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PAGE 1 of 16
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION

ILLINOIS COLLABORATION ON YOUTH, *et al.*,	)	
Plaintiffs,	)	No. 16 CH 6172
v.	)	The Honorable Rodolfo Garcia
JAMES DIMAS, Secretary of the Illinois Department of Human Services, in his official capacity, *et al.*,	)	
Defendants.	)	

PLAINTIFFS' COMBINED MEMORANDUM IN RESPONSE TO DEFENDANTS' SECTRION 2-619.1 MOTION TO DISMISS AND REPLY IN SUPPORT OF PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION

Introduction

To restate the case: the plaintiffs who carry out the human service programs of the State seek a preliminary injunction to pay off certain back bills from fiscal year 2016, now overdue by up to a year or more, so they can continue with these same programs now, in fiscal year 2017. Plaintiffs seek the same kind of preliminary injunction order attached as Exhibit 1 and issued by Circuit Court of the 20th Judicial Circuit on July 10, 2015 in cause No. 15 CH 475 and upheld by the Appellate Court on July 24, 2015 in *AFSCME v. State*, 2015 Il App (5th) 150277-U. Under this still effective preliminary injunction, based entirely on state law claims, not federal consent decrees, the State of Illinois has now paid to State employees—including the defendants—billions of dollars in salaries and wages. Under the same preliminary order, the defendant Comptroller is paying the wages and salaries of defendants without any appropriation from the General Assembly. The Illinois Supreme Court declined to consider the case on direct appeal from the Circuit Court, *see* Order of 7/17/2015, attached hereto as Exhibit 2, leaving in effect the order of payment without any appropriation pursuant to Article VIII of the Constitution, and the State defendants did not appeal the decision of the Appellate Court.

In this case plaintiffs have claims at least as strong if not stronger than the State employees and officers to their pay. For one thing, despite the passage of a very partial "Stop Gap Budget," many of the plaintiffs have received no payments for services under contracts that they have fully performed. By contrast, the State employees and officers have not missed a payday. As set out in the motion—and not seriously disputed by the defendants—the human services infrastructure of the State is on the verge of collapse. In addition, the legal claims are stronger. In *AFSCME v. State*, the employees argued only a claim under the Contracts Clause, though the General Assembly had not enacted a law like the Stop Gap Budget: that is, there was no legislative impairment. Furthermore, under the "officer exception," the defendant officers

were not trying to enforce the collective bargaining agreements without payment and were not running the State in the unauthorized and unlawful way they have carried out the State's business here. The irreparable injury is greater, the impairment of contract is greater, and the *ultra vires* actions are more serious.

Significantly, in the March 24, 2016, decision of the Illinois Supreme Court in *State (Department of Central Management Services) v. AFSCME, Council 31*, 2016 IL 118422 (hereinafter "*State (CMS)*"), the Court stated that it might sustain Contract Clause claims like Count II where the contract did not have a specific disclaimer of liability. The Court did not rely on Article VIII, but a specific statutory disclaimer in Section 21 of the Public Labor Relations Act, 5 ILCS § 315/21, that a multi-year collective bargaining agreement would not take effect until there was a *prior* approval by the General Assembly. While the defendants try to argue there is a disclaimer here, the plain language of Section 4.1 of Exhibit A to the complaint is clear that in the absence of a legislative appropriation, the defendants have only a right to terminate the contract *prospectively*, and not cancel retroactively any existing liability for services already rendered. Section 4.1 of Exhibit A does not apply here and indeed the defendant officers have done the very opposite: not given notice of cancellation, but enforced these contracts to the very end.

Argument

I. For the violations set out in the Third Amended Complaint, this Court has authority to order payment without legislative appropriation.

As set out in the Introduction, an Illinois state trial court—upheld by the Illinois Appellate Court—has ordered the state to pay billions to date without any appropriation. Under this preliminary injunction, the Comptroller has written checks without demurrer, and the order has been left in place by defendants. Unlike the directors of the plaintiff organizations, no State

official or agency head has missed a payday. It is ironic, to say the least, that they are quite willing to deny the same relief to the people who work for the plaintiff organizations. According to defendants, they owe plaintiffs absolutely nothing, except whatever they may choose to reallocate to fiscal year 2016 from the Stop Gap Budget, also known as Public Act 99-524, enacted on June 30, 2016. Instead of joining in this motion to get the same relief obtained for themselves, they continue—heartlessly—to tell plaintiffs they have no rights at all, even though plaintiffs are supposed to carry out the same contracts in fiscal year 2017 that they carried out without any pay throughout fiscal year 2016.

Of course it is extraordinary relief to order payments without legislative appropriation—but operation of the State without a budget is an unreal and even bizarre spectacle, surely not foreseen by those who drafted the 1970 Illinois Constitution. In this case, the equities favor such an order. First, there is a serious constitutional wrong. Even the defendants do not specifically deny that they acted unlawfully or *ultra vires* in entering and enforcing these contracts while vetoing the appropriations for them. Second, as a practical matter, such an order here does not frustrate or interfere with any action of the legislative *branch*, i.e., the General Assembly itself. Indeed, on two occasions, the General Assembly passed bills that provided for the payment of these contracts. The real separation of powers question arises not because the General Assembly failed to act but because the Governor misused his veto power to block the funding of contracts that as an executive he and his agency heads had a duty to pay in a business-like manner.

An even stronger basis for this relief comes from the Illinois Supreme Court itself, in the same *State (CMS)* decision on which defendants rely. In that case, the Supreme Court at least by implication made clear that Article VIII is not necessarily a bar to judicial relief. In that case, considering a collective bargaining agreement, the Court held that it would not order an arbitral

award increasing pay beyond what the General Assembly had expressly authorized. But rather than rely on Article VIII as the ground, the Court relied primarily on Section 21 of the Public Labor Relations Act. 2016 IL 118422 at ¶¶ 44, 52-54. Section 21 was an *explicit* requirement that the General Assembly must approve the level of pay in a multiyear collective bargaining agreement, and such a specific disclaimer of liability in a specific type of contract meant that the *contract itself* denied the right of payment without legislative approval. As part of the contract, the disclaimer acted from the very inception, prospectively, to limit the state's liability. Otherwise, notwithstanding Article VIII, the Supreme Court made clear that there might well be a case for judicial enforcement of a payment without a legislative authorization. *Id.* at ¶ 52-54.

While reversing the holding of the Appellate Court in *State (CMS),* 2014 Ill App (1st) 130262 (2014), the Supreme Court acknowledged that court's concern about letting "the General Assembly in every appropriation bill to impair the State's obligations under its contracts." 2016 IL 118422 at ¶ 52. The Court highlighted the importance of the specific exclusion in Section 21, and went out of its way to say that it was not approving a blanket impairment simply for lack of a legislative appropriation:

> The partial concurrence and partial dissent (dissent) shares the appellate court's concern, suggesting that under today's decision, the State may now avoid its contractual obligations simply by not making the necessary appropriations. 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." 5 ILCS 315/21 (West 2014)…[T]he failure of that contingency to occur cannot "impair" AFSCME's agreement with the State.
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> * * *
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> 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.

* * *

> For all the reasons discussed above, we hold that section 21 of the Act, when considered in light of the appropriations clause, evinces a *well-defined* and *dominant* public policy under which multiyear collective bargaining agreements are subject to the appropriation power of the State…We further hold that the arbitrator's award…violated this public policy.

Id. at ¶¶ 52-56 (internal citations omitted, emphasis supplied).

To let the defendants impair *these* obligations—on hundreds of contracts—would "create[ ] uncertainty, generally, as to the State's obligations under its contracts." *Compare id.* at ¶ 54. It would do just what the Supreme Court in *State (CMS)* indicated that the judiciary should prevent. Surely the Supreme Court's warning, issued on March 24, 2016, was crafted with the budget impasse in mind. Furthermore, in this case, unlike *State (CMS)*, there is no "well-defined" and "dominant public policy" that would require an advance legislative appropriation for these human service contracts. Indeed, there is no policy at all, and no disclaimer of liability *in the contract itself* or fairly implied like that of Section 21.

Finally, Illinois courts have ordered monetary payments for lesser breaches of the Constitution. *See., e.g., Jorgensen v. Blagojevich,* 211 Ill. 2d 286 (2004); *IL County Treasurers Ass'n v. Hamer*, 2014 IL App (4th) 130286.

II. Plaintiffs' contracts do not exclude liability for services rendered.

It is telling that the defendants' motion runs on for pages in a vague and general way about a disclaimer of liability—without ever quoting or parsing it. There is no such disclaimer. In the case of the Department of Human Services, for example, section 4.1 of Exhibit A to the Third Amended Complaint says:

> 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.

Third Amend. Compl. ¶ 46 (emphasis added).

Defendants never terminated or suspended the Agreement—or any of the contracts in Exhibit I of the Complaint. The Defendants do not even dispute this fact in response to Plaintiffs' motion for preliminary injunction. Furthermore, even if they had terminated or suspended a contract (and they did not), Section 4.1 only relieves the defendants from *further* payment, i.e., liability for the balance of the year. Of course that would bar "expectation" damages, but it would not bar liability for services already performed. Nor can defendants cite a "well-defined" or "dominant" public policy, like Section 21 of the Public Labor Relations Act, to read this language as barring such payment, or for allowing such a forfeiture.

Defendants may not rely on *State (CMS)* as a defense to liability under the Contracts Clause.

III. Plaintiffs have stated a claim under the Contracts Clause, and they are likely to succeed on their claim.

In both *AFSCME v. State* and in *State (CMS)*, 2014 IL App (1st) 130262, the Illinois Appellate Court found an actual or potential impairment of contract just from the mere lack of an appropriation. The Supreme Court, while reversing the outcome in *State (CMS)*, left open the possibility of finding an impairment from the mere absence of an appropriation in a case not involving a multi-year collective bargaining agreement. *See* 2016 IL 118422 at ¶¶ 52-54. Accordingly, there can be a violation of Article I, section 16, even without a law that specifically

impairs a contract. These two holdings are in keeping with the purpose of the Contracts Clause, which should stop the General Assembly from doing indirectly or by omission what it may not do directly—that is, render payment of a contract less secure, or impossible. *See generally U.S. Trust Co. v. New Jersey* 431 U.S. 1 (1976). Furthermore, the obligation against impairment of contracts is part of a broader obligation on the State to provide substantive due process. Logically, then, even in the absence of a legislative act by the General Assembly, the Governor's veto—the frustration of two attempts by the General Assembly to fund these contracts—is also by itself an affirmative legislative act that has rendered payment less secure. *See Defs. Br.* at 12 (citing *Williams v. Kerner*, 30 Ill. 2d 11, 14 (1963), for the proposition that the veto is a legislative act).

Nonetheless, this case fits literally into Article I, section 16. There *was* a law passed, P.A. 99-542—the compromise known as the Stop Gap Budget—that once and for all makes full payment of the contracts less secure, if not impossible. It is no answer for defendants to say that at least plaintiffs, or some of them, will get "something." Nor is it an answer to say that it is "speculative" to say whether plaintiffs can recover the full amount in the Court of Claims. By the very reliance on Article VIII to deny liability, the defendants necessarily take the position that plaintiffs should get nothing in the Court of Claims. Surely they will take that position if any legal actions proceed. In fact, at least one of the Defendants, Jean Bohnhoff, the Director of the Department on Aging, has recently told some plaintiffs explicitly that a remedy cannot be obtained in the Court of Claims without "an appropriation and a signed balanced budget," and that "A Stop Gap Spending Bill is not a budget." *See* 8/16/16 Bohnhoff email to Plaintiff New Age Elder Care, attached hereto as Exhibit 3. Plaintiffs have set out why these actions are futile. But in any event, the Stop Gap Budget makes this legal remedy less secure. As noted in *U.S.*

Trust, there need not be "total destruction" of the right. *Id at* 26-27. Indeed, the bondholders in *U.S. Trust* had a far better chance of full recovery than plaintiffs do here. Nor can defendants claim that somehow the "public welfare" required this devastating impairment of the plaintiffs' contracts. To the contrary, the reckless actions taken by these officers imperil the State's infrastructure for delivering human services.

Furthermore, there is not just a law impairing these obligations, but a retroactive one, adopted on the last day of the fiscal year, to give short shrift to contracts that on that very day were fully performed.

IV. Plaintiffs have stated an *ultra vires* or "officer exception" claim, and are likely to succeed on that claim.

While defendants question the authority of the Court to order relief in this case, defendants do not try to defend their own actions as lawful. That is, at no point in the motion to dismiss do the defendants try to justify entering and enforcing the contracts while vetoing the funds to pay for them—or that the Governor properly used his legislative power to frustrate contracts that he had a duty as the chief executive to enforce. Nor do defendants claim that they acted properly in conducting the public business in this way for an entire fiscal year without any budget or appropriations. Defendants do not seek a ruling that in conducting business in this way, they acted within their lawful authority.

Furthermore, such an argument, if it were made, would be in seeming conflict with the position of the State made in *AFSCME v. State*. Had the Circuit Court not issued the order attached as Exhibit 1, the public business of the State would have stopped. No one would have continued working—nor should they have done so. In effect, the argument was that no officer could have or *should* have continued the public business, without appropriations under Article VIII. So it would be hypocritical for the State to argue now that continuing the public business in

this way is lawful or legitimate. Indeed, unlike the state employees, plaintiffs had to continue in the contracts, at least for a period of time, even if they gave notice of withdrawal; and even if they did, they might be liable for breach. Furthermore, plaintiffs also had other commitments—to outside agencies and foundations—that would make it difficult for them to withdraw from these human services programs.

At any rate, the defendants can hardly deny the actions of the Governor and his department heads are *ultra vires*—in excess of their powers—when they induced plaintiffs to enter contracts that were unauthorized and illusory.

The defendants do object to the analogy drawn by plaintiffs to the kind of unconscionable business practice that would violate the Consumer Fraud and Deceptive Practices Act. And of course plaintiffs do not mean that the Act literally applies to state officers. But in cases like *Smith v. Jones*, 113 Ill.2d 126 (1986), the Illinois Supreme Court has held that defendant officers act *ultra vires* when they engage in business-type fraud. And where there is an element of such fraud, the Immunity Act does not apply. In *Smith v. Jones*, the Court referred to affirmative fraud, an actual misrepresentation, which was the extent of the fraud prohibited at the time. But plaintiffs note that there has been a significant expansion in the fraud that is actionable under the Consumer Fraud and Deceptive Practices Act. *See Robinson v. Toyota*, 201 Ill.2d 403, 417-18 (2002). The treatment of plaintiffs by defendants is the kind of inexcusable conduct that is now prohibited under Illinois law—unconscionable and inflicting substantial injury. *Id.* Likewise a disclaim for services rendered would be an unconscionable contract term, unfairly imposed, within the meaning of UCC § 2-302. Indeed, in *State (CMS)* the Illinois Appellate Court cited the Iowa Supreme Court's decision that non-payment of State contracts could represent a form of unconscionable behavior. 2014 IL App (1st) 130262, ¶¶ 38-39. Significantly, while reversing the

Appellate Court on the particular facts of that case, the Supreme Court made clear that when there is no specific exclusion of liability in the contract itself—as in this case—then such behavior may be unconscionable. So in this case the reasoning quoted by the Illinois Appellate Court from the decision in Iowa Supreme Court in *AFSCME/Iowa Council 61 v. State*, 484 N.W.2d 390 (Iowa 1992), should apply.

In this case, there is at least an element of fraud, at least as great as that often cited in cases that pierce a corporate veil. Inadequate capitalization is a major factor in determining whether plaintiffs can pierce the veil because "[a]bsent adequate capitalization, a corporation becomes a mere liability shield." *Fiumetto v. Garrett Enters.*, 321 Ill. App. 3d 946, 958-59 (2001). Similarly, the Governor may not veto adequate appropriations and then raise Article VIII and sovereign immunity as "liability shields." Neither the Illinois Constitution nor the Immunity Act was enacted to perpetrate a fraud.

Because of the "officer exception" and the particular conduct alleged here, the principle of sovereign immunity does not apply. *See Leetaru v. Board of Trustees of the Univ. of Ill.*, 2015 IL 117485, ¶ 48 (collecting cases). Relief in such cases cannot affect or "control the operations of the State" because the State cannot be presumed to engage in this type of conduct. *Id.* at ¶ 47.

V. Plaintiffs have stated constitutional claims for denial of equal protection and due process.

Plaintiffs hereby incorporate their arguments regarding the merits of Count III set forth in their opening brief in support of their Renewed Motion for Preliminary Injunction and stand on those arguments in response to Defendants' motion to dismiss.

VI. Where Plaintiffs have stated valid claims for relief, sovereign immunity does not apply.

A. Sovereign immunity is not a defense to a constitutional claim, or a claim "founded upon" a violation of the Constitution.

The Illinois Constitution of 1970 abolished sovereign immunity "except as the General Assembly may provide by law." Ill. Const. art. XIII, § 4. The General Assembly thereafter enacted the State Lawsuit Immunity Act ("Immunity Act"), 745 ILCS 5/0.01 *et seq.* In other words, sovereign immunity may not be invoked as a constitutional defense: only as a limitation under a statute. Necessarily, a subordinate or second-order statutory defense cannot bar a first-order constitutional claim. The General Assembly does not have the power to bar Illinois courts from hearing and deciding claims arising from the State's invasions of constitutional rights.

The claim in Count II of an unlawful impairment of contract is such a constitutional claim. So also is the claim in Count I that the defendants have exceeded the lawful powers of their office—by enforcing contracts while vetoing the funding of them. Indeed, plaintiffs contend that defendants also acted in excess of their constitutional authority by conducting the public business without a budget, as required by Article VIII. For Article VIII requires a budget to be in place as a necessary part of the operation of State government. But the Governor repeatedly vetoed such bills that put such a budget in place for the course of an entire year. As the Illinois Appellate Court pointed out in *AFSCME v. Netsch*, 216 Ill. App. 3d 566, 569 (1991), there comes a point when there is a breakdown of constitutional government and the court should intervene. At any rate, defendants do not take issue with this proposition that the business of the State has been lawlessly conducted.

Since plaintiffs have set out valid *constitutional* claims, a mere statute providing for sovereign immunity cannot apply. That is especially true where the Court of Claims has no

authority to provide relief and may not even be willing to hear constitutional claims. *Sass v. State,* 36 Ill. Ct. Cl. 111 (1984).

B. As constitutional claims, Counts I and II are not "founded upon a contract" within the meaning of the Immunity Act.

Not only is it impossible for the Immunity Act to apply to the constitutional claims, it also does not apply to such claims by its own terms. There is no explicit bar to liability for breaches of the Illinois Constitution. The defendants rely on the section that bars claims "founded upon a contract." But in the "officer exception" cases, the appellate courts have specifically held that the mere existence of a contractual relationship between the State and the plaintiffs does not mean that a claim for wrongdoing is "founded upon" that contract. *See, e.g., Senn Park Nursing Center v. Miller,* 118 Ill. App. 3d 733 (1983), *aff'd,* 104 Ill.2d 169 (1984). In that case, nursing centers challenged a change in the method of calculating reported health care costs under contracts with the State. The Court held that the claims were not "founded upon" a contract but the violation of State administrative rules and regulations. Here plaintiffs are alleging a violation not of State administrative rules but of the Illinois Constitution.

It is unthinkable that a claim for impairment of contract under Article I, section 16, is not actionable because it is "founded upon" a contract, for purpose of a statutory defense. This would invalidate every claim under the Contracts Clause. Defendants give no coherent rationale for how such a result can be possible. Indeed, Defendants seem to acknowledge that a valid constitutional claim brings this case out of the realm of a mere contract dispute. *See* Defs. Br. at 19 (citing *Horwitz-Matthews, Inc. v. City of Chicago,* 78 F.3d 1248, 1251 (7th Cir. 1996)).

VII. Plaintiffs seek prospective injunctive relief—an injunction to control how the individual funding decisions will be made in the coming weeks and months and to ensure plaintiffs can restore program at full strength.

Under Count I, where plaintiffs are invoking the "officer exception," plaintiffs seek prospective injunctive relief only. At the moment, in the next few days or weeks, the defendants will consider which if any bills they will pay to keep the plaintiffs "in business." That is, in the next month or two, the directors will be doling out money on criteria that will leave the plaintiff agencies crippled and unable to resume programs at full strength. Plaintiffs seek a preliminary injunction that is prospective in its aim—to require that defendants in making these individual funding decisions over the next few weeks to pay all the bills overdue by 60 days or more. Otherwise, without such an order, and with the partial funding now being contemplated, it will be impossible for plaintiffs to rehire staff, resume programs at or near full strength. Likewise, without such an order, it will be impossible for plaintiffs to do the work that they are contractually obligated to do for fiscal year 2017. Indeed, there is a risk that defendants will just "rob Peter to pay Paul"—reallocate fiscal year 2017 money authorized in the Stop Gap Budget and spend it for obligations in fiscal year 2016. But then plaintiffs have no money to go forward with services in fiscal year 2017. In other words, plaintiffs seek prospective or future relief to bar the defendants using the Stop Gap Budget as a pretext for doling out so little money that the organizational capacities of the plaintiff agencies are ruined beyond repair. Indeed, there is a stronger basis for a preliminary injunction to a future irreparable injury loss or downgrading of capabilities than in the preliminary injunction upheld by the Illinois Appellate Court in *AFSCME v. State*.

Furthermore, plaintiffs seek injunctive relief to ensure that all the plaintiff agencies are treated equally and fairly in the funding decisions to be made—specifically, that all the agencies receive payment for vouchers overdue by 60 days or more.

As plaintiffs pointed out, as in cases like *Gold v. Ziff Communications,* a mandatory preliminary injunction is most appropriate when: (1) a condition of rest will inflict irreparable injury on plaintiffs; and (2) the parties are already in a pre-existing relationship, with rights and duties.

VIII. The cursory opposition to the motion for preliminary injunction—and the failure to deny irreparable injury—justify the grant of Plaintiffs' motion.

Defendants do little to question the propriety of a preliminary injunction if plaintiffs have stated a claim. Apart from the issue of likelihood of success, the defendants make only passing mention of the other criteria.

Of course there is a legal right in need of protection, and plaintiffs have argued the merits of the legal claim. Plaintiffs "need establish only a *prima facie* case that there is a *fair question* as to the existence of the right claimed and the need for protection." *The Agency, Inc. v. Grove*, 362 Ill. App. 3d 206, 214 (2005) (citing *Buzz Barton & Associates, Inc. v. Giannone*, 108 Ill. 2d 373, 382 (1985)). There is also no adequate legal remedy. As shown in Exhibit 3, Director Jean Bohnhoff has told the plaintiff agencies with whom she deals that they have *no* remedy in the Court of Claims. Defendants do not really argue otherwise in their brief. Instead, they only protest that the Court cannot "speculate" that the Court of Claims will continue to rule as it has in the past.

Significantly, defendants do not dispute the irreparable injury. They state, "Defendants do not dispute or underestimate the serious hardships that Plaintiffs and their clients have suffered as a result of the State's budget crisis." That is, defendants concede the most important element in a motion for a preliminary injunction.

However, the defendants claim that the State will be harmed as well, stating, "Plaintiffs requested order would force the Comptroller to stop making other payments that have sufficient

appropriations, are directly mandated by the Illinois Constitution or are required by federal law." But defendants put in no evidence that the State could not make the payments in the same way that they are paying billions in salaries and wages under *AFSCME v. State* and other consent decrees—namely, by going into debt. The money that plaintiffs seek is a fraction—probably under 3 or 4 percent—of the money being paid in salaries to defendants and other State employees. There is no attempt to explain why defendants—without appropriations—can spend billions on themselves while they nickel and dime the plaintiffs, and nothing in the evidentiary record to support the defendants' claims.

Finally, if the Defendant Governor is really so concerned about irreparable injury to the State, he is always free to allow the General Assembly to enact funding for the existing plaintiffs' contracts, which the General Assembly has on two occasions tried to do, and which Governor has unlawfully refused to permit.

Conclusion

For all the above reasons, plaintiffs respectfully request that this Court deny the defendants' motion to dismiss under 735 ILCS 5/2-619.1 and grant plaintiffs' motion for preliminary injunction.

Dated: August 18, 2016

Respectfully submitted,

s/ Sean Morales-Doyle
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