, p. 4;
18 Request, Exh. A.) Since, as fully set forth in defendants'
19 previously filed Motion to Dismiss, the plaintiff classes in
20 Villery and Tailfeather are the same, they are bound by that
21 decision as between themselves, and will be bound by the final
22 determination of the matter by the State Court of Appeal, where
23 review of the Tailfeather judgment is pending.

24 Plaintiffs' assertion that patients discharged from
25 hospitals, and patients with disabilities or any other persons,
26 except GR recipients, are entitled to continuing, County paid non-
27 emergency, out-patient care is totally illogical, besides being
28 completely erroneous, because it means that the County may never

1 discontinue public out-patient services, whether or not there are
2 revenues to pay for them. In plaintiffs' view, the County must
3 pay for out-patient services for **all** residents who seek them, and,
4 if not provided directly by the County, then the same services
5 must be provided by somebody else and **still** be paid for by the
6 County. (Ps & As 1:24-2:1, 5-16.) This is obviously impossible
7 and not required under State or federal law.

8 Under plaintiffs' scenario, basic government functions and
9 all other critical public welfare services are subordinate in
10 priority to the provision of non-emergency, out-patient medical
11 services, regardless of relative need or other sources of health
12 insurance or medical care in the community. This self-interested
13 and illogical view demonstrates clearly why government fiscal
14 decisions are entrusted by law to elected officials, not public
15 service recipients.

16 A preliminary injunction is not needed to ensure that proper
17 arrangements are made for alternative care, or for any other
18 reason. The County is not required under any law to continue to
19 provide out-patient services it is financially unable to provide,
20 in any form, by any alternative. The County has shown in its
21 Motion to Dismiss that no federal discharge planning or other
22 regulation requires counties to pay for routine medical care of
23 persons who have been **discharged** from County hospitals. County
24 has further shown that no provider of hospital in-patient services
25 has any continuing obligation to patients who have been
26 **discharged**. Plaintiffs' contrary view extends the obligation for
27 medical care into the realm of incredulity.

28 Contrary to plaintiffs' representation (Ps & As 2:3), there

1 is absolutely no evidence that disabled persons who have used
2 County out-patient facilities will be "forced out of their homes
3 and into nursing homes" by these service curtailments. These dire
4 predictions are speculative at best, entirely premature, and
5 wholly ignore the fact that disabled persons are entitled to **Medi-**
6 **Cal**, and therefore, may go to any Medi-Cal provider for medical
7 care, **all** of whom are also subject to the requirements of federal
8 disabilities laws.

9 The County has shown, in its Motion to Dismiss that, under
10 federal law, the State, not counties, is responsible for ensuring
11 sufficient Medi-Cal providers. Therefore, if a mandatory
12 injunction based on Medicaid is to be ordered, it must be ordered
13 against the State, not counties.

14 The State has not required the County to continue operating
15 out-patient facilities it cannot pay for, **and has refused to**
16 **provide additional revenues to the County for this purpose.** In
17 fact, during the past two years, the State has diverted over \$2
18 billion in property taxes from counties to other purposes, such as
19 school districts. (Reed **decl.**, ¶ 3.) Therefore, the State that
20 has diverted property tax revenues away from counties, and the
21 taxpayers who enacted Prop. 13 in the first place, have determined
22 that counties need not continue to provide routine, out-patient
23 medical care for which they have no revenues and are not provided
24 sufficient revenues, and their determination is final.'

25 The County is obligated to provide medical care only to GR

26
27 'Plaintiffs are apparently under the misimpression that
28 services at the County's specialty hospital for the disabled,
Rancho Los Amigos, will be severely reduced. (Plaintiffs' Ps and
As **2:9**). This is not true. (Diaz **decls.**, filed herewith).

1 recipients under WIC section 17000. (Request, Exh. A, p.4.)
2 Contrary to plaintiffs' unsupported fears, the County is
3 continuing and will **continue** to **comply** with its obligation to GR
4 recipients, despite the curtailments. GR recipients are currently
5 being transitioned from the County Community Health Plan ("CHP"),
6 through which they had been provided medical care, to care that
7 will be provided by private contractors in each of the fourteen
8 County welfare districts. (Williams **decl.**, ¶ 6, filed herewith.)
9 The Board is fully aware of its obligation to provide medical care
10 to GR recipients, and this service was **not** excluded from the FY
11 1995-96 budget.

12 Contrary to plaintiffs' representation (Ps & As 2:11), the
13 County does not owe any duty under state law or otherwise to
14 persons in the County's "Ability-to-Pay" ("ATP") program, or
15 persons covered by Medi-Cal, for all the reasons stated in
16 defendants' Motion to Dismiss and the Judgment in **Tailfeather**
17 (Request, Exh. A). The County is under **no** duty, whatsoever, to
18 **insure** continued County paid medical care for any person, other
19 than GR recipients; particularly those supported by the State
20 through Medi-Cal, when it cannot continue to pay for it and the
21 Board has determined not to pay for it.

22 Defendants have shown in their Motion to Dismiss that the
23 County has **no** "substantive" duty to continue to pay for out-
24 patient services for persons not entitled to County GR, and **no**
25 'procedural" obligation under the Due Process clause to
26 individually notify plaintiffs of health service curtailments, or
27 to continue to provide out-patient care as a matter of law.
28 (**Tailfeather** Order, Request Exh. A, p. 7), (Ps & As 2:17.) The

1 only requirement of "notice and opportunity to be heard" regarding
2 health service reductions is the only remaining, reduced notice
3 provisions of amended HSC section 1442.5 (the "Beilenson" Act)
4 (Exh. C hereto), with which the County has fully complied. (See
5 administrative "record", filed by plaintiffs.)

6 There is absolutely no due process requirement, nor could
7 there be, of individual notice to 800,000 plus individuals, and
8 800,000 gr any pre-closure appeal hearings as a prerequisite to
9 necessary County budget cuts that are already two months after the
10 beginning of the fiscal year. Budget decisions are wholly
11 legislative acts, not subject to judicial or administrative due
12 process notice or appeal requirements. The concept that official
13 Board actions are subject to prior individual notice requirements,
14 or administrative or judicial review, particularly in the area of
15 budget determinations, completely conflicts with fundamental
16 principles of separation of powers established decades ago, and is
17 clearly not the law. (Marbury v. Madison, supra.)

18 Plaintiffs' insistence that all they request here is a
19 "temporary prohibition" (Ps & As 3:10) against the curtailments
20 that have already been made in the County budget simply defies
21 reality. There can be no "temporary prohibition" because any
22 prohibition in the face of no funds to continue would affect the
23 continuation of all County operations that would have to be
24 reduced or curtailed in order to immediately increase out-patient
25 services, even on a "temporary" basis.

26 A "temporary prohibition" on the discontinued services for
27 which funds have not been budgeted would mean that the County
28 would be required to continue all out-patient facilities and

1 services in operation, despite the fact that there **are no revenues**
2 in the County budget for these services, and that if this is
3 required, funds would have to be taken from other critical
4 programs and services, themselves reduced to rock-bottom levels,
5 commencing a chain of events that could lead to the County's
6 insolvency by as early as October 15. (Sicotte **decl.**) Therefore,
7 "temporary" in the sense used by plaintiffs is, in reality, not
8 temporary at all.

9 Indeed, permanent, not "temporary", is what plaintiffs seek,
10 since they request an order that "patient needs for on-going
11 services will be met." (Ps & As 3:11.) Translated into plain
12 English, this means that the County would be required to continue
13 to pay for out-patient services to all 800,000 plus persons in the
14 class, if not in County facilities then in "alternative"
15 facilities or through "alternative" providers. Therefore, in
16 reality, plaintiffs request this Court to order the County to
17 incur these costs one way or another on a continuing and **permanent**
18 basis. However no law requires county out-patient services to
19 become permanent, and specific laws prohibit such relief. (AB
20 1012, Request, Exh. M; WIC section 17608.10.) Therefore, there is
21 no reasonable possibility of success on the merits of plaintiffs'
22 claims. Accordingly, their motion for preliminary injunction must
23 be denied.

24 B. **Description Of The Plaintiffs Es Specified In The Ps And As.**

25 Plaintiffs **Marti** Villery and Diana Molino are identified as
26 County GR recipients. (Compl., **paras** 11, 12.) As such, they are
27 entitled to, and will continue to receive County paid medical care
28 under WIC section 17000, despite the curtailments. (Williams

1 **decl., ¶ 4.)** Accordingly, GR recipient plaintiffs are not harmed
2 and, therefore, lack standing to complain of the cuts.

3 Plaintiffs Bonnie Hagy and Neil Dworzack are Medi-Cal
4 recipients. (Compl., ¶s 13, 17.) As such, they are entitled to
5 medical care from any Medi-Cal provider. They are not limited to
6 County facilities (or county contractors), like GR recipients are.
7 Therefore, they need not become "institutionalized" (Ps & As 6:10,
8 20) by the closure of County out-patient facilities, since medical
9 care from alternative providers is available to them. Thus, while
10 Medi-Cal recipients may be inconvenienced by the closures of
11 County out-patient facilities, they are not prevented by these
12 closures from obtaining medical care.

13 Plaintiff Keith Crosswhite is not among the named plaintiffs
14 described in the complaint (¶s 11-21). Therefore, his legal
15 status vis-a-vis County benefits is unknown. If he is "indigent"
16 such that he qualifies for County GR (Ps & As 5:18) the County
17 will continue to provide for his medical care. If he is not
18 "indigent", such that he does not meet County eligibility
19 standards for GR, he may have funds to pay for some or all
20 continuing care or other means to obtain it.

21 **C. The County Health Care System And The Planned Reductions.**

22 Contrary to plaintiffs' representation (Ps &As 6:27), the
23 out-patient services that will no longer be provided in County
24 hospitals are general medical services that are otherwise
25 available from private hospitals, clinics, and practitioners in
26 Los Angeles. The **2,840,000** yearly out-patient visits plaintiffs
27 allege have been provided in these facilities (Ps & As 7:1-10)
28 have been paid for by taxpayers. This revenue source is not

1 sufficient to maintain this level of service any longer.

2 D. The County's Planning Process.

3 The County is not required by due process **or** otherwise **to**
4 provide individual notice of facility or service closures. This
5 would be an impossible requirement. The only notice requirements
6 applicable to county medical service curtailments are the **pre-**
7 closure public notice requirements that remain in the Beilenson
8 Act (HSC section **1442.5**), with which the Board has fully complied.
9 Plaintiffs overlook the legal source of State and county authority
10 over health services.

11 The basic authority of state and local government over health
12 services does not stem from the federal or state constitutions or
13 any statute. Rather, it derives from the sovereign's police power
14 over the general welfare, a **discretionary** function. See **Goodall**
15 **v. Brite**, 11 **Cal.App.2d** 540, 548-59 (1936). The exercise of
16 police power over the general welfare of an entire state or
17 political subdivision obviously cannot be circumscribed by
18 individual "due process" notice and hearing procedures before this
19 authority may be exercised; particularly not in the most populous
20 County in the State, such as Los Angeles County. Plaintiffs*
21 contrary erroneous view simply ignores the three branches of
22 government and separation of powers.

23 Current public notice requirements under HSC section 1442.5
24 (Exh. C) require general notice to the public regarding proposed
25 county health care reductions. Counties are required, prior to
26 closing medical facilities or reducing the level of medical
27 services, to provide public notice of public hearings to be held
28 by the Board prior to its decision to proceed. (**Id.**)

1 The notice must be posted fourteen days before the proposed
2 public hearing, and must generally contain a list of proposed
3 reductions, the amount and type of each proposed change, the
4 expected savings and the number of persons affected. (**Id.**)
5 Former requirements that the Board make findings that the proposed
6 cuts would not have a detrimental impact on County health care
7 needs, and that despite reductions, the County ensure that the
8 availability and quality of its care to indigents was equivalent
9 to that received by private patients (the Beilenson 'community
10 standard") were **eliminated** in 1992. (AB 1012; Request, Exh. M.)

11 The Board complied with these Beilenson requirements. (See
12 "admin." record, filed by plaintiffs.) Bilingual public notices
13 were timely posted. The Beilenson public meeting notice outlined
14 several proposed options affecting all County facilities that
15 would be considered to close the \$655 million budget gap. It
16 described all proposed reductions, by facility and service, the
17 amount and type of the proposed change, the expected savings and
18 the number of persons affected. A hearing before the Board and
19 extensive public meetings with the Health Crisis Task Force
20 ensued. (Margolin **decl.**; ¶s 5-10.) Taking issue with the content
21 of the notice, plaintiffs and their counsel declined to
22 participate in the Board hearing; however, they did participate in
23 the Task Force meetings, and they submitted a mountain of material
24 to the Board concerning all of the facilities potentially subject
25 to reduction. (Margolin **decl.**, **supra.**; see also plaintiffs'
26 "admin." record.)

27 Contrary to plaintiffs' representations (Ps & As **8:5-9**), the
28 closure process followed by DHS staff commencing September 1, 1995

1 includes counseling and discussions with patients regarding other
2 sources of medical care, and specialized advice and counseling
3 pertinent to individual medical conditions. (Loos **decl.**, filed
4 previously, ¶ 8.)

5 Contrary to plaintiffs' representations (Ps & As 9, fn 13),
6 the County's contribution for County health services has not
7 declined since **1981/82**. Rather, total County revenues
8 appropriated for health services from all revenue sources between
9 1980 and 1992 increased by 371%, from \$780 million in FY 1980-81
10 to over \$3.7 billion in 1991-92. This means that the total County
11 appropriation for DHS is **471%**, or 4 and one-half times greater
12 what it was twelve years ago. In 1994-95, welfare, health and
13 mental health services accounted for 53.1% of the County's total
14 budget. (See, Request, Exh. F, pp. 31-32.) The net **County** costs
15 for DHS for FY 1995-96 increased approximately \$10 million over
16 the FY 1994-95 budget. (Reed **decl.**, ¶ 10.)

17 **E. The Board Has Conclusively Determined That There Are No Fiscal**
18 **Alternatives.**

19 In plaintiffs' opinion, it would be less costly and more
20 effective to cut the more costly hospital in-patient services and
21 emergency services and to continue to provide only non-emergency,
22 out-patient services, rather than make the choices the Board has
23 made. (Ps & As **9:10 -10:2.**) This self-interested opinion is
24 misinformed.* Further, it is entirely irrelevant. As stated in

25
26 *Basically, the Board adopted the Task Force's
27 recommendations that non-emergency, outpatient services be
28 curtailed before in-patient or emergency care because it would be
easier to re-open out-patient facilities than hospitals should
additional revenues be obtained; this option held out the best
hope for retaining vital public health and safety net services: it

1 County of Butte v. Superior Co-, 176 **Cal.App.3d** 693, 699

2 (1985) (**emphasis** added):

3 "The [County] budgetary process entails a complex
4 balancing of public needs in many and
5 varied areas with the finite resources
6 available for distribution among those
7 demands. It involves interdependent
8 political, social and economic judgments
9 which cannot be left to individual officers
10 acting in isolation; rather, it is, and
11 indeed must be, the responsibility of the
12 legislative body to weigh those needs and
13 set priorities for the utilization of the
14 limited revenues available."

15 Accord: Jefferson v. Hackney, 406 U.S. 535, 50 **L.Ed.2d** 285, 92
16 S.Ct. 1724 (1972) (**court** may not second-guess state officials
17 charged with the difficult responsibility of allocating limited
18 public welfare funds among the myriad of potential recipients).

19 //

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26 maximized state and federal revenues, since in-patient
27 reimbursement is much more generous than out-patient reimbursement
28 under the Medi-Cal program; and allowed reconfiguration of out-
patient services through public/private partnerships. (See
Margolin **decl.**, ¶s 12-16.)

1 III.

2 **ARGUMENT**

3 A. Plaintiffs **wholly fail to meet the standards required for a**
4 **preliminary injunction to issue.**

5 1. **The balance of hardships overwhelmingly favors**

6 defendants-

7 A preliminary injunction may not be granted where, as here,
8 the balance of harms overwhelmingly favors defendants, and there
9 is no reasonable chance of success on the merits of plaintiffs'
10 **claims. Amoco Production Co. v. Village of Gambell**, 480 U.S. 531,
11 107 S.Ct 1396, 94 L.Ed.2d 542 (1987). For all the reasons stated
12 **supra, pp. 1 - 19**, there is no balance to the hardships the County
13 of Los Angeles will suffer if an injunction were granted by the
14 speculative, uninformed, and pre-mature misgivings erroneously
15 characterized as hardships by plaintiffs.

16 As described by declarants Reed and Sicotte, the granting of
17 an injunction against necessary health service cuts could initiate
18 the County's insolvency by as early as October 15. The hardship
19 that this would impose on the entire Los Angeles community is
20 simply overwhelming, and dwarfs the individual hardship that may
21 result from the discontinuance of one aspect of County health
22 services. Accordingly, the balance of hardships clearly compels
23 the denial of a preliminary injunction.

24 Undoubtedly, inconvenience to Medi-Cal recipient users of
25 County facilities, and to GR recipients and to the other
26 recipients of County health services may result from the closure
27 and discontinuance of County out-patient facilities and services.
28 Possibly, private providers and private facilities may become

1 crowded. Undoubtedly, many persons having routine medical care
2 provided free of charge may now have to pay for such services, and
3 this may be economically difficult. Indeed, the true balance here
4 is not sickness against health, but who must pay for the cost of
5 routine, non-emergency medical care. In the weighing and
6 balancing of alleged individual economic hardship against the
7 specter of County economic insolvency, individual hardship must be
8 subordinated to the welfare of the entire community.

9 Indeed, the State of California and California taxpayers have
10 already made that balance. They have determined that the County
11 may not have any more revenues, and must govern itself within the
12 revenues it has. The State of California requires only GR
13 recipients to be supported by counties, including their medical
14 care. (WIC section 17000, Exh. D.) The State of California has
15 limited the amount counties may be required to pay for indigent
16 health care generally under Realignment (WIC section 17608.10.)

17 Thus, the "hardship" of paying for non-emergency medical care
18 above the level required through Realignment has lawfully been
19 placed on all persons not entitled to GR by the Legislature. It
20 has not been placed on counties. Accordingly, this question has
21 already been answered and the balance between these two interests
22 has already been drawn as a matter of law. Under fundamental
23 rules of separation of powers, this legislative balance may not be
24 judicially re-weighed. **Marbury v. Madison, supra.** The crisis
25 fiscal condition of local government in the '90's, and the extreme
26 prejudice that would be suffered by all County residents in all
27 aspects of life overwhelm any particular individual hardship that
28 may be suffered by the loss of County paid, routine medical care.

1 The interest of the public is a reason for denying an
2 injunction against an undertaking of vital importance to the
3 community. Loma Portal Civic Club v. American Airlines, 61 Cal.2d
4 582, 588 (1964) (denying an injunction against a major airline
5 terminal for passenger jetliners); Cota v. Los Angeles, 105
6 Cal.App.3d 282, 292 (1980) (damages from halting construction of
7 public building would have exceeded the costs of completion):
8 Caribbean Marine Services Co., Inc. . . supra, (district court must
9 consider the public interest as a factor in balancing the
10 hardships when the public interest may be affected). The health
11 cuts in issue are an undertaking of vital importance to the
12 community, since they are necessary for the Board to continue
13 County government within reduced revenues without becoming
14 insolvent. This factor clearly outweighs the hardship or
15 inconvenience that some individuals may suffer as a result of the
16 reduction of County provided medical care.

17 The Legislature is the ultimate **balancer** of public services
18 that will be provided under its power over the general welfare.
19 It has struck the balance respecting County provided health
20 services and individual need for such services. Counties, as
21 agents of the State, cannot be required to do what the Legislature
22 has not required. This is a political subject that is not
23 **justiciable**. Marbury v. Madison, supra. Therefore, an injunction
24 may not issue as a matter of law.

25 2. Plaintiffs have no likelihood of success on the merits.

26 Defendants have fully set forth the identities of the parties
27 and causes of action in this and the **Tailfeather** case in their
28 previously filed Motion to Dismiss. The **Tailfeather** decision

1 establishes that plaintiffs are already unsuccessful on the merits
2 of the core elements of this complaint and this motion.
3 Principles of comity and res judicata prevent the relitigation of
4 these issues here, a subsequent action between these same parties
5 on these same causes of action. West Coast Theater Corp. v. City
6 of Portland, 897 **F.2d** 1519 (9th Cir. 1990) (under Full Faith and
7 Credit doctrine, federal court must give State court judgment same
8 deference as given in the State): Dubinka v. Judges of Sup. Ct.,
9 23 **F.3d** 218, 223 (9th Cir. 1994) (federal court must abstain where
10 state court proceedings on the same issues are pending).

11 All the State laws cited in plaintiffs' eighth claim for
12 relief have already been determined not to entitle any sub-group
13 of the plaintiff class (other than GR recipients, whose benefits
14 will be continued) to County paid medical care at any level.
15 Furthermore, plaintiffs' claims to continuing out-patient care
16 under substantive and procedural due process have likewise been
17 determined against their position. The Tailfeather Order and
18 Judgment conclusively establish that these claims were not
19 successful and are precluded from relitigation here.

20 County has shown, in its Motion to Dismiss, that plaintiffs
21 will not be successful on the merits of their ADA and
22 Medicaid/Medi-Cal claims because these claims wholly fail to state
23 a cause of action. The reasons will be briefly repeated in this
24 Opposition under the specific headings below. Since plaintiffs
25 fail to meet either requirement for a preliminary injunction, the
26 motion for preliminary injunction must be denied.

27 //

28 //

1 **B. Plaintiffs Must Be Required To Post Bond.**

2 Given that a preliminary injunction could push the County
3 over the brink and into insolvency at the projected cost of
4 \$930,000 per day (Reed **decl.**, ¶ 19), the plaintiffs must be
5 required to post a bond if a preliminary injunction is to issue.
6 Otherwise, the extreme prejudice to the entire Los Angeles
7 community would be irreversible.

8 No preliminary injunction may issue except upon the applicant
9 giving security in such sums as the court deems proper for the
10 payment of such costs and damages as may be incurred or suffered
11 by any party who is found to have been wrongfully enjoined. Fed.
12 R. Civ. P. 65(c). Usually, a wrongfully enjoined party's right to
13 recovery is limited to the security bond ordered by the court.
14 **Buddv Systems, Inc. v. Exer-Genie, Inc.**, 545 F2d 1164, 1167-68
15 (9th Cir. 1976).

16 The costs and damages that would be incurred by the County if
17 an injunction were to issue are, at minimum, \$930,000 per day.
18 (Reed **decl.**, ¶ 19.) This would be the amount required to keep the
19 County operational during the **pendency** of these proceedings, (if
20 not dismissed pursuant to County's previously filed motion to
21 dismiss). Since plaintiffs' believe that the individual hardships
22 or inconveniences to their members outweigh the public harm that
23 would be caused by an injunction, they should be required to
24 protect the public by posting the required bond.

25 In view of the irreversible harm that will result from a
26 preliminary injunction, plaintiffs should not be excused from this
27 requirement on the ground that they are "indigent." The class is
28 not indigent. There is absolutely no evidence that any members

1 other than recipients of County GR are not financially
2 responsible. Since only a portion of the class is comprised of GR
3 recipients, it must be assumed that all other 700,000 class
4 members have some means of personal support.

5 Furthermore, this action was filed by 10 law firms, each of
6 which is supported in some, if not all respect by federal or other
7 grants. If these firms are to use public funds to irreversibly
8 harm the Los Angeles County community by causing its local
9 government to become insolvent, with attendant losses to the
10 community if an injunction were to issue, they should be required
11 to apply some of these funds to the public's protection by posting
12 the required bond.

13 The Court has discretion to establish a bond amount affording
14 sufficient security to cover the losses and damages incurred or
15 suffered by the defendants if an injunction is wrongfully granted
16 against them. Fed. R. Civ. P. 65(c). Based on the above,
17 defendants respectfully request that a bond in the amount of at
18 least \$930,000 per day be ordered, for every day this action is
19 pending, if a preliminary injunction is to issue.

20 C. **The Health Services Curtailments** Do Not Violate **The ADA**.

21 1. **The service curtailments do not violate the ADA's**
22 **"integration mandate."**

23 Defendants have shown in their Motion to Dismiss that the ADA
24 was enacted to provide to persons with disabilities (as defined in
25 the ADA) **equal** access to public and private facilities as provided
26 to non-disabled persons, and that this means that facilities must
27 be physically adapted to the physical needs of the disabled. This
28 does not mean that the gamut of routine, out-patient medical

1 services must be provided at County expense to all persons who may
2 be disabled.

3 The ADA "integration mandate" provides that unnecessary
4 segregation of the disabled is discriminatory. Helen L. v.
5 DiDario, 46 F.3d 325, 333 (3rd Cir. 1995). It requires only that
6 if practically possible, disabled persons are to live in their
7 communities the same as non-disabled persons would be able to do.
8 The intent was to desinstitutionalize the disabled, not to require
9 counties to provide free medical care for persons requiring the
10 skilled nursing care of nursing homes. That was not the holding
11 of Helen L. v. DiDario, *supra*, cited by plaintiffs on p. 12 of
12 their Ps and As. The DiDario decision does not stand for the
13 proposition that counties must continue to provide routine, out-
14 patient medical care to disabled persons in or out of nursing
15 homes, or to anyone.

16 The plaintiff in DiDario was confined to a nursing home, and
17 sought in home supportive services ("IHHS") from the State of
18 Pennsylvania to permit her to live **at home**. (California provides
19 IHHS under WIC section 12300 et. seq. (Exh. E). IHHS is a State,
20 not County program.) In her efforts to leave the nursing home and
21 return to her home, the Court held that since the IHHS benefit was
22 available from the State and she was eligible **therefor** under the
23 State's standards, it should be provided, rather than requiring
24 her to stay in the nursing home. This has nothing to do with
25 County health services or disabled persons **not** in nursing homes.

26 California counties do not fund IHHS benefits. Counties are
27 not required to underwrite the State's welfare obligations as well
28 as their own. This action is completely dissimilar to DiDario.

1 None of the disabled plaintiffs is in a nursing home. All are
2 Medi-Cal recipients. Thus, they are entitled to routine, medical
3 care from other providers. Presumably, some, if not all, may or
4 will qualify for California IHHS if warranted. Therefore, it does
5 not at all follow that any of these plaintiffs will be "forced"
6 into a nursing home due to County health service curtailments.

7 In their attempt to state a non-existent claim under the ADA,
8 plaintiffs either misunderstand or misrepresent the effect of the
9 curtailments on persons with disabilities. The services that are
10 to be cut are not services special to the disabled. Rather, they
11 are routine, non-emergency, out-patient services equally
12 applicable to all users of such services, disabled or **non-**
13 disabled. County **rehabilitative** services to the disabled are to
14 continue. (Second Diaz **decl.**, filed herewith.) Other providers
15 of health care are subject to the same ADA physical access
16 requirements as the County. Therefore, the curtailments to County
17 health services do not deny access to health services to the
18 disabled.

19 **Rancho** Los Amigos Medical Center is among the hospitals that
20 are to remain in operation. Only 20% of the out-patient services
21 at **Rancho** Los Amigos are to be curtailed while the non-disabled
22 hospitals will have such services curtailed by 75%. (Second Diaz
23 **decl.**) Thus, the Board has endeavored to protect the special
24 needs of the disabled despite these necessary curtailments.
25 Accordingly, there has been no violation of the "integration
26 mandate" of the ADA.

27 Under the ADA, health care reductions that are facially
28 neutral and equally impact the disabled and non-disabled, as the

1 curtailments in issue are and do, do not violate the ADA.
2 Alexander v. Choate, 469 US 287, 105 S.Ct. 712, 83 **L.Ed.2d** 712
3 (1985). Plaintiffs' assertion that the disabled are more impacted
4 is factually and legally erroneous. Individual impact is a
5 function of individual circumstances. Non-disabled persons may be
6 as impacted or more impacted than disabled persons, depending on
7 the particular circumstances. Disabled persons have the same
8 right of access to remaining services and facilities as the **non-**
9 disabled. Therefore, plaintiffs fail to state a claim for
10 violation of the ADA, and may not succeed in this claim.

11 2. The service cut-backs do not eliminate access to me-
12 care.

13 For all of the reasons stated above, the health care
14 curtailments at issue here are not equal to dismantling a ramp (Ps
15 & As 14-15). No ramps, or any other fixtures are being
16 dismantled. Rather, some out-patient facilities are being closed,
17 and hospital out-patient services are being reduced. All
18 operating health facilities are required to have the same ramps
19 and same physical access accommodations to the disabled.
20 Therefore, physical access to medical care is not being denied.

21 Although the plaintiffs in **Tailfeather** contended that County
22 out-patient care was legally inadequate, such that it denied them
23 medical care, here plaintiffs extol the practice of medicine at
24 **Rancho** Los Amigos and other County facilities that apparently
25 provide care to the disabled that cannot be duplicated anywhere,
26 particularly not through private medical plans, such as Cigna.
27 (Ps & As **16:15.**) The Board would be pleased to know that the care
28 provided in these facilities is so highly acclaimed and

1 appreciated by the plaintiff class. The problem is that there are
2 insufficient revenues to continue to provide this level of health
3 services, which is one reason why managed care plans, such as
4 Cigna, are growing. Therefore, most County out-patient services
5 to all persons are being cut equally, regardless of disability.

6 Concerned Parents to Save Dreher Park v. City of West Palm
7 Beach, 846 F. Supp. 986 (S.D. Fla. 1994), cited by plaintiffs on
8 pp. 16-18 of their Ps & As, is completely inapplicable. There,
9 the City eliminated all recreational programs for the disabled,
10 while continuing all or most of such programs for the non-
11 disabled. The Court determined that this was a failure to provide
12 equal access to City programs, as required by the ADA, which it
13 clearly was. However, the Court also opined that had the City cut
14 its entire recreational program for all persons, the ADA would not
15 have been implicated because both groups would have been equally
16 affected. 846 F. Supp. At 986.

17 Here, the County is closing 75% of all out-patient
18 facilities, serving all persons regardless of disability, and all
19 hospital out-patient services (with the exception of **Rancho Los**
20 **Amigos**, which is only to be cut by 20%). This is completely
21 opposite to Concerned Parents. Under Concerned Parents, these
22 curtailments do not violate the ADA. Accordingly, plaintiffs are
23 not likely to succeed on the merits of their ADA claim.

24 D. The Curtailments Do Not Violate Medicaid/Medicare Hospital
25 Discharge Planning and Transfer Requirements.

26 Defendants have shown in their Motion to Dismiss that the
27 members of plaintiffs' class who are not Medi-Cal recipients have
28 absolutely no standing to complain of purported Medicaid

1 violations. Defendants have further shown in their Motion that no
2 class member has standing to sue the County over these
3 regulations, which are a State responsibility. Defendants have
4 further shown that these regulations pertain to hospitals, not
5 out-patient clinics, and that since no hospitals are being closed,
6 these regulations are not even implicated by the service
7 curtailments. Therefore, the plaintiffs may not succeed on these
8 claims as a matter of law.

9 As fully set forth in defendants' Motion to Dismiss, the
10 Medicaid/Medicare discharge planning and transfer regulations do
11 not apply to the discontinuance of ambulatory services in County
12 out-patient facilities, (see 42 U.S.C. sec. **1395x(ee)**), and
13 plaintiffs do not contend that they do. Rather, plaintiffs
14 contend that the curtailments in out-patient services will prevent
15 the County from providing follow-up care to patients **that have**
16 **been discharged** from its hospitals. Defendants have shown in
17 their Motion to Dismiss that the Medicare and Medicaid laws do **not**
18 require the County to provide follow-up care to discharged
19 patients.

20 Defendants have shown that at most, the laws require only
21 that the County make referrals for follow-up and ancillary care
22 and assist the patient in the initial implementation of the
23 discharge plan (42 U.S.C. sec. 1395x (ee); 42 CFR sec. **48.43**), and
24 that the initial implementation can be accomplished in several
25 ways not involving continuing County services. Most notably, as
26 defendants have shown, the services can be provided by non-County
27 Medicare or Medicaid providers, which are numerous. Therefore, a
28 Medi-Cal patient has no right to insist that his or her services

1 be provided through County facilities. Accordingly, there is no
2 direct correlation between the County's closure of outpatient
3 facilities and the ability or inability of in-patients to obtain
4 follow-up care.

5 There is no evidence that such other resources will not be
6 available. Moreover, the State, not counties, is given the
7 responsibility of ensuring sufficient Medi-Cal providers. 42
8 U.S.C. sec. 1396(a)(8). Therefore, plaintiffs will not succeed on
9 these claims against the County as a matter of law.

10 **E. The Curtailments Do Not Violate Any State Mandates.**

11 Defendants have shown in their Motion to Dismiss that in
12 light of the **Tailfeather** Order, each of the four specific elements
13 requiring a court to deny supplemental jurisdiction over state
14 claims is present here. Therefore, the Court should abstain from
15 entertaining the relitigation of these same claims in this action.
16 Relitigating these claims would waste the Court's time in a
17 voluminous amount of litigation that one Court has already spent a
18 great deal of time over, and determined. In addition, it would
19 improperly condone blatant forum shopping and piecemealing of
20 litigation, and conflict with Full Faith & Credit principles.

21 The California statutes plaintiffs rely on (Ps & As 23-24)
22 are the same statutes they unsuccessfully relied on in **Tailfeather**
23 for precisely the same erroneous principles. (See Request, Exh.
24 **A.**) The cases plaintiffs cite on pp. 23 - 26 of their Ps & As are
25 the same cases they unsuccessfully relied on in **Tailfeather. Id.**
26 The cases, statutes, and laws that were and are determinative on
27 these issues are not mentioned by plaintiffs at all, just as they
28 failed to mention the applicable laws in **Tailfeather**, and under

1 which laws they could not and did **not** prevail.

2 As in **Tailfeather**, the County, in order to re-defend these
3 claims, would have to completely set forth, all over again, the
4 history of California health and welfare laws, culminating in
5 recent amendments to these laws limiting requirements on counties
6 for mandated services; all the California laws pertaining to
7 medical care: the history of the case law of California health and
8 welfare programs, culminating in the recent statutory changes in
9 these programs, which overruled all authorities cited by
10 plaintiffs for their erroneous position. (See Request, Exhs. A-
11 K-) The parties have already made these -same arguments once
12 before one trial judge, who carefully considered all of the above
13 and determined these issues. Under principles of comity and res
14 judicata, once is enough as a matter of law.

15 Briefly, WIC section 17000 does not require counties to
16 provide county-paid medical care to all "indigents." Under WIC
17 section 17000, counties are only required to support indigents
18 "not supported by their own means" or other programs. Therefore,
19 there is no obligation under WIC section 17000 to pay for medical
20 care of the "working poor." Bay General Community Hospital v.
21 County of San Diego, 156 Cal.App.3d 944 (1984). Under HSC
22 sections 1441 and 1445 (Exh. F), the operation of county medical
23 facilities and provision of health services to the poor is
24 entirely discretionary. Id. HSC sections 1441 and 1445 that are
25 specific to indigent health care control over the general welfare
26 provisions of WIC section 17000. (Request, Exh. A, pp. 3-4.)

27 In 1991, the Legislature enacted WIC section 17000.5 (Exh. G)
28 which limited requirements on counties for welfare under WIC

1 section 17000 to the fiscal standard provided in that statute. In
2 1991, the Legislature also enacted the Realignment statutes, which
3 realigned funding and responsibilities for State/county public
4 services programs and set the maximum amount that counties could
5 be required to pay for indigent health care. WIC section
6 17608.10, Exh. B. In 1992, the Legislature eliminated the
7 Beilenson "community standard" and reduced the notice provisions
8 applicable to reductions in county health services so that no
9 county could be required to provide any level of indigent health
10 services above the amounts specified by the Legislature in the
11 Realignment statutes. (AB 1012, Request Exh. M.) The FY 1995-96
12 DHS budget meets the Realignment amount. (Reed **decl.**, ¶ 9.)
13 Under these laws, the County may not be required to increase the
14 level of out-patient services currently provided, or provide out-
15 patient services at higher levels than required under Realignment.
16 **Tailfeather, supra.**

17 The curtailments do not violate the duty of "humane"
18 treatment. In **Cooke v. Superior Court**, 213 **Cal.App.3d** 401 (1989),
19 the California Court of Appeal interpreted the language of WIC
20 section 10000 (Exh. H) requiring that public aid be provided
21 "promptly and humanely," to require counties to provide medical
22 care, including dental care **to GR recipients** sufficient to relieve
23 substantial pain and infection. The County has, does, and will
24 continue to comply with this requirement. This decision has never
25 been interpreted to require counties to pay for all medical care
26 for all persons in the County, as plaintiffs attempt to do here.
27 It has never been interpreted to require counties to enter, or
28 remain in the dentistry business for all residents, or even for GR

1 recipients. It cannot be so interpreted in view of the 1991 and
2 1992 laws prohibiting such requirements.³

3 F. The Curtailments Do Not Violate Due Process

4 This is the most specious of plaintiffs' arguments, in view
5 of the statutory Beilenson notice requirements that pertain to
6 health service cuts by California counties. Health and welfare
7 policies are legislative functions under police powers over which
a states are sovereign. In administering welfare, counties act as
9 agents of the state. Robbins v. Superior Court, 38 Cal.3d 199,
10 211 (1985) (in welfare administration, counties act as agents of
11 the states).

12 By adopting the Beilenson notice requirements in 1974, and
13 amending them to reduce notice requirements and eliminate
14 "standards" for county health care in 1992, the Legislature has
15 delineated the process that is due when county health facilities
16 are to be closed or services are to be reduced. The due process
17 clause is not a super-legislature imposing additional requirements
18 on the exercise of State or local police power. There is no
19 property right to discretionary public services such that their
20 discontinuance implicates the due process clause. Maher v. Roe,
2 1 432 U.S. 464, 469, 97 S.Ct. 2376, 2380, 53 L.Ed.2d 484
22 (1977) (Constitution imposes no obligation on states to pay medical
23 expenses of indigent persons); Punikaia v. Clark, 720 F.2d 564

24
25 ³The 9th Circuit has never ruled that anyone has a property
26 interest in county-paid medical care. In Griffith v. Detrich, 603
27 F.2d 118 (9th Cir. 1979), the 9th Circuit ruled on an issue
28 involving termination of GR support benefits, under WIC section
17000, which courts have viewed as a property right. The
"property" right to continue GR benefits does not translate into a
similar right to health care for non-GR recipients, because under
State law, indigent health care is entirely discretionary.

1 (9th Cir. 1983) (no property right in continuance of particular
2 state hospital); Lipscomb v. Simmons, 962 F.2d 1374, 1379 (9th
3 Cir. 1992) (the due process clause does not confer an affirmative
4 right to government aid).

5 Rather than "occurring in great haste and without individual
6 notices" (Ps & As 28:26), the closures and curtailments followed
7 the Beilenson notice and public meeting procedures, were not made
8 until after the posting of (bilingual) notices, an official public
9 hearing before the Board, numerous discussions and deliberations
10 at other public meetings of the Board, and numerous opportunities
11 to meet with the Health Crisis Task Force, affording the public,
12 including plaintiffs, extensive opportunities to submit materials,
13 argument, facts and proposals: and the review and study of the
14 specially appointed, independent Health Crisis Task Force. This
15 is about as deliberate and prudent a process as can be followed
16 where local government budget cuts and insolvency are at stake.

17 Indeed, the Board waited until the very last minute, against
18 staff advice, before adopting the reduced budget, and has still
19 maintained 10 out-patient facilities in operation while pursuing
20 all avenues of obtaining additional revenues for health services
21 from both the State and federal governments, which efforts are
22 ongoing. This is hardly "precipitous" or "chaotic." (Ps & As
23 29:3).⁴

24 ⁴No judicial decision requires individualized or any notice
25 for reductions in discretionary county out-patient services.
26 Memphis Light, Gas & Water Div. (Ps & As 33) concerned utility
27 service cut-offs under state law prohibiting such cut-offs at
28 will. Mennonite Board of Missions v. Adams (Ps & As 33-34)
concerned the adequacy of notice of a tax sale to a prior-in-time
mortgagee. These cases are inapplicable to this case. No other
decision cited by plaintiffs pertains to counties or county

1 The defect in plaintiffs' due process contentions is that
2 they are based on the wholly erroneous assumption that the class
3 has a 'property right' to County-paid routine medical care.
4 Plaintiffs' fail to identify the source of such a property right
5 because there is no source. In California, indigent health care
6 is entirely discretionary. HSC sections 1441, 1445.

7 As stated in Board of Regents v. Roth, 408 U.S. 564, 577, 33
8 **L.Ed.2d** 548, 561, 92 S.Ct.2701 (1972):

9 "To have a property interest in a
10 benefit, a person clearly must have
11 more than an abstract need or desire
12 for it. He must have more than a
13 unilateral expectation of it. He must,
14 instead, have a legitimate claim of
15 entitlement to it."

16 Except for GR recipients, whose medical benefits are not
17 being curtailed, no class member has a legitimate claim of
18 entitlement to County-paid medical care, because under HSC
19 sections 1441 and 1445, the operation of County medical facilities
20 and provision of health services to the poor **is entirely**
21 **discretionary**. Accordingly, except for GR recipients, the class
22 has only had, up to this time, a unilateral expectation of it.
23 This is insufficient to confer a property right as a matter of
24 law. **Id. Tailfeather, supra.**

25 The authorities plaintiffs rely on for the proposition that
26 County residents have a property right to County paid medical care
27
28 _____ medical services, or supports the erroneous view that
individualized notice is required.

1 do not support this proposition and are entirely inapplicable.
2 **Memorial Hospital v. Maricopa County** (Ps & As 29) concerns the
3 interpretation of a **state** statutory durational residency
4 requirement for in-patient care in a county hospital. The Supreme
5 court determined that the durational residency requirement was
6 unconstitutional in violation of the right to travel. It did not
7 hold that county paid hospital care was a property right.

8 **LeBaron v. U.S.**, (Ps & As 30) considered the exclusion of
9 certain Ute Indians from medical care under the federal Indian
10 Health Services Program, through which there was an entitlement to
11 federally paid medical services for eligible Indian recipients.
12 There is no such comparable right for non-GR recipients in
13 California. **Board of Regents v. Roth** (Ps & As 30) has nothing to
14 do with medical care or counties. That decision held that an
15 untenured college professor had no property right to continued
16 employment.

17 **Haymons v. Williams**, 795 F.Supp. 1511 (N.D. Fla. 1992) (Ps &
18 As, ¶ 31) concerned a claim against the State for deprivation of
19 specific Medicaid benefits by Medicaid recipients. Neither the
20 State, nor a specific medical entitlement is involved in the
21 instant case. Similarly, **BredHealthirector for Dept.Of** ,
22 (Ps & As 31, fn 45), which was subsequently modified and limited
23 by **Punikaia v. Clark, supra**, concerned a claim against the State
24 under the Medicaid hospital patient transfer rules by Medicaid
25 hospital patient recipients. Neither decision involved counties
26 or county medical care.

27 Similarly, the curtailments to County out-patient services do
28 not violate a "liberty" interest in personal security. (This

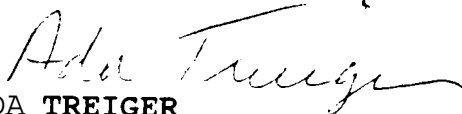
argument was so deficient that it was dropped from plaintiffs' complaint in **Tailfeather**. Request, Exh. F, p. 109.) Contrary to plaintiffs' representation in fn. 43 of their Ps & As (p. 30), the State has not "undertaken" to provide, and subsequently withdrawn medical care to indigents. Rather, except for GR recipients, **County** indigent medical care is entirely discretionary. HSC sections 1441, 1445.

For all the reasons stated above, the motion for preliminary injunction must be denied.

DATED: September 15, 1995

Respectfully submitted,

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BY 
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illery.pio

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**MARTI VILLERY; MARGUERITE BRAUNSTEIN; ALEX
FLORES**, by and through his Guardian ad
Litem, MARIA PEREZ; MARY HAYES; NEIL
DWORZACK, by and through his Guardian ad
Litem, DIANE DWORZACK; EDUARDO ACEVES;
EUNICE VIQUEZ; BONNIE HAGY; DIANA MOLINO;
KEITH CROSSWHITE, and JUDY MAGANA,

Plaintiffs,

v.

BOARD OF SUPERVISORS OF THE COUNTY OF LOS
ANGELES, AND ROBERT C. GATES, DIRECTOR OF
THE LOS ANGELES COUNTY DEPARTMENT OF HEALTH
SERVICES,

Defendants.

CASE NUMBER

CV 95-5714 JGD (SHx)

PROOF OF SERVICE

I, the undersigned, certify and declare that I am over the age
of 18 years, employed in the County of Los Angeles, State of California,
and not a party to the above-entitled cause.

On September 15, 1995, I served a true copy of:

DEFENDANTS' POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

by depositing copies in the United States Mail, in a sealed envelope
with the postage fully prepaid and addressed to the following:

SEE ATTACHED LIST

Place of mailing: 500 W. Temple Street, Los Angeles, California 90012.
Executed on September 15 at Los Angeles, California.

** X I hereby certify that I am employed in the office of a member of
c 1 the Bar of this Court at whose direction the service was made.


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