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Recent Developments: Ehrlich v. Perez: The Government's Failure to Provide Medical Funding to Resident Alien Children and Pregnant Women, Based Solely on Their Alienage, Was Subject to Strict Scrutiny and Violated Their Rights to Equal Protection

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RECENT DEVELOPMENT

EHRlich V. PEREZ: THE GOVERNMENT'S FAILURE TO PROVIDE MEDICAL FUNDING TO RESIDENT ALIEN CHILDREN AND PREGNANT WOMEN, BASED SOLELY ON THEIR ALIENAGE, WAS SUBJECT TO STRICT SCRUTINY AND VIOLATED THEIR RIGHTS TO EQUAL PROTECTION.

By: Lauren Dodrill

The Court of Appeals of Maryland held that the government's failure to provide medical funding to resident alien children and pregnant women, based solely on their alienage, was subject to strict scrutiny and violated their rights to equal protection. *Ehrlich v. Perez*, 394 Md. 691, 908 A.2d 1220 (2006). The Court found that the State's denial was based solely on their status as aliens and was not suitably tailored to serve a compelling state interest. *Id.* However, the Court deemed an award of retrospective damages inappropriate because a preliminary injunction is meant to preserve the status quo, not to rectify past harms. *Id.*

Appellees ("The Perezes") are resident alien children and pregnant women who immigrated to the United States. Pursuant to Maryland Code section 15-103(a)(2)(viii) of the Health-General Article, the Perezes received medical assistance from the State. However, on April 7, 2005, the General Assembly executed its budget for the fiscal year of 2006, which reflected Governor Robert L. Ehrlich's decision to eliminate this type of medical assistance in an effort to save money for the State. Therefore, in June of 2005, the Perezes received notice from the Department of Health and Mental Hygiene ("DHMH"), alerting them that their current medical benefits would terminate on June 30, 2005. DHMH advised the Perezes to seek medical assistance from other local sources. However, the Perezes were unable to find comparable medical assistance.

The Perezes filed suit in the Circuit Court for Montgomery County against the Governor of Maryland, the State Treasurer, and the Secretary of the Maryland Department of Health and Mental Hygiene ("the State"). The Perezes alleged that the State violated their constitutional rights to equal protection given that the State's denial of

medical assistance was based on their status as aliens and was not tailored suitably to a compelling state interest. The circuit court issued a preliminary injunction, reinstating medical assistance to the Perezes, including retrospective benefits. The State appealed the circuit court's judgment. The Court of Special Appeals of Maryland ordered a stay of the circuit court's decision pending appeal. The Court of Appeals of Maryland, however, issued a writ of certiorari before the Court of Special Appeals could hear this case.

The Court first addressed whether the State's denial of medical assistance to the Perezes based on their status as aliens violated their rights to equal protection under Article 24 of the Maryland Declaration of Rights and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. *Perez*, 394 Md. at 715, 908 A.2d at 1234. The Court noted that the Maryland Constitution and the United States Constitution are "in para materia," meaning that the Court usually reads them as consistent with each other. *Perez*, 394 Md. at 715, 908 A.2d at 1234. The Court stated that, generally, when determining if state action violates equal protection, rational review is applied, and there is a strong presumption of constitutionality. *Id.* at 716, 908 A.2d at 1235. However, if the state action involves a suspect class or a fundamental right, then a higher level of scrutiny, strict scrutiny, is applied. *Id.* at 717, 908 A.2d at 1235.

Grounding its argument on *Matthews v. Diaz*, 426 U.S. 67 (1976) and *Fiallo v. Bell*, 430 U.S. 787 (1977), the State argued that the trial court should have applied relaxed scrutiny pursuant to the Supremacy Clause, alleging that the Perezes' constitutional claims required deference to Congress's far-reaching power to regulate immigration. *Perez*, 394 Md. at 709, 908 A.2d at 1230-31. Essentially, the State argued that Congress' extensive power of regulating immigration also applied to states through the "uniform rule." *Perez*, 394 Md. at 719, 908 A.2d at 1237 n.12 (citing *Soskin v. Reinertson*, 353 F.3d 1242, (10th Cir. 2004)). However, the Court found that no such "uniform rule" applied to the states, holding that "it is the business of the political branches of the Federal Government, rather than that of either the states or the Federal Judiciary, to regulate the conditions of entry and residence of aliens." *Perez*, 394 Md. at 721, 908 A.2d at 1238 (quoting *Matthews v. Diaz*, 426 U.S. at 84).

Furthermore, the Court relied on *Graham v. Richardson*, which determined that alienage is a suspect class, and, therefore, subject to strict scrutiny regardless of whether a fundamental right is impaired.

Perez, 394 Md. at 718, 908 A.2d at 1236 (citing *Graham*, 403 U.S. 365, 376 (1971)). As such, the Court applied strict scrutiny, requiring the classification to be tailored suitably to the State interest. *Perez*, 394 Md. at 731, 908 A.2d at 1243. Ultimately, the Court held that cost savings was not a compelling interest by which the State could justify terminating the Perezes' medical benefits, and, therefore, the Perezes' equal protection rights were violated. *Perez*, 394 Md. at 731, 908 A.2d at 1244 (citing *Shapiro v. Thompson*, 394 U.S. 618 (1969)).

The second issue addressed by the Court of Appeals was whether the circuit court properly awarded retrospective damages to the Perezes by reinstating the medical assistance program in addition to awarding prospective damages from the filing date of the original complaint through the final judgment of this case. *Perez*, 394 Md. at 733, 908 A.2d at 1245. The Court first stated that injunctive relief is designed to remedy future actions that may cause injury, but it is not an instrument created to rectify past harms. *Id.* (citing *El Bey v. Morrish Temple*, 362 Md. 339, 765 A.2d 132 (2001)). The Court further explained that preliminary injunctions are meant to preserve the status quo. *Perez*, 394 Md. at 733, 908 A.2d at 1245 (citing *State Dep't v. Balt. County*, 281 Md. 548, 383 A.2d 51 (1977)).

Based on this precedent, the Court held that the trial court erred in awarding retrospective damages to the Perezes because a "...reinstatement of medical assistance benefits was not a preservation of the status quo." *Perez*, 394 Md. at 734, 908 A.2d at 1246. The court's order was instead an award of past damages designed to be awarded only by a judgment on the merits. *Id.* at 734, 908 A.2d at 1246. However, the Court upheld the part of the circuit court decision that awarded medical assistance benefits to the Perezes from the filing date of their complaint through the final disposition of this case. *Id.* at 735, 908 A.2d at 1246.

The Maryland Court of Appeals has, with this decision, limited state power to regulate immigration. This decision, therefore, has far-reaching implications given that immigration is currently a hot-button issue in Maryland. Essentially, Maryland state government must submit to a higher level of scrutiny than the federal government when addressing issues based on alienage. This is true despite the fact that immigration is an area of great concern within the State where citizens would possibly be in favor of increased state regulation. However, as this case makes clear, any state action based solely on alienage will be subjected to strict scrutiny by the courts. As such, Maryland state

government must heavily consider this ruling when developing policy that encroaches on the rights of immigrants.