

96 N.Y.2d 418

1418 **In the Matter of Mohamed ALIESSA,
by His Guardian ad Litem, Sumaya Al
FAYAD, et al., Appellants,**

v.

**Antonia NOVELLO, as Commissioner
of the New York State Department
of Health, Respondent.**

Court of Appeals of New York.

June 5, 2001.

Aliens who were lawfully present in the United States brought class action challenging constitutionality of statute terminating state Medicaid benefits for non-qualified aliens, including lawfully admitted permanent residents, and aliens permanently residing in the United States under color of law (PRUCOLs). After initially granting in part and denying in part aliens' motion for summary judgment, 181 Misc.2d 334, 694 N.Y.S.2d 308, the Supreme Court, New York County, Sheila Abdus Salaam, J., granted reargument, and vacated that portion of its decision which found the statute violative of equal protection. State appealed, and the Supreme Court, Appellate Division, 274 A.D.2d 347, 712 N.Y.S.2d 96, affirmed in part and reversed in part, and found statute to be constitutional. Aliens appealed. The Court of Appeals, Rosenblatt, J., held that: (1) statute violated provision of State Constitution which guarantees that aid for the needy be provided by imposing an overly burdensome condition on eligibility that had nothing to do with need, and (2) statute did not meet strict scrutiny standard, and violated equal protection guarantees of Federal and State Constitutions.

Appellate Division reversed, and case remitted.

1. Aliens ⇔53

Aliens permanently residing in the United States under color of law (PRUCOLs) are aliens of whom the Immigration and Naturalization Service (INS) is aware, but has no plans to deport, and are distinguished from illegal aliens subject to deportation.

2. Social Security and Public Welfare ⇔241.60

Under Medicaid system, the federal government and the states share the cost of providing Medicaid to certain federally specified categories of needy individuals, and if a state wants to extend Medicaid benefits to others, it is free to proceed at its own expense. Social Security Act, § 1902(a), as amended, 42 U.S.C.A. § 1396a(a).

3. Social Security and Public Welfare ⇔1.1

In enacting provisions of Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) which deal with aliens, goals of Congress were to promote self-sufficiency, which is an enduring principle of United States immigration law, and to discourage aliens from immigrating just to avail themselves of welfare or other public resources. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 400(1, 2), 8 U.S.C.A. § 1601(1, 2).

4. Social Security and Public Welfare ⇔241.60, 241.76

While provisions of Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) which deal with aliens make aliens who are permanently residing in the United States under color of law (PRUCOLs) ineligible for both federal and state Medicaid, it authorizes states to provide Medicaid to PRUCOLs—and indeed even to illegal aliens—by enacting a new law after PRWORA's effec-

tive date which affirmatively provides for such relief. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 411(a), (c)(1)(B), (d), 8 U.S.C.A. § 1621(a), (c)(1)(B), (d).

5. Social Security and Public Welfare ⌘3

Care for the needy is not a matter of legislative grace, but rather, is a mandate under State Constitution. McKinney's Const. Art. 17, § 1.

6. Social Security and Public Welfare ⌘3

While State Constitution mandates that aid, care, and support for the needy be provided, State is not required to meet every legitimate need of every needy person; rather, the Legislature may determine who is "needy" and allocate the public dollar accordingly. McKinney's Const. Art. 17, § 1.

7. Social Security and Public Welfare ⌘3

Provision of State Constitution mandating that aid, care, and support for the needy be provided prohibits the Legislature from refusing to aid those whom it has classified as needy. McKinney's Const. Art. 17, § 1.

8. Social Security and Public Welfare ⌘241.76

Statute terminating state Medicaid benefits for non-qualified aliens, including lawfully admitted permanent residents, and aliens permanently residing in the United States under color of law (PRUCOLs), imposed an overly burdensome condition on eligibility for public assistance that had nothing to do with need, and thus violated provision of State Constitution mandating that aid, care, and support for the needy be provided. McKinney's Const. Art. 17, § 1; McKinney's Social Services Law § 122.

9. Social Security and Public Welfare ⌘3

Provision of State Constitution mandating that aid, care, and support for the needy be provided affords the State wide discretion in defining who is needy and in setting benefit levels. McKinney's Const. Art. 17, § 1.

10. Aliens ⌘39 States ⌘18.43

Federal law in the area of immigration is preemptive.

11. Constitutional Law ⌘210(1)

Aliens are "persons" entitled to equal protection under Federal and State Constitutions. U.S.C.A. Const.Amend. 14; McKinney's Const. Art. 1, § 11.

12. Constitutional Law ⌘213.1(1)

In determining whether a state statute violates equal protection clause of Federal Constitution, courts apply different levels of scrutiny to different types of classifications. U.S.C.A. Const.Amend. 14.

13. Constitutional Law ⌘215.2

Statute terminating state Medicaid benefits for non-qualified aliens, including lawfully admitted permanent residents, and aliens permanently residing in the United States under color of law (PRUCOLs), created classifications based on alienage, which were not expressly authorized by federal statute establishing uniform immigration policy, and thus was subject to strict scrutiny for purposes of challenge under equal protection clause of Federal Constitution. U.S.C.A. Const. Amend. 14; McKinney's Const. Art. 1, § 11; McKinney's Social Services Law § 122.

14. Constitutional Law ⌘213.1(2)

Under strict scrutiny standard, a state statute will withstand an equal protection challenge under Federal Constitution only

when the state can show that the law furthers a compelling state interest by the least restrictive means practically available. U.S.C.A. Const.Amend. 14.

15. Constitutional Law ⇨211(1),
213.1(2)

For purposes of review under equal protection clause of Federal Constitution, courts generally accord states broad discretion to create classifications in implementing economic and social welfare policy; in such instances, the court leaves it to the political process to bring about repeal of undesirable legislation, and if a statute has some reasonable basis, the Court will sustain it even if the classification is not made with mathematical nicety or results in some inequality. U.S.C.A. Const. Amend. 14.

16. Constitutional Law ⇨52

Under system of separation of powers, a lawmaking body may not legislatively declare that a statute meets constitutional criteria.

17. Constitutional Law ⇨52

Social Security and Public Welfare
⇨1.1

Section of Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) which provides that a state choosing to follow the federal classification in determining the eligibility of qualified aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving compelling governmental interest of assuring that aliens be self-reliant cannot be relied on to establish that such a state statute meets strict scrutiny standard under equal protection clause of Federal Constitution, as a lawmaking body may not legislatively declare that a statute meets constitutional criteria. U.S.C.A. Const. Amend. 14.

18. Aliens ⇨18, 39

Congress has power to exclude aliens, and may order the deportation of aliens whose presence in the country it deems hurtful; however, the states have no like power.

19. Aliens ⇨39, 60

Congress has considerable latitude in enacting immigration and naturalization statutes, and over no conceivable subject is the legislative power of Congress more complete. U.S.C.A. Const. Art. 1, § 8, cl. 4.

20. Social Security and Public Welfare
⇨1.1

Federal Constitution does not prohibit Congress from distinguishing between aliens and citizens when allocating federal welfare benefits.

21. Social Security and Public Welfare
⇨4.5

When federal welfare programs are jointly administered with the states, Congress may direct the states to implement national immigration objectives as long as the federal government has by uniform rule prescribed what it believes to be appropriate standards for the treatment of an alien subclass.

22. Social Security and Public Welfare
⇨4.5

State regulation of a welfare program jointly administered with the federal government that is not congressionally sanctioned, and that discriminates against aliens lawfully admitted to the country, is impermissible if it imposes additional burdens not contemplated by Congress.

23. Constitutional Law ⇨215.2

Social Security and Public Welfare
⇨241.76

Statute which discriminated on the basis of alien status by terminating state Medicaid benefits for otherwise eligible non-qualified aliens, including lawfully ad-

mitted permanent residents, and aliens permanently residing in the United States under color of law (PRUCOLs), did not further a compelling interest by the least restrictive means available, and thus violated equal protection guarantees of Federal and State Constitutions. U.S.C.A. Const. Amend. 14; McKinney's Const. Art. 1. § 11; McKinney's Social Services Law § 122.

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1. Federal law requires the Immigration and Naturalization Service (INS) to issue permanent resident cards (commonly known as green cards) to lawfully admitted permanent residents (*see*, 8 USC § 1304[d]).

2. As distinguished from *illegal* aliens subject to deportation, this designation is used to classify aliens of whom the INS is aware, but has no plans to deport (*see generally*, Polen, *Salvaging a Safety Net: Modifying the Bar to Supplemental Security Income for Legal Aliens*, 76 Wash. U. L.Q. 1455, 1455 n. 3

OPINION OF THE COURT

ROSENBLATT, J.

On this appeal, we must decide whether Social Services Law § 122 violates the United States and New York Constitutions⁴²² by denying State Medicaid benefits to plaintiffs based on their status as legal aliens. We conclude that it does.

I.

[1] Plaintiffs are 12 aliens who lawfully reside in New York State. They immigrated to the United States from various countries, including Bangladesh, Belorussia, Ecuador, Greece, Guyana, Haiti, Italy, Malaysia, the Phillippines, Syria and Turkey. As legal aliens, they fall into two groups. Some are lawfully admitted permanent residents of the United States under the Immigration and Nationality Act (i.e., green card holders) (*see*, 8 USC § 1101 *et seq.*);¹ the rest are permanently residing in the United States under color of law (PRUCOLs).² All suffer from potentially life-threatening illnesses and, but for the exclusion under Social Services Law § 122, would allegedly qualify for Medicaid benefits funded solely by the State.

Plaintiffs brought a class action in Supreme Court seeking a declaration that Social Services Law § 122 violates article XVII, sections 1 and 3 of the New York State Constitution and the Equal Protection Clauses of the United States and New

[1998]). The classification appears in numerous statutes and regulations (*see, e.g.*, 8 USC § 1254a [f]; 26 USC § 3304[a][14][A]; 20 CFR §§ 416.1618, 416.1619; 42 CFR § 435.408). When and whether a particular alien meets a given provision's definition has generated considerable litigation (*compare Holley v. Lavine*, 553 F.2d 845, 849 [2d Cir.], *cert. denied sub nom. Shang v. Holley*, 435 U.S. 947, 98 S.Ct. 1532, 55 L.Ed.2d 545, with *Sudomir v. McMahon*, 767 F.2d 1456, 1461 [9th Cir.]).

York State Constitutions. The putative class consists of “[a]ll Lawful Permanent Residents who entered the United States on or after September 22, 1996 and all [PRUCOLs] who, but for the operation of New York Social Services Law § 122, would be eligible for Medicaid coverage in New York State.” The State moved to dismiss or, in the alternative, for summary judgment, for which plaintiffs cross-moved. Deferring its decision on class certification, Supreme Court denied the State’s motion and granted in part plaintiff’s motion for summary judgment, declaring that section 122 of the Social Services Law violates ¹⁴²³article XVII, § 1 of the New York State Constitution and the Equal Protection Clauses of the United States and New York Constitutions. (*Aliessa v. Whalen*, 181 Misc.2d 334, 694 N.Y.S.2d 308.)

Three days later, the Appellate Division decided *Alvarino v. Wing* (261 A.D.2d 255, 690 N.Y.S.2d 262). In that case, resident aliens argued that Social Services Law § 95 unconstitutionally denied them food assistance. The court held that because the State enacted the statute in direct response to a Federal supplemental appropriations bill (Pub L 105–18), the challenged classification should be evaluated, for equal protection purposes, under a rational basis standard rather than the strict scrutiny standard Supreme Court had employed.

Supreme Court granted reargument in light of *Alvarino* and vacated the portion of its decision that declared section 122 violative of the Equal Protection Clauses of the United States and New York State Constitutions. The court left undisturbed, however, so much of its decision as held section 122 of the Social Services Law violative of article XVII, § 1 of the New York State Constitution. The Appellate Division reversed in part and affirmed in

part, holding that section 122 did not violate equal protection or article XVII, § 1. Plaintiffs appeal to this Court as of right (*see*, CPLR 5601[b]).

II.

A.

The Medicaid System

[2] The Legislature established New York’s Medicaid system in 1966 (L. 1966, ch. 256), the year after Congress created the federally funded Medicaid program (*see*, Pub. L. 89–97, 79 U.S. Stat 344). Under this complex scheme, the Federal government and States share the cost of providing Medicaid to certain categories of needy individuals. The shared program provides benefits to the disabled, the blind, the elderly, children, pregnant women, single-parent families and parents of children where there is a deprivation factor in the household (*see*, 42 USC § 1396a [a]). To remain eligible for Federal matching funds, New York must conform its Medicaid program to evolving Federal standards (*see*, 42 USC § 1396a [b]; Social Services Law § 363–a).

If a State wants to extend Medicaid benefits to others, it is free to proceed at its own expense. New York has done so. It has provided non-federally subsidized Medicaid benefits to ¹⁴²⁴certain categories of individuals, including residents between the ages of 21 and 65 whose income and resources fall below a statutory “standard of need” and who are not otherwise entitled to federally subsidized Medicaid (*see*, Social Services Law § 366[1]; 18 NYCRR 360–3.3[b]). Thus, New York State’s Medicaid system has two components: one that is federally subsidized and one that the State funds entirely on its own.³

New York had long provided State Medicaid to needy recipients without distin-

3. For purposes of this decision, we refer to

federally subsidized Medicaid as “Federal

guishing between legal aliens and citizens. It ceased to do so, however, after Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193, 110 U.S. Stat. 2105 [codified in scattered sections of 8 and 42 USC]) (PRWORA). Asserting that they have been unlawfully deprived of State Medicaid for which they would otherwise qualify, plaintiffs have brought this challenge.

B.

The Personal Responsibility and Work
Opportunity Reconciliation Act of
1996

After extensive debate, Congress enacted PRWORA as a comprehensive reform initiative designed to “end welfare as we know it.”⁴ PRWORA touches on virtually all aspects of welfare. In this case, however, we are concerned only with title IV of PRWORA, which deals with aliens.⁵

[3] ¹⁴²⁵In its preamble to title IV, Congress stressed that its goals were to pro-

Medicaid” and Medicaid entirely funded by the State and its localities as “State Medicaid.” This litigation, and our holding, relate only to the latter category (*compare, Lewis v. Thompson*, 252 F.3d 567 [2d Cir.] [dealing with claims by illegal aliens for prenatal care under Federal Medicaid]).

4. See generally, *Recent Legislation: Welfare Reform—Treatment of Legal Immigrants—Congress Authorizes States to Deny Public Benefits to Noncitizens and Excludes Legal Immigrants from Federal Aid Programs*, 110 Harv. L. Rev. 1191 (1997); Hoke, *Symposium, State Discretion Under New Federal Welfare Legislation: Illusion, Reality and a Federalism-Based Constitutional Challenge*, 9 Stan. L. & Pol’y Rev. 115 (1998); *Development in Policy: Welfare Reform*, 16 Yale L. & Pol’y Rev. 221 (1997).

5. Title IV is codified beginning at section 1601, title 8, of the United States Code. Title I of PRWORA provides block grants to States for temporary assistance to needy families.

mote self-sufficiency—an enduring principle of United States immigration law—and to discourage aliens from immigrating here just to avail themselves of welfare or other public resources (*see*, 8 USC § 1601[1]-[2]). The lawmakers stated that meeting these goals was a “compelling government interest” (*see*, 8 USC § 1601[5]-[6]).

By enacting title IV, Congress restricted alien eligibility for federally funded public assistance benefits (including Medicaid) and authorized States to follow suit with their own programs. Its restrictions govern eligibility for Federal and State retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance and unemployment benefits, among others (*see*, 8 USC § 1611[c]; § 1621[c]). For purposes of this decision, however, we address solely its effect on Medicaid eligibility.

Under title IV, aliens are divided into two categories: qualified aliens and non-qualified aliens (*see*, 8 USC § 1641). Broadly speaking, qualified aliens include

Congress designed these grants to reduce out-of-wedlock pregnancies and promote job preparation, work, marriage and two-parent families. Title II modifies eligibility requirements for Supplemental Security Income benefits for, among others, fugitive felons, probation and parole violators, prisoners and persons found to have fraudulently misrepresented their residences. Title III streamlines child support collection procedures, requiring uniformity throughout the States. Title V mandates a national study of children at risk of abuse or neglect. Title VI provides block grants to States to develop localized child care programs that promote parental choice and independence from public assistance. Titles VII and VIII make changes to the National School Lunch Act and the Food Stamp Act. Finally, title IX implements a variety of initiatives that, among other provisions, authorize States to test welfare recipients for controlled substances, require public housing agencies to provide certain information to law enforcement agencies and encourage the use of electronic benefit transfer systems.

aliens who are lawfully admitted for permanent residence (generally green card holders), granted asylum, designated refugees, paroled into the United States for at least one year, having their deportation withheld, granted conditional entry, Cuban and Haitian entrants or victims of battering or extreme cruelty by a spouse or other family member (*see*, 8 USC § 1641[b]-[c]). All other aliens, including PRUCOLs, are non-qualified aliens.⁶ Plaintiffs in this case fall into both categories. The lawfully admitted permanent resident plaintiffs are qualified aliens and the PRUCOL plaintiffs non-qualified aliens. These classifications carry significant Medicaid consequences.

¶⁴²⁶1.

PRWORA's Treatment of Aliens'
Entitlement to Medicaid

Title IV renders non-qualified aliens ineligible for Federal Medicaid (8 USC § 1611[a]). Qualified aliens are divided into two subcategories. The first subcategory includes those who were lawfully residing in the United States before August 22, 1996. Section 1612(b)(2) requires States to provide Federal Medicaid to some, but not all, of this group.⁷ The second subcategory includes those who entered the country on or after August 22,

1996. This latter group is largely ineligible for Federal Medicaid for five years (*see*, 8 USC § 1613[a]).⁸ Moreover, title IV authorizes States to extend the ineligibility period beyond the initial five years (*see*, 8 USC § 1612[b][1]).

[4] In addition to rendering PRUCOLs ineligible for Federal Medicaid, title IV renders them ineligible for State Medicaid as well (*see*, 8 USC § 1621[a], [c][1][B]). Section 1621(d), however, authorizes States to provide State Medicaid to PRUCOLs—and indeed even to illegal aliens—by enacting a new law (after August 22, 1996) “which affirmatively provides for such eligibility” (*see*, 8 USC § 1621[d]).⁹ As for qualified aliens, title IV does not require, but instead allows States to grant or deny them State Medicaid, subject to certain exceptions (*see*, 8 USC § 1622[a]).¹⁰

Finally, notwithstanding all of these restrictions, both non-qualified aliens and qualified aliens (during their periods of ineligibility) may receive State and federally funded emergency ¶⁴²⁷medical treatment (*see*, 8 USC § 1611[b][1][A]; § 1613[c][2][A]; § 1621[b][1]).

2.

New York's Response to PRWORA

In response to PRWORA, New York enacted Social Services Law § 122, termi-

6. Illegal aliens and certain others—with whom we are not here concerned—are also non-qualified aliens (*see*, 8 USC § 1641).

7. For example, section 1612(b)(2)(A)(i) requires States to provide Federal Medicaid to certain refugees and asylees for seven years. Thereafter, States have authority to determine eligibility (*see*, 8 USC § 1612[b][1]). Title IV also requires States to provide Federal Medicaid to other qualified aliens, including lawfully admitted permanent residents who worked or can be credited with 40 qualifying quarters under the Social Security Act and legally residing veterans and active duty members of the United States Armed Forces (and their dependents) (*see*, 8 USC § 1612[b][2][B]-[F]).

8. Refugees, asylees, Cuban and Haitian entrants, veterans and their dependents, active duty soldiers in the United States Armed Forces and their dependents, and certain other qualified aliens are exempt from this restriction (*see*, 8 USC § 1613[b]).

9. Section 1621(d) refers to “State authority to provide for eligibility of illegal aliens.” Inasmuch as only PRUCOLs are before us, we need not decide the full scope of this provision. The statute obviously authorizes the State to provide State Medicaid to PRUCOLs.

10. States must, for example, provide State Medicaid to otherwise eligible refugees, asylees, and Cuban and Haitian entrants, among others (*see*, 8 USC § 1622[b]).

nating Medicaid for non-qualified aliens—including PRUCOL plaintiffs (*see*, Social Services Law § 122[1][c]). New York did, however, maintain Medicaid for otherwise eligible PRUCOLs who, as of August 4, 1997, were receiving Medicaid and were diagnosed with AIDS or residing in certain licensed residential health care facilities (*see*, Social Services Law § 122[1][c]).

As for qualified aliens, section 122 provides Medicaid to all otherwise eligible qualified aliens who entered the United States before August 22, 1996 and continuously resided in the United States until attaining qualified status (Social Services Law § 122[1][b] [i]). Those entering on or after August 22, 1996, however, are no longer immediately eligible for State Medicaid, but must now wait five years for coverage (*see*, Social Services Law § 122[1][b] [ii]).¹¹ This group includes the lawfully admitted permanent resident plaintiffs. Finally, all plaintiffs (both PRUCOLs and qualified aliens) may receive safety net assistance and emergency medical treatment (*see*, Social Services Law § 122[c][i]-[ii]).

III.

Plaintiffs argue that section 122 violates article XVII of the New York State Constitution and denies them equal protection under the United States and New York State Constitutions.

A.

New York State Constitution, Article XVII

[5, 6] Plaintiffs contend that section 122 violates article XVII, § 1 of the State Constitution, which provides:

“The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and ways by such means, as the legislature may from time to time determine” (N.Y. Const., art. XVII, § 1 [emphasis added]).

As this provision demonstrates, care for the needy is not a matter of “legislative grace”, it is a constitutional mandate (*Tucker v. Toia*, 43 N.Y.2d 1, 7, 400 N.Y.S.2d 728, 371 N.E.2d 449; *see also*, *Lovelace v. Gross*, 80 N.Y.2d 419, 424, 590 N.Y.S.2d 852, 605 N.E.2d 339; *Jiggetts v. Grinker*, 75 N.Y.2d 411, 416, 554 N.Y.S.2d 92, 553 N.E.2d 570). Of course, New York is not required to meet every legitimate need of every needy person (*see*, *Matter of Bernstein v. Toia*, 43 N.Y.2d 437, 448-449, 402 N.Y.S.2d 342, 373 N.E.2d 238). Rather, the Legislature may determine who is “needy” and allocate the public dollar accordingly.

[7, 8] This Court, however, has interpreted article XVII, § 1 as prohibiting the Legislature from “refusing to aid those whom it has classified as needy” (*Tucker v. Toia*, 43 N.Y.2d, at 8, 400 N.Y.S.2d 728, 371 N.E.2d 449, *supra*). In *Tucker*, the State required minors to obtain final orders of disposition in support proceedings against their parents before they could become eligible for home relief. We found this requirement so onerous as to constitute a practical deprivation of benefits. Needy minors, we recognized, may not know the whereabouts of their parents, or even if their parents are located in this State. In some cases, it could take a minor as long as a year to obtain a disposition in an often futile support proceeding. While waiting, needy minors were effectively denied home relief. Because the requirement imposed an overly burden-

11. The five-year waiting period does not apply to, among others, refugees, asylees and veter-

ans (*see*, Social Services Law § 122[1][a]).

some eligibility condition on recipients—one unrelated to need—we held that the requirement contravened the “letter and spirit” of section 1 of article XVII (*see*, 43 N.Y.2d, at 9, 400 N.Y.S.2d 728, 371 N.E.2d 449, *supra*).

[9] The State argues that the allocation scheme here does not contravene *Tucker*. It contends that the Constitution affords it discretion to set levels of benefits for the needy and, in the exercise of that discretion, it has provided plaintiffs full safety net assistance and emergency medical treatment. We agree that article XVII, § 1 affords the State wide discretion in defining who is needy and in setting benefit levels. Indeed, in *Matter of Barie v. Lavine*, 40 N.Y.2d 565, 566, 388 N.Y.S.2d 878, 357 N.E.2d 349, this Court upheld a regulation that required welfare recipients to participate in a work referral program and denied them benefits for 30 days if they failed to comply.

Plaintiffs argue that section 122 does not merely set levels of benefits for the needy, but deprives them of all otherwise available ongoing medical care—a species of aid distinct from safety net assistance and emergency medical treatment. They contend that ongoing medical care covers a full spectrum of ailments, ¶ 429 whereas emergency medical treatment becomes necessary when their medical conditions reach crisis or catastrophic levels. Plaintiffs and *amici* point out that diabetics, for example, often require daily insulin doses and blood glucose monitoring in order to stay alive, and that with such care they can lead healthy, productive lives. They are, however, denied this coverage. Treatment is unavailable until the condition reaches emergency proportions, involving insulin shock, renal failure and possibly amputation. Similarly, asthmatics receive no coverage for inhalers and medications to con-

trol their conditions. They receive no medical care until they experience severe attacks that can lead to suffocation and death. Contrasting it with emergency treatment, the Supreme Court has characterized ongoing medical care as a “basic necessity of life” (*see, Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 259–261, 94 S.Ct. 1076, 39 L.Ed.2d 306). “To allow a serious illness to go untreated until it requires emergency hospitalization is to subject the sufferer to the danger of a substantial and irrevocable deterioration in his health” (*id.* at 261, 94 S.Ct. 1076).

In this context, plaintiffs and *amici* argue that when such patients are treated in emergency settings, the hospitals are not permitted to release them without a discharge plan for necessary continuing health care services, citing Public Health Law § 2803(1)(g). Because they cannot be readily discharged, many remain in hospital facilities. Those who are discharged experience a cycle of emergency, recovery, stabilization, deterioration and the onset of another emergency. All of this, plaintiffs and *amici* contend, could be avoided through ongoing medical treatment.

[10] In *Barie* the work incentive requirement was an appropriate mechanism for identifying need. Here, however, the concept of need plays no part in the operation of section 122. Indeed, the statute suffers from an infirmity comparable to the one in *Tucker* and cannot be justified on the basis of a distinction between qualified aliens and PRUCOLs on the one hand, and citizens on the other. We conclude that section 122 violates the letter and spirit of article XVII, § 1 by imposing on plaintiffs an overly burdensome eligibility condition having nothing to do with need, depriving them of an entire category of otherwise available basic necessity benefits.¹²

12. In light of this determination, we do not address plaintiffs’ argument under article

XVII, § 3. In addition, we note the State’s

§ 430B.Equal Protection

[11] Plaintiffs argue that section 122 denies them equal protection under the United States and New York State Constitutions. The Fourteenth Amendment provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws” (U.S. Const., 14th Amend., § 1). The New York State Constitution contains its own equal protection requirement (N.Y. Const., art. I, § 11). It is axiomatic that aliens are “persons” entitled to equal protection (*see, Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S.Ct. 1064, 30 L.Ed. 220 [“The fourteenth amendment to the constitution is not confined to the protection of citizens”]; *see also, Mathews v. Diaz*, 426 U.S. 67, 77, 96 S.Ct. 1883, 48 L.Ed.2d 478; *Takahashi v. Fish & Game Commn.*, 334 U.S. 410, 419–420, 68 S.Ct. 1138, 92 L.Ed. 1478).

[12, 13] In considering whether a State statute violates the Equal Protection Clause, the Supreme Court applies different levels of scrutiny to different types of classifications (*see, Clark v. Jeter*, 486 U.S. 456, 461, 108 S.Ct. 1910, 100 L.Ed.2d 465). The parties disagree as to the level of scrutiny section 122 must withstand. Plaintiffs urge this Court to apply strict scrutiny because section 122 creates classifications based on alienage. The State argues that section 122 implements Federal immigration policy and therefore must

argument that it enacted section 122 in response to title IV. We recognize that Federal law in the area of immigration is preemptive (*see, Toll v. Moreno*, 458 U.S. 1, 10, 102 S.Ct. 2977, 73 L.Ed.2d 563; *DeCanas v. Bica*, 424 U.S. 351, 354, 96 S.Ct. 933, 47 L.Ed.2d 43; *Graham v. Richardson*, 403 U.S. 365, 378, 91 S.Ct. 1848, 29 L.Ed.2d 534; *cf. Minino v. Perales*, 79 N.Y.2d 883, 885, 581 N.Y.S.2d 162, 589 N.E.2d 385). In view of our holding in part III.B, *infra*, however, we need not reach this issue.

merely withstand rational basis scrutiny. We agree with plaintiffs.

[14] As a general rule, the Supreme Court has strictly scrutinized State laws that create alienage classifications when distributing economic benefits or regulating economic activity (*see, e.g., Bernal v. Fainter*, 467 U.S. 216, 227–228, 104 S.Ct. 2312, 81 L.Ed.2d 175 [invalidating a Texas statute that required citizenship for notaries public]; *Nyquist v. Mauclet*, 432 U.S. 1, 7–12, 97 S.Ct. 2120, 53 L.Ed.2d 63 [striking down a New York statute that restricted eligibility for Regents college scholarships based on alienage]; *In re Griffiths*, 413 U.S. 717, 718–722, 93 S.Ct. 2851, 37 L.Ed.2d 910 [invalidating a Connecticut statute that allowed only citizens to qualify for the bar examination]; *Graham v. Richardson*, 403 U.S., at 370–376, 91 S.Ct. 1848, *supra* [invalidating statutes in Arizona and Pennsylvania that limited welfare benefits based on citizenship]; *Takahashi v. Fish & Game Commn.*, 334 U.S., at 414, 418–422, 68 S.Ct. 1138, *supra* [striking down a California statute that granted commercial fishing § 431 licenses to citizens but denied them to aliens who were ineligible for citizenship]; *see generally*, 3 Rotunda & Nowak, Constitutional Law: Substance and Procedure § 18.12, at 469 [3d ed. 1999]). Under strict scrutiny, a State statute will withstand an equal protection challenge only when the State can show that the law “furthers a compelling state interest by the least restrictive means practically available” (*see, Bernal v. Fainter*, 467 U.S., at 227, 104 S.Ct. 2312, *supra*).¹³

13. In *Plyler v. Doe*, 457 U.S. 202, 223, 102 S.Ct. 2382, 72 L.Ed.2d 786, *supra*, however, the Supreme Court applied an intermediate level of scrutiny to a State statute that denied public education to children who were not lawfully admitted into the United States. In this context, a State must demonstrate that its classification is “reasonably adapted” to further a “substantial goal of the State” (*id.* at 224, 226, 102 S.Ct. 2382). In addition, the Supreme Court has carved out exceptions to strict scrutiny for State laws pertaining to

[15] Heightened scrutiny is premised on the Supreme Court's view of the political process. The Court generally accords States broad discretion to create classifications in implementing economic and social welfare policy (see, *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S.Ct. 1153, 25 L.Ed.2d 491). In these instances, the Court leaves it to the political process to "bring about repeal of undesirable legislation" (see, *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152–153 n. 4, 58 S.Ct. 778, 82 L.Ed. 1234). If a statute has "some 'reasonable basis,'" the Court will sustain it even if the classification "is not made with mathematical nicety [or] results in some inequality" (*Dandridge v. Williams*, 397 U.S., at 485, 90 S.Ct. 1153, *supra* [quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 31 S.Ct. 337]). Recognizing, however, that "discrete and insular minorities" can be shut out of the political process, the Court has applied a more searching inquiry to statutes that draw classifications aimed at these groups (see, *United States v. Carolene Prods. Co.*, 304 U.S., at 152–153 n. 4, 58 S.Ct. 778, *supra*).

In *Graham v. Richardson*, 403 U.S. 365, 372, 91 S.Ct. 1848, 29 L.Ed.2d 534, *supra*, the Supreme Court held that as a class, aliens are a "prime example of a 'discrete and insular' minority * * * for whom such heightened judicial solicitude is appropriate." Lawful resident aliens benefit our

aliens' eligibility for participating in the political process or holding influential public positions (see, e.g., *Foley v. Connelie*, 435 U.S. 291, 297, 98 S.Ct. 1067, 55 L.Ed.2d 287; *Ambach v. Norwick*, 441 U.S. 68, 75–81, 99 S.Ct. 1589, 60 L.Ed.2d 49; *Boyd v. Nebraska ex rel. Thayer*, 143 U.S. 135, 12 S.Ct. 375, 36 L.Ed. 103; compare, *Sugarman v. Dougall*, 413 U.S. 634, 643, 93 S.Ct. 2842).

14. The State notes only that under title IV, a State choosing "to follow the Federal classification in determining the eligibility of [qualified] aliens for public assistance shall be con-

country in a great many ways. Like citizens, they contribute to our economy, serve in the Armed Forces and pay taxes (see, *Hampton v. Mow Sun Wong*, 426 U.S. 88, 107 n. 30, 96 S.Ct. 1895, 48 L.Ed.2d 495; *In re Griffiths*, 413 U.S., at 722, 93 S.Ct. 2851, *supra*; see generally, Notes, *Constitutional Limitations on the Naturalization Power*, 80 Yale L. Journal 769, 803 [1971]) including, of course, taxes that fund State Medicaid. Nevertheless, aliens may not vote, which has historically inhibited their ability to protect their interests (see, *Nyquist v. Mauclet*, 432 U.S. 1, 12, 97 S.Ct. 2120, 53 L.Ed.2d 63; *Hampton v. Mow Sun Wong*, 426 U.S., at 107, 96 S.Ct. 1895, *supra*; see generally, Chemerinsky, *Constitutional Law: Principles and Policies* § 9.5.2, at 618–619 [1997]; *Notes and Legislation*, 17 N.Y.U. L.Q. Rev. 242, 242–243 [1940]).

[16, 17] The State does not attempt to justify section 122 under a strict scrutiny standard.¹⁴ Nor has it identified any "compelling governmental interest" that section 122 promotes. Instead, the State argues that strict scrutiny does not apply here. It contends that section 122 implements title IV's Federal immigration policy and should therefore be evaluated under the less stringent "rational basis" standard. To address this argument, we must compare State and Congressional

considered to have chosen the *least restrictive means* available for achieving the *compelling governmental interest* of assuring that aliens be self-reliant in accordance with national immigration policy" (see, 8 USC § 1601[7] [emphasis added]). Given our system of separation of powers, a lawmaking body may not legislatively declare that a statute meets constitutional criteria (see, *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, —, 121 S.Ct. 955, 963, 148 L.Ed.2d 866; *City of Boerne v. Flores*, 521 U.S. 507, 519, 117 S.Ct. 2157, 138 L.Ed.2d 624).

legislative authority in the context of immigration and naturalization.

[18, 19] The Constitution empowers Congress to “establish [a] uniform Rule of Naturalization” (U.S. Const., art. I, § 8, cl. [4]), “regulate Commerce with foreign Nations” (U.S. Const., art. I, § 8, cl. [3]), “declare War” (U.S. Const., art. I, § 8, cl. [11]) approve treaties (U.S. Const., art. II, § 2, cl. [2]), and legislate over foreign affairs (*see, Toll v. Moreno*, 458 U.S. 1, 10, 102 S.Ct. 2977, 73 L.Ed.2d 563, *supra*; *Mathews v. Diaz*, 426 U.S., at 81 n. 17, 96 S.Ct. 1883, *supra*). In entertaining challenges to Federal immigration and naturalization statutes, the Supreme Court has interpreted these sources of authority to accord Congress—as distinguished from the States—considerable latitude (*see, Fiallo v. Bell*, 430 U.S. 787, 792–797, 97 S.Ct. 1473, 52 L.Ed.2d 50; *Hampton v. Mow Sun Wong*, 426 U.S., at 100–105, 96 S.Ct. 1895, *supra*; *Kleindienst v. Mandel*, 408 U.S. 753, 765–770, 92 S.Ct. 2576, 33 L.Ed.2d 683; *see generally*, Chemerinsky, *Constitutional Law: Principles and Policies* § 3.5.1, at 204–208, *supra*). The Court has explained that “over no conceivable subject is ¹⁴³the legislative power of Congress more complete” (*Oceanic Steam Nav. Co. v. Stranahan*, 214 U.S. 320, 339, 29 S.Ct. 671, 53 L.Ed. 1013).¹⁵

[20–22] When allocating Federal welfare benefits, the Constitution does not prohibit Congress from distinguishing between aliens and citizens. In *Mathews v. Diaz*, 426 U.S. 67, 69, 77–81, 96 S.Ct. 1883, 48 L.Ed.2d 478, *supra* a group of aliens

challenged a Federal statute that denied aliens Medicare eligibility unless they had been admitted for permanent residence and resided in the United States for at least five years. The Court held that the “decision to share [our] bounty with our guests may take into account the character of the relationship between the alien and this country: Congress may decide that as the alien’s tie grows stronger, so does the strength of his claim to an equal share of that munificence” (*id.* at 80, 96 S.Ct. 1883). Moreover, when Federal welfare programs are jointly administered with the States, Congress may direct the States to implement national immigration objectives as long as the “Federal Government has by *uniform* rule prescribed what it believes to be appropriate standards for the treatment of an alien subclass” (*see, Plyler v. Doe*, 457 U.S., at 219 n. 19, 102 S.Ct. 2382, *supra* [emphasis added]).¹⁶

Relying on these cases, the State argues that section 122 does what title IV has authorized it to do with regard to Federal immigration policy. Plaintiffs contend, however, that the issue is not whether the State has followed the authorization. Rather, it is whether title IV can constitutionally authorize New York to determine for itself the extent to which it will discriminate against legal aliens for State Medicaid eligibility. Plaintiffs argue that it cannot, and we agree.

Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534, *supra* is at the center of our analysis. There, the State of

15. Congress has power to exclude aliens (*see, Chae Chan Ping v. United States*, 130 U.S. 581, 603, 9 S.Ct. 623, 32 L.Ed. 1068) and may “order the deportation of aliens whose presence in the country it deems hurtful” (*see, Bugajewitz v. Adams*, 228 U.S. 585, 592, 33 S.Ct. 607, 57 L.Ed. 978). The States have no like power (*see, Plyler v. Doe*, 457 U.S., at 219 n. 19, 102 S.Ct. 2382, *supra*).

16. The Supreme Court has cautioned, however, that State “regulation not congressionally sanctioned that discriminates against aliens lawfully admitted to the country is impermissible if it imposes additional burdens not contemplated by Congress” (*De Canas v. Bica*, 424 U.S., at 358 n. 6, 96 S.Ct. 933, *supra*; *see also, Toll v. Moreno*, 458 U.S., at 12–13, 102 S.Ct. 2977, *supra*; *Plyler v. Doe*, 457 U.S., at 225–226, 102 S.Ct. 2382, *supra*).

Arizona administered a Federal disability program under Federal guidelines much the same as New York administers Medicaid. Arizona argued that because its 15-year residency period for aliens was impliedly authorized by Federal law, it did not violate the Fourteenth Amendment (see, *Graham v. Richardson*, 403 U.S., at 382, 91 S.Ct. 1848, *supra*). The Supreme Court rejected this contention, holding that a Federal statute authorizing “discriminatory treatment of aliens *at the option of States*” would present “serious constitutional questions” (403 U.S., at 382, 91 S.Ct. 1848 [emphasis added]). The Court recognized that although the Federal government has broad constitutional power to distinguish among aliens in setting the rules for their admission and naturalization, “Congress does not have the power to authorize the individual States to violate the Equal Protection Clause” (see, 403 U.S., at 382, 91 S.Ct. 1848, *supra*). Indeed, the Court went on to state that a “congressional enactment construed so as to permit state legislatures to adopt divergent laws on the subject of citizenship requirements for federally supported welfare programs would appear to contravene this explicit constitutional requirement of uniformity” (see, 403 U.S., at 382, 91 S.Ct. 1848, *supra*).¹⁷

Additional Supreme Court decisions reinforce *Graham’s* requirement for uniformity in immigration policy (see, *Plyler v. Doe*, 457 U.S., at 219 n. 19, 102 S.Ct. 2382, *supra* [(“If the Federal Government has by *uniform* rule prescribed what it believes to be appropriate standards for the

treatment of an alien subclass, the States may, of course, follow the federal direction”] [emphasis added]). Moreover, in *Mathews v. Diaz*, the Court recognized that when it comes to State welfare policy, “there is little, if any, basis for treating persons who are citizens of another State differently from persons who are citizens of another country” (see, *id.*, 426 U.S., at 85, 96 S.Ct. 1883, *supra*). In distinguishing between Federal and State powers, the Court held that a “division by a State of the category of persons who are not citizens of that State into subcategories of United States citizens and aliens has no apparent justification, whereas, a comparable classification by the Federal Government is a routine and normally legitimate part of its business” (see, *Mathews v. Diaz*, 426 U.S., at 85, 96 S.Ct. 1883, *supra*).

Finally, in *Hampton v. Mow Sun Wong*, 426 U.S. 88, 104, 96 S.Ct. 1895, 48 L.Ed.2d 495, *supra*, the Supreme Court drew limits on the power of entities¹⁴³⁵ other than Congress or the President to make alienage classifications in furtherance of Federal immigration policy. In addressing whether Federal agencies could make such classifications for civil service eligibility, the Court concluded that if Congress or the President had created the classification, it could be justifiable as a valid exercise of immigration authority in the national interest (see, *id.*, 426 U.S., at 104, 96 S.Ct. 1895, *supra*). When, however, it came to Federal agencies that did not deal directly with immigration, the Court was not willing to presume they would deliberately

17. The Constitution empowers Congress to “establish [a] *uniform* Rule of Naturalization” (U.S. Const., art. I, § 8, cl. [4] [emphasis added]). The framers of the Constitution did not include the word “uniform” by accident. It was an imperative design. James Madison decried the disorder that resulted from the operation of the Privileges and Immunities Clause of the Articles of Confederation when

each State had its own criteria for citizenship (see, Federalist LXII; see also, 2 Story, Commentaries on the Constitution of the United States § 1103, at 41 [1873]). Although we are not dealing with the Privileges and Immunities Clause of the United States Constitution here, the concern for uniformity is similarly present.

foster national immigration interests, which are “so far removed from [their] normal responsibilities” (*see, id.*, 426 U.S., at 105, 96 S.Ct. 1895, *supra*). Surely this is also true of the States.

Title IV does not impose a *uniform* immigration rule for States to follow. Indeed, it expressly authorizes States to enact laws extending “any State or local public benefit” even to those aliens not lawfully present within the United States (8 USC § 1621[d]). The converse is also true and exacerbates the lack of uniformity: Section 1622(a) provides that, subject to certain exceptions, States are authorized to withhold State Medicaid from even those qualified aliens who are eligible for Federal Medicaid under PRWORA. Thus, in administering their own programs, the States are free to discriminate in either direction—producing not uniformity, but potentially wide variation based on localized or idiosyncratic concepts of largesse, economics and politics. Considering that Congress has conferred upon the States such broad discretionary power to grant or deny aliens State Medicaid, we are unable to conclude that title IV reflects a uniform national policy. If the rule were uniform, each State would carry out the same policy under the mandate of Congress—the only body with authority to set immigration policy.

In exercising its discretion under title IV, New York has chosen to continue Medicaid coverage for any PRUCOL who, as of August 4, 1997, was receiving Medicaid and was either diagnosed with AIDS or residing in certain licensed residential health care facilities. This demonstrates that New York—along with every other State—with Congressional permission is

choosing its own policy with respect to health benefits for resident, indigent legal aliens. Thus, we address this case outside the context of a Congressional command for nationwide uniformity in the scope of Medicaid coverage for indigent aliens as a matter of federal immigration policy.

[23] [3] We conclude that section 122 is subject to—and cannot pass—strict scrutiny, notwithstanding title IV’s authorization. ¹⁴³⁶Because title IV authorizes each State to extend the ineligibility period for Federal Medicaid beyond the mandatory five years (*see*, 8 USC § 1612)¹⁸ and terminate Federal Medicaid eligibility for certain refugees and asylees after seven years (*see*, 8 USC § 1612[b][1], [2][A][i]), it is directly in the teeth of *Graham* insofar as it allows the States to “adopt divergent laws on the subject of citizenship requirements for *federally* supported welfare programs” (*see*, 403 U.S., at 382, 91 S.Ct. 1848, *supra* [emphasis added]). Moreover, title IV goes significantly beyond what the *Graham* Court declared constitutionally questionable. In the name of national immigration policy, it impermissibly authorizes each State to decide whether to disqualify many otherwise eligible aliens from State Medicaid.¹⁹ Section 122 is a product of this authorization. In light of *Graham* and its progeny, title IV can give section 122 no special insulation from strict scrutiny review. Thus, section 122 must be evaluated as any other State statute that classifies based on alienage. We hold that section 122 violates the Equal Protection Clauses of the United States and New York State Constitutions insofar as it denies State Medicaid to otherwise eligible PRUCOLs and lawfully ad-

18. New York has declined this invitation (*see*, Social Services Law § 122[1][b][ii] [adopting the five-year ineligibility period]).

19. To be sure, title IV provides States with some uniform directives (*see, e.g.*, 8 USC § 1613[a], [b]; § 1621[b]; § 1622[b]). These directives, however, do not cure the infirmity before us.

mitted permanent residents based on their status as aliens.

Accordingly, the order of the Appellate Division should be reversed, with costs, and the case remitted to Supreme Court for further proceedings in accordance with this Opinion.

Chief Judge KAYE and Judges SMITH, LEVINE, CIPARICK, WESLEY and GRAFFEO concur.

Order reversed, etc.



96 N.Y.2d 484

1₄₈₄ Sara LEVIN et al., Appellants,

v.

**YESHIVA UNIVERSITY
et al., Respondents.**

Court of Appeals of New York.

July 2, 2001.

Lesbian medical students sued private medical school under State Human Rights Law, and New York City Civil Rights Law, based on school's refusal to permit them to reside in school-owned housing with their respective partners. The Supreme Court, New York County, Franklin R. Weissberg, J., 180 Misc.2d 829, 691 N.Y.S.2d 280, granted school's motion to dismiss. Students appealed. The Supreme Court, Appellate Division, affirmed, 272 A.D.2d 158, 709 N.Y.S.2d 392. After granting permission to appeal, the Court of Appeals, Ciparick, J., held that: (1) school's housing policy, which restricted housing to medical students and their spouses and children, did not on its face discriminate on the basis of marital status, but (2) students' complaint was sufficient to allege a disparate impact on basis of sexual orien-

tation, in violation of New York City Civil Rights Law.

Affirmed as modified.

Smith, J., concurred and filed opinion.

Kaye, C.J., concurred in part and dissented in part and filed opinion.

1. Civil Rights ⇌127.1, 131

Private medical school's housing policy, which restricted school-owned housing to medical students and their spouses and children, did not on its face discriminate on the basis of marital status, as would violate State Human Rights Law, and New York City Human Rights Law. McKinney's Executive Law § 296; New York City Administrative Code, § 8-107(5, 17).

2. Civil Rights ⇌104.1

In applying proscription against discrimination on basis of marital status that is contained in State Human Rights Law, a distinction must be made between the complainant's marital status as such, and the existence of the complainant's disqualifying relationship—or absence thereof—with another person. McKinney's Executive Law § 296.

3. Civil Rights ⇌131

Provision of New York City Human Rights Law which prohibits discrimination against specified groups in the provision of housing accommodations applies to those who provide public or private housing. New York City Administrative Code, § 8-107(5, 17).

4. Civil Rights ⇌128, 131

Claims by lesbian students at private medical school that their applications for school-owned housing that they sought to rent along with their partners had been denied pursuant to school housing policy, which restricted school-owned housing to medical students and their spouses and