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Jurisdiction	ILLINOIS SUPREME COURT - STATE
District	District 1
Plaintiff/Petitioner/ Appellant/Movant Last Name/Company	ILLINOIS COLLABORATION ON YOUTH ET AL
Defendant/Respondent/Appellee Last Name/Company	DIMAS ET AL

List of documents filed

Doc Ref #	Document Name	Document Type	Filed Under Seal	Comments
1	2016-10-20 petition for direct appeal.pdf	MOTION	No	MOTION FOR DIRECT APPEAL PURSUANT TO SUPREME COURT RULE 302(B) and SUPPORTING RECORD

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No. _____

IN THE
SUPREME COURT OF ILLINOIS

ILLINOIS COLLABORATION ON YOUTH, ACCESS LIVING, ADDUS HEALTHCARE INC., AIDS FOUNDATION OF CHICAGO ALTERNATIVES, INC., CARITAS FAMILY SOLUTIONS, CENTER FOR HOUSING AND HEALTH, CHADDOCK, CHICAGO COMMONS, CHILDREN'S HOME + AID, COMMUNITY YOUTH NETWORK, INC., CONNECTIONS FOR THE HOMELESS, COUNTY OF UNION, ILLINOIS DUPAGE YOUTH SERVICES COALITION FAMILY ALLIANCE, INC., FAMILY FOCUS, FOX VALLEY OLDER ADULT SERVICES, HAVEN YOUTH AND FAMILY SERVICES, HEARTLAND HUMAN CARE SERVICES, HOUSING OPPORTUNITIES FOR WOMEN, ILLINOIS COALITION AGAINST SEXUAL ASSAULT, INDIAN OAKS ACADEMY, INSPIRATION CORPORATION, INTERFAITH HOUSING DEVELOPMENT CORPORATION, JEWISH CHILD AND FAMILY SERVICES, JEWISH VOCATIONAL SERVICES, KEMMERER VILLAGE, LA CASA NORTE, LESSIE BATES DAVIS NEIGHBORHOOD HOUSE, LUTHERAN CHILD AND FAMILY SERVICES, MEDICAL GEAR LLC, METROPOLITAN FAMILY SERVICES, NEW AGE ELDER CARE, NEW MOMS, NEXUS, OMNI YOUTH SERVICES, ONE HOPE UNITED, OUNCE OF PREVENTION FUND, POLISH AMERICAN ASSOCIATION, PROJECT OZ, PUBLIC ACTION TO DELIVER SHELTER, INC., PUERTO RICAN CULTURAL CENTER, RAMP, INC., RIVER TO RIVER SENIOR SERVICES, SENIOR HELPERS, SENIOR SERVICES PLUS, SHELTER, INC., STEPHENSON COUNTY HEALTH DEPARTMENT, STEPPING STONES OF ROCKFORD TEEN LIVING PROGRAMS, THE BABY FOLD, THE CENTER FOR YOUTH AND FAMILY SOLUTIONS, THE FELLOWSHIP HOUSE THE HARBOUR, THE NIGHT MINISTRY, TREATMENT ALTERNATIVES FOR SAFE	Motion for Direct Appeal Pursuant to Supreme Court Rule 302(b) On appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 16-CH-6172, to the Appellate Court of Illinois, First Judicial District, No. 1-16-2471. The Honorable RODOLFO GARCIA, Judge Presiding.

COMMUNITIES, UNITY PARENTING AND COUNSELING, UNIVERSAL FAMILY CONNECTION, WESTERN ILLINOIS MANAGED HOME SERVICES, WHITESIDE COUNTY HEALTH DEPARTMENT, YOUTH OUTREACH SERVICES,	)
Plaintiffs-Appellants,	)
v.	)
JAMES DIMAS, SECRETARY OF THE ILLINOIS DEPARTMENT OF HUMAN SERVICES, in his official capacity, JEAN BOHNHOFF, ACTING DIRECTOR OF THE ILLINOIS DEPARTMENT ON AGING, in her official capacity, NIRAV SHAH, DIRECTOR OF THE ILLINOIS DEPARTMENT OF PUBLIC HEALTH, in his official capacity, and FELICIA NORWOOD, DIRECTOR OF THE ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES, in her official capacity, JOHN R. BALDWIN, DIRECTOR OF THE ILLINOIS DEPARTMENT OF CORRECTIONS, in his official capacity, MICHAEL HOFFMAN, ACTING DIRECTOR OF THE ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES, in his official capacity, AUDRA HAMERNIK, EXECUTIVE DIRECTOR OF THE ILLINOIS HOUSING DEVELOPMENT AUTHORITY, in her official capacity, LESLIE GEISSLER MUNGER, COMPTROLLER FOR THE STATE OF ILLINOIS, in her official capacity, and BRUCE RAUNER, GOVERNOR OF ILLINOIS, in his official capacity,	)
Defendants-Appellees.	)

MOTION FOR DIRECT APPEAL PURSUANT TO SUPREME COURT RULE 302(B)

Introduction

The Plaintiffs-Appellants hereby move the Court to hear this case on direct appeal pursuant to Supreme Court Rule 302(b) because this case concerns an utter breakdown of government that is causing grave harm to the State's social services infrastructure, among other emergencies, across Illinois. The Plaintiffs are all social service providers who were contracted

by the State to provide services in fiscal year 2016, but who were not paid for those services throughout fiscal year 2016. The Plaintiffs were not paid as a result of the Defendants' *ultra vires* actions, which include the failure to properly conduct the State government, the impairment of the obligation of the State's contracts, and the breach of Plaintiffs' constitutional rights to due process and equal protection of the law under the Illinois Constitution. Though the Defendant Governor and his department heads contracted with the Plaintiffs to provide social services in fiscal year 2016, the Governor repeatedly vetoed appropriations passed by the General Assembly that would have allowed payment for those services. Then, on June 30, 2016, the last day of fiscal year 2016, the General Assembly and the Governor finally agreed on a so-called "Stop Gap Spending Bill" that provided partial, but insufficient, appropriations for the services provided by Plaintiffs in fiscal year 2016 and the first six months of fiscal year 2017. This Stop Gap Spending Bill impaired the obligation of the Plaintiffs' contracts by denying or abridging their right to a legal remedy for the Defendants' breach. It also denied them due process and equal protection by improperly giving the Defendants unlimited discretion regarding how and when to spend insufficient appropriations, and which contractors would be paid for their work. Finally, even to the extent the Defendants used those appropriations to pay Plaintiffs in the intervening months, the result will only be to place Plaintiffs in the same position for their contracts for fiscal year 2017.

Defendants argued for dismissal of Plaintiffs' claims on the basis of a misreading of this Court's opinion in *State (Department of Central Management Services) v. AFSCME, Council 31*, 2016 IL 118422 (hereinafter *State (CMS) v. AFSCME*). The trial court dismissed Plaintiffs' claims on the grounds that the question required resolution of the meaning of that opinion by a higher court. Plaintiffs therefore seek a direct appeal to this Court in order to resolve the meaning

of its previous decision because it is necessary to do so in order to answer pressing questions that go to the very heart of how the State government should function during the ongoing budget crisis created by the other branches.

I. Statement of Facts

As this case was decided on a motion to dismiss, the Court must accept the well-pleaded allegations of the Plaintiffs' Third Amended Complaint as true. The Plaintiffs have compiled a partial record for purposes of presenting this petition, which consists of the Third Amended Complaint, the briefing on the Plaintiffs' Motion for a Preliminary Injunction and the Defendants' Motion to Dismiss, a partial transcript of the oral argument on those motions, and the Circuit Court's order dismissing the case. Plaintiffs have not included the Exhibits to the Third Amended Complaint, which are voluminous, but are prepared to provide them upon request.

The State of Illinois outsources delivery of most state-supported human services to plaintiffs and similar organizations. As set out in the Third Amended Complaint, the plaintiffs in the trial court were 98 of the organizations that deliver human services to Illinois citizens in need. R. 3, ¶ 1. Of the 98 plaintiffs, 61 are party to this appeal. Plaintiffs deliver every kind of state-funded human service. They had and have contracts with the Department of Human Services, Department on Aging, Department of Public Health, Department of Healthcare and Family Services, Department of Corrections, and the Department of Central Management Services. R. 5-7, ¶¶ 5-19; R. 9, ¶ 41.

On February 18, 2015, the defendant Governor submitted to the General Assembly a proposed budget for fiscal year 2016, starting on July 1, 2015. R. 8, ¶ 29. The defendant Governor's proposed budget provided for funding of most, if not all, of the services covered by

the contracts that the defendant state officers later entered with the respective plaintiffs. R. 8, ¶ 30.

In May 2015, the General Assembly passed a number of appropriations bills that authorized the expenditure of money to pay plaintiffs for the contracts with defendants in either the same, or differing but comparable, amounts to those proposed by the defendant Governor. R. 8, ¶ 31. The General Assembly sent the appropriations bills to the Governor in late June 2015. R. 9, ¶ 34. No further action by the Governor—or signature or consent—was necessary for the amounts appropriated by the General Assembly to become law. R. 9, ¶ 36.

On June 25, 2015, the Governor vetoed all of the relevant appropriation bills. R. 9, ¶ 37. The Governor's veto included funding that he himself had planned for these services. R. 9, ¶ 38. At various times before and after the veto, the defendant directors induced plaintiffs to enter contracts to provide the services. R. 9, ¶ 39. After the Governor's veto on June 25, 2015, the defendant directors at various times accepted and returned the plaintiffs' contracts and enforced them through the end of fiscal year 2016. R. 9, ¶ 44.

The defendant directors never proposed or took any action to suspend or terminate the contracts signed by plaintiffs for lack of an appropriation by the General Assembly or for any other reason. R. 10, ¶ 45. Many of the contracts, which are form contracts, have a clause like Section 4.1 of Exhibit A to the Third Amended Complaint, which states:

> This contract is contingent upon and subject to the availability of funds. The State, at its sole option, may terminate or suspend this contract, in whole or in part, without penalty or further payment being required, if (1) the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason, (2) the Governor decreases the Department's funding by reserving some or all of the Department's appropriation(s) pursuant to power delegated to the Governor by the Illinois General Assembly: or (3) the Department determines, in its sole discretion or as directed by

> the Office of the Governor, that a reduction is necessary or advisable based upon actual or projected budgetary considerations. Contractor will be notified in writing of the failure of appropriation or of a reduction or decrease.

R. 10, ¶ 46. Defendants never invoked these rights, but continued the contracts in effect. R. 10, ¶ 47.

At the same time, the plaintiffs were not readily able to withdraw from these contracts. R. 10, ¶ 48. First, contracts that allowed the plaintiffs to withdraw generally required the plaintiffs to give 30 days' notice, and in doing so, such plaintiffs would have been among those least likely ever to be paid. R. 10, ¶ 49. Furthermore, the plaintiffs might face liability to their service populations if they abruptly withdrew even with 30 days' notice. R. 10, ¶ 50. Plaintiffs also feared reprisal if they withdrew and the loss of funding not only from the defendants but from foundations and other funders for carrying out their missions. R. 11, ¶ 51. Furthermore, the defendant directors do not dispute that the plaintiffs should receive payment for these services during fiscal year 2016. R. 11, ¶ 52. Nonetheless, except in instances where payment was required by some other court order or federal funds were available, plaintiffs received no funding for the services they rendered in fiscal year 2016 at any point during the fiscal year. R. 11, ¶ 53.

None of this harm was necessary regardless of any political dispute between the Governor and the General Assembly, since the existences of these obligations to plaintiffs was never questioned or challenged or denied by the Governor or General Assembly. R. 12, ¶ 59. The Governor had the option under the Illinois Constitution to exercise a line-item veto to block only expenditures unrelated to the obligations which the defendants have acknowledged with respect to plaintiffs. R. 12, ¶ 60. Nonetheless, the Governor used his legislative power of veto to block the funding of the contracts that he and his subordinates had entered. R. 12, ¶ 61.

On June 10, 2016, as the fiscal year 2016 drew to a close, the Governor again—for a second time—vetoed the full funding of the plaintiffs' contracts which had now been almost fully performed. R. 12, ¶ 62. On April 13, 2016, the General Assembly had passed SB 2046 which approved appropriations for virtually all of Plaintiffs' contracts. R. 12, ¶ 63. On April 14, 2016, the General Assembly sent SB 2046 to the Governor. R. 12, ¶ 65. On June 10, 2016, the Governor vetoed SB 2046 in its entirety. R. 12, ¶ 66. As in the previous veto of June 25, 2015, the Governor did not use the amendatory veto, or line item veto to allow the funding of the contracts that he and his designates have entered and enforced. R. 12, ¶ 67. The Governor took this action to block the funding of the contracts although by June 10, 2016, the Governor and other defendants had already received the benefit of the performance of these contracts. R. 13, ¶ 68.

On June 30, 2016, the General Assembly passed and the defendant Governor signed Public Act 99-524, popularly known as the "Stop Gap Spending Bill" or "Stop Gap Budget." R. 13, ¶ 69. Public Act 99-524 does not purport to be a budget within the meaning of Article VIII of the Constitution—and is better described as providing interim funding in light of the impasse between the Governor and General Assembly as to an actual budget for fiscal year 2016. R. 13, ¶ 70. In particular, Public Act 99-524 has very little money *explicitly* for the contracts at issue in this case. R. 13, ¶ 71. For example, there are no funds explicitly appropriated by Public Act 99-524 for the contracts plaintiffs have with the Department on Aging for fiscal year 2016. R. 13, ¶ 72.

Article 74 of Public Act 99-524 says that appropriations in Articles 75 through 225 are appropriated for use in the first six months of fiscal year 2017, but may be used to pay prior year costs. R. 13, ¶ 73. Whether that money is so used is within the discretion of the defendant

agencies. R. 13, ¶ 74. Public Act 99-524 also has various lump sum amounts to be used by the Department of Aging, the Department of Corrections and other agencies, which is also to be spent according to Defendants' discretion. R. 13, ¶ 75.

Furthermore, instead of requiring plaintiffs to be paid out of general revenue as typically occurred in the past, Public Act 99-524 limits payments out of specific funds. R. 13, ¶ 76. There are dozens of such funds, and vouchers were held up for months by the defendant state agencies' need to code them to the specific funds. R. 14, ¶ 77. While the news media give figures of the stop gap budget covering 50 percent or some other percent of the obligations for both fiscal year 2016 and 2017, the defendants could choose without any standard or criteria to pay nothing, 10 percent, 20 percent, or other amount for services already rendered. R. 14, ¶ 82.

Defendants took the position through fiscal year 2016 and in this litigation that the Governor's veto of the appropriations for these contracts barred them from paying plaintiffs for services rendered under these contracts. R. 11, ¶ 56. As a result of this unorthodox manner of conducting public business, plaintiffs had to use up lines of credit, lay off professional and other staff, cut back programs and suffer a loss or degrading of their capabilities as service organizations. R. 11, ¶ 57. Nonetheless, the defendants took the position that they could lawfully conduct the public business in this manner without appropriations to fund these contracts, and inflict such damage upon plaintiffs and leave plaintiffs to pursue such remedies as they might have in the Court of Claims. R. 11, ¶ 58.

The impact on the plaintiffs of the defendants' non-payment in fiscal year 2016 was tremendous, and has not been entirely remedied by subsequent payments made since the passage of the Stop Gap bill. Indeed, in the briefing and at the hearing on the Plaintiffs' motion for preliminary injunction, the defendants conceded that Plaintiffs were suffering irreparable injury.

R. 134 & 152. Most plaintiffs used up all available lines of credit and many destroyed their credit as a result. R. 14, ¶¶ 83-84. Most plaintiffs had to use cash reserves and many have no cash reserves remaining. R. 14, ¶ 85. Plaintiffs in some cases laid off up to 30 percent or more of their professional staff. R. 15, ¶ 89. In some cases plaintiffs have closed critically needed programs, for which there are no alternatives in their areas. R. 15, ¶ 90. Many plaintiffs had difficulty meeting payroll and a few came close to total closure. R. 14, ¶¶ 86-87.

Furthermore, once services and programs are eliminated, many are incapable of restoration. R. 15, ¶ 92. Even with payment from the Stop Gap, plaintiffs will not be able to find the find the same professional staff, or the equivalent and in many cases plaintiffs have already lost the personal networks and relationships in the communities they serve. R. 15, ¶¶ 93-95. These personal networks and relationship are crucial in reaching the neediest clients. R. 15, ¶ 96. Many of these clients are youth, homeless persons, persons with HIV/AIDS, or low income persons with persistent mental health and behavioral issues. R. 15, ¶ 97. Already many of these former clients have ended up in the jails of the state because there is no other place for them to go. R. 15, ¶ 98.

Because of defendants' course of conduct, the entire infrastructure of State-supported social services to the needy is threatened. R. 16, ¶ 99. Because this problem is now rolling over into fiscal year 2017, the payments allowed for by the Stop Gap will not remedy this problem. The plaintiffs will only truly be able to recover and rebuild this infrastructure when they can once again feel confident that their contracts will be honored.

Argument

II. The Court should exercise its supervisory authority over the courts below and resolve a legal question of enormous public significance.

The emergency basis for this direct appeal is the breakdown of constitutional government in the State of Illinois. This Court is well aware of the budget impasse between the General Assembly and Governor—now well over a year, and possibly to continue into 2017. A patchwork of court orders has kept up payment to some creditors of the State and not others. For example, by one court order, the State of Illinois Comptroller has paid over $3.2 billion to State employees without any consented-to appropriation. *See AFSCME v. Illinois,* 2015 Il App (5th) 150277-U (upholding preliminary injunction ordering continued payment of state employees despite lack of appropriation). Here, on the other hand, the Circuit Court dismissed plaintiffs' action seeking a much smaller payment—precisely for lack of a consented-to appropriation. Such disparity in treatment is inexplicable. At present, defendants expect plaintiffs to go on saving the neediest citizens without compensation while the employees who supervise them never miss a paycheck. To address such unfairness, this Court should take this direct appeal from the trial court's final judgment of August 31, 2016—and use its supervisory authority to resolve this conflict among the lower courts.

In addition plaintiffs raise constitutional claims of enormous public importance—to clarify not only their rights but the obligations of the General Assembly and Governor in the current impasse. In count I of the third amended complaint, dismissed on August 31, 2016, plaintiffs contend that by acting far beyond any power of office, the Governor and his agency heads have unlawfully entered hundreds of contracts—accepting the services of plaintiffs—while vetoing the two separate attempts of the General Assembly to fund them. In bringing this claim, plaintiffs invoke the "officer exception" to the *statutory* defense of sovereign immunity under the

State Lawsuit Immunity Act, 745 ILCS 5/0.01 *et seq*. *See, e.g., Leetaru v. Board of Trustees of the University of Illinois,* 2015 IL 117485. In that case, this Court stated, "The exception is aimed…at situations *where the official is not doing the business which the sovereign has empowered him or her to do or is doing it in a way which the law forbids*." *Id*. at ¶ 47 (emphasis added). *See also Sass v. Kramer*, 72 Ill. 2d 485, 490-92 (1978). Nor can the Governor and other executive officers raise Article VIII, section 2(b), requiring General Assembly approval of expenditures, as a defense, when the defendant Governor himself has twice vetoed that approval. In particular, it is not the intent of Article VIII, section 2(b) to justify such an unconscionable business practice. The Governor could have used his line item veto authority to approve those parts of the budget bills that funded the contracts that he and the agency heads were continuing to enforce. Under express provisions of all these contracts, the defendants were always free to cancel the contracts prospectively for lack of funding or other reasons, but did not do so. Defendants have no power of office to affirm the contracts in their executive role but disaffirm them by a legislative veto.

In the second claim, alleging an unlawful impairment of the obligation of contracts, plaintiffs raise an issue left open in this Court's own recent decision in *State v. AFSCME, Council 31*, 2016 IL 118422. By blocking the General Assembly's funding of plaintiffs' contracts—and then by using the Stop Gap bill to cap the State's financial liability *after* plaintiffs had fully performed—defendants have violated Article I, section 16 of the Illinois Constitution. As set out in this second claim, plaintiffs have no legal remedy for non-payment in the Court of Claims unless there is a sufficient appropriation of funds. The Governor's successive vetoes of the budget bills—which culminated in the Stop Gap, or partial payment—mean that by legislative act, plaintiffs have no legal remedy. At the very least, the right to sue has been

impaired by a legislative "deal" that came after full performance. And any legislative action that renders full payment less secure has been deemed a violation of the analogous federal Contracts Clause, set out in Article I, section 10 of the United States Constitution. *See, e.g., U.S. Trust Company v. New Jersey,* 431 U.S. 1 (1976). Public Act 99-524 or the "Stop Gap" Bill signed on June 30, 2016, provides funding sufficient to pay for *twelve* months of services *or less*, but is to be used to cover an *eighteen* month period. In short, to get any money to plaintiffs, the General Assembly and Governor retroactively put a cap on what plaintiffs may recover.

The gist of this claim is not a contractual breach but a limitation on the right to sue for a contractual breach. While Article VIII, section 2(b) of the Illinois Constitution generally requires that the General Assembly approve the expenditure of public funds, Article I section 16 states that the General Assembly may not impair the right to sue for breach of legitimate contracts. The legitimacy of these contracts cannot be in question—indeed, not only did the General Assembly pass appropriations bills for full funding, but even the Stop Gap Bill recognizes their legitimacy. Significantly, the Illinois Constitution abolished sovereign immunity. While the General Assembly may enact a law like the State Lawsuit Immunity Act, 745 ILCS 5/0.01 *et seq*., the Illinois Constitution also prohibits the State from impairing the obligation of contracts. As plaintiffs allege, the Constitution limits how far the State may go in discarding the obligation for non-payment of contract.

It is especially proper to grant a direct appeal when this Court in a prior opinion has left open a question that only this Court can now answer. The outcome of the appeal now pending in the First Division turns *entirely* on what this Court meant in its concluding remarks in *State v. AFSCME, Council 31*, 2016 IL 118422. At the end of that opinion, this Court went out of its way to leave open the question of whether the State of Illinois could routinely disregard debts for

which there had been no appropriation. The Court recognized that its decision in *State v. AFSCME* left open many questions under the contracts clause, and anticipated the need for this direct appeal:

> The appellate court expressed concern that recognizing the appropriation contingency in this case "would allow the General Assembly in every appropriation bill to impair the State's obligations under its contracts," in violation of the contracts clause of the Illinois Constitution….This case, however, does not involve every species of contract with the State. Rather, this case involves a multiyear collective bargaining agreement that is, by statute, "[s]ubject to the appropriation power of the employer."
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> * * *
>
> Finally, we disagree with the dissent that our decision creates uncertainty as to the State's obligations, generally, under its contracts. We reiterate that this case involves a particular contract: a multiyear collective bargaining agreement. Whether other state contracts with different provisions and different controlling law could also be subject to legislative appropriation without offending the contracts clause is not before us.

Id. at ¶¶ 52-54 (citations omitted).

The Court's reference to the statutory limitation in that case was to the requirement in Section 21 of the Public Labor Relations Act, 5 ILCS 315/21, which expressly stated there must be such an appropriation for each year of a multiyear collective bargaining agreement (CBA). The Court found that this statute was necessarily incorporated into the multiyear CBA at issue and that such a law was a "clear expression of public policy." *Id*. at ¶¶ 48-49. Here by contrast, there is no such multiyear agreement and no statutory provision like Section 21. Rather in each of these contracts, there is only language that gives the Governor the right to cancel the contract prospectively—if there turns out to be no legislative approval. Defendants chose not to invoke this right. To the contrary, unlike *State v. AFSCME,* defendants—on behalf of the State—accepted the full benefit of the services that plaintiffs rendered in fiscal year 2016.

Furthermore even absent this distinction, the Court in that case announced a policy that would not apply here. The Court was concerned not to infringe on the power of the General Assembly—but *only* the General Assembly. As the Court said:

> The power to appropriate for the expenditure of public funds is vested exclusively in the General Assembly; *no other branch of government holds such power*. In the state budget-making process, for example, although the Governor is constitutionally required to set forth in his proposed budget "the estimated balance of funds available for appropriation[,]" and statutorily required to set forth "the amounts recommended *** to be appropriated to the respective departments, offices, and institutions[,]" the General Assembly alone has the authority to make any such appropriations.

Id. at ¶ 42 (ellipsis in original, emphasis added, citations omitted). Here nothing in the case brought by plaintiffs would frustrate that public policy, since the General Assembly, twice, in May 2015 and June 2016 did pass budget bills that provided funding for plaintiffs' contracts. The relief sought here would not infringe on any authority of *the General Assembly*. It is the executive branch that has blocked the funding of these contracts.

Again, the Court in *State v. AFSCME* expressly left open the question of "[w]hether other state contracts with different provisions and different controlling law could also be subject to legislative appropriation without offending the contracts clause is not before us." *Id*. at 54. The instant case raises that question, and the trial court dismissed it precisely because there is no clear guidance from this Court on how to resolve it. R. 206-08. Plaintiffs' motion for direct appeal now places that question before this Court, and plaintiffs respectfully submit that sooner or later this Court must resolve it—as well as the quite different claim that these public officers had no authority to conduct the public business as they did. Given a continuing public emergency and the need to resolve that question promptly for the guidance of the General Assembly and the Governor—as well as themselves—plaintiffs respectfully ask this Court for leave to file their appeal.

III. The case is not moot – and even if it were the issues raised would fall under the two recognized exceptions for cases capable of repetition but evading review and the public interest.

Since the trial court's dismissal of the case and final judgment of August 31, 2016, many of the plaintiff organizations have received full payment of the amounts due to them for services rendered in fiscal year 2016. However, the appeal is not moot. First, some plaintiff organizations still have not received payment or full payment. Furthermore, it is not moot even for the plaintiff organizations that have received full payment at long last. For those plaintiffs, the money comes through a budgetary sleight of hand that puts the plaintiffs at risk of non-payment for the fiscal year 2017. To be clear, the Stop Gap Bill signed by the Governor on June 30, 2016, had little money or no money for the contracts performed by plaintiffs in fiscal year 2016. However, the Stop Gap did give discretion to the Governor to re-allocate money intended for services in fiscal year 2017 to pay off claims in fiscal year 2016. The Governor has used that authority to direct payments to most if not all of the plaintiff organizations. Of course that act now puts them at risk of nonpayment for the contracts being performed in fiscal year 2017.

The particular plaintiffs who have received full funding of the contracts attached in Exhibit I to the Complaint are back in the same place as when they originally filed suit—with no money coming in to pay the bills they submit now, in this new fiscal year. Thanks to the re-allocation, there is now little, if any money for fiscal year 2017. And with a lack of money coming in, plaintiffs cannot restore the "capabilities" that they lost during the prior fiscal year, or even rehire staff. The plaintiffs face another year of trying to get lines of credit, skipping paydays for top managers, and—in the end—laying off even more staff. The "re-allocation" in Public Act 99-524 only leads to infliction of the same injury on the same organizations—which are now greatly weakened. Defendants continue this same unlawful way of doing business. As a result, more homeless youth end up in jail because programs cannot be restored; more seniors

who were to live at home will go to institutions; and more victims of sexual assault will find there are no counseling or treatment available.

Under well-established case law, there are three exceptions that would keep this appeal from being moot, even for the plaintiffs that have received full payment of the old contracts. See *People v. Alfred H.H. (In re Alfred H.H.),* 233 Ill. 2d 345 (2009). All three exceptions apply here. As set forth in *Alfred H.H.*, the first exception is for cases "capable of repetition but evading review." This is a two part test. "First, the challenged action must be of a duration too short to be fully litigated prior to its cessation. Second, there must be a reasonable expectation that…'the same complaining party would be subjected to the same action again.'" *Id.* at 358 (quoting *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998). The claims of plaintiffs are "capable of repetition but evading review." There can be no doubt about a repetition—the defendants are repeating their actions right now. Indeed, plaintiffs could be filing a new case for bills that are not being paid for services in fiscal year 2017. And even if there is another Stop Gap in a year—and it is likely there will not be—terrible long term damage will have been done in the meant time. More staff will be laid off, more programs will be cut back, and the ability of these plaintiff organizations to function will be further degraded because the right to payment will be obscure. As noted, the defendants did not dispute plaintiffs' claim of irreparable injury set forth in their motion for a preliminary injunction. R. 134 & 152.

The second exception, for cases having a special "public interest," also applies. It is hard to imagine when it would be stronger. As stated in *Alfred H.H*, "The public interest exception allows a court to consider an otherwise moot case when (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question." 233 Ill. 2d at 355

(quoting *People ex rel. Wallace v. Labrenz,* 411 Ill. 618, 622 (1952)). In the present case, all three of these elements are present. First, issues raised here arise directly from Articles III and VIII of the Illinois Constitution—and indeed, raise issues about the entire constitutional scheme of government. Second, not only the plaintiffs but the public officers—the legislators and the Governor—are entitled to an "authoritative determination" of the issue. Finally, since plaintiffs are being paid for the last fiscal year from money that they should be receiving for services in this fiscal year, not just the same issue but the same case is likely to arise again. Indeed, it has already arisen, since bills for services in this fiscal year are already overdue.

Finally, the "collateral consequences" exception also applies. "The collateral consequences exception to mootness allows for appellate review, even though a court order or incarceration has ceased, because a plaintiff has 'suffered, or [is] threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.'" *Id.* at 361 (quoting *Spence v. Kemna,* 523 U.S. 1, 7 (1998)) (brackets in original).

The collateral consequence left in place by the trial court decision is that plaintiffs have no legal remedy available to enforce their contracts for payment for services rendered in the coming fiscal year. It is hard to imagine how plaintiffs will be able to get a line of credit, or loan, in the year ahead. It is a devastating blow to the viability of their continued operation.

Conclusion

For all these reasons, Plaintiffs-Appellants respectfully request that the Court grant a direct appeal pursuant to Supreme Court Rule 302(b).

Dated: October 20, 2016

Respectfully submitted,

/s/ Sean Morales-Doyle
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