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14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 CITY AND COUNTY OF SAN FRANCISCO

17 MATERNAL AND CHILD HEALTH
18 ACCESS,
19 Petitioner,
20 vs.
21 MANAGED RISK MEDICAL
INSURANCE BOARD and CLIFF
ALLENBY, Chair of the Managed Risk
22 Medical Insurance Board,
23 Respondents.

CASE NO. CPF-08-508296

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ISSUANCE OF
PEREMPTORY WRIT OF MANDATE
AND INJUNCTIVE RELIEF**

Hearing Date: _____
Hearing Time: 9:30 a.m.
Judge: The Hon. Patrick J. Mahoney, Presiding
Dept.: 302

INTRODUCTION

1 Because Americans have a fundamental constitutional right to move freely among states, the
2 United States Supreme Court has repeatedly struck down laws that exclude new residents from
3 benefits programs. Yet California bars working poor women from receiving health insurance
4 through the Access for Infants and Mothers (AIM) program during their pregnancies if they
5 have resided in this state for less than six continuous months immediately before applying for
6 AIM . This durational residency classification discriminates against bona fide low-income
7 California residents solely on the basis that they have not lived in the state “long enough”; it
8 therefore violates both the California and United States Constitutions.

9 In 2007, the Legislature sent the Governor a bill to repeal AIM’s durational residency
10 requirement after its attorney, the non-partisan Legislative Counsel, concluded that the
11 requirement is “an impermissible infringement on the right to travel” and “constitute[s] an
12 arbitrary and invidious classification that violates. . .equal protection.” Request for Judicial
13 Notice (RJN) Exhibit (Exh.) 2, p. 6. The Governor, however, vetoed the bill, and so AIM’s
14 illegal eligibility restriction persists.

15 This action is a facial challenge to Insurance Code 12698(a),¹ the statute that sets forth
16 AIM’s durational residency requirement, and to Title 10, California Code of Regulations (CCR),
17 § 2699.200(b)(1)(B), the corresponding regulation. Petitioner Maternal and Child Health
18 Access (MCHA) seeks both a prohibitory writ of mandate and a prohibitory injunction to
19 restrain Respondent Managed Risk Medical Insurance Board (MRMIB), the state agency
20 charged with administering the AIM program, and its Chair from implementing AIM’s
21 unconstitutional six-months in-state residency requirement.

22 Without such prohibitory orders, otherwise eligible medically indigent California women
23 will be unlawfully denied health insurance under AIM . Without insurance, women are more
24 likely to forego medical care that is critical to their own health, to their ability to carry a
25 pregnancy to term and to the well-being of the baby. And if uninsured women do obtain
26 medical care they cannot do without, such as emergency hospital labor and delivery services,
27 they may then face bankrupting debt when forced to bear the cost of medical care on their own.
28 Their children also lose “AIM -linked” eligibility for other important public health insurance
programs during their first two years, impeding access to medical care during this critical time.

¹ All references are to the California Insurance Code unless otherwise indicated.

1 This Court’s intervention is necessary to invalidate AIM’s plainly unconstitutional six-
2 month durational residency requirement.

3 **I. FACTS**

4 **A. The Access for Infants and Mothers Program**

5 AIM provides health insurance for both non-emergency and emergency services to eligible
6 low-income pregnant California residents through publicly-subsidized managed care plans.
7 §§ 12695 *et seq.*; Exh. 1, pp. 3-6. Benefits are not limited to pregnancy-related care, such as
8 prenatal and hospital labor and delivery services; AIM benefits also include preventive care and
9 treatment for cancer, heart disease, brain tumors, broken bones and other injuries sustained in an
10 automobile crash or other accidents, and prescription drugs, among other medical services. *Id.*
11 AIM coverage lasts through 60 days post-partum. § 12698.30(a); 10 CCR § 2699.209(b).

12 To qualify for AIM, a woman must be pregnant. 10 CCR § 2699.200 (b)(1)(A). She must
13 also submit her application no later than the 30th week (about 7½ months) of her pregnancy. 10
14 CCR § 2699.201(d)(1)(H).

15 Respondent MRMIB estimates that AIM’s total annual enrollment during fiscal year 2008-
16 09 will be 13,907 pregnant women. RJN Exh. 3, p.15.

17 **(1) AIM Is A Means-Tested Program.**

18 Only women who lack the economic means to provide for their own health care during
19 pregnancy, and are thus medically indigent, may qualify for AIM. The AIM program has
20 determined that pregnant women with family income at or below 300% of the federal poverty
21 level are medically indigent (§ 12698.05; 10 CCR § 2699.200 (b)(1)(C) and (F)) and can afford
22 to pay no more than 1.5% of their gross household income toward health care (§ 12696.05(d)(1);
23 10 CCR § 2699.400(a)(4)).² A woman will also meet AIM’s means test if she must pay \$500 or
24 more for a separate maternity-only deductible or co-payment under any private health insurance
25 she may have. 10 CCR § 2699.200(b)(1)(G).

26 Families with income in the AIM eligibility range are often referred to as the “working
27 poor,” and their incomes are not keeping pace with increased health insurance costs. Declaration
28 of Dr. Neal Kaufman, M.D., M.P.H., ¶ 20, 7:17-25-28, 8:1-4; ¶ 7:26-28. Low and moderate-

² More specifically, a woman’s family income at the time of her AIM application must be over the limit for free pregnancy-related care under the Medi-Cal program, which is 200% of poverty, but under AIM’s limit of 300%, and she must commit to paying 1.5% of her income to AIM, usually in the form of 12 monthly “subscriber contributions”.

1 income individuals are particularly hard hit by current insurance cost trends, with the uninsured
2 being the hardest hit and unable to pay for other basic necessities of life, such as food, heat and
3 rent, as the result of medical bills and debt. *Id.* at ¶19. “Unanticipated expenses, such as doctors’
4 visits or medicines, of even relatively small amounts can push these families over the financial
5 cliff into economic ruin and homelessness.” *Id.* at ¶ 16, 6:7-10. “Underinsured” low-income
6 families with high deductibles face similar excruciating choices over paying for medical care or
7 other basic necessities. *Id.* at ¶ 20.

8 For working poor women, affording private health insurance is even more daunting than it is
9 for working poor men. *Id.* at ¶ 22. The AIM program helps fill health insurance gaps for
10 eligible working poor women during pregnancy—except for those who are unlawfully excluded.

11 **(2) AIM’s Six-Month In-State Residency Requirement Means Otherwise Eligible**
12 **Pregnant Women Miss Out on AIM Coverage.**

13 To qualify for AIM, a woman must be a resident of California (§ 12698(a); 10 CCR
14 § 2699.200(b)(1)(B)), which AIM defines as “being present in California with intent to remain
15 present except when absent for transitory or temporary purposes.” 10 CCR § 2699.100(u). This
16 lawsuit does not challenge this basic residency requirement.

17 AIM, however, further requires that a woman have been a California resident for at least six
18 continuous months before applying. Subdivision (a) of § 12698, the statute challenged here,
19 states that “[t]o be eligible to participate in [AIM], a person shall. . . [b]e a resident of the state
20 *for at least six continuous months prior to application*” (Emphasis added). The corresponding
21 regulation, also challenged here, requires the applicant to have lived in California “at least six
22 continuous months *immediately prior* to the date of signing the application” (Emphasis added).
23 10 CCR 2699.200(b)(1)(B). On her application for AIM , a pregnant woman must declare and
24 certify: “I am a resident of the State of California and have lived here for at least six continuous
25 months prior to the date of signing this application for enrollment.” Exh. 2, p. A3, Section 4.

26 AIM’s six-month in-state residency requirement means that some pregnant women who are
27 new residents of California are barred from AIM coverage altogether. For example, a woman
28 who moves to this state when she is two months pregnant does not meet AIM ’s durational
residency requirement until six months later. By then, however, at eight months pregnant, she is
not eligible for AIM under the rule that requires a woman to be less than 30 weeks (about 7½
months) pregnant when she applies. Other new residents will only qualify for AIM very late in

1 their pregnancies. For example, a woman who moves to California and becomes pregnant
2 shortly thereafter will not be eligible for AIM until six months into her pregnancy under the
3 durational residency requirement.³

4 **(3) The Children of Otherwise Eligible Pregnant Women Excluded from AIM
Also Miss Out on Health Insurance at a Critical Time.**

5 The newborns of AIM mothers enjoy the special legal status of “AIM -linked infants”
6 (§ 12695.03), meaning that they are “deemed eligible” for one year for Healthy Families
7 (§§ 12693.70(a)(6)(A)(ii), 12693.765), a California health insurance program for children in
8 working poor families. Through deemed eligibility, “AIM -linked infants” automatically qualify
9 for Healthy Families as of the date of birth, with eligibility continuing throughout the first 12
10 months of life (with two limited exceptions). *Id.* Because of this special status, an “AIM -linked”
11 infant retains eligibility even with family income at or over 300% of the poverty line, even
12 though Healthy Families’ usual income eligibility limit is 250% of poverty. Being an “AIM -
13 linked infant” can thus mean the difference between an infant qualifying for Healthy Families or
14 being uninsured during the first year of life. *See*, § 12693.70(a)(6)(B).

14 “AIM -linked” infants are also deemed eligible for Healthy Families *retroactively* to the date
15 of birth. In contrast, infants who are not “AIM -linked”, and who therefore can be enrolled in
16 Healthy Families only through the usual application procedures, receive no retroactive coverage
17 at all. Moreover, their insurance will not start for up to 20 days after the birth and the Healthy
18 Families application date. 10 CCR §§ 2699.6607(a), 2699.6613(a). Thus, if the mother was not
19 in AIM, she can *never* have her newborn covered by Healthy Families *as of the date of birth or*
20 *the days immediately following*. Avoiding gaps in child health insurance is always important,
21 but it may be crucial on the day of birth, as the cost of care for a premature or sick newborn
22 needing neo-natal intensive hospitalization can be astronomical.

21 Finally, an “AIM -linked” child remains eligible for Healthy Families between the ages of
22 one and two years with family income up to 300% of poverty. § 12693.70 (a)(6)(A)(ii). Without
23 this special status, children in families with income of 251% to 300% of poverty cannot qualify
24 for Healthy Families, where, as noted, the usual income eligibility limit is 250% of poverty.

25
26 _____
27 ³ The delay in the woman’s coverage is even longer, as health insurance under AIM does not
28 start for up to 20 days after an application is submitted. 10 CCR §§ 2699.203(a), 2699.209(a).

1 **(4) Uninsured Pregnant Women and Children Are Less Likely to Receive**
2 **Necessary Health Services Than Are the Insured.**

3 Without health insurance, low-income pregnant women and children are more likely to
4 experience delays in accessing necessary medical care, or to be deprived of essential care
5 altogether. Declaration of Jeanne Conry, M.D., Ph.D., ¶¶ 21-22 (pregnant women); Declaration
6 of Robert L. Black, M.D., ¶ 16, 5:19-27, ¶ 17, 6:8-10 and Kaufman Dec., ¶¶ 23-26 (children).
7 Being uninsured or experiencing gaps in coverage also results in the loss of the important
8 medical benefits of “continuity of care,” *i.e.*, having a usual source of care and maintaining an
9 uninterrupted relationship with a doctor or other providers. *See, e.g.*, Black Dec., ¶¶ 12-18 and
10 Kaufman Dec., ¶¶ 27-32. The State concurs with both of these points, observing in its most
11 recent report (2007) on California women’s health:

12 [The] uninsured are less likely than those with health insurance to seek preventive care
13 services, which can result in poor health outcomes and increased health care costs. . .

14 Females of all ages who have a usual source of care. . .are more likely to receive
15 preventive care, to have access to care, to receive continuous care, and to have lower
16 rates of hospitalization and lower health care costs.

17 RJN Exh. 4, pp. 74 and 76. In a similar vein, the Legislature has declared that “[l]ack of
18 insurance coverage for children results in reduced access to medical services, resulting in
19 restricted access to primary and preventive care and increased reliance on emergency rooms and
20 hospitals for treatment. . .” RJN Exh. 5, § 12693(d) (1997 enactment of the Healthy Families).

21 **(5) Delays and Denials of Medical Care for Uninsured Pregnant Women and for**
22 **Children Can Have Serious, Even Life-Threatening Consequences.**

23 The State’s 2007 report on California women’s health also concluded that “[p]renatal care is
24 important for achieving healthy pregnancy outcomes. Early prenatal care tends to reduce the
25 incidence of perinatal illness, disability, and death. . .” RJN, Exh. 4, p. 62. The official
26 *Guidelines* of the American College of Obstetricians and Gynecologists, which set the standards
27 of practice for obstetrical and gynecological care, include early (first trimester) and on-going
28 prenatal care for those very reasons. Conry Dec., ¶¶ 8-12.

 Delays in prenatal care of up to six months or having to forego prenatal care altogether—the
 results for newcomer women under AIM’s six-months-in-state residency rule—can not only
 have serious consequences for a woman’s health but can also mean the difference between a

1 positive and a poor birth outcome. For example, women with one or more chronic medical
2 conditions that require ongoing monitoring and treatment, such as high blood pressure and
3 diabetes, are at increased risk of poor birth outcomes without timely diagnosis and care. *Id.* at ¶
4 18 (d) and (e). Testing for HIV and other sexually transmitted diseases can lead to treatment to
5 prevent infection of the fetus. *Id.* at ¶ 18 (c); *see also*, RJN Exh. 6 (According to the
6 State, “[g]ood prenatal care, use of antiretroviral medications, avoidance of breastfeeding, and
7 elective caesarean section at delivery reduce the risk of perinatal HIV transmission”, but one-
8 third of pregnant California women had not been counseled for HIV, and “[t]argeted
9 interventions [including California women with *income over 200% of poverty*] are needed to
10 reduce barriers to prenatal HIV testing among women”). An ultrasound at a routine prenatal
11 care visit can lead to the diagnosis and treatment of placenta previa, a condition that can cause
12 vaginal bleeding and result in the death of the mother or fetus or both. Conry Dec. at ¶ 18(f).

13 Thus, a woman’s lack of necessary medical care during pregnancy may also increase the risks
14 of life-long disability or even death for her infant. *See also*, Conry Dec., ¶¶ 12,15-17, 18(f).
15 Moreover, children under the age of two years continue to require frequent medical visits for
16 timely immunizations and identification and treatment of developmental delays, potentially
17 serious illnesses and other physical or mental health conditions. Black Dec., ¶¶ 8-11; Kaufman
18 Dec., ¶¶ 24-25, 30-32. The Legislature emphasizes that “[t]imely treatment for infectious and
19 chronic diseases can prevent more serious medical conditions in children of all ages. . .” RJN
20 Exh. 5, § 12693(d). “Without ongoing and regular care, diseases and illnesses that could have
21 been easily treated can turn into much more serious matters. . .The result of such delays in
22 treatment can be catastrophic: very young children can end up in severe pain, very seriously
23 damaged or even dead.” Black Dec., ¶ 23.

24 **(6) Uninsured Working Poor Families Risk Economic Ruin from Medical Debt.**

25 The exclusion of new California residents from AIM and the resulting delays in their
26 children’s enrollment in and even outright exclusion from Healthy Families can also have
27 devastating economic effects. Working poor uninsured families face dire financial straits when
28 forced to divert scarce resources from shelter, food, utilities and other basic needs to pay for
health care. While women cannot be turned away from hospitals for emergency labor and
delivery services, they may still be liable for the costs. And without a source of payment a low-
income women’s very economic survival is threatened by the resulting mountain of debt.

1 As many as half of all personal bankruptcies in the United States are due to medical care
2 costs. Kaufman Dec., ¶ 18, 6:27, 7:1-7. Americans have become increasingly hard pressed to
3 pay their medical bills, with 41% of persons ages 19 to 64 experiencing problems paying
4 medical bills, up from 34% over the two-year period from 2005 to 2007. *Id.*, ¶ 19, 7:8-12.
5 According to the Legislature, “the costs of needed medical care [for a seriously ill or injured
6 child] can force families into financial ruin.” RJN Exh. 5, § 12693(e).

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14 **B. AIM ’s Unconstitutional Durational Residency Requirement Has Been
Retained for Purely Speculative Fiscal Reasons.**

15 In 2007, the Legislature passed Assembly Bill (AB) 1328 to delete the unconstitutional six-
16 month durational residency requirement from the AIM statute challenged here, § 12698(a). RJN
17 8. The Legislative Counsel had advised its client that the requirement is “an impermissible
18 infringement on the right to travel” and “constitute[s] an arbitrary and invidious classification
19 that violates. . .equal protection”. RJN Exh. 2, p. 6; *see also*, RJN Exh. 10, pp. 2-3. The
20 Governor, however, vetoed the bill in October, 2007, stating it would “potentially increase[e]
21 General Fund costs by \$1 million.” RJN Exh. 9.

22 **II. PROCEDURAL BACKGROUND**

23 This action was filed on April 24, 2008, and the First Amended Complaint was filed on May
24 27, 2008. In June, 2008, Petitioner’s counsel was informed that a proposal to repeal AIM’s
25 durational residency requirement from § 12698(a) was to be part of the negotiations over the
26 State’s fiscal year 2008-09 budget. Petitioner therefore refrained from filing this motion during
27 those negotiations. Declaration of Lucy Quacinella, ¶ 2. However, the budget, finalized on
28 September 23, 2008, leaves AIM’s durational residence requirement in place. *Id.* ¶ 3.

ARGUMENT

29 **I. AIM ’s Six-Month Residency Requirement Impermissibly Burdens the Right to Travel,
Which Includes the Right to Establish a Residence in the State of One’s Choosing
Without Being Treated Less Favorably Than a Longer Term Resident.**

30 AIM’s basic residency requirement-- “being present in California with intent to remain
31 present except when absent for transitory or temporary purposes” (10 CCR § 2699.100(u))-- is
32 consistent with the general definition of state residency set forth in Government Code § 244(a)
33 and (f). Petitioner does not challenge AIM’s core state residency requirement. But California
34 cannot lawfully deny AIM’s health coverage benefits to an otherwise eligible woman who is

1 present in the state and who intends to remain here indefinitely, *i.e.*, who is a bona fide state
2 resident, simply because she has not held that status for at least six continuous months
3 immediately before applying to the program.

4 Transferring to a new job in L.A., re-locating to Fresno to be closer to friends after a lay-off
5 or foreclosure, moving back in with parents in San Jose after a bad marriage or a hurricane:
6 these are just a few of the multitude of economic or personal reasons why women may decide to
7 leave another state and move to California for the first time or return to live here. *See, e.g.*, RJN
8 Exh. 10, p. 2. A woman who settled in California in August intending to live here indefinitely is
9 legally as much a resident as one who was born and raised here. Yet AIM denies health
10 insurance to one resident while providing it to the other. This is plainly unconstitutional.

11 Courts have consistently held that differential treatment of new residents through imposing
12 durational residency requirements burdens the freedom to establish residence in the state of
13 one's choosing and thus restricts the fundamental right to travel. Such differential treatment is
14 constitutionally permissible only if it furthers a compelling state interest. AIM's residency rule
15 does not meet that high burden of proof and must therefore be struck down.

16 **A. Interstate Migration Involves a Fundamental Right.**

17 The "freedom to travel throughout the United States has long been recognized as a basic right
18 under the Constitution." *Dunn v. Blumstein* 405 U.S. 330, 338 (1972) (citations omitted.) The
19 United States Supreme Court has repeatedly recognized that the nature of our federal union and
20 constitutional concept of personal liberty "require that all citizens be free to travel throughout
21 the length and breadth of our land uninhibited by statutes, rules, or regulations which
22 unreasonably burden or restrict this movement." *Shapiro v. Thompson*, 394 U.S. 618, 629
23 (1969). The right to freely migrate from one state to another therefore "occupies a position
24 fundamental to the concept of our Federal Union" and "has long been recognized as a basic right
25 under the Constitution." *United States v. Guest*, 383 U.S. 745, 757-58 (1966); *see also, Green v.*
Anderson, 811 F.Supp. 516, 518 (E.D. Cal. 1993) (quoting *Guest*).

26 The Supreme Court has grounded the source of the right to travel in various constitutional
27 provisions.⁴ However, "[w]hatever its origin, the right to migrate is firmly established and has

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⁴ Most recently, in *Saenz v. Roe*, 526 U.S. 489, 500-503 (1999), the Court located aspects of the
right to travel in the Citizenship Clause and the Privileges and Immunities Clause of the
Fourteenth Amendment. The Court explained that the right to travel embraces at least three

1 been repeatedly recognized. . .” *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 903
2 (1986) (citations omitted); *Saenz*, 526 U.S. at 498 (“the constitutional right to travel from one
3 State to another is firmly embedded in our jurisprudence”, quoting *Guest* at 757.)

4 **B. States Must Treat Residents Equally Regardless of the Length of Residency.**

5 Regardless of the textual source of the right to travel, the Court’s analysis has always focused
6 on whether new state residents are treated less favorably than other state residents: “right to
7 travel cases have examined, in equal protection terms, state distinctions between newcomers and
8 longer term residents.” *Zobel v. Williams*, 457 U.S. at 60 n. 6 (citations omitted); *see also*,
9 *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 251 (1974) (identifying “constitutional
10 question presented” as “whether this durational residency requirement is repugnant to the Equal
11 Protection Clause as applied by this Court in *Shapiro*. . .”); *see also*, *Soto-Lopez*, 476 U.S. at
12 904, *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 618 n. 6 (1985).

13 Thus, a state “may not identify a group of current residents as its ‘own’ and seek to advance
14 their interests and address their needs to the detriment of new residents.” *Green v. Anderson*,
15 811 F.Supp. at 522 (citations omitted). Once an individual becomes “a bona fide resident of this
16 state, he or she becomes the state’s ‘own’ to the same extent as a longer-term resident.” *Charles
17 Del Monte v. Pete Wilson*, 1 Cal. 4th 1009, 1020 (1992) (citations omitted).

18 **(1) Courts Analyze Laws on Their Face to Determine Whether Residents Are
19 Treated Differently Based on Length of Residence.**

20 The U.S. Supreme Court has consistently looked at the face of the statute in question to
21 determine whether newcomers are treated differently. The freedom to live in the state of one’s
22 choosing forbids not only actual barriers to interstate migration but also being treated unequally
23 on account of one’s recent migration from another state. *See, e.g., Saenz*, 526 U.S. at 504-505;

24 different components, including the right of interstate travelers who elect to become permanent
25 residents in a new state to be treated like other residents—the right implicated in this case.

26 The Court has also grounded the freedom of interstate travel or migration in the Privileges
27 and Immunities Clause of Article IV (*see, e.g., Zobel v. Williams*, 457 U.S. 55, 73-74 (1982)
28 (O’Connor, J., concurring in judgment) (privileges and immunities analysis “supplies a needed
foundation for many of the ‘right to travel’ claims discussed in the Court’s prior opinions”)); in
the Commerce Clause (*see Edwards v. California*, 314 U.S. 160, 172-74 (1941)); and in the Fifth
Amendment Due Process Clause (*see Kent v. Dulles*, 357 U.S. 116, 125-126 (1958) (“The right
to travel is a part of the ‘liberty’ of which the citizen cannot be deprived without the due process
of law under the Fifth Amendment. . . Freedom of movement is basic in our scheme of values.”))

1 *Soto-Lopez*, 476 U.S. at 903. Attempts to distinguish *Shapiro* by urging that a durational
2 residence requirement... did not deter travel [involve]. . . a fundamental misunderstanding of the
3 law (citation omitted).” *Memorial Hospital*, 415 U.S. 250 at 258.

4 **(2) Differential Treatment of New State Residents Is Consistently Invalidated.**

5 The Supreme Court has consistently struck down state laws and policies that exclude new
6 residents from important state benefits, including medical care. In *Memorial Hospital v.*
7 *Maricopa County*, *supra*, the Court ruled that Arizona’s law excluding new state residents from
8 a non-emergency medical care program for one year impermissibly discriminated solely on the
9 basis of duration of residency. *See generally*, 476 U.S. 250. The Court ruled that such
10 discrimination could be sustained only if the state had a compelling justification; all of
11 Arizona’s reasons were rejected. *Id.* at 262-269. Notably, the *Memorial Hospital* case involved
12 non-emergency medical care; the exclusion at issue here includes not only non-emergency, but
13 also emergency, care for pregnant women.

14 *Memorial Hospital* followed the landmark decision in *Shapiro v. Thompson*, *supra*, which
15 ruled that a durational residency requirement limiting welfare benefits impermissibly burdened
16 the exercise of the right to travel; *see also*, *Green*, 811 F.Supp. at 521. Such durational
17 residency requirements, the *Shapiro* Court explained, create two groups of residents
18 “indistinguishable from each other” except that one is comprised of residents who have been
19 state residents for a longer period of time than the other. 394 U.S. at 627. The Court held that
20 such a classification is unconstitutional “unless shown to be necessary to promote a compelling
21 governmental interest.” *Id.* at 634 (citations omitted); *see also*, *Saenz*, 526 U.S. at 499. To the
22 government’s assertion that it was logical to confer benefits on those who had lived in the state
23 for a longer period, and thus contributed more in past taxes, the Court responded that the
24 justification had no limit, as “this reasoning would logically permit the State to bar new
25 residents from schools, parks, and libraries or deprive them of police and fire protection.”
26 *Shapiro*, 394 U.S. at 632-633.

27 Most recently, in *Saenz v. Roe*, *supra*, the Court invalidated a California statute imposing a
28 durational residency requirement limiting the amount of an individual’s welfare benefits to the
amount payable by the state of the family’s prior residence. In invalidating the statute, the Court
found that “the discriminatory classification is itself a penalty” on the right to be treated equally
in a new state of residence. 526 U.S. at 505.

1 The California Supreme Court applies the same analysis. In *Charles Del Monte v. Pete*
2 *Wilson, supra*, the Court held that the distribution of veterans benefits conditioned on residency
3 at a fixed point in the past violated the federal constitutional right to equal protection under the
4 laws. 1 Cal.4th at 1011. The Court recognized that “the Constitution will not tolerate a state
5 benefit program that ‘creates fixed, permanent distinctions... between... classes of concededly
6 bona fide residents, based on how long they have been in the State.’ ” *Id.* at 1017 (citing *Hooper*
7 *v. Bernalillo County Assessor, supra*, striking down a New Mexico tax exemption law that
8 discriminated against newcomer veterans). The Court explained that permitting the state to
9 apportion benefits to reward longer term residents would unacceptably “ ‘open the door to state
10 apportionment of other rights, benefits, and services according to length of residency.’ ” *Id.* at
11 1016, quoting *Zobel*, 457 U.S. at 64 (striking down an Alaska state oil dividend distribution law
12 that discriminated against newcomers). Relying on *Soto-Lopez, supra*, which invalidated the
13 exclusion of newcomer veterans from New York’s civil service preference, the Court concluded
14 that there was no legitimate justification for limiting benefits—no matter how narrowly—to
15 long-term residents. *Charles Del Monte*, 1 Cal.4th at 1025.⁵

16 **B. AIM ’s Durational Residency Requirement Penalizes the Right to Travel and**
17 **Violates New Residents’ Right to Equal Treatment.**

18 Like the state programs in *Shapiro, Memorial Hospital, Saenz, Hooper, Zobel, Soto-Lopez,*
19 *Charles Del Monte*, and others, AIM uses a classification based on length of residency. The
20 result here is the exclusion of newly arrived working poor pregnant women from insurance for
21 prenatal and other vital medical services. Medical care during pregnancy, especially for women
22 with high risk pregnancies or who are in active labor, may be significantly more urgent than
23 even the non-emergency medical care the Supreme Court held was unconstitutionally denied to
24 new Arizona residents in *Memorial Hospital*. The durational residency requirement in AIM is
25 antithetical to a newcomer’s fundamental right not to be penalized on account of the timing of
26 her migration. Such penalties are particularly suspect when they restrict access to the basic
27 necessities of life. *See e.g., Shapiro, supra; Memorial Hospita, supra; Saenz, supra.*

28 ⁵ Other state courts have also protected newcomers’ right to migrate. *See, e.g., Mitchell v.*
Steffen, 504 N.W.2d 198 (Minn. 1993) (six-month durational residency requirement for full
amount of general relief benefits burdened fundamental right to travel, thereby violating the U.S.
Constitution); *Aumick v. Bane*, 161 Misc.2d 271 (N.Y.Supp. 1994) (same).

1 AIM 's six-month residency requirement creates two groups of residents that are identical
2 except that one group has lived in the state for at least six continuous months immediately
3 before applying for AIM and the other has not. California cannot justify the distinction.

4 **II. California Has No Compelling Justification for Discriminating Against
5 Pregnant Residents Who Have Recently Arrived in the State.**

6 AIM's six-month residency classification, like the long line of similar classifications
7 invalidated by federal and state courts, burdens the fundamental right of interstate movement;
8 therefore, "its constitutionality must be judged by the stricter standard of whether it promotes a
9 compelling state interest." *Shapiro*, 394 U.S. at 638; *see also*, *Memorial Hospital*, 415 U.S. at
10 254 (when a classification "imping[es] on the constitutionally guaranteed right of interstate
11 travel, it [i]s to be judged by the standard of whether it promote[s] a compelling state interest.")
12 Strict scrutiny review means not whether a state can conjure a legitimate purpose for the
13 classification but whether it has a very significant public need that is actually furthered by "the
14 discriminatory means it has chosen." *Saenz*, 526 U.S. at 506.

15 California simply cannot prove that it has a compelling interest to justify a durational
16 residency restriction that penalizes an entire class of pregnant newcomer residents. Respondents
17 must meet the heavy burden of showing that in pursuing state objectives, they have chosen
18 means that are valid and do not unnecessarily impinge constitutionally protected interests. This
19 they cannot do.

20 California's Governor stated that his *only* reason for vetoing AB 1328, the measure that
21 would have repealed AIM's unconstitutional durational residency requirement from state law,
22 was to avoid "*potentially* increasing General Fund costs by \$1 million" (Emphasis added). RJN,
23 Exh. 9. This utterly speculative statement is at odds with the findings of the Institute of
24 Medicine and other researchers that for every dollar spent on prenatal care, net savings of \$3.38
25 or more are achieved from reduced medical care for infants. Conry Dec., ¶ 23. And even were
26 the AB 1328 veto message not speculative, it would remain a classically inadequate basis for
27 treating new residents in a hostile fashion. *See Shapiro*, 394 U.S. at 633 (The State's "valid
28 interest in preserving the fiscal integrity of its programs" cannot be accomplished by "invidious
distinctions between classes of its citizens"); *Memorial Hospital*, 415 U.S. at 263 ("A State may
not protect the public fisc by drawing an invidious distinction between classes of citizen
[citation omitted] so [respondents] must do more than show that denying free medical care to

1 new residents saves money”); *Green*, 811 F.Supp. at 522 (“The Supreme Court has never upheld
2 a durational residency requirement whose sole justification was the State’s desire to conserve its
3 resources.”) Related justifications for durational residency requirements are also insufficient to
4 sustain discrimination against newcomers: preventing the migration of indigents, protecting
5 long-term residents for their past contributions, sustaining the political viability of its programs,
6 as measures of bona fide residence, to prevent fraud, and to ensure budget predictability. *See*,
e.g., *Shapiro*, 394 U.S. at 631-638, *Memorial Hospital*, 415 U.S. at 266-268.

7 In short, California simply has no legitimate justification—much less a compelling one-- for
8 discriminating against pregnant new residents by denying them vital health coverage under AIM
9 solely on the basis of their length of bona fide state residency.

10 **III. Petitioner Is Entitled to a Writ of Mandate Under CCP §1085 to Ensure that
11 Respondents Treat New State Residents Equally Under the AIM Program.**

12 This Court is authorized to issue a writ of mandate to compel Respondents to follow the law.
13 Code of Civil Procedure (CCP) §1085. "Generally a writ will lie when there is no plain, speedy,
14 and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a
15 clear and beneficial right to performance." *Payne v. Superior Court*, 17 Cal.3d 908, 925 (1976).
16 Petitioners must show a clear and ministerial duty on the part of the respondents, and a
17 beneficial right to the performance. *Bell. v. California State and Consumer Services Agency*, 225
18 Cal.App.3d 107,118 (1990).

19 There can be no question that Respondents have a clear duty is to obey both the U.S. and
20 California Constitutions. Nor is there any question that both the federal and state Constitutions
21 require Respondents to treat AIM applicants who are bona fide state residents equally, without
22 regard to whether they have established state residency for six months. Petitioner is therefore
23 entitled to issuance of the writ. For the same reasons, permanent injunctive relief is also
24 appropriate. *Camp v. Board of Supervisors*, 123 Cal.App.3d 334, 355-57 (1981).

25 Where mandatory provisions "affecting the well-being—perhaps the very survival—of
26 citizens of this state are being violated with impunity. . .the courts, as final interpreters of the
27 law, must intervene to enforce compliance." *City and County of San Francisco, v. Superior
28 Court*, 57 Cal.App.3d 44, 50 (1976); *see also, Boehm v. Superior Court*, 178 Cal.App.3d 494,
500 (1986). The need for such intervention is indeed great in the case of an uninsured pregnant

1 woman needing access to medical care to protect her own health, as well as that of her
2 developing fetus, and to prevent disability and even death.

3 **CONCLUSION**

4 AIM 's durational residency requirement impermissibly discriminates against the class of new
5 pregnant residents. The U.S. and California Supreme Courts have consistently struck down state
6 laws that were similarly hostile to newcomers. Because AIM's classification penalizes the
7 fundamental right of interstate migration, Respondents MRMIB and its Chair must show that the
8 penalty is necessary to promote a compelling state interest. Virtually all state objectives asserted
9 in past cases—including preserving the public fisc—have been rejected as impermissible.
10 AIM 's durational residency requirement is likewise unconstitutional, and Petitioner is entitled to
11 issuance of a writ of mandate and permanent injunctive relief prohibiting Respondents from
12 discriminating against bona fide state residents who have not resided in California for at least six
13 months at the time they apply for AIM.

14 Dated: _____, 2008

15 Respectfully submitted:

16 _____
17 Lucy Quacinella, Esq.
18 American Civil Liberties Union Foundation
19 of Northern California
20 Bay Area Legal Aid
21 Lawyers' Committee for Civil Rights
22 of the San Francisco Bay Area

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