

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SUNNARUN KEO, et al.,)	
)	
Plaintiffs)	
)	
v.)	
)	
H. ROLLIN IVES, et al.,)	
)	
Defendants and)	
Third-Party)	
Plaintiffs)	Civil No. 90-0051 P
)	
v.)	
)	
LOUIS W. SULLIVAN, M.D.,)	
Secretary, United States)	
Department of Health &)	
Human Services,)	
)	
Third-Party)	
Defendant)	

**MEMORANDUM DECISION ON MOTIONS FOR RECONSIDERATION
AND FOR LEAVE TO FILE AMENDED COMPLAINT**

The plaintiffs in this class action¹ request leave under Fed. R. Civ. P. 15(a) to amend their complaint to add a claim challenging the validity of Maine's implementation of the Job Opportunities and Basic Skills Training ("JOBS") program. In their original complaint, filed February 26, 1990, the plaintiffs questioned the legality of Maine's operation of the Additional Support for People in

¹ The state defendants do not controvert the plaintiffs' class-action allegations. Complaint §§ 12-18; Defendants' Answer §§ 2-5.

Retraining and Education ("ASPIRE") program. JOBS superseded ASPIRE as of October 1990. See Memorandum in Support of Motion for Leave to File Amended Complaint ("Plaintiffs' Memorandum") at 1-2. The plaintiffs contend that JOBS violates federal law in the same manner as did ASPIRE. See *id.* at 2. In January 1991 I granted the plaintiffs' motion to amend their complaint over the objection of third-party defendant Louis W. Sullivan, secretary of the United States Department of Health and Human Services ("HHS"). See Endorsement dated 1/2/91 to Motion for Leave to File Amended Complaint. The Secretary moved for reconsideration on the basis of inadequate opportunity to respond to new claims raised by the plaintiffs' reply memorandum. See Motion of Third-Party Defendant Sullivan for Reconsideration of Court Order Granting Plaintiffs' Motion to Amend and for Dismissal on Grounds of Mootness. I hereby grant the Secretary's motion for reconsideration, vacating my earlier order allowing the plaintiffs leave to amend. Upon reconsideration I now deny the plaintiffs' motion to amend.

I. LEGAL ANALYSIS

Fed. R. Civ. P. 15(a) commands that "leave [to amend] shall be freely given when justice so requires." Courts should allow plaintiffs to test claims on the merits "[i]f the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief" *Foman v. Davis*, 371 U.S. 178, 182 (1962). On the other hand, courts may deny leave to amend if the change "clearly is frivolous or advances a claim or defense that is legally insufficient on its face" 6 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* ' 1487 at 637 (1990). The plaintiffs' proposed amended complaint presents such a claim.

The Secretary argues, and I agree, that the JOBS claim is not justiciable. As the Secretary observes, the proposed amended complaint is barren of any assertion of injury to a named plaintiff at

the hands of JOBS. Memorandum of Third-Party Defendant Sullivan in Support of Suggestion of Mootness and in Opposition to Motions to Intervene and Motion for Leave to File Amended Complaint at 9. The proposed complaint thus appears on its face to indicate lack of standing. *See, e.g., Duke Power Co. v. Carolina Env'tl. Study Group, Inc.*, 438 U.S. 59, 72 (1978) (litigant must have "personal stake" in outcome, meaning injury fairly traceable to challenged conduct). The plaintiffs attempt to meet the force of the Secretary's argument by conceptualizing ASPIRE and JOBS as a seamless web of job-training programs. The plaintiffs observe that ASPIRE and JOBS (1) share the same basic structure, Plaintiffs' Memorandum at 2, (2) function identically from beneficiaries' point of view, Memorandum in Opposition to Third-Party Defendant's Motion for Reconsideration ("Plaintiffs' Reconsideration Memorandum") at 2, and (3) each violate a federal requirement of administration by a single state agency, *id.*

Despite these similarities ASPIRE and JOBS are not interchangeable for purposes of this litigation. Inasmuch as appears, the plaintiffs complain about the administration of ASPIRE largely because it diverted so-called AFDC "special needs" funds. *See* Complaint & 1. Under JOBS, states may no longer allocate special-needs funds for expenses ancillary to job training, such as child care. *See, e.g.,* 45 C.F.R. ' 233.20(2)(v)(B)(2). Such ancillary expenses are now funded through a separate program. *See, e.g.,* 54 Fed. Reg. 42233 (1989). Hence, it is not clear that the allegedly illegal administration of JOBS injures the plaintiff class. Nor is it clear that the recoupment of illegally expended funds would afford the class relief, in that federal law no longer permits expenditure of the funds in the manner the plaintiffs desire. Further, as the plaintiffs concede, the Maine legislature is considering legislation that would consolidate administration of JOBS in DHS. *See* Plaintiffs' Reconsideration Memorandum at 1. The plaintiffs expect this bill to pass, mooting this action. *Id.* at

2. The proposed claim therefore appears on its face to be unripe. It should be brought if and when administration of JOBS injures the plaintiffs in a concrete manner for which relief may be afforded.

II. CONCLUSION

For the foregoing reasons, the plaintiffs' motion to amend is upon reconsideration **DENIED**.

Dated at Portland, Maine this 3rd day of April, 1991.

David M. Cohen
United States Magistrate Judge