UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE, JOHN ROE, and CONNECTICUT HARM REDUCTION COALITION, Plaintiffs,	:	CIVIL ACTION NO. 3:00-CV-2167 (JCH)
v.	:	
BRIDGEPORT POLICE DEPARTMENT and WILBER L. CHAPMAN, CHIEF OF THE BRIDGEPORT POLICE DEPARTMENT, in his official capacity only, Defendants.	:	NOVEMBER 15, 2000

RULING ON PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER [DKT. NO. 3]

The plaintiffs, John Doe, John Roe,[1] and the Connecticut Harm Reduction Coalition, bring a putative class action, on behalf of themselves and a class of similarly situated injecting drug users, against the Bridgeport Police Department and its chief, Wilber L. Chapman, in his official capacity, for violation of the individual plaintiffs' fourth amendment rights to be free from illegal search and seizures, false arrest, and malicious prosecution. The plaintiffs bring this action against the

[1] The court granted the Plaintiffs' Motion to Proceed under Fictitious Name [Dkt. No. 15] on November 13, 2000.

defendants pursuant to 42 U.S.C. § 1983.

The plaintiffs filed an Application for Temporary Restraining Order on November 13, 2000, and the court held oral argument on the Application with both sides present on the same day. The plaintiffs seek a temporary restraining order to enjoin and restrain the defendants, "their agents, employees, assigns, and all persons acting in concert or participating with them . . . from searching, stopping, arresting, punishing or penalizing in any way, or threatening to search, stop, arrest, punish or penalize in any way, any person based solely upon that person's possession of up to thirty sets of injection equipment, whether previously used or sterile." For the reasons stated herein, the plaintiffs' Application for Temporary Restraining Order [Dkt. No. 3] is granted in part and denied in part.

I. FACTS

In 1990, the Connecticut legislature enacted Conn. Gen. Stat. § 19a-124 to mandate the establishment of an experimental needle exchange program in New Haven. In 1992, the legislature amended section 19a-124 to expand the needle exchange program to Bridgeport and Hartford and to, inter alia, "provide that program participants receive an equal number of needles and syringes for those

returned, up to a cap of [five] needles and syringes per exchange." As part of the same legislative enactment in 1992, Conn. Gen. Stat. § 21a-240(a)(2)0)(A)(ix) was amended by adding "in a quantity greater than eight" to provide in the criminal drug enforcement statutes' definitional section that:

> "Drug paraphernalia" refers to equipment, products and materials of any kind which are used, intended for use or designed for use in . . . injecting, ingesting, inhaling or otherwise introducing into the human body, any controlled substance contrary to the provisions of this chapter including, but not limited to: . . . (ix) in a quantity greater than [eight] hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body . . ..

(emphasis added). Later in 1992, the legislature changed the language of section 21a-240(a)(20)(A)(ix) from "eight" to "ten." In 1994, the legislature changed the cap in section 19a-124(b) from "five" to "ten" needles and syringes. In 1999, the legislature passed a bill, enacted later that year into law, which raised the cap in section 19a-124(b) from "ten" to "thirty" and which raised the quantity in section 21a-240(a)(20)(A)(ix) from "ten" to "thirty."

The Bridgeport Public Health Department administers the Syringe Exchange Program ("Exchange") in Bridgeport. Dkt. No. 1 at ¶ 30; Dkt. No. 8 at ¶ 2. "The Exchange operates every day of the week during well-publicized hours," and

"[c]lients may come to the Health Department during business hours for counseling, addiction treatment referrals, and to exchange injection equipment, or they may do so at the Exchange van, which travels to specified locations in Bridgeport." Dkt. No. 1 at ¶ 30. "As with other exchange programs, the Bridgeport Exchange provides sterile injection equipment in return for used equipment." Id.

The plaintiffs have filed with the court declarations and affidavits of the plaintiffs John Roe and John Doe [Dkt. Nos. 9 & 10]; Robin Clark-Smith, the AIDS Program Coordinator for the Syringe Exchange Program of the Bridgeport Public Health Department [Dkt. No. 8]; Anthony Givens, a research assistant in the I-91 study, which researches how transmission of HIV and Hepatitis is related to how injecting drug users acquire, use, and discard syringes [Dkt. No. 11]; Mark Kinzly, a former coordinator of the Syringe Exchange Program of the Bridgeport Public Health Department and current coordinator of the I-91 study [Dkt. No. 6]; Dr. Robert Heimer, Associate Professor of Epidemiology and Public Health and Associate Professor of Pharmacology at the Yale University School of Medicine [Dkt. No. 7]; and Ricky Blumenthal, Associate Sociologist in the Health Program

and Drug Policy Research Center at the RAND Corporation [Dkt. No. 5]. According to the declaration of Clark-Smith, the Exchange "issues identification cards to injecting drug users who become participants." Dkt. No. 8 at ¶ 2. According to the declaration of Dr. Heimer, exchange programs "remove used, potentially infectious syringes from circulation" and "reduce the spread of HIV by increasing the availability of injection equipment, as well as increasing access to medical services and substance abuse treatment for users" Dkt. No. 7 at ¶¶ 24, 28. Dr. Heimer affirms that "[t]he effectiveness of exchange programs resides not only in the provision of sterile syringes in exchange for used ones but also in the provision of other services that reduce the harm of illicit drug injection." Id. at ¶ 33. According to Kinzly, the Exchange "simply cannot give users a new syringe if they do not already have [a used] one." Dkt. No. 6 at ¶ 7.

The plaintiffs argue in their Application for Temporary Restraining Order that, "[d]espite clear state law to the contrary and extensive efforts by employees of the Bridgeport Exchange, officers of the [Bridgeport Police Department] persist in arresting and harassing drug users based solely upon the users' lawful possession of injection equipment." Dkt. No. 3 at 2. In their complaint, the plaintiffs allege that

"[d]efendants' harassment and illegal arrests of members of the plaintiff class is undermining the state mandated exchange program in Bridgeport, and placing at risk the plaintiff class and citizens of Bridgeport for infection from blood-borne diseases, including HIV and hepatitis." Dkt. No. 1 at ¶ 4. The plaintiffs further allege that "fear of police harassment and arrest discourages injecting drug users from carrying injection equipment for exchange." Id. at ¶ 3. "If users are afraid to exchange injection equipment, then they will share and discard contaminated equipment, putting not only themselves but also their sexual partners, their children and community members who might encounter improperly discarded equipment at risk for infection from blood-borne diseases and death from AIDS." Id. Givens alleges that, "[w]hile working on the Bridgeport Exchange van, I frequently observed police harassment of Exchange clients." Dkt. No. 11 at ¶ 7.

The plaintiffs Doe and Roe are both injecting drug users and participants in the Exchange. Dkt. No. 1 at ¶¶ 5-6; Dkt. No. 10 at ¶¶ 4-6. Doe alleges that the Bridgeport police have "constantly interfere[d] with my ability to use the Exchange" by "often stop[ping] me, tell[ing] me to leave the area [of the Exchange], and threaten[ing] to arrest me." Dkt. No. 10 at ¶ 7. According to Doe, "[o]n several

occasions, police officers have ordered me to hand over the injection equipment that I had just received from the Exchange" and "then have broken the syringes so that I could not use them." Id. Doe alleges that he was charged in Seaside Park with possession of drug paraphernalia on September 11, 2000, after the police officer confiscated the injection equipment that Doe received earlier that day from the Exchange. Id. at ¶¶ 8-16. The charge was nolled on November 7, 2000, when Doe appeared in court. Id. at ¶ 18.

Roe alleges that, on October 5, 2000, he was arrested on Shelton Street in Bridgeport by a Bridgeport police officer for possession of drug paraphernalia and possession of narcotics, after the officer seized the injection equipment which Roe was carrying with him. Dkt. No. 9 at ¶¶ 7-13. He was jailed for 7 days pending bail, before bond was posted for him on October 13, 2000, and the prosecutor dropped the charges against him on October 19, 2000. Id. at 13. Roe alleges that he offered to show the officers his Exchange identification card when he was initially stopped, but was rebuffed in this attempt. Id. at ¶ 12.

II. STANDARD

The "standards which govern consideration of an application for a temporary restraining order . . . are the same standards as those which govern a preliminary injunction." Local 1814, Int'l Longshoremen's Ass'n v. N.Y. Shipping Ass'n, Inc., 965 F.2d 1224, 1228 (2d Cir. 1992). "A preliminary injunction may be granted only when the party seeking the injunction establishes that '1) absent injunctive relief, it will suffer irreparable harm, and 2) either a) that it is likely to succeed on the merits, or b) that there are sufficiently serious questions going to the merits to make them a fair ground for litigation, and that the balance of hardships tips decidedly in favor of the moving party.' . . . When, however, the injunction 'seeks to prevent government action taken pursuant to statutory authority, which is presumed to be in the public interest,' only the likelihood of success standard applies." Statharos v. N.Y. City Taxi & Limousine Comm'n, 198 F.3d 317, 321 (2d Cir. 1999) (citations omitted).

Here, the Bridgeport Police Department claims to arrest drug users only for possession of illegal narcotics, contained in drug paraphernalia, pursuant to Conn. Gen. Stat. § 21a-277 et seq. The plaintiffs must therefore establish that 1) absent

injunctive relief, they will suffer irreparable harm, and 2) they are likely to succeed on the merits.

III. DISCUSSION

A. Irreparable Harm

The plaintiffs allege violations of their fourth amendment rights to be free from illegal search and seizures, false arrest, and malicious prosecution. Dkt. No. 1 at ¶¶ 49-56; see also Rohman v. N.Y. City Transit Auth., 215 F.3d 208, 215-16 (2d Cir. 2000) (reciting the requirement to state a section 1983 cause of action for malicious prosecution under the fourth amendment); Ricciuti v. N.Y. Transit Auth., 124 F.3d 123, 128 (2d Cir. 1997) (discussing section 1983 causes of action for false arrest under the fourth amendment); Katz v. Morganthau, 892 F.2d 20, 22-23 (2d Cir. 1989) (discussing section 1983 causes of action for illegal search and seizure under the fourth amendment). The law is well-settled that plaintiffs sufficiently establish irreparable harm through "the allegation of fourth amendment violations." Brewer v. West Irondequoit Cent. Sch. Dist., 212 F.3d 738, 744-45 (2d Cir. 2000) (citation omitted); see also Jolly v. Coughlin, 76 F.3d 468, 482 (2d Cir. 1996); Mitchell v. Cuomo, 748 F.2d 804, 806 (2d Cir. 1984). Both individual plaintiffs

have already been detained and charged with possession of narcotics for the alleged residual quantities of drugs contained in used needles they were carrying, such that the threat to their fourth amendment rights is actual and imminent and not remote or speculative. Based on the record, the court finds that the plaintiffs have alleged systemic or ongoing constitutional violations that can not be remedied with a monetary award. See Air Transp. Int'l, L.L.C. v. Aerolease Fin. Group, Inc., 993 F. Supp. 118, 124-25 (D. Conn. 1998). The court therefore concludes that "the plaintiffs have met their burden of showing irreparable harm because the deprivation alleged involves a constitutional right." Brewer, 212 F.3d at 745.

B. Likelihood of Success on the Merits

In order to prevail on their application for a temporary restraining order, the plaintiffs must establish that they are likely to succeed on the merits of their fourth amendment claims based on allegations of illegal search and seizure, false arrest, and malicious prosecution. The court notes the requirements for each in turn.

1. Elements of the Plaintiffs' Fourth Amendment Claims

A plaintiff may bring a section 1983 action for an unreasonable warrantless search. See Ruggiero v. Krzeminski, 928 F.2d 558, 562-63 (2d Cir. 1991). "It is

well established that a warrantless search is 'per se unreasonable under the fourth amendment—subject only to a few specifically established and well-delineated exceptions.' . . . If it is established that the place or object subjected to the warrantless search is one in which the plaintiff has a reasonable expectation of privacy, the defendant has the burden of showing that the search was valid because it fell within one of the exceptions to the warrant requirement. . . . The principal exceptions include searches on consent, . . .; searches incident to a lawful custodial arrest, . . .; inventory searches of the property of a person who has been lawfully arrested, . . .; searches based on evidence lying in plain view, . . .; and automobile searches based on probable cause to believe the vehicle contains contraband or evidence, ..." McCardle v. Haddad, 131 F.3d 43, 48 (2d Cir. 1997) (citations omitted).

Although a plaintiff may bring a section 1983 action for illegal seizure under the fourth amendment, "'[s]eizure' alone is not enough for § 1983 liability; the seizure must be 'unreasonable.'" Brower v. County of Inyo, 489 U.S. 593, 599 (1989). "The fourth amendment prohibits unreasonable seizures; it is not a general prohibition of all conduct that may be deemed unreasonable, unjustified or

outrageous. . . . So the first step in any fourth amendment claim (or, as in this case, any section 1983 claim predicated on the fourth amendment) is to determine whether there has been a constitutionally cognizable seizure." Medeiros v. O'Connell, 150 F.3d 164, 167 (2d Cir. 1998) (citations omitted). Under the fourth amendment, "[w]henever an officer restrains the freedom of a person to walk away, he has seized that person." Tennessee v. Garner, 471 U.S. 1, 7 (1985) (citations omitted). "To determine the constitutionality of a seizure '[w]e must balance the nature and quality of the intrusion on the individual's fourth amendment interests against the importance of the governmental interests alleged to justify the intrusion.' . . . We have described 'the balancing of competing interests' as 'the key principle of the fourth amendment.' . . . Because one of the factors is the extent of the intrusion, it is plain that reasonableness depends on not only when a seizure is made, but also how it is carried out." Id. at 8 (citations omitted).

Turning next to the plaintiffs' false arrest claim, the court notes that, "[t]he right not to be arrested or prosecuted without probable cause has, of course, long been a clearly established constitutional right. Probable cause to arrest exists when the authorities have knowledge or reasonably trustworthy information sufficient to

warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested." Golino v. City of New Haven, 950 F.2d 864, 870 (2d Cir. 1991) (citation omitted). According to the Second Circuit, "the fourth amendment provides the source for a § 1983 claim premised on a person's arrest." Singer v. Fulton County Sheriff, 63 F.3d 110, 115 (2d Cir. 1995) (footnote omitted).

A claim of malicious prosecution alleged under the fourth amendment requires that the plaintiff state a claim for malicious prosecution under the law of the state in which the conduct is alleged to have occurred. Singer, 63 F.3d at 116. "In Connecticut, to establish a claim for malicious prosecution the plaintiff must prove that: (1) the defendant either initiated or procured the initiation of a criminal proceeding against him; (2) the criminal proceeding terminated in his favor; (3) the defendant acted without probable cause; and (4) the defendant acted with malice." Merrill v. Muriel, No. 3:99CV1401RNC, 2000 WL 306879, at *2 (D. Conn. Jan. 4, 2000) (citing McHale v. W.B.S. Corp., 187 Conn. 444, 447 (1982)). Moreover, "[i]n order to allege a cause of action for malicious prosecution under § 1983, [a plaintiff] must assert, in addition to the elements of malicious prosecution under

state law, that there was (5) a sufficient post-arraignment liberty restraint to implicate the plaintiff's fourth amendment rights." Rohman v. N.Y. City Transit Auth., 215 F.3d 208, 215 (2d Cir. 2000) (citing Murphy v. Lynn, 118 F.3d 938, 944-46 (2d Cir. 1997), and Singer, 63 F.3d at 116-17). "The fourth amendment right implicated in a malicious prosecution action is the right to be free of unreasonable seizure of the person—i.e., the right to be free of unreasonable or unwarranted restraints on personal liberty. A plaintiff asserting a fourth amendment malicious prosecution claim under § 1983 must therefore show some deprivation of liberty consistent with the concept of 'seizure.'" Id. (quoting Singer, 63 F.3d at 116, and citing Murphy, 118 F.3d at 944). "'[S]ince the gist of a claim for malicious prosecution is abuse of the judicial process, a plaintiff pursuing such a claim under § 1983 must show that the seizure resulted from the initiation or pendency of judicial proceedings.'" Id. (citation omitted). Alternatively, a plaintiff asserting a fourth amendment malicious prosecution claim under section 1983 "must show some post-arraignment deprivation of liberty that rises to the level of a constitutional violation." Singer, 63 F.3d at 117 (citation).

Based on the allegations of the plaintiffs discussed above, the court concludes that the likelihood of the plaintiffs succeeding on any of these fourth amendment claims turns on whether it is a crime to: (1) possess less than thirty-one, sterile, hypodermic syringes and needles; (2) to possess less than thirty-one, previously-used, hypodermic syringes and needles; or (3) to possess trace amounts of drugs contained as residue in a previously-used hypodermic needle or syringe. The resolution of these issues requires the court to engage in statutory interpretation to determine whether possession of hypodermic needles and syringes, both sterile and previously-used, and of the trace amounts of drugs as residue within previously-used needles or syringes, constitutes illegal possession of controlled substances under Connecticut law, particularly Conn. Gen. Stat. §§ 21a-267 & 21a-270(a)(20)(A)(ix).

2. Principles of Statutory Interpretation under Connecticut Law

A district court interpreting a state statute must "predict how the forum state's highest court would decide the issues before [it], . . ., and, to the extent there is any ambiguity in the state statutes under consideration, to carefully predict how the highest court of the state would resolve the uncertainty or ambiguity." Sprint

PCS L.P. v. Conn. Siting Council, 222 F.3d 113, 115-16 (2d Cir. 2000) (citations and internal quotation marks omitted). The Connecticut Supreme Court "will not ordinarily construe a statute whose meaning is plain and unambiguous." City of West Haven v. Hartford Ins. Co., 221 Conn. 149, 156 (1992) (citations omitted).

When engaging in statutory interpretation, however, the Connecticut Supreme Court has held:

> In construing statutes, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In seeking to discern that intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . . [A]lthough we recognize the fundamental principle that [penal] statutes are to be construed strictly, it is equally fundamental that the rule of strict construction does not require an interpretation which frustrates an evident legislative intent. . . .

State v. Gibbs, 254 Conn. 578, 601-02 (2000) (citations omitted). "When construing a statute, we do not interpret some clauses in a manner that nullifies others, but rather read the statute as a whole and so as to reconcile all parts as far as possible." City of West Haven, 221 Conn. at 157 (citations and internal quotation marks omitted).

The Connecticut Supreme Court has further held that "[i]t is a basic tenet of statutory construction that the legislature did not intend to enact meaningless provisions." Willoughby v. City of New Haven, 254 Conn. 404, 422 (2000) (citation and internal quotation marks omitted). "Accordingly, care must be taken to effectuate all provisions of the statute. . . . Moreover, statutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant. . . ." Gibbs, 254 Conn. at 602 (citations and internal quotation marks omitted).

"Furthermore, [w]e presume that laws are enacted in view of existing relevant statutes . . . because the legislature is presumed to have created a consistent body of law. . . . In addition, we presume that the legislature intends sensible results from the statutes it enacts. . . . Therefore, we read each statute in a manner that will not thwart its intended purpose or lead to absurd results. . . ." Town of Southington v. Commercial Union Ins. Co., 254 Conn. 348, 357-58 (2000) (citations and internal quotation marks omitted).

Moreover, "it is a well established rule of statutory construction that repeal of the provisions of a statute by implication is not favored and will not be presumed

where the old and the new statutes, . . ., can peacefully coexist. . . . If, by any fair interpretation, we can find a reasonable field of operation for both [statutes], without destroying or perverting their meaning and intent, it is our duty to reconcile them and give them concurrent effect. . . ." Rivera v. Comm'r of Corr., 254 Conn. 214, 242 (2000) (citation and internal quotation marks omitted).

3. Interpretation of the Connecticut needle exchange program and criminal drug possession statutes

A. No criminal liability for possession of less than thirty-one sterile hypodermic needles or syringes

As a starting point, the court takes as its "initial guide . . . the language of the statute itself. . . . The words of a statute are to be given their commonly approved meaning unless a contrary intent is clearly expressed." Oxford Tire Supply, Inc. v. Comm'r of Revenue Servs., 253 Conn. 683, 696 (2000) (citation and internal quotation marks omitted). Conn. Gen. Stat. § 21a-267 provides that "[n]o person shall use or possess with intent to use drug paraphernalia, as defined in subdivision (20) of section 21a-240, to . . . inject, ingest, inhale or otherwise introduce into the human body, any controlled substance as defined in subdivision (9) of section 21a-240." Conn. Gen. Stat. § 21a-240(a)(20)(A) provides that "'[d]rug

paraphernalia' refers to equipment, products and materials of any kind which are used, intended for use or designed for use in . . .injecting, ingesting, inhaling or otherwise introducing into the human body, any controlled substance contrary to the provisions of this chapter including, but not limited to: . . . (ix) in a quantity greater than thirty hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body . . .." Finally, Conn. Gen. Stat. § 21a-270 instructs that, "[i]n determining whether any object or material listed in subdivision (20) of section 21a-240 shall be deemed 'drug paraphernalia', a court or other authority shall, in addition to all other logically relevant factors, consider the following: . . . (3) The existence of any residue of controlled substances on the object . . .."

Reading these statutes as a whole, the court concludes that the plain language and meaning of Conn. Gen. Stat. § 240(a)(20)(A)(ix) clearly excludes criminal liability for possession, without more, of less than "thirty hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body." Therefore, the court concludes, and the defendants have not to this point denied, that the plaintiffs are

likely to succeed on the merits of their fourth amendment claims challenging the detention, arrest, and prosecution of the plaintiffs by the defendants solely for the possession of less than thirty-one sterile hypodermic needles or syringes.

B. No criminal liability for participants in the Exchange for possession of previously-used hypodermic needles or syringes or trace or residual amounts of drugs within previously-used hypodermic needles or syringes

The court further concludes that section 21a-240(a)(20)(A)(ix) exempts the possession of any hypodermic needles and syringes, whether sterile or previously-used, in a quantity no greater than thirty from criminal liability. The court reads the phrase "used, intended for use or designed for use in parenterally injecting controlled substances into the human body" to apply only to "other objects" and not the terms "hypodermic syringes, needles" in section 21a-240(a)(20)(A)(ix). This interpretation follows from the last antecedent rule in statutory construction:

> Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. The last antecedent is the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence. Thus a proviso usually is construed to apply to the provision or clause immediately preceding it.

State v. Clein, No. CR 10230423, 1996 WL 686905, at *2 (Conn. Super. Nov. 19, 1996) (citing 2A N. Singer, Sutherland on Statutes and Statutory Construction

§ 47.33 (5th ed. 1992)); see generally Winslow v. Lewis-Shepard, Inc., 216 Conn. 533, 538 (1990) (applying the last antecedent rule). Following this construction, the unmodified terms "hypodermic syringes, needles" would, according to their commonly approved meaning, include any such needles and syringes, whether sterile or previously-used and whether containing drug or blood residue in trace amounts or not.

However, even if the phrase "used, intended for use or designed for use in parenterally injecting controlled substances into the human body" applies to "hypodermic syringes, needles" as well as "other objects," the term "used" in section 21a-240(a)(20)(A)(ix) must include needles and syringes which have been used already for injecting drugs. If "used" conveyed only the meaning "which are to be used" or "which can be used", the phrase "intended for use or designed for use" would be rendered superfluous. Moreover, section 21a-270(3) would be meaningless for its express purpose of directing courts in interpreting section 21a-240(a)(20) if it were per se illegal for a person to possess hypodermic needles and syringes covered by section 21a-240(a)(20)(A)(ix) containing, or having on them, "any residue of controlled substances," i.e., having traces of having been "used" for

injecting drugs.

Following this analysis, the court concludes that the Connecticut legislature intended to exclude participants in the needle and syringe exchange programs under section 19a-124, including the Exchange, from liability for possession of less than "thirty hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body" which include on or in them "any residue of controlled substances." Moreover, the legislature intended to exclude participants in the Exchange from criminal liability for possession of any trace amounts of drugs contained as residue within previously-used needles and syringes. If this were not the legislature's intent, the legislation enacting section 19a-124 and amending section 21a-240(a)(20)(A)(ix) would have protected only persons involved in the Exchange while they are leaving the Exchange location with sterile needles, but not when they are transporting used needles to the Exchange. The program mandates the exchange of used needles, i.e., needles which will often necessarily contain "any residue of controlled substances," for sterile needles. Under their enacting statute, the legislature decreed that the exchange "programs shall: . . . (2) provide for free and

anonymous exchanges of needles and syringes and (A) provide that program participants receive an equal number of needles and syringes for those returned, up to a cap of thirty needles and syringes per exchange . . .." Conn. Gen. Stat. § 19a-124(b)(2). An interpretation which would subject participants in the Exchange to criminal liability for possession of trace residues of narcotics in the used needles and syringes they were holding to transport to the Exchange locations would thwart the intended purpose of the statutory enactment establishing the exchange programs, i.e., to reduce the incidence and spread of HIV, AIDS, and other blood-borne diseases. Such an interpretation would lead to an absurd result. See Conn. Gen. Stat. § 19a-124(a)-(b); see generally Town of Southington, 254 Conn. at 360 (applying the principle that "[w]e ordinarily read statutes with common sense and so as not to yield bizarre results" to conclude that "[i]t would make little sense, and would yield a bizarre result, if we read the powers of a municipality to accept a bond pursuant to § 8-25 without the concomitant implied power to call the bond according to its terms" (citing Comm'n on Human Rights & Opportunities v. Sullivan Assocs., 250 Conn. 763, 777-78 (1999))).

On the record before the court, however, the court cannot conclude that the legislature intended to exclude from criminal liability for possession of narcotics and other controlled substances which are contained as a residue in a hypodermic needle or syringe in the possession of a person who is not involved in the Exchange established under section 19a-124. Absent a greater showing, including a more complete legislative history, the court cannot accept the plaintiffs' argument that all persons must be free from criminal liability in order to ensure that injecting drugs users do not improperly discard their used needles and syringes. The court notes that the Connecticut Supreme Court has "long held that provisos and exceptions to statutes are to be strictly construed with doubts resolved in favor of the general rule rather than the exception and that 'those who claim the benefit of an exception under a statute have the burden of proving that they come within the limited class for whose benefit it was established.'" Gay & Lesbian Law Students Ass'n v. Bd. of Trs., 236 Conn. 453, 473-74 (1996) (quoting Conservation Comm'n v. Price, 193 Conn. 414, 424 (1984) ("exemptions to statutes are to be strictly construed")). The court cannot conclude, on this record, that the Connecticut legislature intended the result to de-criminalize possession of trace amounts of drugs in needles by persons

not participating in the Exchange. The court reaches this conclusion by reading the statutory language of section 19a-124(b) and section 21a-240(a)(20)(A)(ix), passed together, and construing them as a whole, mindful of the purpose of the Exchange Program.

Moreover, the plaintiffs' own brief and complaint rely heavily upon the argument that the defendants' actions undermine the effectiveness of the Exchange. See, e.g., Dkt. No. 1 at ¶ 4; Dkt. No. 4 at 15-17. Indeed, the injury that the plaintiffs complain of lies in unreasonable searches and seizures perpetrated on the plaintiffs by the defendants in violation of the plaintiffs' fourth amendment rights, based on the legality of possessing less than thirty-one hypodermic needles which drug users in the Exchange use to safely inject drugs and to obtain sterile injection equipment, as authorized by state law. Dkt. No. 3 at ¶¶ 1-2.[2] It is therefore unclear whether the two individual plaintiffs, who are both participants in the Exchange, are typical of and adequate representatives of a class of injecting drug users who are not participants in the program. Fed. R. Civ. P. 23. On the present record, the court

[2] Much of the record before the court focuses on the impact of police action on drug users' participation in the Exchange. See Dkt. No.5 at ¶ 17; Dkt. No.6 at ¶ 6; Dkt. No. 11 at ¶¶ 7 and 9.

cannot conclude that the plaintiffs are likely to succeed on the merits of fourth amendment claims brought on behalf of injecting drug users who are not participants in the Exchange and who possess used hypodermic needles and syringes.[3]

IV. CONCLUSION

For the reasons stated above, the plaintiffs' Application for Temporary Restraining Order [Dkt. No. 3] is granted in part and denied in part. The court hereby orders that:

> Defendants Bridgeport Police Department and Wilber L. Champan, Chief of the Bridgeport Police Department, their agents, employees, assigns, and all persons acting in concert or participating with them are enjoined and restrained from searching, stopping, arresting, punishing or penalizing in any way, or threatening to search, stop, arrest, punish or penalize in any way, any person who is a participant in the Bridgeport Syringe Exchange Program, based solely upon that person's possession of up to thirty sets of injection equipment, whether sterile or previously-used and possibly containing a residue of drugs.

This temporary restraining order will expire, pursuant to Fed. R. Civ. P. 65(b), in ten (10) days, on December 1, 2000. The court will convene a hearing on a

[3] The court will, if it is pressed, revisit this issue after both sides have briefed the issues and presented a fuller record on a hearing for a preliminary injunction.

preliminary injunction on Monday, November 27, 2000, at 9 a.m.[4] The defendants will file a brief (with a courtesy copy to chambers) no later than Monday, November 20, 2000, at 4 p.m., and the plaintiffs will file a reply brief (with a courtesy copy to chambers) no later than Wednesday, November 22, 2000, at 4 p.m. If either party proposes to offer testimony or exhibits, the parties are to confer and to file with the Clerk of the Court (with a courtesy copy to chambers) a list of witnesses, if any, with a brief description of the witnesses' proposed testimony, and a list of proposed exhibits (which are to have been previously exchanged), if any, no later than 4 p.m. on Tuesday, November 21, 2000.

SO ORDERED.

Dated this 15th day of November, 2000, at Bridgeport, Connecticut.

_____/s/_____
Janet C. Hall
United States District Judge

[4] However, as the court indicated at oral argument on November 12, 2000, on the present Application, the court's schedule is such that the date of November 27, 2000, presents difficulty, and the court would suggest an alternative date of Friday, December 8, 2000, at 12:30 p.m. The court would request that the parties notify it whether they all are willing to waive their rights under Fed. R. Civ. P. 65 and agree to a continuance of the temporary restraining order until that later date. If all the parties are willing to do so, the court will issue an adjusted scheduling order for the preliminary injunction hearing.