

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>RUBY BELL, et. al., individually and on</b>	)	
<b>behalf of all similarly situated persons,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>No. 06C-3520</b>
	)	
<b>vs.</b>	)	
	)	
<b>MICHAEL LEAVITT, Secretary of the</b>	)	
<b>United States Department of Health and</b>	)	
<b>Human Services,</b>	)	
	)	
<b>Defendant.</b>	)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION FOR  
RECONSIDERATION OF DISMISSAL OF CLAIMS OF CLASS A  
AND DENIAL OF MOTIONS AS TO CLASS A**

In a Memorandum Opinion and Order dated September 14, 2006 ("September 14 Order"), this Court, among other dispositions, dismissed for lack of standing the claims made by certain plaintiffs on behalf of themselves and the proposed plaintiff Class A (collectively "the Class A plaintiffs," "the Class A claims"), and struck as moot the Class A plaintiffs' motions for preliminary injunctive relief and class certification.<sup>1</sup> On October 3, 2006, the Class A Plaintiffs filed this Motion for Reconsideration, asking that the Court reconsider and reverse its dismissal of the Class A claims and reinstate and grant the two motions. The Class A Plaintiffs submit this memorandum in support of that motion.

**I. STANDING**

The Class A Plaintiffs claim that the citizenship documentation requirement of the Deficit Reduction Act of 2005, Pub. L. No. 109-171 §6036, 120 Stat. 4, 81 (2005) ("Section

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<sup>1</sup> The named plaintiffs who bring the motion are A.L., T.W., Jo.N., Ja.N., and Jerome Windley, who were eligible beneficiaries of Medicaid prior to July 1, 2006, and who continue to be subject to the documentation requirement. The proposed Class A is defined as: " All persons who, prior to July 1, 2006, have been determined eligible for health coverage under the Medicaid Program, 42 U.S.C. §1396 et seq., and who declared on their applications for Medicaid coverage or otherwise that they are citizens or nationals of the United States, or who were made eligible for Medicaid without the need for a declaration of citizenship or eligible alien status under 42 U.S.C. §1320b-7." First Amended Complaint, at ¶18.

6036"), insofar as it subjects them to a new procedural requirement to produce documentary proof that they are United States citizens in order to continue to be eligible for Medicaid benefits, violates their rights under the Due Process Clause to the Fifth Amendment to the United States Constitution. Specifically, the Class A Plaintiffs challenge Section 6036(b), which makes the new citizenship documentation rule applicable to all people who were Medicaid beneficiaries on July 1, 2006. See § II, *infra*.

In the September 14 Order, this Court found that the Class A plaintiffs had shown "injury in fact" for purposes of standing to sue, but had not satisfied either the "redressability" or "traceability" elements of standing. September 14 Order at 12-13. The predicate for this ruling was the Court's understanding that the Class A Plaintiffs had only attacked and sought to enjoin the defendant Secretary's implementing regulation for Section 6036 and not Section 6036 itself. The Court found that the harm the Class A Plaintiffs seek to prevent stems from the statute and not the regulation, and therefore the Class A Plaintiffs lacked standing because the harm was not traceable to the regulation, nor would an injunction against the regulation redress the harm. *Id.*

In the Motion for Reconsideration, plaintiffs respectfully request that the Court reverse its standing ruling. The Class A Plaintiffs have indeed attacked the statute itself and requested that it be enjoined insofar as it applies the documentation procedures to them. See, First Amended Complaint, ¶ 2 (all plaintiffs in general), and ¶ 60 (Class A claims: "Section 6036 violates the Due Process Clause of the Fifth Amendment of the United States Constitution"). In the First Amended Complaint, plaintiffs seek a declaratory judgment that "Section 6036 itself violates plaintiffs' rights under ... the Due Process Clause of the Fifth Amendment to the United States Constitution," First Amended Complaint, Prayer for Relief, ¶ B. Plaintiffs also seek corresponding injunctive relief. *Id.*, ¶ C. See also, Memorandum in Support of Plaintiffs' Amended Motion for Temporary Restraining Order and Preliminary Injunction, at 24 (if the

regulation is permitted or required by the statute, "then Section 6036 itself is unconstitutional."); Reply Memorandum in Support of Plaintiffs' Amended Motion for a Temporary Restraining Order and Preliminary Injunction ("Pl. TRO/PI Reply") at 6 ("... plaintiffs claim that Section 6036 itself ... violates their constitutional rights."). Moreover, in the First Amended Complaint, the plaintiffs assert their claim as to the unconstitutionality of Section 6036 not only under the Administrative Procedure Act, but also directly under the Constitution and via general federal question jurisdiction. First Amended Complaint, ¶¶3,4. See, Pl. TRO/PI Reply at 18, n.12. That alternative pleading is clear evidence that plaintiffs indeed were challenging the statute itself.

Plaintiffs' Amended Motion for Temporary Restraining Order and Preliminary Injunction did not contain an alternative request for relief against Section 6036. However, the totality of the Plaintiffs' documents clearly demonstrates that the omission of the request for relief against Section 6036 in their motion was a drafting mistake. All of the other documents, including both briefs on the motion, reflect a manifest intent to challenge the statute itself. The mistake did not prejudice the Secretary, who had the opportunity to respond to the challenge to the statute appearing in the briefs. Thus, Plaintiffs respectfully submit that the omission of a request for relief against the statute in the motion should not be the basis for a denial of standing to sue, which should be based on what is in the pleadings. Bennett v. Spear, 520 U.S. 154, 168, 117 S.Ct. 1154, 1164 (1997). The First Amended Complaint makes the necessary allegations and request for relief against Section 6036 on behalf of the Class A Plaintiffs, and therefore they request that the Court reconsider and reverse its ruling that they do not have standing to sue.

## **II. MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

### **A. The Court should reinstate the motion and grant a preliminary injunction**

As noted above, plaintiffs omitted the request for relief against the statute in their Amended Motion for Temporary Restraining Order and Preliminary Injunction. If the Court

reverses its standing ruling and reinstates the Class A claims, Plaintiffs request that the Court consider the preliminary relief motion to have been amended by the briefing to include a request for relief against the statute, and that the court grant a preliminary injunction. In the alternative, plaintiffs request that the Court allow plaintiffs to file an amended motion to add the omitted relief, although plaintiffs respectfully request that the court dispense with further briefing, given the time sensitivity of the issues and the fact that briefing on the matter has already occurred.

For the convenience of the Court and the Secretary, and in the event that the Court decides to reach the merits of the preliminary relief motion, plaintiffs present below an overview of the arguments that they made in the prior briefing in support of their claim that Section 6036 is unconstitutional as to Class A.

**B. The Court should grant a preliminary injunction as to Class A**

**1. Likelihood of Success on the Merits**

Each state participating in the Medicaid program is required to develop a plan that incorporates the mandatory federal requirements for eligibility and scope of benefits and identifies the optional features the state has chosen to include. The state plan must set forth the standards of eligibility for the program. These mandatory and optional state plan eligibility and program provisions are contained in 42 U.S.C. §1396a.

As a cooperative federal-state program, state participation in Medicaid is voluntary. All states currently participate, however, and as a result are required to comply with the federal statutes and regulations governing Medicaid in order to receive federal reimbursements. The intergovernmental arrangements for federal matching funds are contained in 42 U.S.C. §1396b.

Medicaid applicants must meet financial and non-financial eligibility requirements. One non-financial requirement is that applicants must declare under penalty of

perjury that they are either United States citizens or noncitizens with satisfactory immigration status. 42 U.S.C. §1320b-7(b)(2) and (d)(1)(A).<sup>2</sup> Another is that the states may not administer the program in any way that results in the denial of health coverage to otherwise eligible American citizens. 42 U.S.C. §1396a(b)(3).

Applicants are able to establish citizenship for purposes of Medicaid eligibility by making a written declaration, under the penalty of perjury, that they are citizens of the United States. 42 U.S.C. § 1320b-7(b)(2) and (d)(1)(A). See generally Department of Health and Human Services, Office of Inspector General, "Self-Declaration of U.S. Citizenship for Medicaid," OEI-02-03-00190 (July 2005) (reporting on an investigation of state practices under this policy) (Attached in Plaintiff's Appendix in Support of Amended Motion for Temporary Restraining Order and Preliminary Injunction). Before enactment of Section 6036, states were not required to demand documentation of citizenship, and in fact most did not find it necessary. See *id.* at 9 (noting that forty-seven states permit or sometimes permit self-declaration of U.S. citizenship). Where states chose to ask an applicant for documentation of citizenship, the types of documentation that could be used to prove citizenship were not limited in any way, but could include documents such as hospital records or baptismal records. See *id.* at 14-15.

Once a Medicaid applicant has demonstrated that she meets the financial and nonfinancial requirements and is granted coverage, federal regulations require that the individual be provided continuing coverage unless and until the state Medicaid agency establishes that the individual no longer meets the eligibility requirements. Eligibility does not end as a result of any pre-established time limit or condition, but continues until the recipient is no longer eligible as a

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<sup>2</sup> Certain "qualified" non-citizens are also eligible for Medicaid. See 8 U.S.C. §§ 1611 (barring all aliens who are not "qualified"); §§ 1612-13 (establishing time limits and waiting periods); § 1641 (setting forth categories of immigration status for "qualified alien"). This case only concerns citizens and the citizenship documentation rules.

matter of fact. "The agency must... [c]ontinue to furnish Medicaid regularly to all eligible individuals until they are *found to be ineligible*." 42 C.F.R. 435.930 (emphasis added).

Congress decided in enacting Section 6036 to alter the intergovernmental arrangements by adding a procedure requiring states to supplement the self-declaration of citizenship by Medicaid applicants and beneficiaries with documentary support. Section 6036 amends 42 U.S.C. § 1396b to deny federal matching funds to states for any Medicaid program expenditures made on behalf of any recipient from whom the state has not received acceptable citizenship-related documentation. Thus, Section 6036 does not change the citizenship eligibility requirement for Medicaid, but instead alters the federal-state administrative arrangements and procedures regarding documenting the citizenship of Medicaid beneficiaries.

Section 6036(b) makes the amendment effective with respect to all initial determinations of eligibility for Medicaid health coverage made on or after July 1, 2006, and applicable to all Medicaid redeterminations for existing beneficiaries of Medicaid health coverage made on or after July 1, 2006.

Class A is represented by all of the named plaintiffs who are current recipients of Medicaid and qualified for coverage, prior to the July 1, 2006, the effective date of Section 6036. The members of this class have established the facts necessary to prove their eligibility for Medicaid and received final administrative determinations as to those facts. Section 6036 did not change the eligibility requirements; it only changed procedures involved with documentation for the citizenship requirement. Plaintiffs claim that important rights arise from this situation. They claim that they are entitled to the protection of the finality of those administrative determinations of fact, and that therefore they cannot constitutionally be required to re-prove those finally determined facts. This notion of "repose" with respect to finally determined facts is included in the fair procedures guaranteed by the Due Process Clause of the Fifth Amendment.

The factual determination that they are citizens cannot be disturbed without some predicate factual indication that there has been a change of circumstances (such as a renunciation of citizenship) or that the original determination was wrong or fraudulent. A new procedure that reverses the factual determination of citizenship by fiat and without any such legitimate triggering factual indication does not comport with due process and, by itself, harms Class A by impairing the property right and forcing the members of the class into new and complex administrative proceedings.

The analysis for any due process claim consists of two parts: whether plaintiffs have a protected property interest; and, if so, what process is due them in connection with a threatened deprivation of that interest. Logan v. Zimmerman Brush, 455 U.S. 422, 428 (1982); Youakim v. McDonald, 71 F.3d 1274, 1288 (7th Cir. 1995), cert. denied, 518 U.S. 1028 (1996).

It is well established that individuals who meet the eligibility criteria for public benefit programs have a property interest in the continued receipt of those benefits that cannot be eliminated without adequate due process. Goldberg v. Kelly, 397 U.S. 254, 262 (1970). While the legislature can determine and change the eligibility requirements to receive those benefits, the legislature cannot adopt procedures that unfairly deprive recipients of those benefits, once defined and conferred. Logan, 455 U.S. at 432; Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985). Governmental actions that trigger a deprivation of an individual's entitlements must be limited and cannot be arbitrary and capricious, regardless of the sufficiency of the procedures used after the deprivation is set in motion. Pearson v. City of Grand Blanc, 961 F.2d 1211, 1216 (6th Cir. 1992). "The hallmark of property, the Court has emphasized, is an individual entitlement grounded in [] law, which cannot be removed except for cause." Dupuy v. Samuels, 397 F.3d 493, 515 (7th Cir. 2005) (quoting Logan, 455 U.S. at 430).

The "cause" that triggers a threat to a property interest cannot be grounded in the whim or caprice of the government providing the benefit. In Shaw v. Schweiker, the Social Security Administration attempted to terminate the disability benefits of a recipient without finding any change in the circumstances that gave rise to his initial grant of eligibility. 536 F.Supp. 79, 82 (E.D.Penn. 1982). The proposed termination occurred as a result of a review by the SSA of the individual's eligibility. Id. In restoring the plaintiff's benefits, the court stated:

Once a final determination of disability has been rendered, it is logically impossible for a claimant to become non-disabled without a change amounting to improvement (unless, of course, as recognized in Miranda [v. Secretary of Health, Education and Welfare], 514 F.2d 966 (1st Cir. 1975)], new evidence shows the original decision to be in error). After a final determination of disability, if a termination of benefits were effected without a showing either of improvement or newly-discovered evidence, such a termination would of necessity be based on whim or caprice or would constitute an impermissible relitigation of facts and determinations already finally decided.

Id. at 82-83. Accord Simpson v. Schweiker, 691 F.2d 966, 969 (11th Cir. 1982).

When an individual has been found to qualify for benefits, they cannot be terminated absent a demonstration of a change in condition or evidence of mistake or fraud in the original determination. Cassiday v. Schweiker, 663 F.2d 745, 747 (7th Cir. 1981) (quoting Miranda v. Secretary of Health, Educ. and Welfare, 514 F.2d 996, 998 (1st Cir. 1975)) (requiring a factual demonstration of medical improvement in order to terminate disability benefits). In Medicaid cases as well, due process mandates that "[t]he presumption that a condition, once shown to exist, continues to exist..., requires a showing of some change in circumstances if the termination of benefits is not to be deemed arbitrary." Cherry v. Tompkins, 1995 U.S. Dist. LEXIS 21989 at \*5 (S.D. Ohio 1995) (quoting Weaver v. Colorado Dept. Soc. Serv., 791 P.2d 1230, 1235 (Colo. Ct. App. 1990)).

As recipients of Medicaid, the Class A Plaintiffs have a property right in continued receipt of Medicaid. They have met all of the eligibility requirements. Section 6036 is

not a new eligibility requirement. It is a procedure. In deciding for due process purposes whether a legislative change is a substantive alteration of the property right (e.g., eligibility, or the substance of the benefit itself) or a procedural change, Atkins v. Parker, 472 U.S. 115 (1985), teaches that, while the analysis begins with an assessment of legislative intent, the final decision rests with the court. In Atkins the Court determined that the change (a program-wide alteration of benefit levels) was substantive, and plaintiffs therefore had no property right in a continuation of their prior benefit level. In Logan v. Zimmerman Brush, 455 U.S. 422 (1982), the statutory provision was a requirement that if a state civil rights agency did not process a claim within a given time, the claim died and, as a result, the plaintiff also lost the right to proceed in court. The Logan Court unanimously reversed the Illinois Supreme Court's interpretation of the Illinois legislative intent and held that this provision was not a substantive element of the statutorily created civil rights claim, but a procedure, so plaintiff had a property right in the continuation of the claim, and the provision was subject to analysis under the second prong of due process analysis regarding the "process due" prior to any deprivation of the claim. See Youakim v. McDonald, 71 F.3d 1274 (7th Cir. 1995), cert. denied, 518 U.S. 1028 (1996) (challenge to procedural aspect of program change falls on the Logan side and not the Atkins side of the property right analysis).

A component of the due process-driven set of fair procedures that attaches to the property interest that the Class A plaintiffs have is the principle of "repose" with respect to finally determined facts. Once a fact that helps to establish eligibility has been finally determined, the recipient cannot be "put to the proof" again with respect to that fact, absent some legitimate case-specific "cause" such as a change of circumstances or new facts indicating that the original determination was the result of mistake or fraud. In applying the new documentation procedures to the Class A Plaintiffs who had already proven their citizenship for purposes of

Medicaid eligibility, without any requirement that there be a factual indication that the prior determination is obsolete or was made in error, Section 6036(b) unfairly disturbs the finality of those decisions and is an unfair procedure that violates the rights of the Class A Plaintiffs to due process of law.

**2. The equitable factors favor the award of preliminary relief**

Plaintiffs and Class A suffer harm by being forced to go through the process of reproving their eligibility and suffering exposure to loss of Medicaid eligibility. This harm is immediate or imminent, depending on when each person's annual redetermination is scheduled. September 14 Order at 11-12.

All recipients of Medicaid have their eligibility redetermined every twelve months. Therefore, all Class A plaintiffs will have the documentation requirement applied to them within one year from July 1, 2006. One quarter of that year has now gone by. The Class A plaintiffs claim that they should not be subject to the documentation requirement at all -- their claim is not about the substance of the documentation process. As time passes, more and more members of Class A are deprived of their asserted right without a chance to have a ruling on the constitutionality of that deprivation. That harm therefore is irreparable. Every day more members of Class A are experiencing it as part of their annual redeterminations.

On top of the harm every Class A Plaintiff faces by having to go through the documentation process, many also face difficulty and possible failure in producing the documentation specified by Section 6036. To the extent that Class A Plaintiffs face actual loss of Medicaid benefits, it is well settled that they face irreparable harm. See, e.g., Kai v. Ross, 336 F.3d 650, 656 (8th Cir. 2003) (danger to plaintiffs' health gives them a strong argument of irreparable injury); Nemnich v. Stangler, 1992 WL 178963 (W.D. Mo. Jan. 7, 1992) (enjoining the state from eliminating several categories of dental treatment); White v. Martin, 2002 U.S.

Dist. LEXIS 27281, \*10-11 (W.D. Mo. Oct. 3, 2002). See also Mass. Ass'n of Older Am. v. Sharp, 700 F.2d 749, 753 (1st Cir. 1983) (policy causing “individuals to forgo such necessary medical care is clearly irreparable injury”); Beltran v. Meyers, 677 F.2d 1317, 1322 (9th Cir. 1982) (irreparable injury shown when enforcement of Medicaid rule “may deny [plaintiffs] needed medical care”); Caldwell v. Blum, 621 F.2d 491, 498 (2d Cir. 1980) (same). No remedy at law can compensate for the denial of necessary medical assistance. See McMillan v. McCrimon, 807 F. Supp. 475, 479 (C.D. Ill 1992); cf. Southside Welfare Rights Org. v. Stangler, 156 F.R.D. 187 (W.D. Mo 1993) (irreparable injury is clearly present, and there are no other adequate remedies at law for violations of federal law in denying food stamp benefits).

As for the balance of harms and the public interest, there is little that the Secretary has to gain from forcing people who have already proven that they are citizens to prove it again when there has been no information indicating that they in fact are no longer or never were citizens. It serves the public interest to provide health coverage to Americans who need it and qualify for it, and to use only procedures that comport with the basic fairness guaranteed by the Fifth Amendment's Due Process Clause.

### **III. CLASS CERTIFICATION**

If the Court decides to reconsider its standing ruling as to Class A and reinstate the Class A claims, it should also reinstate the Motion for Class Certification as to Class A. And the Court should grant that motion. As with the motion for preliminary relief, plaintiffs have extracted below the class certification arguments made on behalf of Class A in the prior briefing.

Plaintiffs sought certification of the following class:

All persons who, prior to July 1, 2006, have been determined eligible for health coverage under the Medicaid program, 42 U.S.C. § 1396 et seq., and who declared on their applications for Medicaid coverage or otherwise that they are citizens or nationals of the United States, or who were made eligible for Medicaid without the need for a declaration of citizenship or eligible alien status under 42 U.S.C. § 1320b-7.

Class A, as defined above, satisfies the requirements of the four subparts of Fed.R.Civ.P. 23(a) and (b)(2).

Numerosity. Fed.R.Civ.P. 23(a)(1). To sustain a class action, plaintiffs do not need to demonstrate the exact number of class members as long as a conclusion is apparent from good-faith estimates. Peterson v. H & R Block Tax Servs., 174 F.R.D. 78, 81 (N.D.Ill. 1997); Long v. Thornton Tp. High School Dist. 205, 82 F.R.D. 186, 189 (N.D. Ill. 1979). Class A is so numerous that joinder of all members is impracticable. Class A includes at least 33.4 million persons. See Table HI09, Health Insurance Coverage Status by Nativity, Citizenship, and Duration (available at [http://pubdb3.census.gov/macro/032005/health/h09\\_000.htm](http://pubdb3.census.gov/macro/032005/health/h09_000.htm).)

Commonality. Fed.R.Civ.P. 23(a)(2). "A defendant's standardized conduct toward proposed class members, such as a generalized policy that affects all class members in the same way, has been considered sufficient to satisfy commonality." Ligas v. Maram, 2006 U.S. Dist. LEXIS 10856 at \*11 (N.D. Ill. 2006) (citing Keele, 149 F.3d at 594 and Gen. Tele. Col of the SW v. Falcon, 457 U.S. 147, 159 n. 15 (1982)). Where a defendant's standardized conduct towards all class members is at issue, not all putative class members must suffer the same injury. Rather, the common question sufficient to meet this criterion is the "uniformity of the defendant's conduct toward the potential members and the plaintiffs' legal theory. Ligas, 2006 U.S. Dist. LEXIS at \*11 (citing Rosario v. Livaditis, 963 F.2d 1013, 1018 (7<sup>th</sup> Cir. 1992)). "The commonality requirement has been characterized as a 'low hurdle' easily surmounted." In re Neopharm, Inc. Securities Litigation, 225 F.R.D. 563, 566 (N.D. Ill. 2004) (citing Scholes v. Stone, McGuire, & Benjamin, 143 F.R.D. 181, 185 (N.D. Ill. 1992)).

There are questions of law or fact common to all members of Class A. Plaintiffs claim that it is improper for Section 6036 to apply to the Class A Plaintiffs, making them go through the process of documenting citizenship and identity without any new fact or information

that indicates that the original determination of citizenship was made in error or the circumstances of citizenship have changed. Thus, a common question of law is whether Section 6036 violates the due process rights of Class A.

Typicality. Fed.R.Civ.P. 23(a)(3). "A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *Id.* at 595 (citing De La Fuente v. Stokely-Van Camp, Inc., 713 F.2d 225, 232 (7<sup>th</sup> Cir. 1983)). "Typical does not mean identical, and the typicality requirement is liberally construed." Gaspar v. Linvatec Corp., 167 F.R.D. 51, 57 (N.D. Ill. 1996). Each of the individual named plaintiffs here is now required to go through the process of showing citizenship and identity even though they have previously satisfied national Medicaid requirements concerning those issues. This is true for all unnamed class members as well. Both named and unnamed class members raise the same claim.

Adequacy of Representation. Fed.R.Civ.P. 23(a)(4). The adequacy of representation determination "is composed of two parts: the adequacy of the named plaintiff's counsel, and the adequacy of . . . protecting the different, separate, and distinct interest of the class members." Retired Chicago Police Ass'n v. City of Chicago, 7 F.3d 584, 598 (7<sup>th</sup> Cir. 1993); Susman v. Lincoln American Corp., 561 F.2d 86, 90 (7<sup>th</sup> Cir. 1977). This Court has already found plaintiffs' counsel adequate in its decision to certify Class C. Because the named class members seek the exact relief that is being sought for unnamed class members, they have the same interest as unnamed class members. See Johnson v. Heckler, 100 F.R.D. 70, 75 (N.D.Ill. 1983).

Fed.R.Civ.P. 23(b)(2). The Secretary is acting on grounds applicable to all class members. The Secretary is requiring each class member to document citizenship and identity, regardless of whether a new fact or information indicates that the original determination was

made in error or the circumstances of citizenship have changed. Thus, if this Court enjoins that practice, all members of Class A would be affected. See Alliance to End Repression v. Rochford, 565 F.2d 975, 979 (7<sup>th</sup> Cir. 1977); Heckler, 100 F.R.D. at 75; Dixon v. Quern, 76 F.R.D. 617, 620 (N.D. Ill. 1977).

Finally, the plaintiffs sought certification of a nationwide class. The plaintiffs seek to enjoin application of Section 6036, a national statute that applies to all members of Class A in every state. Differences in state administration of Medicaid programs are not present here; all class members, regardless of their state of residence, claim that Section 6036 should not apply to them at all. A nationwide class is appropriate here. See Califano v. Yamasaki, 442 U.S. 682, 702 (1979) (if nationwide class satisfies Rule 23, it should be certified); Sullivan v. Zebley, 493 U.S. 521, 526 (1990); Ferrell v. Pierce, 743 F.2d 454, 456 (7<sup>th</sup> Cir. 1984); and Tustin v. Heckler, 591 F.Supp. 1049, 1066-1069 (D.N.J. 1984).

#### IV. CONCLUSION

For the foregoing reasons, as to Class A this Court should reconsider its standing decision and reverse the dismissal of the Class A claims, reinstate the motions for preliminary relief and for class certification as to Class A, and grant both motions as to Class A.

DATED: October 10, 2006

Respectfully submitted,

RUBY BELL, et al.

By /s/ Mary E. Anderson  
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