CONFIDENTIAL
ATTORNEY WORK PRODUCT

STATE OF MAINE
OFFICE OF ATTORNEY GENERAL

MEMORANDUM

6 State House Station
Augusta, ME 04333-0006

Telephone 626-8800
FAX 626-8828

****

To: Dori Harnett, Assistant Attorney General
Thomas Quinn, Assistant Attorney General

From: Justin B. Barnard, Assistant Attorney General

Date: December 26, 2013

Subject: Equal Protection Implications of Citizenship-Related Changes to General Assistance Eligibility Regulations

****

This memorandum is intended to briefly and informally summarize my views on the federal Equal Protection Clause implications of the recent proposed changes to Maine's General Assistance eligibility regulations. My views are informed almost exclusively by past research on related subjects; I have not performed any new case law research. As discussed below, I believe that there is a high likelihood that the proposed changes would violate the Equal Protection Clause, notwithstanding the apparent discretion granted to the States by the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA").

Overview of the General Assistance Changes

The Department describes the proposed changes to the General Assistance eligibility regulations (found at 10-144 C.M.R. ch. 323, section V) as an effort to "align Maine's General Assistance citizenship eligibility requirements with those applicable to legal non-citizens who are covered under other federal and state funded programs such as Temporary Assistance for Needy Families (TANF) and the Maine Food Supplement (SNAP) program." The effect is quite simple. Currently, General Assistance eligibility for legal noncitizens residing in Maine is determined without reference to citizenship status. The proposed rule would impose on most[1] legal noncitizens the more restrictive, citizenship-based eligibility restrictions that apply to federal programs, but would not change or restrict the eligibility of citizens for General Assistance in any way.

[1] The proposed rule imports the citizenship eligibility provisions from Maine's SNAP and TANF rules, which extend state-funded benefits to some narrow classes of federally ineligible aliens (e.g., the disabled or elderly). Thus, the effect of the proposed rule would not be as sweeping as would be the case if Maine adopted the federal eligibility provisions outright.

The relevant language is as follows:

> NONFINANCIAL ELIGIBILITY FACTORS: Citizenship Status:
> Individuals who are not eligible for federal or state TANF or SNAP benefits due to citizenship status are not eligible for General Assistance.
>
> To determine eligibility for TANF or SNAP benefits, ~~s~~See:
>
> Maine Food Supplement Certification Manual, 10-144 CMR, Ch. 301, FS-111-2 and FS-444-1; or
>
> Maine Public Assistance Manual, 10-144 CMR, ~~332~~, Ch. 331, Ch. II, beginning on page 3 and Ch. VII, beginning on page 9;
>
> for state-funded and federal eligibility factors.

Note that, while there are many similarities between the eligibility standards that apply to TANF and those that apply to SNAP, federal law imposes only a five-year mandatory bar on qualified alien eligibility for TANF, *see* 8 U.S.C. §§ 1612(b), 1613(a), but entirely bars most qualified aliens from the SNAP program, *see id.* § 1612(a). Presumably, given the disjunctive language in the proposed amendments, most qualified aliens who do not fall within an exception would only be excluded from General Assistance for five years from time of entry (applying the more lax TANF standards).

Relevant Provisions of PRWORA

In the *Bruns* case, we have been dealing with the provisions of PRWORA that apply to federal public benefits programs. PRWORA also includes an entire subchapter relating to state and local benefits programs. Two provisions are relevant here.

First, 8 U.S.C. § 1622 provides that, subject to certain exceptions, "a State is authorized to determine the eligibility for any State public benefits of an alien who is a qualified alien . . ., a nonimmigrant under the Immigration and Nationality Act, or an alien who is paroled into the United States under section 212(d)(5) of such Act for less than one year." *Id.* § 1622(a). Thus, as a general matter, Congress intended to give states discretion as to coverage of noncitizens in state public benefits programs.

Second, 8 U.S.C. § 1624 basically reiterates the same principle, with some amplification, for state and local general assistance programs. It provides that "a State or political subdivision of a State is authorized to prohibit or otherwise limit or restrict the eligibility of aliens or classes of aliens for programs of general cash public assistance furnished under the law of the State or a political subdivision of a State," *id.* § 1624(a), so long as such limitations are no more severe than the limitations imposed on comparable federal programs, *id.* § 1624(b).

Equal Protection Analysis

As set forth above, we have (a) a proposed rule that would treat noncitizens differently and less favorably than citizens with respect to eligibility for General Assistance benefits and (b) a federal statute that purports to authorize such disparate treatment. The question, then, is whether a state may, with Congressional authorization, treat noncitizens differently from citizens with respect to state-only benefits. The relevant Constitutional principles, in outline form, are as follows:

(1) States generally may not enact laws that subject individuals to disparate treatment on the basis of alienage. *Graham v. Richardson*, 403 U.S. 365 (1971). Strict scrutiny applies to state laws that make alienage-based distinctions.

(2) The federal government may, pursuant to its broad authority over immigration and naturalization, enact laws establishing different rules for aliens than those that apply to citizens. *Mathews v. Diaz*, 426 U.S. 67 (1976). Rational basis review applies to federal laws that make alienage-based distinctions.

(3) A state may treat aliens differently than citizens where it does so pursuant to a uniform federal immigration rule. *Plyler v. Doe*, 457 U.S. 202, 219 n. 19 (1982) ("[I]f 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")

(4) BUT: Other than through a uniform rule, "Congress does not have the power to authorize the individual States to violate the Equal Protection Clause." *Graham v. Richardson*, 403 U.S. 365, 382 (1971).

Based on this last principle, I do not believe that PRWORA's purported grant of discretion to the States to limit alien eligibility for general assistance would immunize Maine's law from an Equal Protection challenge. I am unaware of any cases upholding a state-only program that serves citizens but excludes noncitizens. *Cf. Aliessa ex rel. Fayad v. Novello*, 754 N.E.2d 1085 (N.Y. Ct. App. 2001) (applying strict scrutiny to law applying PRWORA's eligibility standards to exclude aliens from state medical assistance program that continued to serve citizens).