IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

Caritas Family Solutions, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 17 CH 112
	)	Honorable Robert P. LeChien
James Dimas, Secretary of the Illinois Department of Human Services, in his official capacity, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' COMBINED MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT AND IN RESPONSE TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Defendants, Bruce Rauner, in his official capacity as Governor of the State of Illinois, *et al*., by their attorney Lisa Madigan, the Illinois Attorney General, submit this Combined Memorandum of Law in Support of their Motion to Dismiss Plaintiffs' First Amended Complaint ("FAC") and in Response to Plaintiffs' Motion for Preliminary Injunction.

INTRODUCTION

Plaintiffs are forty-four human services organizations that have entered into contracts with the State. In their First Amended Complaint, Plaintiffs seek full and timely payment for contractual services rendered pursuant to those contracts in fiscal year 2017 (FY2017). (FAC ¶ 1). Similarly, Plaintiffs' Motion for Preliminary Injunction seeks an order requiring Defendants "to pay in the future vouchers to be submitted, and to pay vouchers that have been pending without payment for over 90 days." (Pltfs' Memorandum at p. 21). As an initial matter, Plaintiffs' First Amended Complaint should be dismissed or, alternatively, stayed because they

are improperly pursuing the same cause in a parallel forum in an effort to obtain a different result.

Thirty-eight out of the forty-four Plaintiffs previously brought a very similar action against Defendants in the Circuit Court of Cook County, *Illinois Collaboration on Youth, et al. v. Dimas, et al.*, No. 16 CH 6172. On August 31, 2016, the Circuit Court of Cook County dismissed Plaintiffs' action with prejudice and denied their Motion for Preliminary Injunction. Plaintiffs are currently appealing that August 31, 2016 decision in the First District Appellate Court, No. 1-16-2471, and oral argument in that appeal is scheduled for May 4, 2017. Accordingly, the Complaint should be dismissed, or alternatively, stayed pending a final decision in that appeal.

Like their action in the Circuit Court of Cook County, the focus of Plaintiffs' First Amended Complaint, although styled as a complaint for injunctive relief, is a breach of contract claim that is defeated by the express terms of Plaintiffs' contracts and by the fact that the General Assembly and Governor have failed to enact a complete budget for FY2017. To avoid the same result as the case in Cook County, Plaintiffs contend that this Court's orders in *AFSCME, et al. v. Rauner, et al*., No. 15 CH 475, compel a ruling in their favor. This contention is unpersuasive. This Court's July 10, 2015 order requiring payment of the State employee payroll and the February 16, 2017 order denying the People's motion to dissolve the preliminary injunction were based on the unique intersection of section 21 of the Illinois Public Labor Relations Act and multiyear collective bargaining agreements (CBAs), and the tolling agreements for those CBAs, which this Court found were not subject to appropriation. This case, in contrast, involves State contracts with private entities, and those contracts, which are by their terms subject to appropriation, cover both personal services and other expenses incurred in the provision of social

services. Nothing in the Court's analysis in the *AFSCME v. Rauner* case supports Plaintiffs' arguments here.

While the failure to enact legislation authorizing full payment to the Plaintiffs has undoubtedly caused them serious hardships, the State's sovereign immunity bars Plaintiffs' effort to have this Court intervene and order the State to pay for the services rendered under their State contracts. Instead, under the Illinois Constitution and laws, only the Governor and General Assembly can take action as part of the legislative process to ensure full and timely payment pursuant to the Plaintiffs' contracts. Thus, Plaintiffs' First Amended Complaint should be dismissed, and their request for a preliminary injunction denied, for several reasons.

- *First*, enforcement of Plaintiffs' contract rights against the State in the circuit court is barred by sovereign immunity. Because this Court lacks jurisdiction to adjudicate a claim against the State founded on a contract, it has no authority to grant Plaintiffs the relief they seek. And Plaintiffs' claim that Defendants' actions resulting in the lack of payments exceeded their constitutional authority, and thus are *ultra vires*, is legally unfounded.

- *Second*, the plain language of Plaintiffs' contracts and Illinois law preclude the relief they seek. The contracts expressly provide that they are contingent upon the availability of funds, which requires a sufficient appropriation.

- *Third*, the Appropriations Clause of the Illinois Constitution and the State Comptroller Act expressly bar the expenditure of State funds absent an appropriation. Plaintiffs' claim that Defendants acted in an *ultra vires* manner by following State law and failing to pay Plaintiffs with unappropriated State funds, therefore, fails as a matter of law.

- *Finally*, Plaintiffs fail to state valid claims for unconstitutional impairment of contracts. An impairment of contract claim requires a legislative enactment that impairs a valid contractual obligation. *AFSCME, Council 31 v. State of Ill., Dep't of Cent. Mgmt. Servs.*, 2015 IL App (1st) 133454, ¶ 44. Here, because Plaintiffs' contracts are explicitly subject to sufficient appropriations, they cannot be impaired by the *absence* of a legislative enactment making such appropriations. See *State of Ill., Dep't of Cent. Mgmt. Servs. v. AFSCME, Council 31*, 2016 IL 118422, ¶ 52 (rehearing denied May 23, 2016). And, nothing in the Court's rulings in *AFSCME v. Rauner* case concerning State employee payroll requires a different result here.

THE COMPLAINT

Plaintiffs are social service organizations that entered into contracts to provide various human services for the State in FY2017. (FAC ¶¶ 1, 5-19). Plaintiffs' contracts expressly provide that they are "contingent upon and subject to the availability of funds." (See e.g., FAC ¶¶ 65-66; see also FAC Exhibit A, p. 6, Section 4.1; see also FAC Group Exhibit F). Plaintiffs' contracts similarly provide that the State "may terminate or suspend this Agreement, in whole or in part, without penalty or further payment being required, if (i) sufficient funds for this Agreement have not been appropriated or otherwise made available . . . ." (*Id.*). Each contract also contains an "Applicable Law" provision stating that any claim against the State arising out of the contract must be filed exclusively with the Illinois Court of Claims (705 ILCS 505/1). (See, e.g., FAC, Exhibit A, p. 23, Section 26.8; see also FAC Group Exhibit F).

On February 18, 2015, the Governor submitted a proposed budget for FY2016 that would have provided funding for most, if not all, of the services provided under Plaintiffs' contracts. (FAC ¶¶ 29, 32, 33). The General Assembly subsequently passed appropriations bills that authorized the expenditure of funds to pay for the vast majority of these services for FY2016. (*Id*. at ¶ 34). On June 25, 2015, the Governor vetoed all of the relevant appropriations bills. (*Id*. at ¶ 36). The General Assembly did not thereafter take action overriding that veto.

On April 13, 2016, the General Assembly passed SB 2046, which included appropriations for nearly all of Plaintiffs' contractual services for FY2016. (*Id*. at ¶ 46). On May 12, 2016, the General Assembly passed SB 2038, another appropriations bill which would have provided funding for Plaintiffs' contracts. (*Id*. at ¶ 47). On June 10, 2016 and July 1, 2016, respectively, Governor Rauner vetoed the relevant appropriations bills in their entirety. (*Id*. at ¶ 48). Again, the General Assembly did not take action overriding that veto.

As of June 30, 2016, Plaintiffs fully performed their contracts for FY2016 without receiving any payment from Defendants. (*Id*. at ¶ 52). And despite not being paid for services rendered in FY2016, Plaintiffs nonetheless agreed to continue to provide contractual services for the State in FY2017. (*Id*. at ¶¶ 53-55).

On June 30, 2016, Public Act 99-0524 was enacted, which appropriated State funds for FY2016 and the first half of FY2017. (*Id*. at ¶¶ 49, 50, 57). Pursuant to this appropriations law, many of the Plaintiffs have been paid in full for services rendered in FY2016. Plaintiffs have received little to no funding for services provided in FY2017, however. (*Id*. at ¶¶ 56-61). Furthermore, Plaintiffs currently cannot receive any funding for services provided after January 1, 2017 because the State's spending authority under P.A. 99-0524 ended as of December 31, 2016. (*Id*. at ¶ 62). Thus, Plaintiffs complain that they are obligated to perform contractual services for the remaining half of FY2017 without any funding. (*Id*. at ¶ 63). And to date, Defendants have not terminated Plaintiffs' contracts based on the absence of sufficient appropriations. (*Id*. at ¶ 67).

On February 9, 2017, Plaintiffs filed their original Complaint seeking injunctive relief against Governor Rauner and the agency heads who contracted with Plaintiffs for FY2017 services. On February 21, 2017, Plaintiffs also filed their Motion for Preliminary Injunction, seeking an order requiring Defendants "to pay in the future vouchers to be submitted, and to pay vouchers that have been pending without payment for over 90 days." (Pltfs' Memorandum at p. 21). On March 30, 2017, Plaintiffs filed their First Amended Complaint.

In Count I, Plaintiffs allege that Defendants violated Article VIII, section 2 of the Illinois Constitution by continuing to conduct public business without a State budget in place. (FAC ¶¶ 88-92). Plaintiffs additionally allege that their rights to equal protection and due process have

been infringed upon in violation of Article I, section 2 of the Illinois Constitution because other creditors have been paid despite the lack of sufficient appropriations. (*Id*. at ¶ 93). Plaintiffs further allege that the allegedly *ultra vires* conduct by Defendants allows them to invoke the "officer suit" exception to the State Lawsuit Immunity Act. (*Id*. at ¶ 94). In Count I, Plaintiffs seek preliminary and permanent injunctive relief requiring Defendants "to specifically perform their obligations of payment under the contracts attached hereto and on a timely basis pay the vouchers submitted and to be submitted for the remainder of the fiscal year." (*Id*. at p. 15).[1]

The remaining counts of Plaintiff's First Amended Complaint purport to allege unconstitutional impairment of their contracts under various theories, in violation of Article I, section 16 of the Illinois Constitution. For example, in Count II, Plaintiffs allege that P.A. 99-0524 allows Defendants to reduce payments below the face amount of Plaintiffs' contracts. (*Id*. at ¶¶ 95-97). In Count II, Plaintiffs seek an order declaring that P.A. 99-0524 violates their rights to be free of legislative acts impairing the obligation of their contracts and granting preliminary and permanent injunctive relief requiring Defendants "to make timely payment on all contracts that were approved by the General Assembly…without any reduction in the face amounts." (*Id*. at pp. 15-16).

In Count III, Plaintiffs allege that the failure of the General Assembly and the Governor to perform their constitutional duties to enact a budget pursuant to Article VIII, section 2 of the Illinois Constitution amounts to an unconstitutional impairment of their contracts. (*Id*. at ¶¶ 99-104). In Count III, Plaintiffs seek preliminary and permanent injunctive relief requiring Defendants to make full and timely payment on their contracts. (*Id*. at p. 17). Plaintiffs

[1] Plaintiffs also seek legal fees under Section 5 of the Illinois Civil Rights Act in all five counts.

additionally seek an order declaring that (i) "the actions of the General Assembly and defendant Governor evidence both legislative and executive approval of these specific contracts and preclude any defense to payment under Article VIII, section 2 for lack of consented-to appropriation in the full amount"; (ii) "the plaintiffs should not be subject to forfeiture or pecuniary loss for the breach of duty under Article VIII by the General Assembly and the defendant Governor to have a timely plan setting forth the revenue and expenditures of the State in the fiscal year"; and (iii) "such breach of duty under Article VIII, section 2 by the General Assembly and defendants has unlawfully deprived the plaintiffs of their legitimate right to the security of payment that comes from having a budget in place." (*Id.*).

In Count IV, Plaintiffs allege that P.A. 99-0524 further impairs the obligation of their contracts by limiting their legal remedies for breach of contract. (*Id.* at ¶¶ 106-110). Plaintiffs allege that the State Lawsuit Immunity Act limits legal remedies for breach of contract to the Court of Claims, and that the Court of Claims has a policy of not awarding payment without a consented-to appropriation. *Id.* In Count IV, Plaintiffs seek an order declaring that Defendants have unlawfully impaired the obligation of Plaintiffs' contracts and granting preliminary and permanent injunctive relief requiring Defendants to make full and timely payment on their contracts. (*Id.* at p. 18).

Finally, in Count V, Plaintiffs allege that the General Assembly has impaired the obligation of their contracts by failing to ensure that there is sufficient cash in general revenue and/or by placing arbitrary restrictions on payment from special funds that have insufficient cash on hand to pay the Plaintiffs. (*Id.* at ¶¶ 111-121). In Count V, Plaintiffs seek an order (i) declaring that the restrictions placed by the General Assembly in P.A. 99-0524 and other laws on the accounts out of which Plaintiffs can be paid and the insufficiency of existing general revenue

to pay Plaintiffs have impaired the obligation of contracts and the rights of Plaintiffs and (ii) requiring the Defendants to "draw or pull cash on hand from these restricted accounts to pay the vouchers submitted by Plaintiffs on a timely basis." (*Id*. at p. 20).

I. MOTION TO DISMISS

As a threshold matter, Plaintiffs are improperly pursuing parallel litigation. Thirty-eight of the forty-four Plaintiffs in this case already brought and lost very similar claims against Defendants in the Circuit Court of Cook County. Plaintiffs are currently appealing the Cook County Circuit Court's decision in the First District Appellate Court, No. 1-16-2471, and oral argument in that appeal is scheduled for May 4, 2017. Accordingly, Plaintiffs' complaint should be dismissed, or alternatively stayed, pending a final decision in that appeal.

Notwithstanding that Plaintiffs are clearly attempting to relitigate here the claims they already lost in the Circuit Court of Cook County, the circuit court lacks jurisdiction over this action. Plaintiffs' claims are barred by sovereign immunity because they are "founded upon" contracts with the State, for which the Court of Claims has exclusive jurisdiction. Additionally, Plaintiffs cannot support their claim that, in entering into and continuing contracts without enacted appropriations statutes, Defendants' acts were *ultra vires*. Thus, Plaintiffs cannot save their claims from the sovereign immunity bar by invoking the "officer suit" exception.

Furthermore, there is no legal basis for Plaintiffs' claim that Defendants exceeded their constitutional authority and violated Plaintiffs' right to equal protection and due process. The express language of Plaintiffs' contracts and Illinois law both preclude the relief Plaintiffs seek, *i.e*., full and timely payment of their contracts in the absence of sufficient appropriations. Additionally, all of Plaintiffs' impairment of contract claims ultimately fail because such claims expressly require a legislative enactment that impairs a contractual obligation, which is not

present in this case. Here, Plaintiffs primarily complain of the *absence* of legislation creating sufficient appropriations for services provided by Plaintiffs in FY2017.

Legal Standard

Defendants may bring a combined Motion to Dismiss pursuant to section 2-619.1 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-619.1. While a section 2-615 motion to dismiss tests the legal sufficiency of a complaint, a section 2-619 motion to dismiss assumes the sufficiency of the complaint but asserts affirmative matter outside the complaint that bars or defeats the cause of action. *Patrick Eng'g, Inc. v. City of Naperville,* 2012 IL 113148, ¶ 31. When ruling on a motion to dismiss, the court takes as true all well-pleaded facts in the complaint, but not conclusions of law or conclusions of fact unsupported by specific factual allegations. *Spillyards v. Abboud*, 278 Ill. App. 3d 663, 668 (1st Dist. 1996).

Argument

A. Plaintiff's First Amended Complaint should be dismissed pursuant to 735 ILCS 5/2-619(a)(3), or alternatively, stayed pending a final decision on appeal.

Plaintiffs' First Amended Complaint should be dismissed pursuant to section 2–619(a)(3) of the Illinois Code of Civil Procedure, which provides that a defendant may seek dismissal of a complaint on the basis that "there is another action pending between the same parties for the same cause." 735 ILCS 5/2-619(a)(3). The statute is intended to avoid duplicative litigation and thereby further judicial economy. *Combined Ins. Co. of Am. v. Certain Underwriters at Lloyd's London*, 356 Ill. App. 3d 749, 753 (1st Dist. 2005); *Friends for Murray Ctr. Inc. v. Dep't of Human Servs.*, 2014 IL App (5th) 130481, ¶ 27.

The initial determination is whether the other pending action involves the "same parties" and the "same cause." *May v. SmithKline Beecham Clinical Labs., Inc.*, 304 Ill. App. 3d 242, 247 (5th Dist. 1999). "Same parties" does not mean that the parties to both litigations have to be

identical, for even if the litigants differ in name or number, the "same parties" requirement is met if the litigants' interests are sufficiently similar. *Id*. (internal citation omitted). The "same cause" requirement does not mean the "same cause of action" or the same legal theories, but it means that the relief sought is requested on the same set of facts. *Id*. To determine whether the actions are under the same cause, the court considers "whether the two actions arise out of the same transaction or occurrence, not whether the legal theory, issues, burden of proof or relief sought materially differ between the two actions." *Combined Ins. Co. of Am.*, 356 Ill. App. 3d at 753, quoting *Kapoor v. Fujisawa Pharm. Co., Ltd.*, 298 Ill. App. 3d 780, 786 (1st Dist. 1998) (internal citations and quotations omitted). This affirmative defense may be invoked "where there is a substantial similarity of issues between the two actions." *Combined Ins. Co. of Am.*, 356 Ill. App. 3d at 753 citing *Overnite Transp. Co. v. Int'l Bhd. of Teamsters*, 332 Ill. App. 3d 69, 76 (1st Dist. 2002). The purpose of the two actions need not be identical. *Id*. Accordingly, the "central inquiry, which is guided by common sense, is whether the relief requested rests on substantially the same facts." *Id*.

All but six of the forty-four Plaintiffs in this case previously brought a substantially similar cause of action against Defendants in the Circuit Court of Cook County, *Illinois Collaboration on Youth, et al. v. Dimas, et al.*, No. 16 CH 6172. (See Exhibit A, Cook County Third Amended Complaint).[2] In the Cook County action, Plaintiffs complained that P.A. 99-0524 would not provide sufficient funding for Plaintiffs' FY2016 and FY2017 contracts and

[2] The following six Plaintiffs were not named in the related Cook County case: ADV & SAS, Life Span, Mujeres Latinas en Accion, Mutual Ground, Dove, Inc., and Courage Connection. John Maki, Executive Director of the Illinois Criminal Justice Information Authority ("ICJIA") is the only Defendant here who was not named in the related Cook County case. Dove, Inc. is the only named Plaintiff that has contracts with the ICJIA. Both Dove, Inc. and John Maki, the Executive Director of the ICJIA, were not named as parties in the related Cook County case. In any event, all of the grants between ICJIA and Dove, Inc. at issue in this lawsuit are fully funded by federal grants, and therefore, ICJIA should not be named as a Defendant in this case.

sought an order requiring Defendants to make full and timely payment on their contracts. On August 31, 2016, after fully briefing and arguing Defendants' Motion to Dismiss and Plaintiffs' Motion for Preliminary Injunction (see Group Exhibit B, Cook County Briefs), the Circuit Court of Cook County dismissed Plaintiffs' action with prejudice and denied their Motion for Preliminary Injunction. (See Exhibit C, August 31, 2016 Order). Plaintiffs have appealed that decision in the First District Appellate Court, No. 1-16-2471 (see Exhibit D, Notice of Appeal), briefing has been completed, and oral argument is scheduled for May 4, 2017.

Significantly, all of the arguments raised by Plaintiffs in the Cook County action are presented in this case. The two cases arise out of the same transaction or occurrence, *i.e.*, the Plaintiffs' human services contracts and the failure of the General Assembly and Governor to enact appropriations to authorize full and timely payment on those contracts. (See Exhibit E, Table Comparing St. Clair County Claims with Cook County Claims). Thus, "the relief requested" in both the Cook County action and this case "rests on substantially the same facts." *See Combined Ins. Co. of Am.*, 356 Ill. App. 3d at 753. Accordingly, the two actions involve "the same cause" and the First Amended Complaint should be dismissed.

Alternatively, the First Amended Complaint should be stayed pending a final decision on appeal. The factors that a court should consider in deciding whether a stay under section 2-619(a)(3) is warranted include comity; the prevention of multiplicity, vexation, and harassment; the likelihood of obtaining complete relief in the foreign jurisdiction; and the *res judicata* effect of a foreign judgment in the local forum. *Combined Ins. Co. of Am.*, 356 Ill. App. 3d at 754 (internal citations omitted). These factors all weigh in favor of dismissing or staying the action pursuant to 735 ILCS 5/2-619(a)(3).

B. Alternatively, Plaintiffs' First Amended Complaint should be dismissed pursuant to 735 ILCS 5/2-619(a)(1) because it is barred by sovereign immunity, and this Court therefore lacks subject matter jurisdiction.

Plaintiffs' entire action is barred by sovereign immunity and must be dismissed for lack of subject matter jurisdiction. Because Plaintiffs' claims are based on their contracts with the State, this suit is outside of this Court's jurisdiction.

Section 1 of the State Lawsuit Immunity Act states that, "[e]xcept as provided in the Illinois Public Labor Relations Act, the Court of Claims Act, the State Officials and Employees Ethics Act, and Section 1.5 of this Act, the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1. The doctrine of sovereign immunity protects the State from interference in its performance in the functions of government. *Vill. of Riverwoods v. BG Ltd. P'ship*, 276 Ill. App. 3d 720, 725 (1st Dist. 1995). If a judgment could operate to control the actions of the State or subject it to liability, the action is effectively against the State and is barred by sovereign immunity. *Currie v. Lao*, 148 Ill. 2d 151, 158 (1992).

1. Sovereign immunity bars Plaintiffs' request for injunctive relief.

Plaintiffs cannot evade sovereign immunity by styling their complaint as one seeking injunctive relief. *State Bldg. Venture v. O'Donnell*, 239 Ill. 2d 151, 164 (2010). The Supreme Court addressed this issue in *State Bldg. Venture* and its reasoning in that case applies here. In that case, the plaintiff brought a declaratory judgment action alleging that it was damaged by the State's interpretation of its rights under a commercial lease and seeking a determination that the State's construction of the lease was invalid. *Id.* at 154-56. The Court explained that the determination of whether an action is founded on a contract and brought against the State depends upon the issues involved and the relief sought. *Id.* at 161. The Court then held that sovereign immunity barred the plaintiff's claim because it was founded upon a contract with the

State. *Id*. at 164-65. The Court reasoned that plaintiff alleged a present claim for relief, rather than a prospective claim, by seeking a determination of its rights under the existing lease. *Id*.

Similarly, Plaintiffs seek a determination of their rights under their contracts with the State. Specifically, Plaintiffs allege that, under their contracts, the State is obligated to fully and timely pay Plaintiffs for the services rendered in FY2017. Consistent with *State Bldg. Venture*, this Court should rule that sovereign immunity bars Plaintiffs' entire action.

2. The Court of Claims has exclusive jurisdiction over Plaintiffs' claims.

Plaintiffs' claims for the payment of services provided pursuant to their contracts must be pursued in the Illinois Court of Claims. In relevant part, the Court of Claims Act provides that the Court of Claims has "*exclusive jurisdiction*" over the following claims:

> (a) All claims against the State *founded upon any law of the State* of Illinois or upon any regulation adopted thereunder by an executive or administrative officer or agency; . . .
>
> (b) All claims against the State *founded upon any contract* entered into with the State of Illinois.

705 ILCS 505/8 (emphasis added). Plaintiffs allege that they contractually agreed to provide various services for the State in FY2017 and have not been paid for those services. (FAC ¶¶ 5-19, 53-55, 58-61). Having made their contracts an essential element of their claims, Plaintiffs cannot avoid the conclusion that their action is "*founded upon* [a] contract entered into with the State of Illinois" and, therefore, within the "*exclusive jurisdiction*" of the Court of Claims. 705 ILCS 505/8(b) (emphasis added). "[T]here is no dispute that claims against the State founded on a contract must be filed in the Court of Claims." *State Bldg. Venture*, 239 Ill. 2d at 161. Even Plaintiffs acknowledge that their claims are founded upon their contracts with the State. Plaintiffs attached their contracts to the First Amended Complaint and state in Paragraph 20 that their contracts are attached "in compliance with 735 ILCS § 5/606 [sic]" (FAC ¶ 20), which requires

them to do so for "a claim . . . *founded upon* a written instrument." 735 ILCS 5/2–606 (emphasis added). Given that every claim in Plaintiffs' complaint seeks payment under their contracts, there can be no dispute that their claims are founded upon State contracts. Accordingly, this suit is barred by the State Lawsuit Immunity Act and should be dismissed pursuant to Section 2-619(a)(1).

3. The officer suit exception to sovereign immunity is not applicable.

Plaintiffs try to save their claims by invoking the "officer suit" exception to sovereign immunity, pursuant to which a court may enter injunctive relief prohibiting future action by a state official "in violation of statutory or constitutional law or in excess of his authority." *Leetaru v. Bd. of Trs. of the Univ. of Ill*., 2015 IL 117485, ¶ 45 (internal citations omitted); see also *Ellis v. Bd. of Governors of State Colls. & Univs.*, 102 Ill. 2d 387, 395 (1984) (holding that sovereign immunity is inapplicable where "a plaintiff is not attempting to enforce a *present claim* against the State, but rather seeks to *enjoin* a State officer from taking *future actions* in excess of his delegated authority") (emphasis added). This effort fails for two reasons: (1) Plaintiffs seek to enforce a *present claim* for monetary relief against the State based on existing contracts, not to enjoin future action in excess of Defendants' authority, and (2) Plaintiffs' allegations that Defendants acted *ultra vires* in excess of their authority are legally unfounded.

Plaintiffs' reliance on the Contracts Clause of the Illinois Constitution does not prevent their action from being a present claim or bring it within the officer suit exception. Not every legal wrong allegedly committed by a State officer will trigger the officer suit exception. *Leetaru*, 2015 IL 117485 at ¶47. For example, where the challenged conduct amounts to simple breach of contract, the exception is inapplicable. *Id*., citing *Smith v. Jones*, 113 Ill. 2d 126, 132–33 (1986). In *Smith*, the Supreme Court held that sovereign immunity could not be avoided

where "plaintiffs' complaint . . . alleges only that the Director exceeded his authority by breaching a contract." *Smith*, 113 Ill. 2d at 132–33. Similarly, in *Joseph Constr. Co. v. Bd. of Trs. of Governors State Univ.*, 2012 IL App (3d) 110379, the appellate court relied on sovereign immunity to affirm dismissal of a suit seeking payment under a contract with a state university. The plaintiff in *Joseph Constr. Co.* sought injunctive relief "prohibiting defendants from 'withholding funds'" and declaring that the plaintiff "'is entitled to the balance due under the terms of the parties' agreement'" based on allegations that the state officer "acted 'outside the scope of her authority' by failing 'to honor the terms of the parties' agreement'" and withholding funds allegedly due. *Id.* at ¶47. In finding the suit barred by sovereign immunity, the court noted that "artful pleadings can allow any plaintiff to suggest that a state employee acts outside the scope of his or her employment when disbursing funds to which the plaintiff feels entitled." (*Id.* at ¶52), but emphasized that "[t]his entire action is premised and founded upon the construction contract between plaintiff and [the state university]". *Id.* at ¶50.[3]

The same conclusion applies here. Regardless of how Plaintiffs label their claims, they seek a monetary recovery from the State for a present claim based on their contracts, and the officer suit exception does not apply. See *Sarkissian v. Chi. Bd. of Educ*., 201 Ill. 2d 95, 102 (2002) (when analyzing a pleading, a court will look to the content of the pleading rather than its label).

[3] See also *Brucato v. Edgar*, 128 Ill. App. 3d 260, 267 (1st Dist. 1984) (court held sovereign immunity barred plaintiff's claim based on a contract with the State, stating that, "although plaintiff's prayer for relief is framed in equitable terms," the relief sought was monetary recovery from the State, and, therefore, "notwithstanding the terminology employed in the pleadings, the present action is substantively a claim for monetary damages from the State arising from a contract with the State" even though plaintiff also alleged that defendants' actions "constituted a denial of her constitutional right to due process and equal protection.").

In addressing a similar sovereign immunity argument in *AFSCME v. Rauner*, No. 15 CH 475, this Court recognized that sovereign immunity would apply in a case, like here, involving "strictly a contract issue between the State and a vendor." See Exhibit F, *AFSCME v. Rauner*, No. 15 CH 475, July 9, 2015 Transcript of Proceedings at 28-29. During the TRO hearing, citing *People ex rel. Sklodowski v. State*, 284 Ill. App. 3d 809 (1st Dist. 1996), *rev'd on other grounds*, 182 Ill. 2d 220 (1998), this Court explained:

> [T]his is … a case that is one that involves the exercise of duties by an officeholder and isn't strictly a contract issue between the State and a vendor…. [The *Sklodowski*] case makes a distinction…that there is a difference between an officeholder's exercise of duties, constitutional duties, and the contractual obligations of the State of Illinois.

See Exhibit F, *AFSCME v. Rauner*, No. 15 CH 475, July 9, 2015 Transcript of Proceedings at 28-29. Because the present case unquestionably involves a "contract issue between the State and a vendor," an issue not in *AFSCME v. Rauner*, this Court's ruling in that case supports the application of the sovereign immunity defense here.

In any event, Plaintiffs' claims of *ultra vires* action by Defendants are unfounded. A state official's actions will not be considered *ultra vires* "merely because the official has exercised the authority delegated to him or her erroneously." *Leetaru*, 2015 IL 117485 at ¶ 47. Rather, the officer suit exception applies in situations where the official is taking action beyond what the sovereign has empowered him or her to do, or is conducting state business in a way the Constitution or a statute forbids. *Id*., citing *PHL, Inc. v. Pullman Bank & Trust Co.*, 216 Ill. 2d 250, 266 (2005).

Here, the contracts that Defendants entered into expressly complied with the law. The contracts contain an express provision – consistent with the law – that they are contingent upon and subject to the availability of sufficient funds. The Appropriations Clause of the Illinois

Constitution (ILL. CONST. art. VIII, §2(b)) and the State Comptroller Act (15 ILCS 405/9(c)) bar the expenditure of State funds absent an appropriation. Under general contract law principles, "statutes and laws in existence at the time a contract is executed are considered part of the contract," and "[i]t is presumed that parties contract with knowledge of the existing law." *State (CMS) v. AFSCME,* 2016 IL 118422, ¶ 53 (citations and internal quotation marks omitted). Plaintiffs were aware that their agreements were contingent upon the sufficiency of funds and enactment of appropriations. By entering into and continuing contracts at a time when there was no sufficient appropriation to pay the contracts in full, Defendants did not act in excess of their authority. The Defendants would have exceeded their lawful authority if they authorized payment without an enacted, sufficient appropriation, not by entering into and continuing contracts in the absence of a sufficient appropriation.

Assuming there was any merit to the *ultra vires* claim that the Defendants lacked the authority to "continue" or "enforce" the Plaintiffs' contracts without a sufficient appropriation, that claim would not support the *remedy* they seek of ordering the payment of unappropriated State funds. Rather, Plaintiffs' only available remedy would be to seek a prospective injunction against the continuation or enforcement of these contracts until there are supporting appropriations for them. *PHL, Inc. v. Pullman Bank & Trust Co.*, 216 Ill. 2d 250, 268 (2005) ("sovereign immunity will not bar a cause of action in the circuit court where the plaintiff seeks to bar a State officer from taking *future actions* in excess of his delegated authority"). In contrast, Plaintiffs seek relief for an alleged breach of contract claim which is barred by sovereign immunity.

C. The Court also should dismiss the First Amended Complaint under 735 ILCS 5/ 2-615 because Plaintiffs fail to state a cause of action.

1. The plain language of the contracts at issue bars Plaintiffs' claims.

Plaintiffs' contracts are attached to their First Amended Complaint and are considered part of the pleading, and when inconsistencies between the factual allegations and those exhibits arise, the exhibits control over inconsistent factual allegations. *Kehoe v. Saltarelli*, 337 Ill. App. 3d 669, 676 (1st Dist. 2003). Each contract states that any claim against the State arising out of the contract must be filed *exclusively* with the Illinois Court of Claims, and that the State does not waive sovereign immunity by entering into these agreements. (See, e.g., FAC, Exhibit A, p. 23, Section 26.8; see also Group Exhibit F).

As noted, Plaintiffs' contracts also provide that they are contingent upon and subject to the availability of sufficient funds. That language limits Plaintiffs' contract rights to the amount of any enacted appropriations. See *State (CMS) v. AFSCME,* 2016 IL 118422, ¶¶ 51-52. And, given the nature of the appropriations process, Defendants have the right to enter into contracts subject to an appropriations contingency. *Id.* at ¶ 44; see also 1979 Ill. Att'y Gen'l Op. 24 (S-1412) (stating that standard appropriations contingency clause in state contract confirms that, in "recognition . . . of the legislature's exclusive authority to appropriate State funds," the contract does not "bind the State in excess of the State agency's appropriation").

There is also no merit to Plaintiffs' contention that Defendants could not continue the contracts despite the lack of sufficient appropriations. Each contract provides that, in the absence of necessary funding, the State *may* terminate or suspend the contract, in whole or in part. That Plaintiffs believe that they were not able to withdraw from the contracts for practical reasons does not change the effect of the contract language they agreed to, which allows but does not require Defendants to terminate the contracts when appropriations are insufficient. (FAC ¶ 68). Plaintiffs cannot state a cause of action for payment under these contracts simply because the Defendants had discretion to terminate or suspend the contracts but chose not to do so.

2. The Illinois Constitution bars the relief Plaintiffs seek.

Even if this Court had jurisdiction over Plaintiffs' contract claims, the Appropriations Clause of the Illinois Constitution precludes full and timely payment for the contracts at issue in the absence of an enacted, sufficient appropriation. The Appropriations Clause provides, in pertinent part, that "[t]he General Assembly by law shall make appropriations for all expenditures of public funds by the State." Ill. Const., art. VIII, §2(b).

The Illinois Supreme Court has repeatedly held that, under the Appropriations Clause, the State cannot make payments without enacted, sufficient appropriations. In *People ex rel. Bd. Of Trs. of Univ. of Ill. v. Barrett*, 382 Ill. 321, 338-52 (1943), the Court held that, even though the University of Illinois had the statutory authority to enter into contracts, it could not pay compensation to its in-house counsel without an appropriation by the General Assembly for that purpose, stating that the power to enter into contracts is "always subject to the restriction that [payments made] must be within the classifications for which funds have been appropriated and are available." 382 Ill. at 344. In *Bd. of Trs. of Cmty. Coll. Dist. No. 508 v. Burris*, 118 Ill. 2d 465, 468-69, 478-79 (1987), the Court held that the Comptroller properly refused to reimburse the community college district the full amount of veterans' scholarships where the General Assembly had appropriated less than 60% of the scholarship program.

As in *Barrett*, Defendants' authority to enter into contracts with Plaintiffs did not in itself provide the basis for payment under the contracts; payment depends on enacted appropriations. Likewise, as in *Burris*, the existence of a legal basis for payment does not mandate full payment if the General Assembly does not appropriate sufficient amounts. *See also State (CMS) v. AFSCME*, 2016 IL 118422; *AFSCME v. Netsch*, 216 Ill. App. 3d 566 (4th Dist. 1991).

In *AFSCME v. Netsch*, 216 Ill. App. 3d 566 (4th Dist. 1991), the court rejected the plaintiffs' effort to require the Comptroller to pay State employees absent enacted appropriations, holding that "any attempt by the comptroller to issue the funds in the absence of an appropriation bill signed into law by the governor would create obvious problems under the separation-of-powers doctrine." *Id*. at 568. Plaintiffs here seek relief similar to the relief sought in *Netsch, i.e*., payment for their contractual services in the absence of a sufficient appropriation. Consistent with *Netsch*, *Barrett,* and *Burris,* Plaintiffs' request to be paid for the contracts should be rejected. See *State (CMS) v. AFSCME*, 2016 IL 118422, ¶¶ 42, 45 (holding that a wage increase pursuant to a collective bargaining agreement could not be implemented due to insufficient appropriations).

Defendants recognize that, in the *AFSCME v. Rauner* TRO hearing, this Court distinguished the holding in the *Netsch* case, but that distinction actually supports Defendants' position here. At the TRO hearing, this Court stated that "*Netsch* did not preclude the courts from … intervening … where the legislative and executive branches failed to perform their obligations." See Exhibit F, *AFSCME v. Rauner*, No. 15 CH 475, July 9, 2015 Transcript of Proceedings at 22. Here, there has not been a complete breakdown in the performance of the obligations of the legislative and executive branches as to Plaintiffs' contracts as this Court found with regard to appropriations for the State employee payroll when it entered the TRO in July 2015. Although the legislative and executive branches did not fund Plaintiffs' FY2016 contracts prior to Plaintiffs providing services under those contracts, many of the Plaintiffs have since been paid in full for services rendered in FY2016 as part of the stop gap budget. In contrast, the legislative and executive branches still have not enacted appropriations to pay the State employee payroll. Even if this Court finds that *Netsch* does not apply here, there are no

cases that give this Court the authority to grant the relief requested, *i.e.*, full and timely payment of the vouchers submitted by Plaintiffs for services rendered in FY2017, in light of insufficient appropriated funds. (FAC, ¶ 1 and pp. 15, 16, 17, 18, 20). Such an order directly contravenes the Appropriations Clause.

3. Illinois law bars the relief Plaintiffs seek.

In addition to the Appropriations Clause, Section 9(c) of the State Comptroller Act, 15 ILCS 405/1, *et seq*., bars an expenditure of public funds without a corresponding appropriation:

> The Comptroller shall examine each voucher required by law to be filed with him and determine whether unencumbered appropriations or unencumbered obligational or expenditure authority other than by appropriation are legally available to incur the obligation or to make the expenditure of public funds. If he determines that unencumbered appropriations or other obligational or expenditure authority are not available from which to incur the obligation or make the expenditure, the Comptroller shall refuse to draw a warrant.

15 ILCS 405/9(c).

Under this Act, the Court has no authority to order the full and timely payment of Plaintiffs' contracts in the absence of a sufficient appropriation. For this reason, the relief requested in Count V is also impermissible. In Count V, Plaintiffs seek an order requiring the Comptroller to draw or pull cash on hand from other accounts to pay for Plaintiffs' vouchers. Such an order, however, directly contravenes the State Comptroller Act. Additionally, the sovereign immunity doctrine precludes the circuit court from entering an order which controls the actions of the State or subjects it to liability. *Currie*, 148 Ill. 2d at 158.

4. There has been no impairment of any obligations in Plaintiffs' contracts.

Plaintiffs improperly rely on the Contracts Clause of the Illinois Constitution as a substitute for a breach of contract action to enforce contractual rights. The Contracts Clause provides that "[n]o . . . law impairing the obligation of contracts . . . shall be passed." ILL.

CONST. art. I, § 16. The purpose of the Contracts Clause "is to protect the expectations of persons who enter into contracts from the danger of subsequent legislation." *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 398 Ill. App. 3d 510, 530 (2d Dist. 2009) (citation and internal quotation marks omitted).

There are four elements to an impairment of contract claim: (1) a contractual relationship; (2) that has been impaired by a legislative enactment; (3) that imposes a substantial impairment; and (4) that is not justified by an important public purpose. *AFSCME, Council 31 v. State of Ill., Dep't of Cent. Mgmt. Servs.*, 2015 IL App (1st) 133454, ¶ 44. Plaintiffs cannot satisfy the second element.

"The constitutional provision denying the power to pass any law impairing the obligation of a contract has reference only to a statute enacted after the making of a contract." *People v. Ottman*, 353 Ill. 427, 430 (1933). In holding that a judicial decision cannot constitute an impairment of contract, the United States Supreme Court has explained that "[i]t is equally well settled that an impairment of the obligation of the contract, within the meaning of the Federal Constitution, *must be by subsequent legislation*." *Cleveland & P.R. Co. v. City of Cleveland*, 235 U.S. 50, 53-54 (1914) (emphasis added). Thus, the remedy for a Contracts Clause violation is invalidation of the legislation, not enforcement of the contract. *Carter v. Greenhow*, 114 U.S. 317, 322 (1885).

Plaintiffs complain that the enactment of P.A. 99-0524 amounts to an unconstitutional impairment of their contracts. Contrary to Plaintiffs' claims, P.A. 99-0524 not only provided Defendants with discretionary spending authority for FY2016 and a portion of FY2017 (see P.A. 99-0524, articles 74, 997, and 998), the appropriations authorized in P.A. 99-0524 also generally provided full payment for Plaintiffs' FY2016 contractual services. (FAC ¶¶ 56-61). While P.A.

99-0524 did not provide sufficient appropriations to fully and timely fund Plaintiffs' FY2017 contracts, it did not do anything to impair those contracts. Instead, as these facts demonstrate, Plaintiffs' claims are based not on an impairment created by P.A. 99-0524, but on the *absence* of a legislative enactment to support full and timely payment of their FY2017 contracts. The failure of the General Assembly and the Governor to enact sufficient appropriations for FY2017 does not rise to an unconstitutional impairment of Plaintiffs' contracts.

The fact that P.A. 99-0524 provided insufficient appropriations for Plaintiffs' FY2017 contractual services amounts to nothing more than a potential breach of contract claim. This issue was addressed by the Illinois Supreme Court in *State (CMS) v. AFSCME,* and that holding controls here. In *State (CMS) v. AFSCME,* the Illinois Supreme Court reversed the lower courts and vacated an arbitration award directing the State to pay a wage increase to State employees covered by a multiyear collective bargaining agreement. 2016 IL 118422, ¶¶ 1-2. The Court held that the arbitration award violated Illinois public policy, as reflected in the Appropriations Clause of the Illinois Constitution, ILL. CONST. art. VIII, §2(b), and Section 21 of the Illinois Public Labor Relations Act, 5 ILCS 315/21. *Id*. at ¶ 2. Although the Governor's proposed budget to the General Assembly provided full funding under the collective bargaining agreement, the budget that was actually passed by the General Assembly did not contain sufficient appropriations to implement the wage increases set forth in that agreement. *Id.*at ¶¶ 8-9. The Illinois Supreme Court held that the failure to enact sufficient appropriations to pay wage increases specified in a CBA was not an unconstitutional impairment of that agreement where the agreement was, by statute, contingent on appropriations. *Id*. at ¶ 52. Specifically, the Court found that the wage increase was "always contingent on legislative funding, and the failure of that contingency to occur cannot 'impair' AFSCME's agreement with the State." *Id*. at ¶ 52.

Similarly, in this case, Plaintiffs' contracts were all explicitly subject to enacted appropriations, and the lack of appropriations for all of the services specified in those contracts cannot "impair" them. The appropriations authorized by P.A. 99-0524 and enacted on June 30, 2016 unfortunately did not provide for full funding of all of Plaintiffs' contracts for FY2016 and FY2017. Although that shortfall has caused hardship, an order compelling Defendants to make full and timely payment on Plaintiffs' contracts without a sufficient, enacted appropriation is contrary to Illinois law.[4]

To be sure, this Court distinguished the Illinois Supreme Court's decision in *State (CMS) v. AFSCME* when it denied the People of the State of Illinois's motion to dissolve the preliminary injunction requiring the Comptroller to pay all State employees in the absence of enacted appropriations legislation. See Exhibit G, February 16, 2017 Order in *AFSCME v. Rauner*, 15 CH 475. In doing so, the Court focused on the fact that the motion to dissolve dealt with the tolling agreements, which this Court found are not subject to appropriation. In contrast, the Supreme Court decision concerned the application of section 21 of the Public Labor Relations Act to multiyear CBAs, which the Supreme Court held are subject to appropriation. See Exhibit H, February 16, 2017 Transcript of Proceedings at 78-79. The distinction this Court found between the facts in *State (CMS) v. AFSCME* and the State employee payroll case does not exist here. Like the multiyear CBAs at issue in *State (CMS) v. AFSCME*, Plaintiffs' contracts are indisputably and statutorily subject to appropriation, and therefore the Illinois Supreme Court's decision controls.

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[4] Contrary to Plaintiffs' erroneous allegations that the Attorney General has taken inconsistent positions as to the Defendants' authority to conduct public business without enacted appropriations (see FAC ¶¶ 78-79), on the legal question at issue here, the Attorney General has consistently argued that there can be no expenditure of public funds without sufficient appropriations.

In addition, State action takes on a constitutional dimension, as opposed to being a potential breach of contract, only if that State action extinguishes any previously available remedy for a breach of contract. *Horwitz-Matthews, Inc. v. City of Chicago*, 78 F.3d 1248, 1251 (7th Cir. 1996). If the party with whom the State contracted has a remedy, there is no constitutional impairment under the Contracts Clause. *Id*. Here, Plaintiffs argue that they have an inadequate legal remedy because they will face significant obstacles in pursuing their remedies in the Court of Claims. (See Count IV of FAC). Namely, Plaintiffs allege that the enactment of PA 99-0524 impairs, if not eliminates, the possibility of a legal remedy for non-payment in the Court of Claims. (*Id*.). But the General Assembly did not pass any legislation that extinguished any contractual rights or remedies Plaintiffs may have. And, Plaintiffs' contracts and Illinois law both provide a remedy, which lies within the exclusive jurisdiction of the Court of Claims.

Finally, there is no basis to Plaintiffs' claim that P.A. 99-0524 "unlawfully allows defendants to reduce payments well below the face amount of these contracts." (FAC ¶ 97). First, Plaintiffs' contracts are enforceable under their original terms in the Court of Claims. And second, Defendants have not contested the amount due to Plaintiffs for services rendered in FY2017. Rather, Defendants have consistently asserted that full and timely payment cannot be made in the absence of sufficient appropriations.

Because Plaintiffs cannot turn their ordinary breach of contract claim into unconstitutional impairment of contract claims, Counts II, III, IV, and V must be dismissed pursuant to 735 ILCS 5/2-615.

5. The lack of payment to Plaintiffs for contractual services, where those contracts are contingent on sufficient appropriations, does not deprive Plaintiffs of due process or equal protection.

Similarly, Plaintiffs cannot turn their breach of contract claim into a violation of due process and equal protection. Because the contracts are subject to sufficient appropriations, the possibility that this contingency would not be satisfied is an inherent part of Plaintiffs' property rights, and the failure of that contingency to occur could not deprive them of property without due process. And, the legislative process resulting in the lack of such appropriations provides all the process due in connection with determining the funds to devote to services under Plaintiffs' contracts. *See Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445 (1915); *Pro-Eco, Inc. v. Bd. of Comm'rs of Jay County, Ind.*, 57 F.3d 505, 513 (7th Cir. 1995).

The decision by Defendants not to authorize full and timely payment absent such appropriations likewise does not deprive Plaintiffs of a property interest. Even if such a deprivation occurred, it was not without due process because Plaintiffs may pursue the process provided by law for any claim founded on a contract with the State, *i.e.*, filing a claim in the Court of Claims. See *Murdock v. Washington*, 193 F.3d 510, 513 (7th Cir. 1999) (citing 705 ILCS 505/8). In any event, because due process guarantees *procedural* protections, not a particular *substantive* outcome, *Engle v. Isaac*, 456 U.S. 107, 121 n.21 (1982), the remedy for a due process violation is an outcome-neutral hearing to contest the legitimacy of the claimed deprivation, *see Evers v. Astrue*, 536 F.3d 651, 660 (7th Cir. 2008), not the specific outcome of paying Plaintiffs the amounts they claim.

Plaintiffs' equal protection claims also must fail. Plaintiffs do not maintain that they are a protected class for equal protection purposes. Thus, the legislative and executive decisions they challenge are subject to judicial scrutiny only to determine whether there is a "rational basis" for treating them differently than other persons who they contend are similarly situated. *People v. Masterson*, 2011 IL 110072, ¶ 24. That scrutiny is "limited and generally deferential." *Comm.*

for Educ. Rights v. Edgar, 174 Ill. 2d 1, 37 (1996). "The challenged classification need only be rationally related to a legitimate state goal, and if any state of facts can reasonably be conceived to justify the classification, it must be upheld." *Id.* (citations omitted).

Rational basis review "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *F.C.C. v. Beach Comm'ns, Inc.*, 508 U.S. 307, 313 (1993). "In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Id.* That is especially true with respect to determinations about how to allocate limited public resources. See *Miller v. Ill. Dep't of Pub. Aid*, 94 Ill. App. 3d 11, 19-20 (1st Dist. 1981) (rejecting equal protection challenge to policy eliminating public aid coverage for certain optical and dental conditions in light of "the obvious constraints of finite financial resources"). In addition, "[a]s a threshold matter . . . it is axiomatic that an equal protection claim requires a showing that the individual raising it is similarly situated to the comparison group," and "when a party fails to make that showing, his equal protection challenge fails." *Masterson*, 2011 IL 110072, ¶ 25. As discussed above, State law and Plaintiffs' contracts expressly provide the rational basis for not making full and timely payments that are contingent on sufficient appropriations.

Nonetheless, Plaintiffs allege that other creditors have been paid by Defendants in the absence of agreed-to appropriations. (FAC ¶ 75). But the other circumstances on which Plaintiffs rely are dissimilar in material respects. For example, the Constitution mandates spending for judicial salaries and operations. *Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 314 (2004). Other types of spending are required under federal law, which, under the Supremacy Clause of the

Federal Constitution (U.S. CONST. art. VI, cl. 2), takes precedence over Illinois law, including the Appropriations Clause and State statutes. *See, e.g.*, Aug. 31, 2015 Order to Enforce Consent Decrees entered in *Memisovski v. Maram*, N.D. Ill. No. 92-cv-01982, and *Beeks v. Bradley*, N.D. Ill. No. 92-cv-4204 (requiring State to make all Medicaid payments in compliance with federal law until budget impasse is resolved).

The only meaningful departure from these principles concerns State employee salaries, which are being paid on a timely basis pursuant to this Court's order in *AFSCME v. Rauner*, No. 15 CH 475, despite the lack of an appropriation for the payment of salaries. (FAC ¶¶ 1, 75). However, this Court's rationale in that case does not support Plaintiffs' position. As discussed above, this Court found that AFSCME stated a claim for impairment of contract after distinguishing the State employee salary case from the Illinois Supreme Court's decision in *State (CMS) v. AFSCME*. The Court focused on the fact that the State employee salary case dealt with the tolling agreements, which this Court found are not subject to appropriation, whereas the Supreme Court decision concerned the application of section 21 of the Public Labor Relations Act to multiyear CBAs, which the Supreme Court held are subject to appropriation. See Exhibit H, February 16, 2017 Transcript of Proceedings at 78-79. Here, Plaintiffs' contracts are indisputably and statutorily subject to appropriation, and therefore the Illinois Supreme Court's decision controls.

II. RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs are not entitled to a preliminary injunction. The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits. *Bd. of Educ. of Dolton Sch. Dist. 149 v. Miller*, 349 Ill. App. 3d 806, 814 (1st Dist. 2004). A party seeking a preliminary injunction is required to establish that he or she (1) has a clearly ascertainable right that is in

need of protection; (2) will suffer irreparable harm without the injunction; (3) has no adequate remedy at law for the injury; and (4) is likely to succeed on the merits. *Hartlein v. Ill. Power Co*., 151 Ill. 2d 142, 156 (1992). In addition, the trial court must determine whether the balance of hardships to the parties supports a grant of preliminary injunctive relief. *Joseph J. Henderson & Son, Inc. v. City of Crystal Lake*, 318 Ill. App. 3d 880, 883 (2d Dist. 2001).

A. Plaintiffs have no clear, ascertainable right in need of protection.

While Plaintiffs clearly have experienced financial hardships resulting from the State's ongoing budget issues, the plain language of Plaintiffs' contracts and Illinois law expressly preclude payment absent a sufficient appropriation and provide that the Court of Claims has exclusive jurisdiction over Plaintiffs' contract claims. Plaintiffs, therefore, have no clear, ascertainable right in need of protection.

B. Plaintiffs fail to establish a likelihood of success on the merits.

For the reasons explained above in support of Defendants' Motion to Dismiss, Plaintiffs fail to establish a likelihood of success on the merits of their claims. The issues raised by that motion present questions of law, and the lack of any legal merit to Plaintiffs' claims requires denying their Motion for Preliminary Injunction.

C. Plaintiffs failed to establish an inadequate remedy at law.

Plaintiffs also cannot establish an inadequate remedy at law. Plaintiffs' damages from Defendants' failure to pay them can be precisely determined. And where a party can be made whole by an award of damages, there is an adequate remedy at law. See *Charles P. Young Co. v. Leuser*, 137 Ill. App. 3d 1044, 1051 (1st Dist. 1985). As explained above, the Court of Claims has exclusive jurisdiction over Plaintiffs' contract claims.

While Plaintiffs assert that the Court of Claims cannot provide an adequate remedy, they have not pursued legal remedies in the Court of Claims and, thus, this Court cannot speculate as to the outcome of a case brought in that forum.

D. A preliminary injunction will cause irreparable harm to the State.

Finally, in balancing the equities, this Court should consider the irreparable harm to the State that would result from an unlawful expenditure of public funds. See *Granberg v. Didrickson*, 279 Ill. App. 3d 886, 889 (1996). That injury is compounded by the fact that, as the Comptroller's website shows, the State's General Revenue Fund lacks sufficient funds to pay the amounts Plaintiffs ask to be paid in the time that Plaintiffs seek to be paid. Plaintiffs' requested order would force the Comptroller to stop making other payments that have sufficient appropriations, are directly mandated by the Illinois Constitution or state law, or are otherwise required by federal law. That would not only impose serious hardship on other persons not represented in this case, but put the Court in the position of determining payment priorities among different classes of claimants. For the types of claims at issue in this case, however, that function is constitutionally vested in other branches of government.

The Illinois Supreme Court long ago recognized that the circuit court may not usurp the powers granted to the coordinate branches of government merely to remedy hardship or avoid a crisis, for to do so would constitute the greater injury:

> The Constitution and laws necessarily invest public officials with certain powers in the performance of the duties of the office. If the official neglects to exercise the powers necessary to a proper discharge of the duties of the office . . . the evil cannot be remedied by holding he never had the power he abused. It would be a greater evil to so hold than is the infrequent evil of abuse or wrongful exercise of powers by public officers.
>
> * * *
>
> [T]he courts have no means, and no power, to avoid the effects of [legislative] nonaction. The Legislature being the creative element in the system, its action

> cannot be quickened by the other departments. Therefore, when the Legislature fails to make an appropriation, we cannot remedy that evil. It is a discretion specially confided by the Constitution to the body possessing the power of taxation.

People ex rel. Millner v. Russel, 311 Ill. 96, 100, 109–10 (1924). Defendants do not dispute or underestimate the serious hardships that Plaintiffs and their clients have suffered as a result of the State's budgetary crisis. However, under the Illinois Constitution and laws, the solution to this egregious situation must come from the enactment of an appropriation from the legislature and the Governor.

CONCLUSION

For the foregoing reasons, along with those stated in the accompanying Motion to Dismiss, Defendants, Bruce Rauner, in his official capacity as Governor of Illinois, *et al*., respectfully request that this Honorable Court deny Plaintiffs' Motion for Preliminary Injunction and grant Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint with prejudice, or alternatively, stay this action pending a final decision on appeal in *Illinois Collaboration on Youth, et al. v. Dimas, et al.*, No. 1-16-2471.

Respectfully Submitted,

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Exhibit A

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

ILLINOIS COLLABORATION ON YOUTH, ABCOR HOME HEALTH INC., ACCESS LIVING OF METROPOLITAN CHICAGO, ADDUS HEALTHCARE INC., AIDS FOUNDATION OF CHICAGO, ALTERNATIVES, INC., ASI, INC., ASSOCIATION FOR INDIVIDUAL DEVELOPMENT, AUNT MARTHA'S YOUTH SERVICES CENTER, CARITAS FAMILY SOLUTIONS, CARROLL COUNTY HEALTH DEPARTMENT, CENTER ON HALSTED, CENTER FOR HOUSING AND HEALTH, CENTERSTONE, CHADDOCK, CHICAGO COMMONS, CHICAGO HOUSE AND SOCIAL SERVICE AGENCY, CHILDREN'S HOME + AID, CHILDREN'S HOME ASSOCIATION OF ILLINOIS, CJE, COMMUNITY YOUTH NETWORK, INC., CONNECTIONS FOR THE HOMELESS, CUNNINGHAM CHILDREN'S HOME OF URBANA, IL, DUPAGE YOUTH SERVICES, FAMILY ALLIANCE, FAMILY COUNSELING CENTER, INC., FAMILY FOCUS, FEATHERFIST, FOX VALLEY OLDER ADULT SERVICES, GAREDA HOME SERVICES, HAVEN YOUTH AND FAMILY SERVICES, HEARTLAND HUMAN CARE SERVICES, HEALTHY FAMILIES CHICAGO, HENRY COUNTY HEALTH DEPARTMENT, HOUSING FORWARD, HOUSING OPPORTUNITIES FOR WOMEN, HUMAN SUPPORT SERVICES, ILLINOIS COALITION AGAINST SEXUAL ASSAULT, ILLINOIS PUBLIC HEALTH ASSOCIATION, INDIAN OAKS ACADEMY, INSPIRATION CORPORATION, INTERFAITH HOUSING DEVELOPMENT CORPORATION, JEWISH CHILD AND FAMILY SERVICES, JEWISH VOCATIONAL SERVICE AND EMPLOYMENT CENTER KEMMERER VILLAGE, KNOX COUNTY HEALTH DEPARTMENT, LA CASA NORTE, LESSIE BATES DAVIS NEIGHBORHOOD HOUSE, LUTHERAN CHILD AND FAMILY SERVICES, MEDICAL GEAR, LLC, METROPOLITAN FAMILY SERVICES, MIDWEST YOUTH SERVICES, NEW AGE ELDER CARE, NEW MOMS, NEXUS, INC., NICASA, NORTH CENTRAL BEHAVIORAL HEALTH SYSTEMS, INC. OMNI YOUTH SERVICES, ONE HOPE UNITED, CHICAGO , PREVENTION INITIATIVE, OUNCE OF

Case No. 16-CH-6172

The Honorable Rodolfo Garcia

PREVENTION FUND, POLISH AMERICAN)
ASSOCIATION, PROJECT OZ, PUBLIC ACTION TO)
DELIVER SHELTER, PUERTO RICAN CULTURAL)
CENTER, RAMP, INC., RENAISSANCE SOCIAL)
SERVICES, REVIVE CENTER FOR HOUSING AND)
HEALING, RIVER TO RIVER SENIOR SERVICES,)
ROCK ISLAND COUNTY HEALTH DEPARTMENT,)
SAN JOSE OBRERO MISSION, SENIOR HELPERS,)
SENIOR SERVICES PLUS INC., SHELTER, INC.,)
SINNISSIPPI CENTERS, STARK COUNTY HEALTH)
DEPARTMENT, STEPHENSON COUNTY HEALTH)
DEPARTMENT, STEPPING STONES OF ROCKFORD,)
INC., TASC, TEEN LIVING PROGRAMS, TEEN)
PARENT CONNECTION, THE BABY FOLD, THE)
BRIDGE YOUTH AND FAMILY SERVICES, THE)
CENTER FOR YOUTH AND FAMILY SOLUTIONS,)
THE FELLOWSHIP HOUSE, THE HARBOUR,)
THE NIGHT MINISTRY, THE RESURRECTION)
PROJECT, TURNING POINT BEHAVIORAL HEALTH)
CARE CENTER, UNION COUNTY, UNITY)
PARENTING AND COUNSELING, VANGUARD)
HEALTH AND WELLNESS, LLC., UNIVERSAL)
FAMILY CONNECTION, WESTERN ILLINOIS)
MANAGED HOME SERVICES, WHITESIDE)
COUNTY HEALTH DEPARTMENT, YOUTH)
ADVOCATE PROGRAM, YOUTH CROSSROADS,)
YOUTH OUTREACH SERVICES, YOUTH SERVICE)
BUREAU OF ILLINOIS VALLEY,)
)
Plaintiffs,)
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 GEISSER MUNGER, COMPTROLLER FOR THE STATE OF ILLINOIS, in her official capacity, and BRUCE RAUNER, GOVERNOR OF ILLINOIS, in his official capacity,	)
Defendants.	)

THIRD AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. Plaintiff Illinois Collaboration on Youth (ICOY) and the 98 other plaintiff provider organizations owed money by the State of Illinois seek declaratory and injunctive relief against the defendant State officers and agency heads for violation of their constitutional rights. First, as set out in Count I, the defendants had no constitutional authority to enter and affirm these contracts while the defendant Governor was vetoing the funding of them. As late as June 10, 2016, the defendant Governor had vetoed yet again the funding of the contracts that his agency heads had approved and entered. By such a course of conduct, the defendant Governor exceeded the powers of his office and conducted the public business for nearly the entire fiscal year without any budget in place as required by Article VIII of the Illinois Constitution or without any legislative authorization for the contracts. As a result, plaintiffs received no funding, took out loans still unpaid, laid off staff who cannot be replaced and have suffered other harm in violation of their constitutional rights to equal protection and due process of law.

2. Second, as set out in Count II, and as a product of this unauthorized conduct of public business during fiscal year 2016, the General Assembly and the Governor reached agreement on a so called stop gap budget which is not a true budget. Public Act 99-524 provides very limited retroactive partial funding for some of the obligations incurred by the defendant

Governor and agency heads during fiscal year 2016 in the unconstitutional manner described above. It also provides limited funding for obligations to be incurred in the first six months of fiscal year 2017. By doing so, and in violation of Article I, section 16 of the Illinois Constitution, the General Assembly has enacted a law, namely, Public Act 99-524, which impairs the legal remedies for non-payment of the contracts in the Court of Claims. As set out below, the Court of Claims is a quasi-judicial agency responsible to the General Assembly and has a policy of providing legal relief only out of the sums appropriated by the General Assembly. As set forth below, even if all the money allocated for fiscal year 2017 could be reallocated to fiscal year 2016, the appropriated amounts still would not be sufficient to obtain relief by legal action for non-payment in the Court of Claims. Accordingly, by an act of the General Assembly, and in violation of their rights under Article I, section 16 of the Illinois Constitution as well as the due process clause of the Illinois Constitution, plaintiffs have suffered an impairment of the obligations of contracts - namely, their legal remedies for non-payment of the contracts.

3. Finally, as set out in Count III, the so called stop gap budget does not guarantee any meaningful payment at any level and thereby further violates the constitutional rights of plaintiffs to equal protection and due process of law and to be free of impairment of contracts. With only a limited number of specific designations for obligations to be paid to plaintiffs for fiscal year 2016, Public Act 99-524 largely gives unchecked discretion by the defendant Governor and agency heads to determine how much to pay and whom to pay - not for contracts to be entered in the future but *for contractual services already rendered.* Public Act 99-524 without any meaningful standards creates a kind of rump bankruptcy process whereby the Governor and agency heads can set up as a kind of court and decide without review the degree to which the plaintiff providers will receive a "haircut" for services rendered in the last fiscal year.

Public Act 99-524 also complicates the chances of plaintiffs receiving timely payment. Instead of being paid out of general revenue, the agency heads must submit vouchers that are coded to alternative specific funds. Plaintiffs have no idea how much money is in those funds. Already in desperate financial condition in many cases, plaintiffs may receive 10 percent, 20 percent, 50 percent, or 60 percent of the money due to them and may not receive it for months to come. Furthermore, the cumbersome nature of the coding of the vouchers will hold up payments for plaintiff organizations that are near collapse and have cut programs and continue to lay off staff.

4. Accordingly, plaintiffs seek declaratory relief that by the actions set forth in Counts I, II and III, plaintiffs have suffered a violation of their constitutional rights. As part of the final relief in this case,, plaintiffs seek an injunction against the defendant Governor and agency heads to redress such constitutional injury by directing the Comptroller to pay the entire sums due to the plaintiff organizations for fiscal year 2016, regardless of the limited funding and lack of specificity in Public Act 99-524. Immediately, and for the pendency of this case, plaintiffs seek a preliminary injunction directing the Comptroller to preserve the status quo by (1) requiring defendants to act on an equal basis and submit all vouchers received from plaintiffs to the Comptroller with or without coding to specific funds, and (2) ordering the Comptroller to pay immediately all such vouchers more than 90 days overdue out of general revenue or specific funds, regardless of whether there is a specific legislative appropriation or not.

Parties

5. Plaintiff Illinois Collaboration on Youth (ICOY) is an Illinois not-for-profit corporation that is party to the contract signed by the Secretary of the Department of Human Services (DHS) for fiscal year 2016 and attached as Exhibit A.

6. The contract attached as Exhibit A, renewed in this fiscal year, is typical in relevant part of the contracts signed by other plaintiffs having contracts with DHS.

7. Additional plaintiffs with contracts signed by the Secretary of DHS for fiscal year 2016 are listed on Attachment 1, and each such plaintiff is incorporated into the allegations concerning these contracts by this reference.

8. Plaintiff Addus Health Care, Inc. is an Illinois corporation that is party to the contract signed by the Director of the Department of Aging for fiscal year 2016 and attached as Exhibit B.

9. The contract attached as Exhibit B is typical in relevant part of the contracts signed by other plaintiffs with the Department of Aging.

10. Additional plaintiffs with contracts signed by the Director of the Department of Aging for fiscal year 2016 are listed on Attachment 2, and each such plaintiff is incorporated into the allegations concerning these contracts by this reference.

11. Plaintiff Whiteside County Health Department is a public entity that is party to the contract signed by the Director of the Department of Public Health (DPH) for fiscal year 2016 and attached as Exhibit C.

12. The contract attached as Exhibit C is typical in relevant part of the contracts signed by other plaintiffs with DPH.

13. Additional plaintiffs with contracts signed by the Director of DPH are listed on Attachment 3, and each such plaintiff is incorporated into the allegations concerning these contracts by this reference.

14. Plaintiff Children's Home & Aid is an Illinois not-for-profit organization that is party to the contract signed by the Director of the Department of Healthcare and Family Services (HFS) for fiscal year 2016 attached as Exhibit D.

15. The contract attached as Exhibit D is typical in relevant part of the contracts signed by other plaintiffs with HFS.

16. Additional plaintiffs with contracts signed by the Director of HFS are listed on Attachment 4, and each such plaintiff is incorporated into the allegations concerning these contracts by this reference.

17. Plaintiff New Moms Inc. is an Illinois not-for-profit organization that is a party to the contract signed by the Director of the Illinois Department of Corrections for fiscal year 2016 attached as Exhibit E.

18. Plaintiff Jewish Vocational Service and Employment Center is an Illinois not-for-profit organization that is party to the contract signed by the acting Director of the Illinois Department of Central Management Services for fiscal year 2016 attached as Exhibit F.

19. Plaintiff Resurrection Project is an Illinois not-for-profit organization that is party to the contract with the Illinois Housing Development Authority for fiscal year 2016 attached as Exhibit G.

20. Defendant James Dimas is the Secretary of the Illinois Department of Human Services and is sued here in his official capacity.

21. Defendant Jean Bohnhoff is the acting Director of the Illinois Department of Aging and is sued here in her official capacity.

22. Defendant Nirav Shah is the Director of the Illinois Department of Public Health and is sued here in his official capacity.

23. Defendant Felicia Norwood is the Director of the Department of Health and Family Services and is sued here in her official capacity.

24. Defendant John R. Baldwin is director of the Illinois Department of Corrections and is sued here in his official capacity.

25. Defendant Michael Hoffman is acting Director of the Illinois Department of Central Management Services and is sued here in his official capacity.

26. Defendant Audra Hamernik is the Executive Director of the Illinois Housing Development Authority and is sued here in her official capacity.

27. Defendant Bruce Rauner is Governor of Illinois and is sued here in his official capacity.

28. Defendant Leslie Geissler Munger is the Illinois State Comptroller and is a defendant only for purposes of relief. Except where she is specifically named, she will be excluded from the term "defendants" as used below.

Facts

29. On February 18, 2015, the defendant Governor submitted to the General Assembly a proposed budget for fiscal year 2016, starting on July 1, 2015.

30. 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.

31. On or about May 28 and 29, 2015, the General Assembly passed 27 appropriation bills for fiscal year 2016.

32. Certain of these appropriation bills 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.

33. Specifically, five of these bills, House Bill 4153, House Bill 4158, House Bill 4165, Senate Bill 2034, and Senate Bill 2037, which appropriated funding for human services,

authorized the expenditure of money to pay plaintiffs for the vast majority of the services covered by the contracts at issue in this complaint.

34. Although these bills had passed both houses in late May, the General Assembly sent the appropriations bills to the Governor on or about June 22 to June 24, 2015.

35. As Exhibit H, plaintiffs have attached a description of each contract entered with the defendant directors for fiscal year 2016 and have cross-referenced the specific line items in the various appropriation bills passed by the General Assembly.

36. No further action by the Governor—or signature or consent—was necessary for the amounts appropriated by the General Assembly to become law.

37. Nonetheless, on June 25, 2015, the Governor vetoed all of the relevant appropriation bills.

38. The Governor's veto included funding that he himself had planned for these services.

39. At various times before and after the veto, the defendant directors induced plaintiffs to enter the contracts in the same standard form like those contracts attached as Exhibits A through G.

40. Plaintiffs have attached all such contracts electronically on the thumb drive attached as Exhibit I, in compliance with 735 ILCS § 5/606.

41. Plaintiffs include 98 agencies providing human services of various kinds that enter contracts annually with the respective defendants.

42. At various times, plaintiffs signed and returned the contracts in the attached Exhibits that the defendant directors had sent them.

43. Plaintiffs signed and returned such contracts in the attached Exhibits after the General Assembly had appropriated the funds for the contracts.

44. After the Governor's veto on June 25, 2015, the defendant directors at various times accepted and returned the contracts in the attached Exhibits and enforced them through the end of fiscal year 2016.

45. The defendant directors never proposed or took any action to suspend or terminate the contracts signed by plaintiffs in the attached Exhibits for lack of an appropriation by the General Assembly or for any other reason.

46. Many of the contracts have a clause like Section 4.1 of Exhibit A, 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.

47. Defendants never invoked these rights, but continued the contracts in effect.

48. At the same time, the plaintiffs were not readily able to withdraw from these contracts.

49. First, the plaintiffs would have had to give 30 days' notice, and in doing so, such plaintiffs would have been among those least likely ever to be paid.

50. Furthermore, the plaintiffs might face liability to their service populations if they abruptly withdrew even with 30 days' notice.

51. 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.

52. Furthermore, the defendant directors do not dispute that the plaintiffs should receive payment for these services during fiscal year 2016.

53. Nonetheless, plaintiffs received no funding for any of the services they rendered in fiscal year 2016 at any point during the fiscal year.

54. While a so called stop gap budget was passed on June 30, 2016, at the very close of fiscal year 2016, Public Act 99-524 has little money designated explicitly for the plaintiff organizations.

55. Furthermore, plaintiffs have received no money to date pursuant to the stop gap budget.

56. Defendant directors - during most of fiscal year 2016 and prior to the enactment of the "stop gap" budget - took the position that the Governor's veto of the appropriations for these contracts on June 25, 2015 barred them from paying plaintiffs for services rendered under these contracts.

57. 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.

58. Nonetheless, the defendants took the position that they could lawfully conduct the public business in this manner, without legislative authorization of these contracts, inflict such damage upon plaintiffs and leave plaintiffs to pursue such remedies as they might have in the Court of Claims.

59. None of this harm was necessary because 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.

60. 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.

61. Nonetheless, the Governor used his legislative power of veto to block the funding of the contracts that he and his subordinates had entered.

62. 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.

63. On April 13, 2016, the General Assembly had passed SB 2046 which approved appropriations for nearly all of the contracts listed in Exhibit I.

64. Specifically, SB 2046 approved the contracts with the Department of Human Services, the Department of Aging, the Illinois Housing and Development Authority, the Department of Public Health, and the Department of Healthcare and Family Services.

65. On April 14, 2016, the General Assembly sent SB 2046 to the Governor

66. On June 10, 2016, the Governor vetoed SB 2046 in its entirety.

67. 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

68. 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.

69. On June 30, 2016, the General Assembly passed and the defendant Governor signed Public Act 99-524, popularly known as "the stop gap" budget.

70. 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.

71. In particular, Public Act 99-524 has very little money *explicitly* for the contracts in Exhibit I.

72. For example, for plaintiffs with contracts with the Department of Aging, plaintiffs state on information and belief and after careful review of Public Act 99-524 that there are no funds explicitly for such contracts.

73. 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.

74. Whether that money is so used is discretionary with the defendant agencies.

75. 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 may or may not be used to pay some unknown percent of the contracts listed in Exhibit I.

76. 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.

77. There are dozens of such funds, and vouchers are being held up by the defendant state agencies' need to code them to the specific funds.

78. Even then plaintiffs do not know if the specific funds will have cash in them to allow the Comptroller to pay them.

79. The coding will take weeks if not months, and when defendants send over the vouchers to the Comptroller, such vouchers will be last in line for payment.

80. The Comptroller in her discretion may nor may not move up an item for payment for any reason or no reason, subject to the prior of obligations to bond holders and court ordered payments.

81. Plaintiffs do not know how much of the obligations of the contracts in Exhibit I will be paid.

82. 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 may choose without any standard or criteria to pay nothing, 10 percent, 20 percent, or other amount for services already rendered.

Irreparable Injury

83. For lack of payment, most plaintiffs have used up all available lines of credit.

84. Many plaintiffs have no credit remaining.

85. Most plaintiffs have had to use cash reserves and many have no cash reserves remaining.

86. Many plaintiffs will have difficulty in meeting payroll within the next 30 days.

87. At least six or more plaintiff organizations face total closure.

88. The financial security and credit of many plaintiff organizations have been destroyed by the defendants' course of conduct.

89. Plaintiffs in some cases have laid off up to 30 percent or more of their professional staff.

90. In some cases plaintiffs have closed critically needed programs, for which there are no alternatives in their areas.

91. All of this injury will increase to a catastrophic degree as the plaintiffs wait under the complex procedures of Public Act 99-524 to determine when and if they receive any funding for the millions of dollars owed them for services in fiscal year 2016.

92. Furthermore, once services and programs are eliminated, many will be incapable of restoration.

93. Indeed, the anticipated amounts from Public Act 99-524 - if anything comes at all - will not allow for rehiring of staff or restoration of programs but simply allow some kind of current effort to continue.

94. It will ultimately be difficult for plaintiffs even if they receive full funding at the end of this case to find the same professional staff, or the equivalent.

95. Likewise in many cases because of the layoffs plaintiffs have already lost the personal networks and relationships in the communities they serve.

96. These personal networks and relationship are crucial in reaching the neediest clients.

97. Many of these clients are youth, homeless persons, persons with HIV/AIDS, or low income persons with persistent mental health and behavioral issues.

98. 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.

99. Because of defendants' course of conduct, the entire infrastructure of State supported social services to the needy is at risk of collapse.

COUNT I
(ULTRA VIRES CONDUCT BY STATE OFFICIALS)

100. By the acts set forth above, and in excess of their lawful powers of their office, the defendant Governor used his legislative power under Article III of the Illinois Constitution to veto the funding of plaintiffs' contracts while he used his executive power under Article IV to enter, affirm, continue and enforce these contracts without any funding or payment of these contracts during fiscal year 2016.

101. Defendants have no constitutional authority to conduct the public business of the state in this extensive and deliberate manner for plaintiffs and hundreds of other providers, with no legislative appropriation in place because of the defendant Governor's own acts.

102. The conduct of public business in this manner is beyond the powers of their office, in conflict with Article VIII, section 2 which requires General Assembly approval of expenditures.

103. Such conduct is even more legally egregious when the defendants themselves and not the General Assembly blocked the funding of these contracts.

104. Furthermore, such conduct has denied their rights to equal protection of the laws, as other vendors of the state were paid, and plaintiffs were unequally harmed by the budget impasse and the conduct of State business in this manner because plaintiffs serve the poor and the indigent.

105. Furthermore, such a course of conduct has denied plaintiffs due process of law and deprived them without compensation of their contractual rights.

WHEREFORE, plaintiffs pray this Court to:

A. Declare that the defendants exceeded their legal and constitutional authority - and their lawful powers of office - by entering and continuing the contracts with plaintiffs through fiscal year 2016 while vetoing the funding to these very contracts and denying any payment to plaintiffs;

B. Declare that such action by the Governor and other defendants as set forth in paragraph B denies the plaintiffs due process of law and equal protection of the law in violation of the Illinois Constitution;

C. Declare that there under Article VIII, section 2 of the Illinois Constitution, there is no authority for conducting the public business in this manner;

D. Grant permanent injunctive relief requiring the defendants to redress the constitutional violations by defendants as set forth above by immediate payment of the vouchers submitted by plaintiffs for services rendered in fiscal year 2016, regardless of whether there are sufficient appropriated funds in Public Act 99-524;

E. Grant preliminary injunctive relief to require defendants and the defendant Comptroller to preserve the status quo and keep the current network of social services in place by immediately paying plaintiffs for the most seriously overdue bills, including bills more than 90 days overdue; and

F. Grant plaintiffs such other legal relief as may be appropriate.

COUNT II
(IMPAIRMENT OF OBLIGATIONS OF CONTRACTS)

106. By the acts set forth above, including the execution of Public Act 99-524, the defendants have also impaired the obligation of contracts, in violation of Article I, section 16 of the Illinois Constitution.

107. Public Act 99-524 is a law that ensures the impairment of the obligation of contracts because it limits the right of plaintiffs to sue in the Court of Claims for non-payment of the contractual obligations in fiscal year 2016.

108. Public Act 99-524 has little money explicitly designated for the contractual obligations incurred by plaintiffs in fiscal year 2016.

109. Article 74 of Public Act 99-524 allows the defendant agency heads to reallocate money appropriated for fiscal year 2017 to pay for obligations incurred in the prior year.

110. There is no guarantee that defendants will use such authority to pay for the obligations incurred in fiscal year 2016 or if so, which obligations they will pay and in what amounts.

111. However, even if all such money to be spent in fiscal year 2017 is reallocated to pay for prior year obligations, there are insufficient funds to pay for the obligations incurred in fiscal year 2016.

112. Defendants in some cases are unilaterally rewriting the contracts for fiscal year 2016 previously signed so as to provide funding that is significantly below the amounts in the original contracts attached as Exhibit I.

113. Plaintiffs are receiving these unilaterally rewritten contracts as if they are binding on them for the reduced amounts.

114. By such action, and rewriting the previously executed contracts without plaintiffs' consent at much lower amounts, defendants have violated the rights of plaintiffs to due process under Article I, section 2.

115. Public Act 99-524 also limits the legal remedies available to the plaintiffs in the Court of Claims, and impairs their ability to sue for non-payment.

116. The Court of Claims has a policy of not paying claims on contracts performed in a prior year except out of appropriations enacted by the General Assembly.

117. By enacting Public Act 99-524, the General Assembly has enacted a law that impairs if not eliminates the possibility of a legal remedy for non-payment in the Court of Claims.

118. By such actions, the defendants have violated the constitutional rights of plaintiffs to receive due process of law and to be free of laws like Public Act 99-524 that impair their contractual obligations.

WHEREFORE, plaintiffs pray this Court to:

A. Declare that by the acts set forth above, including but not limited to the continuation of these contracts through the fiscal year without payment, and the execution of Public Act 99-524 at the end of the fiscal year to ensure there will not be full or reasonable payment, the defendants have violated Article I, section 16 of the Illinois Constitution, which prohibits the legislative impairment of the obligation of contracts;

B. Declare that by the acts set forth above, defendants have also violated plaintiffs' rights to due process of law under Article I, section 2;

C. Issue preliminary injunctive relief to bar defendants from continuing in this unconstitutional scheme and to provide payment for vouchers submitted by plaintiffs and overdue by 90 days or more;

D. Issue permanent injunctive relief to ensure that plaintiffs receive full payment of the contracts entered in fiscal year 2016, notwithstanding the attempt of defendants through the vetoes of full funding as described above and through the

enactment of Public Act 99-524 to impair the remedies for non-payment of the contracts in the Court of Claims in violation of Article I, section 16, and otherwise to deny them due process of law under Article I, section 2.

E. Grant plaintiffs legal fees under Section 5 of the Illinois Civil Rights Act of 2003, 740 ILCS 23/5;

F. Grant such other temporary and permanent injunctive relief as may be appropriate.

COUNT III
(ADDITONAL CONSTITUTIONAL VIOLATIONS)

118. As set forth above, Public Act 99-524 fails to provide funding for the obligations incurred by plaintiffs in fiscal year 2016.

119. Defendant officials can decide in effect which claims accrued against the State of Illinois prior to enactment of Public Act 99-524 and now performed in full will be entitled to retroactive payment.

120. As set forth above, defendant officials are currently using Public Act 99-524 to act in a quasi judicial capacity to determine which contractual claims will be honored and which will not.

121. Under Public Act 99-524, there is virtually no limit on their discretion or obligation to act equally or impartially.

122. While defendant officials may exercise discretion as public officers to commit sums from a general or lump sum appropriation for particular contracts that they choose to enter, the General Assembly may not confer a judicial type power on the defendants to decide retroactively and on a general basis which obligations against the State will be paid and which will not be.

123. Furthermore, in this case there is no requirement that defendants treat all claims equally, although the contractual obligations are equally legitimate.

124. Such a process denies plaintiffs equal protection of the laws since it is necessarily arbitrary and capricious.

125. Plaintiffs have no opportunity to be heard before these decisions are made.

126. Such a process denies plaintiffs due process of law since it denies fundamental fairness.

127. Such a process denies plaintiffs due process of law since it is a forfeiture of their contractual rights and services without compensation.

128. Finally, such a process denies the principle of separation of powers since it accords to the defendants a quasi-judicial authority to determine which claims will be paid and which will not.

WHEREFORE, plaintiffs pray this Court to:

A. Declare that by the acts set forth above, the defendants are currently violating the rights of plaintiffs to equal protection of the laws and due process of the laws;

B. Declare that by the acts set forth above the defendants are resolving claims against the State in a quasi judicial manner and without standards in a manner that violates the principle of the separation of powers as set forth in Article II, Section 1 of the Illinois Constitution;

C. Grant plaintiffs the preliminary injunctive relief sought in the prayers for relief in Counts I and II above;

D. Grant plaintiffs permanent injunctive relief as sought in the prayers for relief in Counts I and II above;

E. Grant plaintiffs their legal fees as sought in the prayers for relief in Counts I and II above;

F. Grant plaintiffs such injunctive and other relief as may be appropriate.

Dated: July 20, 2016

By:

s/ Sean Morales-Doyle
One of Plaintiffs' Attorneys

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Group Exhibit B

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

Illinois Collaboration on Youth, *et al.*,	)	
	)	
	)	
Plaintiffs,	)	Case No. 16 CH 6172
	)	
v.	)	
	)	Hon. Rodolfo Garcia
James Dimas, Secretary of	)	
the Illinois Department of Human	)	
Services, in his official capacity, *et al.*,	)	
	)	
Defendants.	)	

PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Illinois Collaboration on Youth, by their undersigned counsel, respectfully move that this Court: (1) set an immediate hearing date for; and (2) grant a preliminary injunction requiring the defendant state officials and defendant Comptroller to begin payment of bills and vouchers submitted by the plaintiff organizations for services performed. For the pendency of the suit, plaintiffs seek an order requiring payments for such bills and vouchers now overdue by 90 days or more. In the alternative, plaintiffs request that this motion for a preliminary injunction be consolidated with proceedings for a permanent injunction. In support of this motion, plaintiffs state as follows:

1. Plaintiffs have filed a Third Amended Complaint which sets forth the reasons for preliminary and permanent injunctive relief, notwithstanding the enactment of Public Act 99-524 otherwise known as the "stop gap budget."

2. Despite the stop gap budget, the harm originally sued on continues. Public Act 99-524 creates additional and new violations of plaintiffs' constitutional rights and inflicts additional irreparable injury.

3. Plaintiffs have an ascertainable right to payment for services performed that is in need of protection.

4. Plaintiffs have legal claims that are likely to succeed and raise a fair question of law.

5. Plaintiffs will suffer irreparable injury unless relief is granted, as set forth in the Third Amended Complaint as well as the affidavits of Anne Statton, Polly Poskin, Arlene Happach, Shannon Stewart, and Michael Turner.

6. As set forth in the Third Amended Complaint, plaintiffs have no adequate legal remedy, and Public Act 99-524 has unconstitutionally impaired any legal remedy for non-payment in the Court of Claims.

7. The balance of harms and the public interest strongly favor preliminary injunctive relief in order to continue the existing social service delivery system.

8. Plaintiffs seek leave to file a revised memorandum of fact and law in support of this motion for preliminary injunction by no later than the date of the status hearing set by this Court to determine a briefing schedule or response date by defendants to the motion.

WHEREFORE, plaintiffs request this Court to set an immediate hearing date on this motion for preliminary injunction and to grant such injunction on a preliminary or permanent basis and give plaintiffs leave to file a revised memorandum of fact and law by no later than July 25, 2016 so as to take account of recent events in the case.

Respectfully submitted,

Dated: July 20, 2016

/s/ Sean Morales-Doyle
One of Plaintiffs' Attorneys

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

Illinois Collaboration on Youth, et al.,	)	
	)	
Plaintiffs,	)	Case No. 16 CH 6172
	)	
v.	)	
	)	Hon. Rodolfo Garcia
James Dimas, Secretary of the Illinois Department of Human Services, in his official capacity, et al.	)	
	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM OF FACT AND LAW IN SUPPORT OF THEIR REVISED MOTION FOR PRELIMINARY INJUNCTION

Introduction: the Irreparable Injury After "Stop-gap"

Despite or rather *because* of the enactment on June 30, 2016 of the "stop-gap" budget, Public Act 99-524, the 98 plaintiff service organizations face a financial catastrophe. Far from redressing the violations of plaintiffs' constitutional rights, P.A. 99-524 confirms them. Fiscal year 2016 is now *over*, and at no time in the fiscal year did the plaintiffs receive any of the money due under the contracts attached as Exhibit I to the Third Amended Complaint. In P.A. 99-524, there is either little or no money designated for the contacts attached as Exhibit I to the Third Amended Complaint. An analysis of P.A. 99-524 performed by staff of plaintiff Illinois Collaboration on Youth (ICOY) is attached as Exhibit 1 to this Memorandum. *See also* Exhibit 2, Affidavit of Nora Collins-Mandeville, at ¶ 3. Articles 1 through 73 of P.A. 99-524 are designated expressly for fiscal year 2016. P.A. 99-524, Article 998 at p. 800.[1] As shown in Exhibit 1, under some of the major programs for which plaintiffs received contracts, no

[1] Throughout their brief, for the Court's convenience, Plaintiffs will use pin cites to page numbers in P.A. 99-524 in addition to cites to article and section numbers. The page numbers correspond to the version of the bill available on the General Assembly's website at http://ilga.gov/legislation/publicacts/99/PDF/099-0524.pdf.

payments are designated at all. To be sure, Article 74 of P.A. 99-524 says that the money in Articles 75 through 225 of the Act—now designated for fiscal year 2017—may be reallocated to pay prior year costs in fiscal year 2016. P.A. 99-524, Art. 74 at p. 272; *see also* Art. 998 at p. 800. But any such partial use is entirely discretionary with defendants. To take but one glaring example: many plaintiffs have contracts with the Department of Aging, but there are *no* funds explicitly for the Department of Aging in fiscal year 2016.

While there are some funds explicitly designated for plaintiffs' programs allocated for fiscal year 2017 within Article 223, these appropriations alone are insufficient to meet the defendant Governor's estimated expenditures for the previous fiscal year, even if the defendant director or defendant Governor elected to use their discretion authorized under Article 74 to reallocate funds for fiscal year 2016 obligations. Moreover, even if the two lump sums provided by in Article 185 for fiscal year 2017 were reallocated in full to fiscal year 2016 expenses—again at the discretion of these defendants—there still would be insufficient to meet the Governor's estimated expenses. But these are only hypotheticals; there is no reason to believe that any of the money will be used for prior year costs.

In sum, it is impossible to tell whether many of the plaintiffs will be paid at all for any of their costs in fiscal year 2016. And if they are paid *anything at all*, it may be no more than 20 percent, 15 percent, 10 percent or even five percent of these contracts that have now been fully performed. Meanwhile, the plaintiffs in most cases are under obligation to keep performing under similar contracts for fiscal year 2017.

Under the most likely scenario, without preliminary injunctive relief, all of the plaintiffs will suffer a grievous downgrading of their capabilities: and in the next 60 or so days, at least some will collapse. Even for those who do not collapse, they will be unable to rehire professional

staff, or restore programs to carry out service requirements for fiscal year 2017. The State's infrastructure for providing human services is, without exaggeration, in severe jeopardy.

Of course the cardinal requirement for a preliminary injunction is irreparable injury *to plaintiffs*. On this motion, such a showing is easy to make. Before going further, plaintiffs wish to emphasize that *part* of the irreparable injury inflicted by P.A. 99-524 is to *deny* the plaintiffs any remedy at law in the Court of Claims for non-payment of the contracts. The Court of Claims can award relief now for prior year costs only out of appropriated funds—or at least it has a policy of doing so. The central fact here as set out in Exhibit 1 of the Memorandum is that there is no money at all designated for scores of the contracts in Exhibit I of the Complaint—and nothing but pennies on the dollar for others. Nor do plaintiffs have any right under P.A. 99-524 to have money dedicated to fiscal year 2017 reallocated to pay the contract obligations for fiscal year 2016. Under P.A. 99-524, all plaintiffs will be dependent on the discretion if not the whim of defendant officials to get anything at all—be it as low as 20 percent, 10 percent or five percent of plan costs. Furthermore, there will be no hearing procedure, no way for plaintiffs even to present their case, or any criteria why some of the equally valid claims will be privileged more than others.

Plaintiffs seek a hearing date on their motion and leave of court to put on four witnesses to give a human face to the injury to their organization—and indeed, the obstacles to functioning at all in the coming weeks. Plaintiffs expect the testimony to be short, but this Court may wish to set aside the better part of the day for a hearing.

As Exhibit 2 to this Memorandum, plaintiffs have attached the Declaration of Nora Collins-Mandeville. She is the policy director of ICOY and oversaw the preparation of the analysis of P.A. 99-524 set out in Exhibit 1. She also took part in a survey of the current financial

situation of the 98 plaintiff organizations. Because of time constraints this is only a partial survey with information for 67 plaintiffs. As set out in her Declaration, 60 percent of the plaintiffs in the survey have used or used up lines of credit; 85 percent have used or used up cash reserves; and nearly 50 percent will have difficulty meeting payroll at some point in the next 60 days. Approximately 8 percent will soon close down altogether.

As just one example prior to the live testimony, plaintiffs offer the predicament of the Family Counseling Center, which runs 19 community health centers in downstate Illinois. The Center has laid off 36 staff members, cut benefits for those staff who remained and finally had to close the only homeless youth shelter in the southern Illinois. The Center is owed over $700,000. Not a single cent is allocated for the Center for fiscal year 2016 in P.A. 99-524. Nor is there any promise or procedure for allocating any money.

Furthermore, once the plaintiffs have closed programs, it takes a significant capital expenditure to open them—to find staff, to make new contacts with the service population. Of course the stop-gap budget designates no money at all to many if not most of the plaintiffs, much less the money they need to restore programs and hire staff.

As set out in the Declaration, many of the plaintiff organizations have now used up *all* lines of credit—they have taken out *all* the loans they can, and are incurring costs on these loans as well.

I. STATEMENT OF FACTS

Plaintiffs offer the following statement of relevant facts in support of their motion. Plaintiffs believe that there will not be much dispute over these facts. Where possible, Plaintiffs cite to documentary evidence and previously-filed affidavits in support of these statements. Where documentary support is not offered, Plaintiffs propose to present live testimony in support of their statement at the hearing on this motion.

A. The Consequences of Non-Payment

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, plaintiffs are 98 of the organizations that deliver human services to Illinois citizens in need. Plaintiffs deliver every kind of state-funded human service. The affidavits previously filed with the original Motion for Preliminary Injunction set out the range of services of these providers. For example, the Inspiration Corporation turns homeless families into permanent apartment tenants. Exhibit 3 (Affidavit of Executive Director Shannon Stewart). Children's Home + Aid keeps youth out of the justice system. Exhibit 4 (Affidavit of Chief Operations Officer Arlene Happach). Senior Helpers - Lincolnwood provides help to the elderly in their homes that allows them to stay out of nursing homes. Exhibit 5 (Affidavit of owner Michael Turner.) The Illinois Coalition Against Sexual Assault counsels and shepherds sexual assault victims through the medical and justice systems. Exhibit 6 (Affidavit of Executive Director Polly Poskin).

The 98 plaintiffs had 298 contracts with various state agencies in fiscal year 2016. These contracts were entered with the Department of Human Services (140), Aging (53), Public Health (35), Healthcare and Family Services (7), Corrections (3), Central Management Services (2), and Housing Development Authority (3). The contracts with these state agencies are set forth in Exhibit I the Third Amended Complaint.

Since the start of the fiscal year on July 1, 2015, the plaintiffs have received no payment at all on their state-funded contracts. Third Amended Complaint (TAC) ¶ 53. During fiscal year 2016, plaintiffs submitted vouchers for payment on a monthly basis, and to date, with the possible exception of one plaintiff, none of the plaintiffs have been paid. The Illinois Coalition Against Sexual Assault, for example, is owed over $6 million. Exhibit 6. Plaintiffs estimate that

as of March 31, 2016, they were owed well over $130 million—and the number is higher today. Defendants are now delinquent in payments for an entire fiscal year.

Having received no payment at all for State-funded services in the past year, plaintiffs are beginning to suspend programs. For example, Children's Home + Aid had to shut down the entire Englewood branch of its youth services program. Exhibit 4. Before the branch closed its doors, the staff served young people who had left home—100 youths last year. *Id.* The caseworkers reconciled teens with their families, found them a safe place to stay in the meantime, and served as liaisons to teachers and police. *Id.* It is expected that many of these 100 youths per year who had access to the program will now end up in the system—with the Department of Children and Family Services, or in juvenile justice. *Id.*

Some plaintiffs have tried to avoid closing down programs by scaling them back severely. For example, Inspiration Corporation was forced to cut all of its Housing Retention Specialists, who helped formerly-homeless families stay in their rented apartments, through home visits and other services. Exhibit 3. Now, there is only an intern available to field emergency calls from tenants and landlords, who then routes them to the housing director. *Id.* Many Plaintiffs have, similarly, slashed staff. *See* Exhibits 4 & 6. These staff layoffs typically mean that the plaintiffs lose contacts with their clients, and with community relationships that are so important to maintaining an effective social service organization. *See* Exhibit 4 & 6. When plaintiffs lay off staff and lose touch with clients, they provide fewer services, which makes it even more difficult for plaintiffs to survive financially, since revenue often depends on a high volume of services. *See* Exhibit 5.

Plaintiffs who have assets have drawn on lines of credit, or even personal savings. Exhibit 5. Other plaintiffs have no assets, and their situation is even more precarious. Unless

payments from defendants resume on at least a partial basis, plaintiffs will have to suspend more services.

As set forth in the affidavits, it will be difficult if not impossible for plaintiffs to resume these programs, even if funding were to come later. Plaintiffs will have to recruit and hire qualified staff—often in very specialized areas—and do extensive training. The new professional staff will have to find or restore the community contacts necessary to find clients, and gain the necessary social, geographical and community knowledge that often took years for the organizations to build. In short, by shutting down even for a short time, plaintiff organizations may permanently lose their ability to serve their former clients and fulfill their missions.

B. The Chronology of Nonpayment

On February 18, 2015 the Governor proposed a budget that included funding for all or nearly all of the contracts in Exhibit I to the Third Amended Complaint. On or about May 28 and 29, 2015, the General Assembly passed 27 appropriation bills for fiscal year 2016. TAC at ¶31. Five of of the bills—House Bills 4153, 4158 and 4165, and Senate Bills 2034 and 2037—authorized the appropriations for the majority of the contracts in Exhibit I. TAC at ¶33. Plaintiffs have attached to the Third Amended Complaint a description of each contract, with a cross reference to each contract's specific line item for payment in the May 2015 bills passed by the General Assembly. TAC, Exhibit H. The General Assembly sent the bills to the Governor in late June 2015. TAC at ¶ 34. No further action by the Governor—by signature or express consent—was necessary for the amounts appropriated by the General Assembly to become law. TAC at ¶ 36. The appropriations would become law automatically without signature after a 60-day period. Ill. Conts., Art. IV, § 9.

Nonetheless, on June 25, 2015, the defendant Governor vetoed all the bills. TAC at ¶ 37. The Governor's veto included funding that he himself had proposed for the contracts in Exhibit I.

TAC at ¶ 38. In so doing, the Governor chose not to use a line-item veto the five bills relevant to this case, by which he could have approved appropriations for the contracts while vetoing other unrelated expenditures.

The defendant state officials proceeded to enter the contracts despite the defendant Governor's veto of the funding. *See generally* TAC, Exhibit I. At various times before and after the veto, defendant state officials sent out the contracts for fiscal year 2016 for plaintiffs to sign and return. TAC at ¶39. At various dates the plaintiffs did sign and return the contracts—sometimes before the veto of June 25, 2015, and in some cases after. TAC at ¶42. The defendant directors then signed the contracts, and returned them to plaintiffs. TAC at ¶44. These are the contracts attached as Exhibit I to the Third Amended Complaint. The contracts as to each defendant are in the standard form as the contracts attached as Exhibits A through G to the TAC. The form contracts were not modified to reflect the veto, or make any reference at all to a veto. The contracts did contain provisions that allow defendants to suspend or terminate services for lack of appropriation or insufficient funds. *See, e.g.,* TAC, Exhibit A at § 4.1. Defendants have not proposed to suspend or terminate the contracts, nor have they exercised any power under Section 4.1 to release plaintiffs from their contractual obligations. TAC at ¶ 47. Defendants have continued to accept plaintiffs' vouchers and to monitor plaintiffs for compliance with state regulations in delivery of services.

C. The Shortfall in Funding in P.A. 99-524

On June 30, 2016, the General Assembly enacted P.A. 99-524. This so called stop-gap budget has appropriations for both fiscal year 2016 in Articles 1 through 73, and for fiscal year 2017 in Articles 75 through 225 (which might be applicable to providers like plaintiffs). P.A. 99-524, Art. 998, at p. 800. As set forth in the spreadsheet attached as Exhibit 1, which is the understanding of the ICOY staff at present, there are not enough appropriations in Articles 1

through 73 to pay the costs incurred by plaintiffs in fiscal year 2016. Out of 98 plaintiffs, it is possible that just one plaintiff—with one contract—may end up being fully reimbursed for fiscal year 2016. However, for every other plaintiff—under every other contract—there is not enough explicitly-designated money to pay the costs for services rendered, even if all the money provided explicitly for programs in fiscal year 2016 will in fact go to plaintiffs. That is a general statement, and in specific cases the shortfall in P.A. 99-524 will be catastrophic. For example, twenty-two plaintiff organizations participate in the Comprehensive Community-Based Youth Services, which is a program mandated by Illinois statute. 20 ILCS § 505/17. Some of these plaintiff organizations include ICOY, Children's Home & Aid, Centerstone of Illinois, Family Counseling Center, Project Oz, DuPage Youth Services Coalition, and others. Although this is one of the major programs for youth services in the State and mandated by law in every area, *P.A. 99-524 has no money designated for these program costs in fiscal year 2016.* By the defendant Governor's own budget estimate there should have been $16,460,000 for these programs in fiscal year 2016. This underestimates the injury since under this program the providers have to match the state share of this funding.

Another example is the Community Care Program, which seeks to keep elderly seniors in the community and out of nursing homes. The Governor's budget estimated that the total program cost for fiscal year 2016 would be $816,545,600. P.A. 99-524 has *no* money designated for these fiscal 2016 costs. Under this program, there are eighteen plaintiff organizations that have contracts with the Department of Aging to keep seniors in their homes and have no funding designated for their prior year costs.

Another major program is the Illinois Mental Health Psychotropic Drugs Program. Four plaintiff organizations have multiple contracts under this program. By the Governor's estimate,

there should have been $1,881,800 for this program, and there is no money designated in P.A. 99-524 to pay for these costs.

D. Uncertainty of Payment Under P.A. 99-524

Except for certain court-ordered Medicaid payments or federal pass-through funds—it appears that with one or two possible exceptions, none of the 98 plaintiffs have received *any payment* as of this date under the contracts in Exhibit I of the Complaint. While some of the money designated for fiscal year 2017 could be reallocated to fiscal year 2016, there is no such requirement in P.A. 99-524, and it is entirely discretionary and uncertain whether even a small amount of such funding for fiscal year 2017 might be reallocated for prior year program costs.

The defendants are re-coding the contracts in Exhibit I to specific funds out of which the contracts can be paid. Not only does P.A. 99-524 fail to provide any appropriations for the programs described, but where money is provided for fiscal year 2016, the costs may be paid only of specific funds, such as the "commitment to human services fund." From an examination of P.A. 99-524, plaintiffs do not know how much money is in these funds and have not been able to find out from defendants. The recoding to the funds may take at least two weeks and possibly longer. Furthermore, the recoding only allows the defendants to release the vouchers to the Comptroller.

It is unclear whether defendants will release a few, a majority, or all of the vouchers to the Comptroller, and over what period of time that process might take place. Then the Comptroller will make payments based off of her review of the availability of funds. There is no date certain by which payment may be made and such delay could extend for months. The Comptroller has stated that already—even before the defendants have submitted these vouchers—there is an estimated $10 *billion* backlog in vouchers or other expenses cleared for payment but not yet paid by the Comptroller. Under these circumstances, it is not unreasonable

for plaintiffs to believe that if any partial payments for prior year costs are made at all, few of these partial payments will be made in the calendar year. The Comptroller says that she will make every effort to pay those in the most need. Over the 18 months covered by P.A. 99-524, while plaintiffs wait for partial payment, it has been projected that the State will spend over $39.6 billion but able to cover only $31.8 billion. Plaintiffs are at the end of this queue of those being paid.

E. Financial Impact of P.A. 99-524 on Individual Providers

The financial impact of P.A. 99-524 on individual plaintiffs is severe, and there is space to give only a few examples here. New Age Elder Care has contracts to serve the vulnerable elderly under the Community Care Program. Presently, New Age Elder Care is owed $1.2 million, with no money in P.A. 99-524 designated for it. Within the next 30 days, without funding, New Age Elder Care will not be able to make payroll. This plaintiff has exhausted all cash reserves and its line of credit.

Stepping Stones of Rockford Inc. provides mental health services and vocational training. This plaintiff is owed over $1.1 million from the State. Stepping Stones has exhausted a line of credit of $1.1 million and has no cash reserves. It is currently at great risk of being unable to make payroll at the end of the month, and the plaintiff will cease to operate if there is no payment in 60 days. There is a long wait list of hospital patients awaiting services.

Lessie Bates Davis Neighborhood House does community-based services for children, with a special emphasis on violence prevention, as well as elder care. Under various contracts, this plaintiff is owed $950,000. This plaintiff has used up all its cash reserves, cut staff by 70 percent—some of the staff having worked there for over 15 years. It anticipates trouble making even this reduced payroll in the next 60 days.

The Illinois Coalition Against Sexual Assault—a statewide organization—has lost 27 full-time staff during fiscal year 2016 because of non-payment. As a result of these reductions in force, an estimated 455 victims of sexual violence could not receive services. Several centers have had to establish waiting lists of 50 or more victims. The Coalition has used up all its cash reserves and line of credit. The Coalition is owed $5,078,532, and while P.A. 99-524 has a partial appropriation of $700,000 it is uncertain when this sum will be paid.

II. ARGUMENT

A. Plaintiffs meet the standards for a preliminary injunction.

The standard for issuance of a preliminary injunction is well established. A party must show: (1) a clearly ascertained right in need of protection, (ii) irreparable harm in the absence of injunctive relief; (iii) no adequate remedy at law; and (iv) likelihood of success on the merits of the case. *Mohanty v. St. John Heart Clinic,* 225 Ill.2d 52, 61 (2006); *Callis, Papa, Jackstadt &Halloran P.C. v. Norfolk & Western Ry.* 195 Ill.2d 356, 366 (2001). In addition, when a party can meet these factors, the court may also consider the balance of equities to the parties. *See Shodeen v. Chicago Title & Trust Co.*, 162 Ill.App.3d 667, 672-73 (Ill. App. Ct. 1987).

As set forth below, plaintiffs meet all of these requirements, including those for a *mandatory* preliminary injunction. First, plaintiffs have an "ascertainable right" in need of protection—a right to payment from the State of Illinois. Without an agreed-to appropriation by the end of this fiscal year, plaintiffs may lose such right, permanently. Second, plaintiffs are likely to succeed on their two legal claims: that defendants have no authority to conduct state business in this manner, and that the Governor's veto and the budget impasse has resulted in an unconstitutional impairment of the State's contractual obligations. See Ill. Const. Art. I, § 16. Third, plaintiffs will suffer irreparable injury unless defendants begin paying the seriously overdue bills. Fourth, there is no adequate legal remedy—in fact, there is probably no legal

remedy at all for plaintiffs. Without a consented-to appropriation, there is no fund out of which the Court of Claims will award monetary legal relief. *LaSalle National Bank v. State,* 43 Il. Ct. Cl. 266 (1991); *Comer v. State,* 34 Ill. Ct. Cl. 174 (1981); *DRF RealtyInc. v. State*, 45 Ill. Ct. Cl. 362 (1993). Nor is the Court of Claims a body that can resolve such constitutional questions. *Sass v. State,* 36 Il. Ct. Cl. 111 (1984).

Plaintiffs seek a mandatory preliminary injunction to preserve the status quo—that is, to protect the property or rights at issue. *See Kaplan v. Kaplan*, 98 Ill. App. 3d 136 (1981). Illinois courts recognize that in some situations only a mandatory injunction will do. *See Gold v. Ziff Communications Co.*, 196 Ill. App. 3d 425, 431-32 (Ill. App.Ct. 1989). Unless defendants begin paying seriously overdue bills, the entire state-funded infrastructure for the delivery of human services is at the risk of collapse. This case presents a public emergency.

B. Plaintiffs are likely to succeed on the merits of their constitutional claims.

1. Under the "officer suit exception" to sovereign immunity, Defendants are continuing to conduct the business of the state unlawfully.

Illinois courts recognize an "officer suit" exception to 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 (2015); *Sass v. Kramer,* 72 Ill. 2d 485, 490-92 (1978). Under this exception, plaintiffs may sue these defendants for *prospective* injunctive relief when they take acts beyond or outside the lawful powers of their office. In *Leetaru*, the Illinois Supreme Court said: "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*." 2015 IL 117485 at ¶ 47 (emphasis added). As the Court went on to say:

> ...this court and our appellate court have repeatedly reaffirmed the right of plaintiffs to seek injunctive relief in circuit court to *prevent unauthorized or unconstitutional* conduct by the State, its agencies,

> boards, departments, commissions and agents or to *compel* their compliance with legal or constitutional requirements.

Id. at ¶48 (emphasis added).

While this exception authorizes only *prospective* relief, it is prospective relief that plaintiffs seek. The partial payments under the so called "stop-gap" budget will only continue an illegal course of conduct—namely, operating the State without a true budget—that the defendant officers began in fiscal year 2016. Continuing without appropriations for the contracts that are *already performed* in the past fiscal year and similar contracts *to be performed* in the next few months is imperiling the infrastructure for delivering human services. P.A. 99-524 is not redressing the irreparable injury, but is a go-ahead to increase it. Of the 98 plaintiffs—many of which have exhausted their cash reserves and lines of credit—some will lay off more staff, some will cut back programs even further, and some will close their doors, unless this course of conduct is enjoined.

The gist of the violation is that defendants continue to enter and require performance under contracts that even with P.A. 99-524 are not being fully funded. The short term budget has come about only because on two separate occasions—June 25, 2015 and then again a year later on June 10, 2016—the defendant Governor vetoed the full funding of the plaintiffs' contracts for fiscal year 2016. Another way to put the violation here is as follows: the defendant Governor is using a legislative power, the veto, to prevent the full funding of contracts that in an executive capacity, the Governor is legally responsible for carrying out. P.A. 99-524 simply permits the continuation of this illegal course of conduct—operating the State without a budget in this manner and allowing use of legislative vetoes to block the funding of public contracts that the Governor as an executive has a duty to perform. This is not "doing the business" which the sovereign has "empowered" the Governor and state officials to do. They should not have entered

these contracts while vetoing the funds for them, and they should not be rolling over the same or similar contracts into fiscal 2017 without payment of the contracts already performed in fiscal 2016.

As alleged in the complaint, defendant officers are acting beyond any constitutional or statutory authority by deliberately conducting the public business—on a large-scale basis—without a true budget and without sufficient appropriations for these contracts. By continuing to do so even now, these officials now imperil the State's entire infrastructure for delivery of human services. Plaintiffs have set out the likely harm over the next few months. There is no lawful power of office that can be invoked by these officials to set aside payment of the contracts, pay in effect pennies on the dollar for them, and go on enforcing new contracts in the absence of a genuine budget as required by Article VIII, section 2(a) and (b). Plaintiffs are entitled to a preliminary injunction to stop this course of conduct and begin making payments whether authorized by the General Assembly or not to stop more irreparable injury because the plaintiffs cannot dig themselves out of the hole in which the defendants have placed them.

In *Warrior v. Thompson,* 96 Ill.2d 1 (1983), the Court upheld the authority of the Governor to suspend temporarily the obligation to pay health care providers. In that case, however, the Court did so only because the Emergency Budget Act specifically and lawfully gave the Governor such authority. But the General Assembly has given no power—and can give no power—to allow the Governor to operate without a budget or to inflict this kind of harm on plaintiffs. Article VIII, section 2 requires the Governor and General Assembly to have a budget in place—a true budget, which P.A. 99-524 cannot purport to be. The absence of such a budget is not a legal justification to inflict this kind of injury on the plaintiffs.

This Court can order monetary relief to redress any type of unconstitutional conduct, or violation of official duty, without a formal appropriation in place. *See Jorgensen v. Blagojevich,* 211 Ill. 2d 286 (2004) (order to pay judicial salaries despite lack of appropriation); *Ill. County Treasurers' Association v. Hamer*, 2014 Ill App (4th) 130286 (April 22, 2014) (order to pay county treasurers' stipends despite lack of appropriation). In *Jorgensen*, the Court enforced a cost of living adjustment, stating that it was "within the power of the judicial branch to compel the State to pay...without a specific appropriation for that payment." 211 Ill. 2d at 314. Illinois courts have also ordered such relief—without a specific appropriation—when state officials have exceeded their authority by failing to comply with a mandatory duty. *See Antle v. Tuchbrieter*, 414 Ill 571 (1953).

Furthermore, not only can this Court order monetary relief without such an appropriation or full appropriation being in place but it can set a priority for immediate payment of these claims by the Comptroller—payment now, immediately, first out of P.A. 99-524, with the requirement that money for 2017 be reallocated to pay off these claims where the defendants in fact under the law now have discretion to do so. Claims that arise from a constitutional violation—as these claims from fiscal year 2016 do—should have priority for that reason alone, and the defendant state officials should attach such a high priority when they send the vouchers over to the Comptroller. Until there is payment of all claims, so that plaintiffs can begin function again under contracts for fiscal year 2017, it should be unlawful for defendants to incur additional costs—not just the costs of the programs that plaintiffs are tasked to carry out but any costs incurred by the State. The defendants could pay these claims. If the defendants have to liquidate state assets to make good on these claims, the defendants should be ordered to do so.

In this case there are at least three constitutional bases for a finding that defendants have acted beyond their authority. First, along with the General Assembly, the Governor has acted outside the scope of his authority described in Article VIII, section 2(a), which calls for a state budget to be in place. Instead, the Governor has attempted to conduct the public business for an entire year without a budget. Second, the Governor has also acted beyond his authority under Article VIII, section 2(b), which states that the General Assembly shall make appropriations. The General Assembly did make the appropriations for these contracts, in much the way that the Governor proposed. But the Governor may not block these appropriations, enter the contracts, and then take the position that plaintiffs may not be paid because of a condition that was under his exclusive control. No party to a contract may do so. *See Farnsworth on Contracts,* section 8.6 at 431. Likewise, there is no constitutional authority for the Governor or his designates to do so. Finally, the Governor's veto was a misuse of the authority given to him under Article IV, section 9. The Governor could have permitted the appropriations by the line-item veto he had under Article 9. In particular, he could have allowed the bills approving the large majority of the contracts in Exhibit H, and used a line-item veto for expenditures in the bills unrelated to these contracts. It is a misuse of the veto power, and a denial of due process, for the defendant Governor in his legislative role to disaffirm the funding of the contracts and then proceed in his executive role to enter and enforce them.

All of this official misconduct is in conflict with the constitutional scheme, and evinces a breakdown in constitutional government. It also undermines the reputation of the State as a responsible party to a contract. *See State of Illinois v. AFSCME, Council 31*, 2014 IL App (1st) 130262 (2014), *rev'd on other grounds,* 2016 IL 118442 (2016). It may well raise the cost to the State of doing business in the future. It is significant that among private parties, the kind of

conduct here could be deemed an unfair trade practice under *Robinson v. Toyota*, 201 Ill.2d 403, 417-18 (2002). In that case the Illinois Supreme Court found that an unfair trade practice exists when any one of three so-called *Sperry* factors is present: when the practice is *either* in conflict with public policy, *or* oppressive, *or* capable of inflicting a substantial injury. *Id.*; *see also Federal Trade Commission v. Sperry-Hutchins Co.*, 405 U.S. 233, 244 (1972). The actions of the state defendants in conducting the public business could meet any one of the *Sperry* factors. Their conduct imperils the infrastructure for providing state-funded services. It is oppressive and unfair to plaintiffs. And it has inflicted substantial injury upon them. Indeed, there is no principle or public policy being served. While Article VIII, section 2(b) may require appropriations by the General Assembly, and thereby seek to protect the principle of the separation of powers, the General Assembly has made the appropriations.

The harm here is unreasonable because the General Assembly and Governor both agree that the plaintiffs *should* receive funding for their contracts. Indeed, the Governor himself has expressed public sympathy for the relief sought in this case. *See* "Morning Spin: Rauner shares 'frustration' of social service providers suing him to get paid," *Chicago Tribune* (May 12, 2016) (*available online at* http://www.chicagotribune.com/news/local/politics/ct-bruce-rauner-social-services-lawsuit-story.html). And there has been no inherent necessity for operating the State in this way. Yet the defendant Governor and the General Assembly have let the plaintiffs and other human-service providers—those least able to do so—act as de facto creditors of this immensely wealthy State: in a sense, to "float" the State on a day-to-day basis through the impasse while the Governor and General Assembly continue a political dispute. P.A. 99-524 virtually requires that the plaintiffs continue to act as creditors.

The defendants further misused their power in refusing to release plaintiffs from these contracts once the duration of the budget impasse became clear. Section 4.1 of Exhibit A 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.

Defendants chose not to invoke this right to suspend or terminate, but to keep the contracts in place and accept full benefits of these unfunded contracts. And while plaintiffs technically have a limited right to withdraw, they faced serious obstacles to exercise such a right then or now. To qualify for the contracts and meet state regulations, plaintiffs had to hire staff and make a budget for the year. They had to find clients, to whom they now have obligations. Many plaintiffs receive funding from other sources, including the federal government, which expects them to continue services. Even if plaintiffs could break all these relationships, they would have to give notice of termination 30 days in advance—and likely have no hope of payment for yet an additional 30 days. Many plaintiffs also reasonably fear that by terminating, they would ensure that they would be the least likely to be paid. Furthermore, plaintiffs are subject to detailed state oversight in carrying out their programs. A termination might raise issues of compliance with state regulation, or subject the plaintiffs to audits or blacklisting in years to come. To be sure, some plaintiffs have had to suspend programs, but only in extreme

circumstances. Once the contracts are signed defendants acquire a leverage—even without payment—that makes it difficult for plaintiffs to withdraw.

Furthermore, the harm now being done to the plaintiffs is a denial of their right to equal protection under the Illinois Constitution. *See* Art. I, § 2. As some have noted, human service providers and the state colleges have been the chief victims of the impasse. *See* "Illinois Has No Budget, So Where Do State Tax Dollars Go, Anyway?" Dan Weissman, WBEZ, April 11, 2016. Yet even the state colleges have received supplemental funding, while plaintiffs have received nothing. There is no rational basis to justify who is being paid by the state and who is not. On the one hand, the state is operating without a budget, but on the other hand it is paying on most of its obligations with a patchwork of special appropriations and court orders. For example, the employees of the State are being paid. *See, e.g., AFSCME v. State*, 2015 IL App (5th) 150277-U (July 24, 2015). The public schools are receiving their funds. Many vendors are being paid. *Order to Enforce Consent Decrees*, Case No. 1:92-cv-1982 (N.D. Ill, Aug. 31, 2015) (Lefkow, J.). There is no rational reason why plaintiffs and other human service providers have not had funding when the State is making so many ad hoc payments to others. One particular characteristic of plaintiffs is that they serve the poor and the needy with purely state funding—and that is not a constituency that has influence or political clout. Courts use more stringent review when a group like plaintiffs, serving a disfavored constituency, is being denied the same or similar equal protection of the laws. *See, e.g., United States v. Windsor,* 133 S.Ct. 2675 (2013); *Romer v. Evans*, 517 U.S. 620 (1996). Furthermore, there is a denial of due process when defendants commandeer or expropriate the services of plaintiffs. The conduct alleged here goes beyond a mere "impairment" of contract; rather, it is closer to an involuntary forfeiture such as no executive officer of the state may require.

In *American Federation of State v. Netsch,* 216 Ill. App. 3d 566 (1991), the Appellate Court allowed the defendant officials to continue employment of state workers without pay *on a temporary basis*—but made clear that it would be quite different to continue such conduct for an entire year. The Court stated:

> While we now hold that the issue of general breakdown of government is not before us, we are not saying that the courts are barred from intervening in the event that the legislative or executive branches fail to perform their constitutional functions.

Id. at 569. Here both the Governor and General Assembly have failed to perform their constitutional functions, and have failed to put in place a budget as a necessary condition for conducting the public business. While operating in this way may be lawful on a short term basis, as in *Netsch* as a "bridge" to a formal budget, it is unlawful as a substitute for having a budget altogether. This Court is fully authorized to enjoin defendants from conducting public business in this way—as if on a permanent budget "holiday"—not only in the past but in the coming months.

2. In violation of Article I, Section 16 of the Illinois Constitution, P.A. 99-524 has unlawfully impaired the obligation of contracts.

Article I, section 16 of the Illinois Constitution states in relevant part, "No...law impairing the obligation of contracts...shall be passed." This provision is parallel to Article I, section 10 of the United States Constitution, which states in relevant part: "No State shall...pass any law...impairing the obligation of contracts." P.A. 99-524 is such a law, since it impairs the ability of the plaintiffs to sue for non-payment in the Court of Claims. As set forth in Count II of the Third Amended Complaint, the Court of Claims has very limited powers and is constrained or at least has a policy to pay claims like those of plaintiffs *only* out of appropriated funds. As stated by the Court of Claims in *LaSalle National Bank v. State*, 43 Ill. Ct. Cl. 266 (1991): "[I]t is this Court's policy to limit awards so as not to exceed the amount of funds, appropriated and lapsed, with which payments could have been made." Nor can the Court of Claims pass on the

constitutionality of actions by state officers, as plaintiffs seek to do here. *See Sass v. State*, 36 Ill. Ct. Cl. 111 (1984).

P.A. 99-524 is a law that impairs if not precludes the likelihood that plaintiffs can obtain any legal relief in the Court of Claims. As set out in Exhibit A, there is very little money *explicitly* for the claims in P.A. 99-524 for the claims in the now completed fiscal year. For legal claims against the Department of Aging, there is no appropriation at all—only a discretionary lump sum amount available for costs incurred in fiscal year 2017. Article 74 allows defendants to reallocate appropriations in Articles 75 through 233 to cover prior year costs, but it is entirely a matter of discretion, and not anything that the Court of Claims has power to order. Even if the Court did have that power—and used it—there would still not be enough money appropriated to cover the costs incurred by plaintiffs in fiscal year 2016. Furthermore, the claims of plaintiffs can be paid not out of general revenue but only specific designated funds. One such fund, the principal such fund for plaintiffs' claim, is the "commitment to human services" fund. Plaintiffs do no know how much is in that fund, but this limitation provides yet another cap on the ability of plaintiffs to sue in the Court of Claims.

Furthermore, P.A. 99-524 is a law that retroactively impairs the obligation of contracts that were fully performed at the time of its enactment on June 30, 2016. The fiscal year ended that day. Such a retroactive impairment by the General Assembly is especially within the scope of Article I, section 16.

It is true that not every impairment of a contract obligation is unlawful. *See United States Trust Co. v. New Jersey*, 431 U.S. 1, 25 (1977) ("an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose"). However, impairment of a public contract—even one—is particularly suspect "because the State's self-interest is at stake."

Id. at 26. "A governmental entity can always find a use for extra money, especially when taxes do not have to be raised." *Id.* Here the impairment applies to hundreds of public contracts. Nor does the impairment effected by P.A. 99-524 "serve an important public purpose," but is an expedient to let a political dispute continue at the expense of these plaintiffs. Furthermore, it is an expedient that comes out of two separate vetoes by the defendant Governor of bills that would have provided funding of the plaintiffs' contracts. There is no legitimate reason why the State could not have paid these contracts, and no one disputes that they should have been paid.

In *Horwitz-Matthews, Inc. v. City of Chicago*, the U.S. Court of Appeals has helpfully distinguished between a *breach of contract* such as plaintiffs might have brought in the Court of Claims and an impairment of the *obligation of contracts* like the one here:

> [The cases]...differentiate...between a measure that leaves the promisee with a remedy in damages...and one that extinguishes the remedy....In Holmes's vivid formulation, the obligation created by a contract is an obligation to perform *or* pay damages for nonperformance. Oliver Wendell Holmes, "The Path of the Law," 10 *Harv. L. Rev* 457, 462 (1897), and if the second alternative remains...the obligation created by the contract is not impaired.

78 F.3d 1248, 1251 (7th Cir. 1996) (emphasis in original).

It is the *loss* of the second alternative—or the right to sue for non-payment—that is one way the conduct of defendants with help from the General Assembly has impaired the *obligation of contracts*. To be sure, there is an arguable possibility that the Court of Claims will dispense with its policy of non-payment on equitable grounds and assert power that until now, it has never had. Nonetheless, even if the possibility of a legal remedy were still to exist, however remote or unlikely, it is certain that it has been *impaired.* A partial "impairment" is still an impairment, even if plaintiffs still had a diminished chance to recover. In *United States Trust*, 431 U.S. at 26, the Court found that impairment can occur even if there is not a "total destruction" of the contract right to payment. As the Court states, "The extent of impairment is certainly a relevant

factor in determining its reasonableness. But we cannot sustain the repeal of the 1962 covenant simply because the bondholders' rights were not totally destroyed." *Id.* at 27.

But an unlawful impairment can also apply to any "security" for payment. In *United States Trust*, for example, the bondholders lost not the right to sue, but a guarantee of payment out of a particular fund. Plaintiffs also reasonably anticipated a security of payment—the enactment of a complete budget, as required by Article VIII, out of which appropriated money to pay their claims could be found. P.A. 99-524 is a law that removes that possibility for fiscal year 2016. Denial of that "security" to these plaintiffs is an even more unreasonable impairment than the mere loss of a bondholder's right in *U.S. Trust* to payment out of a particular account.

Nor is *State v. AFSCME,* 2016 IL 118422 (2016), in conflict with a finding of unlawful impairment. In that case the Illinois Supreme Court refused to enforce an arbitrator's award of a "multi-year" wage increase, absent a specific appropriation by the General Assembly in each relevant fiscal year. But in that case, there was no "law" like P.A. 99-524 that *retroactively* sought to remove liability for hundreds of millions of dollars under contracts that had been fully performed at the time of enactment. To the contrary, the contractual claim in that case was one that was prospective only and which the defendant Governor in his executive capacity had a legitimate statutory ground for challenging. As pointed out by the Court, Section 21 of the Public Employee Act had required General Assembly approval of any such prospective increase in the wages and benefits of State employees. In this case, there is no pre-existing statutory basis for rejecting the validity of plaintiffs' contracts. The restore to a stop-gap budget like P.A. 99-524 to shortchange the plaintiffs from the sums that they had already earned is just the kind of retroactive law that Article I, section 16, is meant to cover. Furthermore, Supreme Court made clear in *State v. AFSCME* that Article I, section 16 might well apply in a different circumstances:

> 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 ¶54. Here, where there is a law that retroactively impairs the obligation of contracts that were fully performed, there is every reason to find that such an impairment which singles out the agencies serving the poor and indigent is a violation of the Illinois Constitution—as well as a disgraceful way of conducting the public business of the State.

3. After P.A. 99-524 the process that is being used to "settle" the plaintiffs' claims denies them "fundamental fairness" and their rights to due process of law.

Under P.A. 99-524 the defendant state officials have been effectively given unilateral discretion to write down plaintiffs' claims for services rendered. There is not enough to pay for the claims for fiscal year 2016. Furthermore, it appears that defendants will be making these write-downs without any prior hearing or opportunity to be heard. In this respect alone, the defendants will be engaging in a systematic denial of "fundamental fairness," in violation of their rights to due process of law under Article I, section 2 of the Illinois Constitution. *Compare Goldberg v. Kelly*, 397 U.S. 254 (1970) (due process violation from recoupment of money without prior hearing); *Mathews v. Eldridge*, 424 U.S. 319 (1976). There is no forum in which plaintiffs can be heard—no process they can invoke—before the claims are unilaterally written down by defendants.

Under P.A. 99-524, the General Assembly has effectively let the defendant officials pay off the claims and attach such priorities as they like. If defendants want to pay 10 percent of some claims, 20 percent of others, or even 80 percent of yet others, they may do so. There are no criteria, and if there are, they are not set out in P.A. 99-524, or in any rule or regulation—or known or disclosed in any way to plaintiffs.

It is one thing for the General Assembly to make lump sum appropriations which defendants have discretion to use prospectively. But in this case defendants are liquidating existing claims. P.A. 99-524 is in effect a process for imposing "haircuts" on plaintiffs in a bankruptcy type proceeding—only there is not any court, and there is not any proceeding. Under U.S. Supreme Court case law cited above, such a process of depriving plaintiffs of their property rights without any hearing or process is a clear violation of the Due Process Clause. But there is also a violation of the state's Equal Protection Clause as well, also set out in Article I, section 2. After all, the claims are equally valid, but it appears that they will be paid in varying amounts, without any particular criteria. Under Illinois law, there at least has to be a rational basis for this unequal treatment—a relationship to a legitimate state interest. *See, e.g., Chicago Nat'l League Ball Club Inc. v. Thompson*, 108 Il. 2d 357 (1985). But here there is no *relationship*—rational or otherwise—to any criteria that might explain why "like" is not treated as "like." *See, e.g., Austin View Civic Ass'n v. City of Palos Heights*, 85 Ill. App. 3d 89 (First Dist. 1980) (municipality must charge the same to all users equally situated). These ad hoc write-downs in varying amounts are therefore a violation of even the most restricted view of Equal Protection.

Aside from the violations of the rights to due process and equal protection of the plaintiffs, this arbitrary process violates the principle of the separation of powers. The defendants are exercising a judicial type power to impose what are effectively final and non-appealable "judgments" of claims against the State.

C. Plaintiffs Will Suffer Irreparable Injury

The irreparable injury here is already immense—and with each passing week it is getting worse. First, there is irreparable injury just from a *continuing* constitutional violation. *See, e.g., C.J. v. Department of Human Services*, 331 Ill. App. 3d 871, 891 (1st. Dist. 2002); *Lucas v. Peters*, 318 Ill. App. 3d 1, 16 (2000). In addition, as set out in federal cases, an impairment of the

obligation of contracts is *per se* irreparable injury. *See Kendall-Jackson Winery Ltd. v. Branson,* 82 F.Supp. 2d 844, 878 (N.D. Ill. 2000); *Allen v. Minnesota,* 867 F. Supp. 853, 859 (D.Minn. 1994).

As set out in Exhibit 2 of the Memorandum, plaintiffs are facing catastrophe. See Exhibit 2, Affidavit of Nora Collins-Mandeville. As shown in the survey, plaintiffs are laying off staff, shutting down programs, and turning away clients in desperate circumstances. Without payment, plaintiffs are forced to make agonizing choices, such as whether to change their mission or close their doors. These choices are especially cruel in downstate communities where there are fewer alternatives if plaintiffs close their doors.

Plaintiffs will present more of this irreparable injury in live testimony. As these witnesses will show, they are alleging more than irreparable injury to themselves—rather, they are complaining of a public emergency across the state. Plaintiffs anticipate putting on no more than four witnesses for brief testimony and ask for a day to be set aside for such a hearing.

D. Plaintiffs have no adequate legal remedy.

For all the reasons set forth above—not least, the impairment of their legal remedy by P.A. 99-524—plaintiffs have no "adequate" legal remedy. Furthermore, even if a money judgment were possible in the Court of Claims, no money judgment can change the fact that the plaintiff organizations will have lost staff, clients and community contacts. No money judgment will allow the harm to their mission.

E. Only a Mandatory Preliminary Injunction Can Preserve the Status Quo.

In this motion, plaintiffs do not seek an order for *all* the money due to them—just enough to keep going until a final judgment enforcing all their contract rights. At least for now, they seek the kind of partial payment that keeps their programs from collapse. By the end of this case, many of organizations will be broken. They will not get back the staff, at least of the same

experience and quality. They will not get the same referrals. They will not get back the clients. They will be unable to rebuild.

Plaintiffs seek an injunction to require the defendants to begin making payments of bills overdue by 60 days or more. Typically a preliminary injunction is prohibitory, but a mandatory injunction is appropriate where it is the only way to preserve the status quo, as it is here to head off the collapse of these organizations. Plaintiffs therefore seek a mandatory preliminary injunction against the defendants to pay the most seriously overdue bills. As the appellate court stated in *Gold v. Ziff Communications*:

> A preliminary injunction, even if mandatory, is justified if necessary to maintain the status quo and prevent irreparable harm. Usually, the status quo is maintained by keeping everything at rest and in its present condition. Sometimes, however, the status quo is not a condition of rest but of action because *the condition of rest is exactly what will inflict irreparable injury upon complainant.*

196 Ill. App. 3d at 432 (emphasis added, citations omitted). Illinois courts in this division have repeated this statement over the years—that when the "condition of rest" will inflict irreparable injury, the court can order the defendant to act. *See, e.g., Travelport, LP v. Am. Airlines Inc.* 958 N.E.2d 1075, 1085 (Ill. App. Ct. 2011); *Twenty One Kristin Ltd Partnership v. La Salle Nat'l Bank,* 1987 Ill. App. LEXIS 2166 (Ill. App. Ct. 1987).

Furthermore, as stated in *Gold*, a mandatory preliminary injunction is even more appropriate when the parties are already in a pre-existing legal relationship, such as the plaintiffs and defendants in this case. They are parties to the contracts in Exhibit I. They have been in such contractual relationships over many years. They know their rights and duties. As the appellate court stated in *Gold*:

> Defendants cites numerous cases [to show here that]... a mandatory injunction was improperly imposed. However, none of the cases cited by defendant involved existing contracts to which the parties

> were adhering at the time of the controversy...In this case, plaintiffs seek merely a continuation of the contract between Gold and defendant, not a new contractual relationship.

196 Ill. App. 3d at 432.

At the time this controversy arose, the parties were adhering to, and indeed were expected to adhere to, the contracts listed in Exhibit H. And it is important to emphasize that defendants and plaintiffs have *continued* their relationship. A mandatory injunction is not—in this case at least—creating a new legal relationship. It is clearing away a technical bar to doing what both parties expected. Indeed, defendants keep asking plaintiffs to submit vouchers for payment. Defendants have chosen not to waive rights under provisions like Section 4.1 to suspend or terminate the plaintiffs' contracts. In some cases, they have told plaintiffs—or have led plaintiffs to believe—that payment is coming. Where such relationships already exist, there is every reason for a mandatory injunction to issue to preserve the status quo and ensure that this relationship continues.

In *Gold*, the court found that harm to legitimate business interests can justify such a mandatory injunction. As the Court stated:

> The loss of customers and sales and the threat of continuation of such losses to a legitimate business interest, as alleged by plaintiff here, is sufficient to show that plaintiff will suffer irreparable injury unless protected.

Id. at 434.

While theirs may be a different kind of business, the plaintiffs are losing their clients and the chance even to find alternative sources of funding. In turn they are losing the ability to render the same services to the State—the biggest customer of all. Only a mandatory preliminary injunction—an order to begin paying overdue bills now—can stop this cascading harm not just to the "legitimate business interests" but to plaintiffs' core missions.

F. The balance of harms and the public interest favor mandatory preliminary injunctive relief.

When a party meets the four requirements for preliminary relief, it is appropriate to consider the balance of harms. *See Mohanty, supra.* Both the balance of harms and the public interest strongly favor the relief sought for plaintiffs. Indeed, this is the rare case where the preliminary injunction will help the defendants. It will help keep in place the existing network and infrastructure for the delivery of human services. Furthermore, the General Assembly approved the funding of these contracts, and the defendant Governor has expressed support for this case. In the May 12, 2016 edition of the *Chicago Tribune*, he is quoted as saying: "Frankly, in some ways, I'm cheering for them. I mean, it's ridiculous. What state in American doesn't pay its bills? We're the only state." *See* "Morning Spin," *infra*. As set forth in the affidavits, the public will soon lose a viable network for delivery of human services—one that has been built up by taxpayers under prior governors and legislative assemblies. Without injunctive relief, there is risk of permanent damage to the plaintiff organizations and their ability to provide services. To the extent there is an irreparable harm to the plaintiffs, there is irreparable harm to the people of the State.

CONCLUSION

For all the reasons set forth above, plaintiffs respectfully request that this Court grant their motion to require the defendants and the defendant Comptroller to make payment of bills overdue by 60 days or more during the pendency of this case.

Dated: July 23, 2016

Respectfully submitted,

s/ Sean Morales-Doyle
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P.A. 99-524

Appropriations for Fiscal Year 2016 and Partial Fiscal Year 2017

State Agency	Contract: State Funds/Line Items (non-federal)	TOTAL FUNDS AVAILABLE VIA P.A. for Distinct PNI Line Item(s)	FY16 Estimated Expenditure (Note 1)	P.A. 99-524 Enacted STATE FUNDS "for fiscal year 2016" (Note 2)	Net Outcome: FY16 Enacted vs FY16 Estimated Expenditures (Note 3)	P.A. 99-524 Enacted STATE FUNDS "for fiscal year 2017" with the caveat that funds "may be used to pay prior year costs" (Note 4)	Net Outcome: state funds remaining for FY17 if all P.A. 99-524 line item appropriations are paid towards FY16 Estimated Expenditure (Note 5)	FY17 Proposed Budget-12 mths (Note 1)
DHS	Addiction Treatment-Gambling	$2,059,000	$1,029,500	$1,029,500	$ -	$1,029,500	$ 1,029,500	$1,029,500
DHS	Child Care-Migrant	$0	$338,475,500	$0	$ (338,475,500)	$0	$ (338,475,500)	$ 646,664,700
DHS	Comprehensive Community Services: Comprehensive Community-Based Youth Services; Release Upon Request Program	$16,132,700	$16,546,400	$0	$ (16,546,400)	$16,132,700	$ (413,700)	$ 16,546,400
DHS	DRS-Independent Living Centers	$4,189,100	$4,296,500	$0	$ (4,296,500)	$4,189,100	$ (107,400)	$ 4,296,500
DHS	Emergency and Transitional Housing	$18,767,400	$9,383,700	$9,383,700	$ -	$9,383,700	$ 9,383,700	$ 9,383,700
DHS	FCS Supportive Housing	$29,247,500	$23,298,300	$3,382,500	$ (19,915,800)	$25,865,000	$ 5,949,200	$ 23,298,300
DHS	FY16 Training for Healthy Families and Parents Too Soon	$16,161,000	$16,910,300	$0	$ (16,910,300)	$16,161,000	$ (749,300)	$ 16,910,300
DHS	Global-Addiction Prevention	$3,103,800	$1,050,000	$1,050,000	$ -	$2,053,800	$ 2,053,800	$ 1,050,000
DHS	Global-Addiction Treatment Services	$54,708,600	$44,393,200	$8,848,000	$ (35,545,200)	$45,860,600	$ 10,315,400	$ 35,393,200
DHS	Global-Addiction-DCFS Clients	$0	$7,365,100	$0	$ (7,365,100)	$0	$ (7,365,100)	$ 7,365,100
DHS	Healthy Families Program: Health Families Illinois; Birth to Three Institute; Pregnant Teen Doula Project	$9,462,500	$10,040,000	$0	$ (10,040,000)	$9,462,500	$ (577,500)	$ 10,040,000
DHS	Homeless Prevention	$7,000,000	$3,000,000	$3,000,000	$ -	$4,000,000	$ 4,000,000	$ 3,000,000
DHS	Homeless Youth Services	$6,436,300	$5,550,000	$1,000,000	$ (4,550,000)	$5,436,300	$ 886,300	$ 5,550,000
DHS	Infant Mortality: All Our Kids Early Childhood Networks; Family Case Management	$11,700,000	$33,965,000	$0	$ (33,965,000)	$11,700,000	$ (22,265,000)	$ 33,965,000
DHS	Mental Health Grants for Persons with Mental Illness Programs: 121-Juvenile Justice, 510-Regions Rural Behavioral Health Access, 580-Crisis Staffing, 620 Mental Health CILA, 830-Supervised Residential, 840-Reintegration Residential, 860-Crisis Residential	$77,771,100	$114,403,800	$0	$ (114,403,800)	$77,771,100	$ (36,632,700)	$ 105,336,100

P.A. 99-524
Appropriations for Fiscal Year 2016 and Partial Fiscal Year 2017

State Agency	Contract: State Funds/Line Items (non-federal)	TOTAL FUNDS AVAILABLE VIA P.A. for Distinct PNI Line Item(s)	FY16 Estimated Expenditure (Note 1)	P.A. 99-524 Enacted STATE FUNDS "for fiscal year 2016" (Note 2)	Net Outcome: FY16 Enacted vs FY16 Estimated Expenditures (Note 3)	P.A. 99-524 Enacted STATE FUNDS "for fiscal year 2017" with the caveat that funds "may be used to pay prior year costs" (Note 4)	Net Outcome: state funds remaining for FY17 if all P.A. 99-524 line item appropriations are paid towards FY16 Estimated Expenditure (Note 5)	Point of Reference-FY17 Proposed Budget-12 mths (Note 1)
DHS	MH Balancing Incentive: 730-Quality Administrator	$3,586,600	$ 7,843,900	0	$ (7,843,900)	$3,586,600	$ (4,257,300)	$ 5,095,700
DHS	MH Capitated Care Coordination: 410-Capitated Community Care	$40,000,000	$45,895,300	$30,000,000	$ (15,895,300)	$10,000,000	$ (5,895,300)	$ 10,000,000
DHS	MI Supportive Housing: 820-Supported Residential	$15,517,900	$15,915,800	$0	$ (15,915,800)	$15,517,900	$ (397,900)	$ 15,915,800
DHS	Parents Too Soon	$6,698,500	$6,870,300	$0	$ (6,870,300)	$6,698,500	$ (171,800)	$ 6,870,300
DHS	Persons with Developmental Disabilities- Grants/POC Contracts:	$209,931,200	$837,970,800	$79,965,600	$ (758,005,200)	$129,965,600	$ (628,039,600)	$ 849,034,000
DHS	Psychotropic Medications for Mentally Ill Clients in the Community: 574-Mental Health Psychotropic Drugs	$1,834,800	$1,881,800	$0	$ (1,881,800)	$1,834,800	$ (47,000)	$ 1,881,800
DHS	Redeploy Illinois: Redeploy Illinois Grants; Juvenile Justice Training, Technical Assistance and Support	$4,763,000	$4,885,100	$0	$ (4,885,100)	$4,763,000	$ (122,100)	$ 4,885,100
DHS	Rehab Balancing Incentive Ptorgram	$2,200,700	$2,349,900	$0	$ (2,349,900)	$2,200,700	$ (149,200)	$ 2,349,900
DHS	Rehabilitation Grants-Case Services to Individuals: Vocational Program; Milestone Services; Supported Employment	$13,554,500	$11,364,600	$2,413,700	$ (8,950,900)	$11,140,800	$ 2,189,900	$ 11,364,600
DHS	Sexual Assault Services Program	$7,405,700	$6,859,700	$700,000	$ (6,159,700)	$6,705,700	$ 546,000	$ 6,859,700
DHS	Youth Services, Training, Technical Assistance & Support	$22,569,000	$22,096,400	$1,000,000	$ (21,096,400)	$21,569,000	$ 472,600	$ 22,096,400
DOA	Area Agencies on Aging for Long-Term Care Systems Development Grants	$267,000	$273,800	$0	$ (273,800)	$267,000	$ (6,800)	$ 273,800
DOA	Balancing Incentive Program (BIP) Grants	$4,947,800	$5,074,700	$0	$ (5,074,700)	$4,947,800	$ (126,900)	$ 5,074,700
DOA	CCP-Care Coordination and Case Management	$22,760,800	$99,390,800	$0	$ (99,390,800)	$22,760,800	$ (76,630,000)	$ 113,500,000
DOA	Community Based Services for Equal Distribution to Each of the 13 Area Agencies on Aging Grants	$1,057,400	$751,200	$0	$ (751,200)	$1,057,400	$ 306,200	$ 1,751,200
DOA	Community Care Program - Administration and Services Grants	$309,374,000	$816,545,600	$0	$ (816,545,600)	$309,374,000	$ (507,171,600)	$ 449,789,600
DOA	Ombudsman Program Grants	$1,285,100	$5,500,000	$0	$ (5,500,000)	$1,285,100	$ (4,214,900)	$ 5,500,000
DOA	Planning and Service Grants to Area Agencies on Aging	$7,529,000	$7,722,000	$0	$ (7,722,000)	$7,529,000	$ (193,000)	$ 7,722,000

P.A. 99-524

Appropriations for Fiscal Year 2016 and Partial Fiscal Year 2017

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DOR	Foreclosure Prevention Program administered by IHDA	$30,000,000	$11,000,000	$ 19,500,000	$ 8,500,000	$10,500,000	$ 19,000,000	$ 10,500,000
DPH	AIDS/HIV Education, Services, Prescription Drugs, CTRPN and Patient and Worker Notification	$17,923,800	$20,000,000	$0	$ (20,000,000)	$17,923,800	$ (2,076,200)	$ 18,000,000
DPH	Food and Drug Safety Program	$4,000,000	$2,000,000	$ 2,000,000	$ -	$ 2,000,000	$ 2,000,000	$ 2,000,000
DPH	Grants for the Tobacco Use Prevention Program, BASUAH Program, and Asthma Prevention Program	$2,000,000	$1,000,000	$ 1,000,000	$ -	1,000,000	$ 1,000,000	1,000,000
DPH	Lead Poisoning Screening and Prevention Grants	$3,000,000	$1,500,000	$ 1,500,000	$ -	$ 1,500,000	$ 1,500,000	$ 1,500,000
DPH	Local Health Protection Grants for Anti-Smoking Programs	$10,000,000	$5,000,000	$ 5,000,000	$ -	$ 5,000,000	$ 5,000,000	$ 5,000,000
DPH	Local Health Protection Grants for Health Promotion Programs	$0	$17,098,500	$0	$ (17,098,500)	$0	$ (17,098,500)	18,098,500
DPH	Mosquito Abatement in an Effort to Curb the Spread of West Nile Virus and other Vector Borne Diseases	$10,200,000	$3,334,900	$ 5,100,000.00	$ 1,765,100	$5,100,000	$ 6,865,100	$ 5,100,000
DPH	Prevention & Treatment of HIV/AIDS grants	$2,218,800	$500,000	$500,000	$ -	$1,718,800	$ 1,718,800	500,000
DPH	Tanning Facility Permit Act	$800,000	$400,000	$400,000	$ -	$400,000	$ 400,000	400,000
DPH	Tatoo & Body Piercing Establishment Program	$600,000	$300,000	$300,000	$ -	$300,000	$ 300,000	300,000
DPH	Vision & Hearing Screening Program Grants	$0	$341,700	$0	$ (341,700)	$0	$ (341,700)	$ 341,700
HFS	Mental Health Care Grants (ICG)	$0	$23,726,500	$0	$ (23,726,500)	$0	$ (23,726,500)	$ 23,726,500

Note 1: Governor Rauner's FY17 Budget Proposal released February 17, 2016 provides "FY 2016 Estimated Expenditures" amounts and "FY 2017 Governor's Proposed" amounts for programs. Both numbers are premised on a 12 month budet. Document accessible online: http://bit.ly/RaunerFY17Present

Note 2: The article(s) of P.A. designating appropriations "for fiscal year 2016" (aka Art 1-73). This column indicates the total sum of state funds allocated explicitly for the line/program, inclusive of general revenue funds and various "other state funds" as applicable.

Note 3: FY16 Enacted Appropriation(s) vs FY16 Estimated Expenditures. Negative values indicate that FY16 designated articles alone do not meet the "FY 2016 Estimated Expenditures."

Note 4: Articles 75-225 of the P.A. are designated as partial appropriations "for fiscal year 2017" with the caveat that funds "may be used to pay prior year costs." This column indicates the total sum of state funds allocated explicitly for the line/program, inclusive of general revenue funds and various "other state funds" as applicable.

Note 5: P.A. 99-524 vs Governor's FY16 Estimated Expenditures. Negative values indicate that the P.A. state funds for FY16 and FY17 appropriations combined are not enough to reconcile the liability indicated as the "FY 2016 Estimated Expenditures." This column also indicates the amount of funds remaining to pay FY17.

P.A. 99-524 Article	State Agency	Fiscal Year Designation	Discretionary
13	DCMS	FY16	Includes various lumped contractual services lines and additional lump sum appropriation
79	DCMS	FY17*	Includes various lumped contractual services lines and additional lump sum appropriation
184	DCMS	FY17*	Lump sum $42,750,000
214	DCMS	FY17*	Sec 15. Lump sum $149,200,000
175	DHS	FY17*	Sec 1. Lump sum $25M. Sec 10. Lump sum $25M
214	DHS	FY17*	Sec 25. Lump sum $25M
185	DOA	FY17*	Sec 1. Lump sum $1M. Sec 10 Lump sum $2M
1	DOC	FY16	Lump sum $37,000,000
174	DOC	FY17*	Lump sum $150,000,000
214	DOC	FY17*	Sec 5. Lump sum $171,150,000
183	DPH	FY17*	Sec 1 Lump sum $3M. Sec 10. Lump sum $4M
182	HFS	FY17*	Sec 1. Lump sum $18M.
214	HFS	FY17*	Sec 20. Lump sum $25M

*** P.A. 99-524 Parameters**

ARTICLE 74 Section 1. Appropriations set forth in Article 75 through Article 225, except for those appropriations for Personal Services, State Contributions to State Employees' Retirement System and State Contributions to Social Security, may be used to pay prior year costs.

ARTICLE 997 Section 1. Appropriations in Articles 174 through 223 are for costs incurred through December 31 of 2016.

ARTICLE 998 Section 1. Appropriations in Articles 1 through 73 are for fiscal year 2016. Appropriations in Articles 75 through 225 are for fiscal year 2017.

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

Illinois Collaboration on Youth, et al.,	)	
	)	
	)	
Plaintiffs,	)	Case No. 16 CH 6172
	)	
v.	)	
	)	Hon. Rodolfo Garcia
James Dimas, Secretary of the Illinois Department of Human Services, in his official capacity, et al.	)	
	)	
	)	
Defendants.	)	

AFFIDAVIT OF NORA COLLINS-MANDEVILLE

Nora Collins-Mandeville on oath states:

1. I am the policy director of Illinois Collaboration on Youth (ICOY), which conducts policy advocacy on behalf of youth and risk and the network of providers who serve them.

2. ICOY is a plaintiff in this action.

3. In my role as policy director of ICOY, I prepared a spreadsheet analysis of the line item expenditures in Public Act 99-524 for fiscal year 2016 and fiscal year 2017, and analyzed the funds available for the providers that have joined this legal action. That analysis is attached as Exhibit 1 to Plaintiffs' Memorandum of Fact and Law.

4. ICOY undertook a survey of the plaintiff providers that have joined the above captioned lawsuit. That survey is referred to in the Introduction to Plaintiffs' Memorandum of Fact and Law.

5. ICOY sent inquiries to the other ninety-seven plaintiffs to provide information on their current financial condition.

6. At present 67 of the providers who have joined in this action have responded to the ICOY survey.

7. Of the respondents 60 percent had used lines of credit.

8. Approximately 80 percent of respondents had used cash reserves.

9. Approximately 50 percent of respondents will have difficulty meeting payroll in the next 60 days.

10. Approximately 8 percent of respondents may be unable to operate at all in the near future.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this affidavit are true and correct.

DATED: July 23, 2016

Nora Collins-Mandeville

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

ILLINOIS COLLABORATION ON YOUTH, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	Case No. 2016 CH 6172
v.	)	
	)	
BRUCE RAUNER, GOVERNOR OF ILLINOIS, in his official capacity, *et al.*,	)	
	)	
Defendants.	)	

AFFIDAVIT OF SHANNON STEWART

1. My name is Shannon Stewart.

2. I am the Executive Director of Inspiration Corporation, which helps people who are affected by homelessness and poverty to improve their lives and increase self-sufficiency through the provision of social services, employment training and placement, and housing. In this affidavit, I describe one of our programs that – based on the state's failure to fund its contract with us – has been compromised beyond recognition, and is at risk of closing down.

3. The program identifies homeless people and families who need housing, and places them in apartments that are set aside as "Homeless Dedicated Units." This is only the start of the services provided, however. Because many of these tenants have not previously had their own apartments, and some have mental illness, our case managers, called Housing Retention Specialists, coordinate key services for them.

4. Our Housing Retention Specialists help our clients learn their rights as tenants, understand and conform to their leases, communicate with their landlords, and ensure that they pay their rent consistently. (The Chicago Low-Income Housing Trust Fund provides rent money to landlords under the program, but our tenants still submit up to 35% of their income in rent.)

5. Many of our clients lack basic knowledge that jeopardizes their ability to stay in their apartments and off the streets. For example, one of our case clients repeatedly had his rent check returned to him until his case manager discovered that he did not know how to properly address an envelope.

6. Another example: one of our clients, because she had not before had a landlord, texted him repeatedly when she had a repair need. The landlord came close to evicting her based on what he perceived as her harassment. One of our case managers successfully counseled her in how to improve her relationship with her landlord.

7. Our Housing Retention Specialists also assist our tenant families with financial literacy and budgeting, applications for benefits, transportation to key appointments, navigation of health care systems, substance abuse service, and the enrollment of their children in school.

8. Landlords participate in the program voluntarily. Without the services of our case managers, landlords may decide that our tenants pose intolerable challenges, and the tenants could again find themselves homeless. Indeed, in the month of May, four separate landlords have requested our assistance. These landlords rely on our services in order to continue renting to our participants. If these landlords did not have our assistance they would not continue to rent to tenants who require additional assistance.

9. An eviction can be particularly devastating to our clients. This is because, once a person has an eviction on her record, it is very difficult for her to obtain housing in the future.

10. In addition, Inspiration Corporation staff members are the point people to ensure that when a new apartment comes available to a homeless household under the city referral system, that apartment is indeed filled by a homeless household. If the unit is not filled quickly,

many landlords decide to move on and find tenants on their own. While those tenants will be low income, they are highly unlikely to be people who are homeless.

11. Without enough staff working to reach out to potential tenants to fill these units, they are at risk of being permanently lost to the homeless system. The Chicago Low-Income Housing Trust Fund has only 450 homeless dedicated units, and each time a homeless family is not placed in a newly-opened unit, that number may permanently decrease. Fewer units dedicated to homeless families increases shelter usage and drives up costs. Reductions in housing for homeless people also make Chicago less competitive when competing for homeless services funding from the U.S. Department of Housing and Urban Development.

12. Our funding for this program comes from a contract with the Illinois Department of Human Services (IDHS). However, IDHS has not funded its contract with us for the entire fiscal year 2016. As a result, we have accrued $118,000 of unpaid receivables for work we have performed under the contract.

13. Under the contract, we are to provide services to formerly-homeless families in 74 Homeless Dedicated Units.

14. Unless IDHS funds our contract, we will have to suspend all services for these 74 households on June 30, 2016.

15. I can provide examples of what it will mean for these households to lose our services. 85 children led by single mothers will not receive assistance to ensure that they are enrolled in school with necessary supplies and uniforms, or – for the young children – placed in safe childcare. Our staff is trained to help tenants access all available resources, and advocate for children to stay in their school of origin, even when the head of household has experienced homelessness.

16. Without a dedicated staff member to help the head of household navigate the often complex world of housing assistance, these 85 children also risk losing safe and affordable housing.

17. Even before we have to suspend all our services at the end of June, we have already drastically curtailed our services. Based on the lack of contract funding, along with reduced appropriation, we have laid off all our case managers for the 74 households. That means that we had to eliminate all home visits and scheduled office and phone meetings with tenants. Now, we can only try to deal emergencies, and we lack the structure to effectively perform this basic function. We are left with an intern who takes emergency calls from landlords or tenants, and routes them to our Director of Housing and Supportive Services, who should not have a caseload because of her many other responsibilities.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Dated: 5/24/2016

Shannon K. Stewart

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

ILLINOIS COLLABORATION ON YOUTH, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	Case No. 2016 CH 6172
v.	)	
	)	
BRUCE RAUNER, GOVERNOR OF ILLINOIS, in his official capacity, *et al.*,	)	
	)	
	)	
Defendants.	)	

AFFIDAVIT OF ARLENE HAPPACH

1. My name is Arlene Happach.

2. I am the Chief Operations Officer (COO) of Children's Home + Aid.

3. Children's Home + Aid is a leading child and family service agency in Illinois. For more than 130 years, we have linked children to a network of opportunity and care. We serve more than 40,000 children and families each year across Illinois.

4. As COO, I am responsible for supervising all of these operations, and I am familiar with the services we provide and the funding sources that support these services.

5. Much of the state funding received by Children's Home + Aid comes from the Illinois Department of Children & Family Services, and - despite the Governor's veto of the General Assembly's appropriations bills - is being paid to us due to a court order.

6. However, we have five separate contracts from the Illinois Department of Human Services (DHS) for which we are not getting funding. During fiscal year 2016, DHS has not paid Children's Home + Aid for the services we perform under those contracts.

7. As a result, three youth services programs that we provide have already been shut down or are in imminent danger of being shut down. We have also had to entirely stop serving 170 youth and 36 families under these three programs.

8. In addition, we have laid off 37 staff members and have been unable to full 10 more positions. If funding is not forthcoming, we will soon lay off another 40 staff.

9. The first of our programs that has been harmed by the missing funding is Comprehensive Community-Based Youth Services (CCBYS), which we have provided in the Englewood community in Chicago and in the Metro East community, outside of St. Louis.

10. CCBYS is committed to ensuring the safety and wellbeing of youth who have left home. The program works to reconcile these youth and their families. If there needs to be a cooling off period, we find the teenagers a safe place to stay. We also connect them with mental health counseling, and serve as liaisons to schools, teachers, probation officers, and police.

11. Based on the fact that DHS has not funded the programs in fiscal year 2016, we were forced to shut down the entire program in Englewood. We served approximately 100 youth a year via that program.

12. When a CCBYS program is shut down, the youth who previously received services tend to end up in more acute situations, as their families begin to lock them out of their homes. We expect many of our formerly-served Englewood youth to end up in the system – in the Department of Children and Family Services, or detained in the juvenile justice system.

13. The Metro EAST CCBYS program has not yet been shut down, but only because we shifted money from other sources. This money will not last much longer: if funding is not forthcoming from DHS, we will have to shut down the Metro East program at the end of June, 2016. The Metro East program is very large – in fiscal year 2015, we served approximately 350 youth in the program.

14. In addition, when we are forced to lay off staff, as we have in both Englewood and Metro East, it will be difficult if not impossible to find replacements at a later date, if funding is restored.

15. Moreover, our staff members take time to develop valuable and meaningful relationships in the community, which allows them to provide quality service. In Englewood, for example, we had staff with deep ties to Englewood.

16. These programs only function because police in the communities served know to call us when they come into contact with runaway teenagers.

17. Because of these realities, once we wind down a CCBYS program, as we have done in Englewood, we are not able to easily reestablish the program once funding is restored.

18. We have no expectation that we will be able to restore the CCBYS program in Englewood even if we eventually receive funding for the services we have already provided.

19. Similarly, if we are forced to shut down our Metro East CCBYS program, as we will have to do within months if funds are not forthcoming, we expect that we will never be able to reconstitute the program.

20. The second program at risk of imminent and irreparable injury is Healthy Families Illinois.

21. Through Healthy Families Illinois, we furnish home visits to new mothers who have been identified as being at risk of DCFS contact in the future.

22. Due to the lack of funding from DHS, this program is currently running at half our typical staffing level, and only serving half our normal number of clients. We have had to drop 16 clients, and have had to lay off a staff member and leave another staff position unfilled.

23. Moreover, we are unable to give to any of our clients or community members the education services that are normally outreach for this program. This informational and educational programming in the community makes potential clients and referral sources aware of the program's existence. Not being able to do this outreach, we receive many fewer clients; the program will dwindle and eventually cease to be relevant.

24. As a result, the longer we go without funding, we not only risk having to shut the program down entirely, but the program becomes less sustainable and will take longer to reestablish if funding is restored, if it is possible to reestablish it at all.

25. The final program at risk of dissolution is Redeploy Illinois, which helps nonviolent juvenile offenders avoid incarceration. We offer counseling, job placement, family therapy, and other services to keep these kids out of the justice system.

26. Redeploy Illinois is noted for being highly effective – studies show that it has reduced youth incarceration by 50% and saved the state of Illinois tens of millions of dollars.

27. Redeploy Illinois is offered on a county-by-county basis by different organizations around the state; we offer the program in four Metro East counties. Only one organization provides these services in each county. Thus, if we are forced to shut down our programs, the juveniles in our served counties will have no such program.

28. Redeploy Illinois works because our highly-trained staff have - over a period of years - developed relationships with judges and prosecutors on the one hand, and community members on the other hand. If we have to shut down Redeploy Illinois, if and when funding is restored, these complex relationships will have to be rebuilt before any organization - Children's Home + Aid, or another group – can provide services again.

29. We have streamlined our provision of these services due to the lack of DHS funding. For instance, we reduced our staffing for the CCBYS program by about a third. We are only able to keep our services at this reduced capacity because of financial assistance from other organizations, including United Way.

30. In addition, we have deferred maintenance on our buildings, limited travel and consulting help, and stopped funding our staff member's 401(k)s. No matter how much we reduce costs and shut down programs, however, our fixed costs – such as building costs – remain. Moreover, those deferred expenses will come back to cost us more money later.

31. Turnover amongst our staff is now incredibly high, as they search for work in industries that are more stable.

32. DHS has continued to demand performance by Children's Home + Aid under our contracts with them, even though we are receiving no funding from them. For example, DHS regularly requests reports from the organization regarding the outcome of the services performed.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: 5/23/16

Arlene Happach

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

ILLINOIS COLLABORATION ON YOUTH, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	Case No. 2016 CH 6172
v.	)	
	)	
BRUCE RAUNER, GOVERNOR OF ILLINOIS, in his official capacity, *et al.*,	)	
	)	
	)	
Defendants.	)	

AFFIDAVIT OF MICHAEL TURNER

1. My name is Michael Turner.

2. I am the owner of Senior Helpers – Lincolnwood, which is an independently-owned Senior Helpers franchise. We provide home care services for the elderly who require assistance with activities of daily living in order to remain in their homes. Many of these seniors would have to enter nursing homes if not for our help with bathing, dressing, medication reminders, light housekeeping, and maintaining their homes in a safe condition. Nursing home placement costs the state nearly twice as much as in-home care.

3. Approximately 72% of my organization's funding comes from the Illinois Department on Aging. Approximately 44% of this funding is Medicaid clients, for which we have been paid sporadically in fiscal year 2016. We have not received payment on our Department of Aging contract for the other 56% of our funding, throughout the entire fiscal year.

4. I am pulling from my own savings – specifically, from my personal 401(k) retirement account - to meet payroll and otherwise keep Senior Helpers open. If I had not done so, my organization would have closed by January 26, 2016.

5. I estimate that without funding from the Department on Aging, we will have to close our doors in mid-June

6. Despite using my savings to keep us afloat, I had to fire our client manager, who was a key staff member. I have been unable to fill another key office position, and, because we have been unable to give raises, we have had significant turnover of staff.

7. We provide our services at 25% below market rate because the state reimbursement rate is low. That means that our margins are very thin, and we require a volume of clients to stay afloat.

8. We had to stop accepting clients at the beginning of February.

9. Despite not receiving any of the funding from our contract with the Department on Aging, the Department requires us to continue providing services and honoring the contract terms.

10. We owe at least $95,000. We have exhausted our credit line.

11. Based on our contract with the Department of Aging, my organization grew substantially. However, due to the absence of funding from the Department, we are now unable to fulfill our growth plan.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: May 24, 2016

Michael Turner

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

ILLINOIS COLLABORATION ON YOUTH, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	Case No. 2016 CH 6172
v.	)	
	)	
BRUCE RAUNER, GOVERNOR OF ILLINOIS, in his official capacity, *et al.*,	)	
	)	
	)	
Defendants.	)	

AFFIDAVIT OF POLLY POSKIN

1. My name is Polly Poskin.

2. I am the Executive Director of the Illinois Coalition Against Sexual Assault (ICASA).

3. ICASA is a network of 29 rape crisis centers that served approximately 18,000 victims of sexual assault last year throughout Illinois. We are the only providers of free, confidential victim counseling services in this state. We provided 66,000 hours of counseling in the last fiscal year.

4. Almost half (45%) of our centers' funding comes from the state of Illinois, via the Department of Human Services. For nearly a full year, none of the centers have received any of their contracted funds.

5. The unpaid contracts amount to over $6,000,000. Although federal funds makes up the remainder, if state funding is not forthcoming, numerous of our rape crisis centers will close. As a result, they will lose their federal funding as well.

6. Our advocates meet victims at the hospital 24 hours a day, 7 days a week, and 365 days per year, providing crisis intervention, medical advocacy, and supportive counseling. If the centers close down, victims lose this service.

7. Victims will also lose access to our hotlines, which currently provides 24-hour crisis intervention, emergency referrals, and counseling.

8. Because of the millions of dollars in missing funding, 17 of our centers have laid off staff or reduced hours. Also, 31 full-time equivalent positions are unfilled, which represents 1,240 hours a week of services that victims have already lost. In addition, many of our centers have reduced the salaries of remaining staff.

9. When our centers close, there will be no office to go to and no hotline to call. When communities believe that justice will not be served and support for sexual assault victims is not available, their sense of safety will be reduced. So, I believe, will communities' actual safety.

10. Specifically, the justice system will suffer when our network shuts down. Police and prosecutors need access to sexual assault victims - as close in time to the assault as possible - in order to make their case. Without our hotline and in-person advocates, many victims will not interact with these "first responders" promptly, or even at all.

11. For years, our network has fostered relationships with first responders and allies, such as hospital personnel, law enforcement, prosecutors, probation staff, child advocates and protective services. Without our assistance, many of these first responders lack the resources to provide the care and support that victims need after trauma.

12. Because sexual assault victims must serve as witnesses against their perpetrators, ICASA has long supported and counseled victims during their criminal proceedings. This support kept many victims invested in the prosecutions of their assailants, without which their fear and trauma may drive them from the justice system. In fiscal year 2015, we provided 12,527 hours of this criminal justice advocacy. Should ICASA centers shut down, we believe that many victims will stop participating in their criminal cases, and numerous sexual perpetrators will go free. Sexual assault recidivism will proliferate.

13. The rape crisis centers belonging to ICASA are also key to sex assault prevention education in the state. Our public educators taught over 650,000 Illinois school-aged youth in K-12 schools, colleges, civic organization, and after-school programs.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

5/24/16 Polly Poskin (JB)

Date Polly Poskin

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

Illinois Collaboration on Youth, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 16 CH 6172
	)	
James Dimas, Secretary of the Illinois Department of Human Services, in his official capacity, et al.,	)	Honorable Rodolfo Garcia
	)	
Defendants.	)	

NOTICE OF FILING

TO: Thomas H. Geoghegan
Michael P. Persoon
Sean Morales-Doyle
Samantha Liskow, *Of Counsel*
Despres, Schwartz & Geoghegan
77 W. Washington Street, Suite 711
Chicago, Illinois 60602

PLEASE TAKE NOTICE that the attached **Defendants' Motion to Dismiss Plaintiffs' Third Amended Complaint and Defendants' Combined Memorandum of Law in Support of their Motion to Dismiss Plaintiffs' Third Amended Complaint and in Response to Plaintiffs' Renewed Motion for Preliminary Injunction** were filed with the Clerk of the Circuit Court of Cook County, Illinois, County Department, Chancery Division, at the Richard J. Daley Center, Chicago, Illinois 60602.

Respectfully submitted,

LISA MADIGAN, #99000
Attorney General of Illinois

By: Amy M. McCarthy

AMY M. McCARTHY
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CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the aforementioned document was served upon the above named individuals, at the above address by U.S. Mail, postage prepaid, and via electronic mail delivery, on August 11, 2016.

Amy M McCarthy

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

Illinois Collaboration on Youth, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 16 CH 6172
	)	
James Dimas, Secretary of the Illinois Department of Human Services, in his official capacity, et al.,	)	Honorable Rodolfo Garcia
	)	
Defendants.	)	

DEFENDANTS' SECTION 2-619.1 COMBINED MOTION TO DISMISS

Defendants, Bruce Rauner, Governor of Illinois; James Dimas, Secretary of the Illinois Department of Human Services; Jean Bohnhoff, Acting Director of the Illinois Department on Aging; Nirav Shah, Director of the Illinois Department of Public Health; Felicia Norwood, Director of the Illinois Department of Healthcare and Family Services; John R. Baldwin, Director of the Illinois Department of Corrections; Michael Hoffman, Acting Director of the Illinois Department of Central Management Services; Audra Hamernik, Executive Director of the Illinois Housing Development Authority; and Leslie Geisser Munger, Comptroller for the State of Illinois (all of whom are sued in their official capacities only), by their attorney Lisa Madigan, the Illinois Attorney General, move this Honorable Court to dismiss Plaintiffs' Third Amended Complaint ("TAC") pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619.1. In support, Defendants state the following:

1. Plaintiffs are organizations that contractually agreed to provide various services for the State. (TAC, ¶¶ 5-19, 41).

2. Plaintiffs complain that Defendants have not made any payment for the contractual services provided during the State's 2016 fiscal year (FY2016). (*Id.* at ¶¶ 53, 55).

3. On May 4, 2016, Plaintiffs filed this lawsuit against Governor Rauner and the agency heads seeking a declaration that the Defendants exceeded their constitutional and statutory authority. Plaintiffs sought an injunction compelling the Defendants to pay for certain services rendered pursuant the contract.

4. On May 25, 2016, Plaintiffs filed a Motion for Preliminary Injunction, asking this Court "to require the defendants and the defendant Comptroller to make payment of bills overdue by 60 days or more during the pendency of this case." (Motion for Preliminary Injunction, pp. 2, 24).

5. On June 2, 2016, Plaintiffs filed their First Amended Complaint, which was followed by Plaintiffs' Second Amended Complaint filed on June 21, 2016.

6. On June 30, 2016, Public Act 99-0524 was enacted, which appropriated some funds for the State's Fiscal Years 2016 and 2017.

7. On July 20, 2016, Plaintiffs filed their Third Amended Complaint (TAC).

8. Count I of the TAC alleges that the Defendants acted *ultra vires* and seeks declaratory and injunctive relief. Specifically, the Plaintiffs allege that:

(a) The Governor violated the Illinois Constitution by using his legislative veto power under Article III while simultaneously exercising his executive power under Article IV to enter into contracts with the plaintiffs (TAC, ¶100);[1]

(b) That by continuing to conduct public business without a State budget in place, the Defendants violated Article VIII, section 2 of the Illinois Constitution (State Finance) (TAC, ¶102);

[1] The relevant articles of the Illinois Constitution are Article IV (The Legislature) and Article V (The Executive), instead of Articles III and IV, as set out in the TAC.

(c) The acts described in subsections (a) and (b) violate the Plaintiffs' right to equal protection under the law (TAC, ¶104).

9. Count II asserts that the conduct described in paragraph 8, *supra*, and the subsequent passage of P.A. 99-524, amount to a violation of the Illinois Constitution's ban on impairment of contracts (Article I, §16) as well as a violation of the due process clause (Article I, §2). (TAC, ¶¶ 106, 118).

10. In Count III, based upon the recent passage of P.A. 99-0524, Plaintiffs claim equal protection and due process violations as well as a violation of the separation of powers clause of the Illinois Constitution (Article II, §1) as a result of what Plaintiffs have characterized as the Defendants' exercise of "quasi-judicial" authority in the determination of "which claims will be paid and which will not." (TAC, ¶¶120, 128).

11. On July 20, 2016, Plaintiffs also filed their Renewed Motion for Preliminary Injunction.

12. On July 25, 2016, Plaintiffs filed their Revised Memorandum of Law in Support of their Renewed Motion for Preliminary Injunction ("Revised Memo"), seeking an injunction requiring Defendants to "make payment of bills overdue by 60 days or more during the pendency of this case." (Revised Memo, p. 30).

DISMISSAL PURSUANT TO 735 ILCS 5/2-619

13. Plaintiffs' Third Amended Complaint must be dismissed pursuant to Section 2-619 of the Illinois Code of Civil Procedure for the following reasons:

(a) Dismissal is warranted pursuant to Section 2-619(a)(1) because Plaintiffs' claims are barred by sovereign immunity; accordingly, this Court lacks

subject matter jurisdiction to adjudicate Plaintiffs' claims and to compel any payment due under the contracts at issue;

(b) Dismissal is warranted pursuant to Section 2-619(a)(9) because Defendants' alleged conduct is lawful and constitutional.

DISMISSAL PURSUANT TO 735 ILCS 5/2-615

14. Plaintiffs' Third Amended Complaint must be dismissed pursuant to Section 2-615 of the Illinois Code of Civil Procedure for the following reasons:

(a) Dismissal is warranted pursuant to Section 2-615 because the express language of Plaintiffs' contracts and Illinois law preclude the relief Plaintiffs seek;

(b) Dismissal is warranted under Section 2-615 because Plaintiffs fail to state a valid constitutional claim for impairment of contract, or any other constitutional violation.

15. A Combined Memorandum of Law in Support of Defendants' Motion to Dismiss Plaintiffs' Third Amended Complaint and in Response to Plaintiffs' Renewed Motion for Preliminary Injunction is attached hereto and incorporated herein by reference.

WHEREFORE, for the foregoing reasons as well as those stated in the accompanying Memorandum of Law, all Defendants respectfully request that this Honorable Court grant their Motion to Dismiss Plaintiffs' Third Amended Complaint pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure.

Respectfully Submitted,

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

Illinois Collaboration on Youth, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 16 CH 6172
	)	
James Dimas, Secretary of the Illinois Department of Human Services, in his official capacity, et al.,	)	Honorable Rodolfo Garcia
	)	
Defendants.	)	

DEFENDANTS' COMBINED MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' THIRD AMENDED COMPLAINT AND IN RESPONSE TO PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION

Defendants, Bruce Rauner, in his official capacity as Governor of the State of Illinois, *et al.*, by their attorney Lisa Madigan, the Illinois Attorney General, submit this Combined Memorandum of Law in Support of their Motion to Dismiss Plaintiffs' Third Amended Complaint ("TAC") and in Response to Plaintiffs' Renewed Motion for Preliminary Injunction.

INTRODUCTION

Until recently, the State of Illinois did not have an operations budget covering social services for fiscal year of 2016 (FY2016). During this time, Plaintiffs' organizations continued to provide social services without being paid for those services under their contracts. But the legislature passed and the Governor signed an appropriations bill on June 30, 2016, which authorizes the expenditure of State funds to cover the State's FY2016 and a portion of FY2017 expenses and includes authorization to pay for social services provided by the Plaintiff organizations. See P.A. 99-0524. While the delay in payments that the Plaintiffs' organizations have experienced has caused serious and unfortunate problems, the law does not support the

remedy Plaintiffs seek, and the courts are not the place for them to obtain relief. Ultimately, the Illinois Constitution and applicable statutes vest in other branches of government the exclusive responsibility to authorize any expenditure of State funds for Plaintiffs' contractual services and control the timing of that expenditure.

Plaintiffs seek court-ordered payments for services specified in their contracts. (TAC, ¶ 4 and pp. 15, 17). Similarly, Plaintiffs' Renewed Motion for Preliminary Injunction seeks an order requiring Defendants "to make payment of bills overdue by 60 days or more during the pendency of this case." (Revised Memo, p. 30). Although styled as a complaint for declaratory and injunctive relief, the focus of Plaintiffs' Complaint is a breach of contract claim that is defeated by the express terms of Plaintiffs' contracts and by the fact that the State has now enacted an appropriation statute that authorizes payment for services provided in FY2016 and the initial portion of FY2017. Plaintiffs' Third Amended Complaint should be dismissed, and their request for a preliminary injunction denied, for several reasons.

- *First*, enforcement of Plaintiffs' contract rights against the State in the circuit court is barred by sovereign immunity. Because this Court lacks jurisdiction to adjudicate a claim against the State founded on a contract, it has no authority to grant Plaintiffs the relief they seek. And Plaintiffs' claim that Defendants' actions resulting in the lack of payments exceeded their authority, and thus are *ultra vires*, is legally unfounded.

- *Second*, the plain language of Plaintiffs' contracts and Illinois law preclude the relief they seek. The contracts expressly provide that they are contingent upon the availability of funds, which requires a sufficient appropriation.

- *Third,* the Appropriations Clause of the Illinois Constitution and the State Comptroller Act expressly bar the expenditure of State funds absent an appropriation. Plaintiffs' claim that Defendants acted in an *ultra vires* manner by following State law and failing to pay Plaintiffs with unappropriated State funds, therefore, fails as a matter of law.

- *Finally*, Plaintiffs fail to state a valid claim for an unconstitutional impairment of contracts, or any other constitutional violation. An impairment of contract claim requires a legislative enactment that impairs a valid contractual obligation. *AFSCME, Council 31*

v. State of Ill., Dep't of Cent. Mgmt. Servs., 2015 IL App (1st) 133454, ¶ 44. Here, because Plaintiffs' contracts are explicitly subject to sufficient appropriations, they cannot be impaired by the *absence* of a legislative enactment making such appropriations. See *State of Ill., Dep't of Cent. Mgmt. Servs. v. AFSCME, Council 31,* 2016 IL 118422, ¶ 52 (rehearing denied May 23, 2016).

THE COMPLAINT

Plaintiffs are social service organizations that entered into written contracts to provide various human services for the State in FY2016. (TAC, ¶¶ 5-19, 41). Plaintiffs' contracts expressly provide that they are "contingent upon and subject to the availability of funds." (See e.g., TAC, ¶ 46, Ex. A, p. 9, Section 4.1; see also Exhibit I). They further provide that 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 . . . fails to make an appropriation sufficient to pay" the amounts provided. (*Id.*) Each contract also contains an "Applicable Law" provision stating that any claim against the State arising out of the contract must be filed *exclusively* with the Illinois Court of Claims (705 ILCS 505/1). (See e.g., TAC, Exhibit A, p. 10, Section 4.14; see also Exhibit I, emphasis added.)

On February 18, 2015, the Governor submitted a proposed budget for FY2016 that would have provided funding for most, if not all, of the services provided under Plaintiffs' contracts. (*Id.* at ¶¶ 29-30). The General Assembly subsequently passed appropriations bills that authorized the expenditure of funds to pay for the vast majority of these services. (*Id.* at ¶¶ 31-33). On June 25, 2015, the Governor vetoed all of the relevant appropriations bills. (*Id.* at ¶ 37). The General Assembly did not thereafter take action overriding that veto.

On April 13, 2016, the General Assembly passed SB2046, which included appropriations for nearly all of the contractual services at issue in this case. (*Id.* at ¶¶ 63-64). On June 10, 2016,

Governor Rauner vetoed the relevant appropriations bill in its entirety. (*Id.* at ¶ 66). Again, the General Assembly did not take action overriding that veto.

Throughout this period, Plaintiffs continued to provide the contractual services. (*Id.* at ¶¶ 42, 48). Defendants did not make any payment for those services. (*Id.* at ¶¶ 53, 55). And, Defendants did not terminate Plaintiffs' contracts based on the absence of appropriations. (*Id.* at ¶¶ 47, 56).

On May 4, 2016, Plaintiffs filed a Complaint seeking declaratory and injunctive relief against Governor Rauner and the agency heads who contracted with Plaintiffs. On May 25, 2016, Plaintiffs also filed their Motion for Preliminary Injunction, seeking an order requiring Defendants to pay outstanding bills and vouchers which are overdue by 60 days or more. (May 25, 2016 Mem. at pp. 2, 24).

On June 30, 2016, the General Assembly passed and the Governor signed into law Senate Bill 2047. See Public Act 99-0524 (eff. 6/30/16). P.A. 99-0524 appropriates State funds for FY2016 and a portion of FY2017 expenses, including funds to pay for social services. As Plaintiffs have acknowledged, the State has begun making payments on social services contracts. See Affidavit of Sue Scroeder (sic) at para. 6, attached hereto as Exhibit A.

On July 20, 2016, Plaintiffs filed their Third Amended Complaint. In Count I, Plaintiffs allege that:

> (a) The Governor violated the Illinois Constitution by using his legislative veto power under Article III while simultaneously exercising his executive power under Article IV to enter into contracts with the plaintiffs (TAC, ¶100);[1]

[1] As stated in the Defendants' Motion to Dismiss, the relevant articles of the Illinois Constitution are Article IV (The Legislature) and Article V (The Executive).

(b) That by continuing to conduct public business without a State budget in place, the Defendants violated Article VIII, section 2 of the Illinois Constitution (State Finance) (TAC, ¶102);

(c) The acts described in subsections (a) and (b) violate the Plaintiffs' right to equal protection under the law (TAC, ¶104).

In Count I, Plaintiffs seek declaratory and injunctive relief. Plaintiffs seek a judgment requiring Defendants to (1) redress their constitutional violations by immediately paying the vouchers submitted by Plaintiffs for services rendered in FY2016, regardless of whether there are sufficient appropriated funds in PA 99-0524; and (2) immediately pay Plaintiffs for any bills that are overdue by 90 days or more. *Id.*

In Count II, Plaintiffs allege an unconstitutional impairment of their contracts and ask the Court to declare that:

(1) by continuing Plaintiffs' contracts through FY2016 without payment and then executing PA 99-0524 at the end of FY2016 to ensure that there will not be full or reasonable payment, Defendants violated the rights of Plaintiffs to be free of any impairment of the obligation of contacts, in violation of Article I, section 16; and

(2) Defendants violated Plaintiffs' right to due process of law under Article I, section 2 of the Illinois Constitution.

(*Id.* at p. 17). In Count II, Plaintiffs seek an injunction (1) barring Defendants from continuing in this "unconstitutional scheme," and to provide payment for vouchers submitted by Plaintiffs that are overdue by 90 days or more; and (2) ensuring that Plaintiffs receive full payment of the contracts performed in FY2016. (*Id.*).

In Count III, Plaintiffs allege a violation of their rights to due process and equal protection. Plaintiffs also allege a violation of the separation of powers doctrine in violation of Article II, section 1 of the Illinois Constitution. Plaintiffs assert that Defendants are using P.A. 99-0524 to act in a quasi-judicial capacity to determine which contractual claims will be honored

and which will not. (*Id.* at ¶¶ 118-128). Plaintiffs seek the same injunctive relief sought in Counts I and II.

I. MOTION TO DISMISS

As a threshold matter, the circuit court lacks jurisdiction over this action. Plaintiffs' claims are barred by sovereign immunity because they are "founded upon" contracts with the State, for which the Court of Claims has exclusive jurisdiction. Plaintiffs cannot save their claims from the sovereign immunity bar by invoking the "officer suit" exception because Defendants' discretionary acts are lawful. The Governor's discretionary decisions to veto appropriations bills are lawful and privileged against any claim that such decisions are invalid due to alleged improper motives. Furthermore, Plaintiffs' attempt to enjoin Defendants' allegedly *ultra vires* acts for entering into and continuing contracts, absent enacted appropriations statutes, and otherwise acting in what they characterize as a "quasi-judicial" manner in determining which contracts to pay, is unavailing.

Additionally, P. A. 99-0524, enacted on June 30, 2016, authorizes payments for social services provided by Plaintiffs pursuant to their contracts. See P.A. 99-0524, articles 74, 997, and 998. Although it is too soon to know how much will ultimately be paid to each Plaintiff as a result of P.A. 99-0524 and when those payments will be made, any remaining disagreements as to the amounts of the payments made and the timing of these payments are claims "founded upon" Plaintiffs' contracts with the State and, thus, barred by sovereign immunity. Plaintiffs cite to no constitutional or statutory obligation that requires the Defendants to process or prioritize payments in a particular manner. Therefore, Plaintiffs have no plausible grounds to invoke the officer suit exception.

Also, there is no legal basis for Plaintiffs' claim that Defendants exceeded their authority and violated Plaintiffs' right to equal protection and due process. Likewise, there is no merit to Plaintiffs' substantive claims because the express language of their contracts and Illinois law both preclude the relief Plaintiffs seek, *i.e.*, payment of their contracts in the absence of sufficient appropriations. Additionally, Plaintiffs' impairment of contract claim fails because that claim would require a legislative enactment that impairs a contractual obligation, which is not present here.

Legal Standard

Defendants may bring a combined Motion to Dismiss pursuant to section 2-619.1 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619.1. While a section 2-615 motion to dismiss tests the legal sufficiency of a complaint, a section 2-619 motion to dismiss assumes the sufficiency of the complaint but asserts affirmative matter outside the complaint that bars or defeats the cause of action. *Patrick Eng'g, Inc. v. City of Naperville,* 2012 IL 113148, ¶ 31. When ruling on a motion to dismiss, the court takes as true all well-pleaded facts in the complaint, but not conclusions of law or conclusions of fact unsupported by specific factual allegations. *Spillyards v. Abboud*, 278 Ill. App. 3d 663, 668 (1st Dist. 1996).

Argument

A. Plaintiffs' Third Amended Complaint should be dismissed pursuant to section 2-619(a)(1) because it is barred by sovereign immunity, and this Court therefore lacks subject matter jurisdiction.

Plaintiffs' entire action is barred by sovereign immunity and must be dismissed for lack of subject matter jurisdiction. Because Plaintiffs' claims are based on their contracts with the State, this suit is outside of this Court's jurisdiction.

Section 1 of the State Lawsuit Immunity Act states that, "[e]xcept as provided in the Illinois Public Labor Relations Act, the Court of Claims Act, the State Officials and Employees Ethics Act, and Section 1.5 of this Act, the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1. The doctrine of sovereign immunity protects the State from interference in its performance in the functions of government. *Vill. of Riverwoods v. BG Ltd. P'ship*, 276 Ill. App. 3d 720, 725 (1st Dist. 1995). If a judgment could operate to control the actions of the State or subject it to liability, the action is effectively against the State and is barred by sovereign immunity. *Currie v. Lao*, 148 Ill. 2d 151, 158 (1992).

1. Sovereign immunity bars Plaintiffs' request for declaratory and injunctive relief.

Plaintiffs cannot evade sovereign immunity by styling their complaint as one seeking declaratory and injunctive relief. *State Bldg. Venture v. O'Donnell*, 239 Ill. 2d 151, 164 (2010). The Supreme Court's ruling in *State Bldg. Venture* is instructive. In that case, the plaintiff brought a declaratory judgment action alleging that it was damaged by the State's interpretation of its rights under a commercial lease and seeking a determination that the State's construction of the lease was invalid. *Id.* at 154-56. The Court explained that the determination of whether an action is founded on a contract and brought against the State depends upon the issues involved and the relief sought. *Id.* at 161. The Court then held that sovereign immunity barred the plaintiff's claim because it was founded upon a contract with the State. *Id.* at 164-65. The Court reasoned that plaintiff alleged a present claim for relief, rather than a prospective claim, by seeking a determination of its rights under the existing lease. *Id.*

Similarly, Plaintiffs here seek a determination of their rights under their contracts with the State, specifically, that the State is obligated to pay Plaintiffs for the services rendered in

FY2016. Consistent with *State Bldg. Venture*, this Court should rule that sovereign immunity bars Plaintiffs' entire action.

2. The Court of Claims has exclusive jurisdiction over Plaintiffs' claims.

Plaintiffs' claims for the payment of services provided pursuant to their contracts must be pursued in the Illinois Court of Claims. In relevant part, the Court of Claims Act provides that the Court of Claims has "*exclusive jurisdiction*" over the following claims:

> (a) All claims against the State *founded upon any law of the State* of Illinois or upon any regulation adopted thereunder by an executive or administrative officer or agency; . . .
>
> (b) All claims against the State *founded upon any contract* entered into with the State of Illinois.

705 ILCS 505/8 (emphasis added). Here, Plaintiffs allege that they contractually agreed to provide various services for the State and have not been paid for those services. (TAC, ¶¶ 53, 55). Having made their contracts an essential element of their claims, Plaintiffs cannot avoid the conclusion that their action is "*founded upon* [a] contract entered into with the State of Illinois" and, therefore, within the "*exclusive jurisdiction*" of the Court of Claims. 705 ILCS 505/8(b) (emphasis added). "[T]here is no dispute that claims against the State founded on a contract must be filed in the Court of Claims." *State Bldg. Venture*, 239 Ill. 2d at 161. And, Plaintiffs allege that their contracts are attached "in compliance with 735 ILCS § 5/606 [sic]" (TAC ¶ 40), which requires them to do so for "a claim . . . *founded upon* a written instrument." 735 ILCS 5/2–606 (emphasis added). Thus, the allegation in paragraph 40 of the Third Amended Complaint demonstrates that Plaintiffs themselves believe that their claim is founded upon the contracts at issue. Because Plaintiffs' claims are founded upon their contracts with the State, this suit is barred by the State Lawsuit Immunity Act and should be dismissed pursuant to Section 2-619(a)(1).

3. The officer suit exception to sovereign immunity is not applicable.

Plaintiffs try to save their claims by invoking the "officer suit" exception to sovereign immunity, pursuant to which a court may enter injunctive relief prohibiting future action by a state official "in violation of statutory or constitutional law or in excess of his authority." *Leetaru v. Bd. of Trs. of the Univ. of Ill.*, 2015 IL 117485, ¶ 45 (internal citations omitted); see also *Ellis v. Bd. of Governors of State Colls. & Univs.*, 102 Ill. 2d 387, 395 (1984) (holding that sovereign immunity is inapplicable where "a plaintiff is not attempting to enforce a *present claim* against the State, but rather seeks to *enjoin* a State officer from taking *future actions* in excess of his delegated authority") (emphasis added). This effort fails for two reasons: (1) Plaintiffs seek to enforce a *present claim* for monetary relief against the State based on existing contracts, not to enjoin future action in excess of Defendants' authority, and (2) Plaintiffs' allegations that Defendants acted *ultra vires* in excess of their authority are legally unfounded.

Plaintiffs' reliance on the Contracts Clause of the Illinois Constitution does not prevent their action from being a present claim or bring it within the officer suit exception. Not every legal wrong allegedly committed by a State officer will trigger the officer suit exception. *Leetaru*, 2015 IL 117485 at ¶47. For example, where the challenged conduct amounts to simple breach of contract, the exception is inapplicable. *Id.*, citing *Smith v. Jones,* 113 Ill. 2d 126, 132–33 (1986). In *Smith*, the Supreme Court held that sovereign immunity could not be avoided where "plaintiffs' complaint . . . alleges only that the Director exceeded his authority by breaching a contract." *Accord, Joseph Constr. Co. v. Bd. of Trs. of Governors State Univ.*, 2012 IL App (3d) 110379 (court relied on sovereign immunity to affirm dismissal of a suit seeking payment under a contract with a state university that sought injunctive relief "prohibiting defendants from 'withholding funds'" and declaring that the plaintiff "'is entitled to the balance

due under the terms of the parties' agreement'" based on allegations that the state officer "acted 'outside the scope of her authority' by failing 'to honor the terms of the parties' agreement'" and withholding funds allegedly due. The court emphasized that "[t]his entire action is premised and founded upon the construction contract between plaintiff and [the state university]," and stated that "artful pleadings can allow any plaintiff to suggest that a state employee acts outside the scope of his or her employment when disbursing funds to which the plaintiff feels entitled.").[2]

The same conclusion applies here. Regardless of how Plaintiffs label their claims, they essentially seek a monetary recovery from the State for a present claim based on their contracts, and the officer suit exception does not apply. See *Sarkissian v. Chi. Bd. of Educ.*, 201 Ill. 2d 95, 102 (2002) (when analyzing a pleading, a court will look to the content of the pleading rather than its label). And in any event, the Governor did not exceed his legal authority or commit any *ultra vires* acts by vetoing appropriation bills, which purportedly would have provided full funding for Plaintiffs' contracts. A state official's actions will not be considered *ultra vires* even if the official has erroneously exercised his or her delegated authority. *Leetaru*, 2015 IL 117485 at ¶ 47. Rather, the officer suit exception applies in situations where the official is not doing the business the sovereign has empowered him or her to do, or is doing it in a way the law forbids. *Id.*, citing *PHL, Inc. v. Pullman Bank & Trust Co.*, 216 Ill. 2d 250, 266 (2005).

Here, the Governor had the express constitutional authority to veto the two appropriations bills alleged in Plaintiffs' Complaint. (TAC ¶¶ 37, 62). ILL. CONST. art. IV, § 9. The Governor's

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[2] See also *Brucato v. Edgar*, 128 Ill. App. 3d 260, 267 (1st Dist. 1984) (court held sovereign immunity barred plaintiff's claim based on a contract with the State, stating that, "although plaintiff's prayer for relief is framed in equitable terms," the relief sought was monetary recovery from the State, and, therefore, "notwithstanding the terminology employed in the pleadings, the present action is substantively a claim for monetary damages from the State arising from a contract with the State" even though plaintiff also alleged that defendants' actions "constituted a denial of her constitutional right to due process and equal protection.").

veto of an appropriations bill arguably exceeds his authority only where, for example, the expenditure is legally mandated without any appropriation, such as for the express constitutional obligation to pay judicial salaries. See *Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 314 (2004). Thus, the Governor did not exceed his authority by vetoing the appropriation bills on June 25, 2015 and June 10, 2016.

Additionally, Plaintiffs improperly allege that Defendants' conduct in carrying out contracts without a budget for an entire fiscal year amounts to an unfair trade practice. (Revised Memo, p. 18). "[A]n implied covenant of good faith and fair dealing cannot overrule or modify the express terms of a contract." *Suburban Ins. Servs., Inc. v. Va Sur. Co.*, 322 Ill. App. 3d 688, 693 (2001). And here, Plaintiffs' contracts expressly provide that they are contingent on funding and anticipate the potential lack of such funding due to the absence or insufficiency of appropriations. The implied duty of good faith therefore cannot negate those provisions, which contemplate the potential lack of appropriations. The Governor's express constitutional authority to veto appropriation bills also establishes "good cause" for his contested vetoes as a matter of law, foreclosing any claim that the vetoes constituted a breach of a contractual duty of good faith. *See Dayan v. McDonald's Corp.*, 125 Ill. App. 3d 972, 993 (1st Dist. 1984) (citing Corbin on Contracts §§ 654D, 1268 (1982 Supp.)).

Plaintiffs' challenge to the constitutional validity of the Governor's vetoes also fails because claims of improper motives generally cannot nullify legislative actions. See *Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723, 730-31 (7th Cir. 2014). Because the Governor's decision to sign or veto a bill is legislative in nature, *Williams v. Kerner*, 30 Ill. 2d 11, 14 (1963), there is no basis for the Court to nullify the Governor's June 25, 2015 and June 10, 2016 vetoes of the appropriations bills.

Plaintiffs' claims of *ultra vires* action by the other Defendants also are unfounded. The remaining Defendant agency heads did not act in excess of their authority by entering into and continuing contracts with Plaintiffs for which there was no prior appropriation. The contracts contain an express provision – consistent with what the law already provides – that they are contingent upon and subject to the availability of sufficient funds. The Appropriations Clause of the Illinois Constitution (ILL. CONST. art. VIII, §2(b)) and the State Comptroller Act (15 ILCS 405/9(c)) bar the expenditure of State funds absent an appropriation. Under general contract law principles, "statutes and laws in existence at the time a contract is executed are considered part of the contract," and "[i]t is presumed that parties contract with knowledge of the existing law." *State (CMS) v. AFSCME,* 2016 IL 118422, ¶ 53 (citations and internal quotation marks omitted). Here, Plaintiffs were aware that their agreements were contingent upon the sufficiency of funds and enactment of appropriations. The Defendant agency heads would have exceeded their lawful authority if they authorized payment without an enacted, sufficient appropriation, not by entering into and continuing contracts in the absence of a sufficient appropriation.

Assuming there were any merit to the *ultra vires* claim that the Defendants lacked the authority to "continue" or "enforce" the Plaintiffs' contracts without an appropriation, that claim would not support the *remedy* they seek of ordering the payment of unappropriated State funds. Rather, Plaintiffs only available remedy would be to seek a prospective injunction against the continuation or enforcement of these contracts until there are supporting appropriations for them. *PHL, Inc. v. Pullman Bank & Trust Co.*, 216 Ill. 2d 250, 268 (2005) ("sovereign immunity will not bar a cause of action in the circuit court where the plaintiff seeks to bar a State officer from taking *future actions* in excess of his delegated authority"). In contrast, Plaintiffs seek retroactive relief for an alleged breach of contract claim which is barred by sovereign immunity,

Plaintiffs also claim that Defendants are acting in a quasi-judicial capacity to determine which contractual claims will be honored, and that such conduct amounts to a constitutional violation. (*Id.* at ¶¶ 119-128). The payment of public funds of the State is an executive function delegated to the Comptroller and the Treasurer. Their executive duties are defined by established statutory law under the State Comptroller Act (15 ILCS 405/1 *et seq.*) and the State Treasurer Act (15 ILCS 505/0.01 *et seq.*). The Comptroller acts as the chief fiscal control officer (15 ILCS 405/2). The Treasurer countersigns State warrants if there are sufficient funds for payment. (15 ILCS 505/11). Neither of these functions is adjudicatory in nature.

Since the June 30, 2016 enactment of P. A. 99-0524 authorizing payments for social services provided in FY2016 and the start of FY2017, many of the Defendants have been in the process of determining how to disburse the appropriated State funds. Although at this juncture, it is not known how much money ultimately will be paid to each Plaintiff and when all payments will be made, the recent appropriations bill indisputably provides funds to the Defendants' agencies that can be used to make payments on Plaintiffs' contracts. See P.A. 99-0524, articles 74, 997, and 998. Any remaining disagreement as to the amounts of the payments made and the timing of these payments must be brought to the Court of Claims. Plaintiffs cite to no constitutional or statutory obligation that requires the Defendants to process or prioritize payments in a particular manner. Therefore, Plaintiffs have no plausible grounds to invoke the officer suit exception.

B. The Court also should dismiss the Third Amended Complaint under section 2-615 because Plaintiffs fail to state a cause of action.

1. The plain language of the contracts at issue bars Plaintiffs' claims.

Plaintiffs' contracts are attached to their Complaint and are considered part of the pleading, and when inconsistencies between the factual allegations and those exhibits arise, the

exhibits control over inconsistent factual allegations. *Kehoe v. Saltarelli*, 337 Ill. App. 3d 669, 676 (1st Dist. 2003). Each contract states that any claim against the State arising out of the contract must be filed *exclusively* with the Illinois Court of Claims, and that the State does not waive sovereign immunity by entering into these agreements. (See e.g., TAC, Exhibit A, p. 10, Section 4.14; see also Exhibit I).

As noted, Plaintiffs' contracts also provide that they are contingent upon and subject to the availability of sufficient funds. That language limits Plaintiffs' contract rights to the amount of any enacted appropriations. See *State (CMS) v. AFSCME,* 2016 IL 118422, ¶¶ 51-52. And, given the nature of the appropriations process, Defendants have the right to enter into contracts subject to an appropriations contingency. *Id.* at ¶ 44; see also 1979 Ill. Att'y Gen'l Op. 24 (S-1412) (stating that standard appropriations contingency clause in state contract confirms that, in "recognition . . . of the legislature's exclusive authority to appropriate State funds," the contract does not ". . . bind the State in excess of the State agency's appropriation").

There is also no merit to Plaintiffs' contention that Defendants could not continue the contracts despite the lack of sufficient appropriations. Each contract provides that, in the absence of necessary funding, the State *may* terminate or suspend the contract, in whole or in part. It is not material whether the Plaintiffs were readily able to withdraw from these contracts. (TAC, ¶ 48). Plaintiffs cannot state a cause of action for payment under these contracts simply because the Defendant agency heads had discretion to terminate or suspend the contracts but chose not to do so.

2. The Illinois Constitution bars the relief Plaintiffs seek.

Even if this Court had jurisdiction over Plaintiffs' contract claims, the Appropriations Clause of the Illinois Constitution precludes full payment for the contracts at issue in the absence

of an enacted, sufficient appropriation. As noted above, P.A. 99-0524 authorizes payment for social services provided by Plaintiffs pursuant to their contracts. Even assuming that the appropriation in this act is not sufficient to pay for all of Plaintiffs' services to date, however, the Appropriations Clause precludes any payments that are not covered by P.A. 99-0524. The Appropriations Clause provides, in pertinent part, that "[t]he General Assembly by law shall make appropriations for all expenditures of public funds by the State." Ill. Const., art. VIII, §2(b).

In *AFSCME v. Netsch*, 216 Ill. App. 3d 566 (4th Dist. 1991), the court rejected the plaintiffs' effort to require the Comptroller to pay State employees absent enacted appropriations, holding that "any attempt by the comptroller to issue the funds in the absence of an appropriation bill signed into law by the governor would create obvious problems under the separation-of-powers doctrine." *Id.* at 568. Plaintiffs here seek relief similar to the relief sought in *Netsch* — *i.e.*, payment for their contractual services in the absence of a sufficient appropriation. Consistent with *Netsch*, Plaintiffs request to be paid for the contracts should be rejected.[3] See *State (CMS) v. AFSCME,* 2016 IL 118422, ¶¶ 42, 45 (holding that a wage increase pursuant to a collective bargaining agreement could not be implemented due to insufficient appropriations). This Court has no authority to grant the relief requested, *i.e.*, immediate payment of the vouchers submitted by Plaintiffs for services rendered in FY2016, should there be

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[3] Defendants recognize that there are narrow circumstances in which State funds may be expended without a corresponding appropriation, in particular where such expenditure is directly mandated by a specific provision of the Illinois Constitution. See *Jorgensen*, 211 Ill. 2d at 314 (applying art. VI, § 14 of the Illinois Constitution, which states that "Judges shall receive salaries as provided by law which shall not be diminished to take effect during their terms of office"); see also *Netsch,* 216 Ill. App. 3d at 568. But those circumstances are not present here.

insufficient appropriated funds. (TAC, ¶ 4 and pp. 15, 17). Such an order directly contravenes the Appropriations Clause.

3. Illinois law bars the relief Plaintiffs seek.

In addition to the Appropriations Clause, an Illinois statute also bars the relief Plaintiffs seek. Section 9(c) of the State Comptroller Act, 15 ILCS 405/1, *et seq.*, bars an expenditure of public funds without a corresponding appropriation:

> The Comptroller shall examine each voucher required by law to be filed with him and determine whether unencumbered appropriations or unencumbered obligational or expenditure authority other than by appropriation are legally available to incur the obligation or to make the expenditure of public funds. If he determines that unencumbered appropriations or other obligational or expenditure authority are not available from which to incur the obligation or make the expenditure, the Comptroller shall refuse to draw a warrant.

15 ILCS 405/9(c).

Again, this Court has no authority to grant the relief requested, *i.e.*, an order "(1) requiring defendants to act on an equal basis and submit all vouchers received from plaintiffs to the Comptroller with or without coding to specific funds, and (2) ordering the Comptroller to pay immediately all such vouchers more than 90 days overdue out of general revenue or specific funds, regardless of whether there is a specific legislative appropriation or not." (TAC, ¶ 4). Such an order directly contravenes the State Comptroller Act. Additionally, the sovereign immunity doctrine precludes the circuit court from entering an order which controls the actions of the State or subjects it to liability. *Currie*, 148 Ill. 2d at 158.

4. There has been no impairment of any obligations in Plaintiffs' contracts.

Plaintiffs improperly rely on the Contracts Clause of the Illinois Constitution as a substitute for a breach of contract action to enforce contractual rights, rather than seeking to invalidate subsequent substantive legislation impairing such rights. The Contracts Clause

provides that "[n]o . . . law impairing the obligation of contracts . . . shall be passed." ILL. CONST. art. I, § 16. The purpose of the Contracts Clause "is to protect the expectations of persons who enter into contracts from the danger of subsequent legislation." *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 398 Ill. App. 3d 510, 530 (2d Dist. 2009) (citation and internal quotation marks omitted).

There are four elements to an impairment of contract claim: (1) a contractual relationship; (2) that has been impaired by a legislative enactment; (3) that imposes a substantial impairment; and (4) that is not justified by an important public purpose. *AFSCME, Council 31 v. State of Ill., Dep't of Cent. Mgmt. Servs.*, 2015 IL App (1st) 133454, ¶ 44. Plaintiffs cannot satisfy the second element.

"The constitutional provision denying the power to pass any law impairing the obligation of a contract has reference only to a statute enacted after the making of a contract." *People v. Ottman*, 353 Ill. 427, 430 (1933). In holding that a judicial decision cannot constitute an impairment of contract, the United States Supreme Court has explained that "[i]t is equally well settled that an impairment of the obligation of the contract, within the meaning of the Federal Constitution, *must be by subsequent legislation.*" *Cleveland & P.R. Co. v. City of Cleveland*, 235 U.S. 50, 53-54 (1914) (emphasis added). Thus, the remedy for a Contracts Clause violation is invalidation of the legislation, not enforcement of the contract. *Carter v. Greenhow*, 114 U.S. 317, 322 (1885).

At the time this action was commenced, Plaintiffs complained of the impact of the *absence* of a legislative enactment on their contracts. Plaintiffs have since amended their pleading to reflect that a stopgap budget was enacted on June 30, 2016, and that such enactment

unconstitutionally impairs their respective contracts. (TAC, ¶¶ 69, 107). Such an allegation is unavailing.

The passage of the June 30, 2016 stopgap budget does not impair, but instead provides funding authority for, Plaintiffs' contracts. Although some of the Plaintiffs ultimately may complain that the enacted appropriation is insufficient in that it does not provide *full* payment for their contractual services, such a claim amounts to nothing more than a potential breach of contract claim.

In *State (CMS) v. AFSCME,* the Illinois Supreme Court recognized that the General Assembly's failure to enact appropriations to pay wage increases specified in a collective bargaining agreement was not an unconstitutional impairment of that agreement where the agreement was, by statute, contingent on appropriations. The Court held that the wage increase was "always contingent on legislative funding, and the failure of that contingency to occur cannot 'impair' AFSCME's agreement with the State." *Id.* at ¶ 52. That holding controls here. All of Plaintiffs' contracts are subject to sufficient appropriations. The failure of this contingency is not an unconstitutional impairment of contract.

In addition, State action takes on a constitutional dimension, as opposed to being a potential breach of contract, only if that State action extinguishes any previously available remedy for a breach of contract. *Horwitz-Matthews, Inc. v. City of Chicago*, 78 F.3d 1248, 1251 (7th Cir. 1996). If the party with whom the State contracted has a remedy, there is no constitutional impairment under the Contracts Clause. *Id.*

Here, Plaintiffs argue that they have an inadequate legal remedy because they will face significant obstacles in pursuing their remedies in the Court of Claims. (TAC, ¶¶ 107, 115, 116, 117). Namely, Plaintiffs allege that the enactment of PA 99-0524 impairs, if not eliminates, the

possibility of a legal remedy for non-payment in the Court of Claims. *Id.* But the General Assembly did not pass any legislation that extinguished any contractual rights or remedies Plaintiffs may have. And, Plaintiffs' contracts and Illinois law both provide Plaintiffs with a remedy which lies within the exclusive jurisdiction of the Court of Claims.

Finally, there is no basis for Plaintiffs' claim that Defendants "are unilaterally rewriting the contracts for fiscal year 2016 previously signed so as to provide funding that is significantly below the amounts in the original contracts attached as Exhibit I." (TAC, ¶ 112). These contracts are enforceable under their original terms in the Court of Claims.

Because Plaintiffs cannot turn their ordinary breach of contract claim into a constitutional claim, Count II must be dismissed pursuant to section 2-615.

5. The lack of payment to Plaintiffs for contractual services, where those contracts are contingent on sufficient appropriations, does not deprive Plaintiffs of due process or equal protection.

Similarly, Plaintiffs cannot turn their breach of contract claim into a violation of due process and equal protection. Plaintiffs note that various State employees, vendors, and schools are being paid, despite the purported absence of a sufficient appropriation to pay Plaintiffs. (TAC, ¶104; Revised Memo, p. 20). Thus, Plaintiffs contend that the denial of payment on their contracts violates their due process and equal protection rights. (*Id.* at ¶ 105). This contention is unfounded.

Because the contracts are subject to sufficient appropriations, the possibility that this contingency would not be satisfied is an inherent part of Plaintiffs' property rights, and the failure of that contingency to occur could not deprive them of property without due process. And, the legislative process resulting in the lack of such appropriations, including the Governor's vetoes of appropriations bills, which are legislative in nature, provides all the process due in

connection with determining the funds to devote to services under Plaintiffs' contracts. *See Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445 (1915); *Pro-Eco, Inc. v. Bd. of Comm'rs of Jay County, Ind.*, 57 F.3d 505, 513 (7th Cir. 1995).

Because Plaintiffs' contracts are subject to sufficient appropriations, the decisions by the Defendant agency heads not to authorize payment absent such appropriations likewise did not deprive Plaintiffs of a property interest. And even if such a deprivation occurred, it was not without due process because Plaintiffs may pursue the process provided by law for any claim founded on a contract with the State — *i.e.*, filing a claim in the Court of Claims. See *Murdock v. Washington*, 193 F.3d 510, 513 (7th Cir. 1999) (citing 705 ILCS 505/8). In any event, because due process guarantees *procedural* protections, not a particular *substantive* outcome, *Engle v. Isaac*, 456 U.S. 107, 121 n.21 (1982), the remedy for a due process violation is an outcome-neutral hearing to contest the legitimacy of the claimed deprivation, *see Evers v. Astrue*, 536 F.3d 651, 660 (7th Cir. 2008), not the specific outcome of paying Plaintiffs the amounts they claim.

Plaintiffs' equal protection claims also must fail. Plaintiffs do not maintain that they are a protected class for equal protection purposes. Thus, the legislative and executive decisions they challenge are subject to judicial scrutiny only to determine whether there is a "rational basis" for treating them differently than other persons who they contend are similarly situated. *People v. Masterson*, 2011 IL 110072, ¶ 24. That scrutiny is "limited and generally deferential." *Comm. for Educ. Rights v. Edgar*, 174 Ill. 2d 1, 37 (1996). "The challenged classification need only be rationally related to a legitimate state goal, and if any state of facts can reasonably be conceived to justify the classification, it must be upheld." *Id.* (citations omitted).

Rational basis review "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *F.C.C. v. Beach Comm'ns, Inc.*, 508 U.S. 307, 313 (1993). "In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Id.* That is especially true with respect to determinations about how to allocate limited public resources. See *Miller v. Ill. Dep't of Pub. Aid*, 94 Ill. App. 3d 11, 19-20 (1st Dist. 1981) (rejecting equal protection challenge to policy eliminating public aid coverage for certain optical and dental conditions in light of "the obvious constraints of finite financial resources"). In addition, "[a]s a threshold matter . . . it is axiomatic that an equal protection claim requires a showing that the individual raising it is similarly situated to the comparison group," and "when a party fails to make that showing, his equal protection challenge fails." *Masterson*, 2011 IL 110072, ¶ 25.

Plaintiffs have not established that they are similarly situated to other entities that have received some appropriations, such as primary and secondary public education. While Plaintiffs certainly can question the wisdom of appropriations to fully fund some State services but not others, the law does not support a challenge to the legality of those determinations by the other branches of government. It is also not possible to conclude that the Defendant state agency heads lacked a rational basis to not pay Plaintiffs during FY2016 while simultaneously paying other vendors. As discussed above, during the time where no appropriations were enacted to authorize payment of Plaintiffs' contracts, State law and Plaintiffs' contracts provided the rational basis for not making payments that are contingent on appropriations. If the appropriation authority in P.A. 99-0524 ultimately does not provide sufficient authority to pay all of Plaintiffs' contracts in

full, State law and Plaintiffs' contracts similarly provide the rational basis for not making full payments that are contingent on sufficient appropriations.

The other circumstances on which Plaintiffs rely are dissimilar in material respects. For example, the Constitution mandates spending for judicial salaries and operations. *Jorgensen*, 211 Ill. 2d at 314. Other types of spending are required under federal law, which, under the Supremacy Clause of the Federal Constitution (U.S. CONST. art. VI, cl. 2), takes precedence over Illinois law, including the Appropriations Clause and State statutes. *See, e.g.*, Aug. 31, 2015 Order to Enforce Consent Decrees entered in *Memisovski v. Maram*, N.D. Ill. No. 92-cv-01982, and *Beeks v. Bradley*, N.D. Ill. No. 92-cv-4204 (requiring State to make all Medicaid payments in compliance with federal law until budget impasse is resolved). Other spending is covered by enacted appropriations, including continuing appropriations.[4]

The only meaningful departure from these principles concerns State employee salaries, which are subject to a preliminary injunction entered by the Circuit Court of St. Clair County. However, Defendants' failure to pay Plaintiffs in the absence of sufficient appropriations is not similar to those court-ordered payments. Moreover, the order in the St. Clair County case specifically relied on the appellate court's opinion that the Supreme Court later reversed in *State (CMS) v. AFSCME* on the ground that the labor agreements in question were contingent on

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[4] Besides the other grounds asserted in this Memorandum of Law, Audra Hamernik, Executive Director of the Illinois Housing Development Authority ("IHDA"), should be dismissed from this action. IHDA was added as a Defendant to this action only as it relates to its contract with Plaintiff, The Resurrection Project ("TRP"). TRP received a grant award in the amount of $30,960.00 pursuant to a federal grant program known as the National Foreclosure Mitigation Counseling Program ("NFMC"). (See Grant #51030, attached in Exhibits G & I to TAC). The NFMC Program is a federally funded program which does not necessitate a State appropriation, and there has been no undue delay in issuing disbursements to TRP. Thus, it is unknown why TRP has filed suit against the IHDA.

appropriations, which had not been enacted for the payments in dispute. That circuit court order therefore cannot justify disregarding the similar appropriations contingencies in Plaintiffs' contracts. Thus, there is no exception in this case that allows Defendants to pay Plaintiffs for their contractual services absent an enacted, sufficient appropriation, which would directly contravene the Appropriations Clause.

II. RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs are not entitled to a preliminary injunction. The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits. *Bd. of Educ. of Dolton Sch. Dist. 149 v. Miller*, 349 Ill. App. 3d 806, 814 (1st Dist. 2004). A party seeking a preliminary injunction is required to establish that he or she (1) has a clearly ascertainable right that is in need of protection; (2) will suffer irreparable harm without the injunction; (3) has no adequate remedy at law for the injury; and (4) is likely to succeed on the merits. *Hartlein v. Ill. Power Co.*, 151 Ill. 2d 142, 156 (1992). In addition, the trial court must determine whether the balance of hardships to the parties supports a grant of preliminary injunctive relief. *Joseph J. Henderson & Son, Inc. v. City of Crystal Lake,* 318 Ill. App. 3d 880, 883 (2d Dist. 2001).

A. Plaintiffs have no clear, ascertainable right in need of protection.

While Plaintiffs clearly have experienced financial hardships resulting from the FY2016 budget impasse, the plain language of Plaintiffs' contracts and Illinois law expressly preclude payment absent a sufficient appropriation and provide that the Court of Claims has exclusive jurisdiction over Plaintiffs' contract claims. Furthermore, the recent passage of the stopgap budget now authorizes Defendants to make payments on Plaintiffs' contracts. Plaintiffs, therefore, have no clear, ascertainable right in need of protection.

Moreover, Plaintiffs are not entitled to a mandatory injunction requiring Defendants to pay them in full for the contractual services rendered in FY2016. "[T]he doctrine of sovereign immunity bars the court from entering a mandatory injunction compelling the state to take specific action." *Brando Constr. v. Dep't of Transp.*, 139 Ill. App. 3d 798, 805 (1st Dist. 1985). Indeed, "[t]he purpose of sovereign immunity is to protect the state from interference with the performance of governmental functions and to preserve and protect state funds." *Lynch v. Dep't of Transp.*, 2012 IL App (4th) 111040, ¶ 21 (internal quotation marks omitted). That, however, is precisely what Plaintiffs request: an order requiring Defendants to pay Plaintiffs.

B. Plaintiffs fail to establish a likelihood of success on the merits.

For the reasons explained above in support of Defendants' motion to dismiss, Plaintiffs fail to establish a likelihood of success on the merits of their claims. The issues raised by that motion present questions of law, and the lack of any legal merit to Plaintiffs' claims requires denying their motion for a preliminary injunction.

C. Plaintiffs failed to establish an inadequate remedy at law.

Plaintiffs also cannot establish an inadequate remedy at law. Plaintiffs' damages from Defendants' failure to pay them can be precisely determined. And where a party can be made whole by an award of damages, there is an adequate remedy at law. See *Charles P. Young Co. v. Leuser*, 137 Ill. App. 3d 1044, 1051 (1st Dist. 1985).

As explained above, the Court of Claims has exclusive jurisdiction over Plaintiffs' contract claims. While Plaintiffs assert that the Court of Claims cannot provide an adequate remedy (Revised Memo, pp. 21-22), they have not initiated a cause of action in the Court of Claims and, thus, this Court cannot speculate as to the outcome of a case brought in that forum.

D. A preliminary injunction will cause irreparable harm to the State.

Finally, in balancing the equities, this Court should consider the irreparable harm to the State that would result from an unlawful expenditure of public funds. See *Granberg v. Didrickson*, 279 Ill. App. 3d 886, 889 (1996). That injury is compounded by the fact that, as the Comptroller's website shows, the State's "general funds" accounts are not sufficient to pay the amounts Plaintiffs ask to be paid in the time that Plaintiffs' seek to be paid. 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.

That would not only impose serious hardship on other persons not represented in this case, but put the Court in the position of determining payment priorities among different classes of claimants. For the types of claims at issue in this case, however, that function is constitutionally vested in other branches of government.

Defendants do not dispute or underestimate the serious hardships that Plaintiffs and their clients have suffered as a result of the State's budgetary crisis. Unfortunately, however, under the Illinois Constitution and laws, the solution to this egregious situation must come from the processing of payments by the Executive branch and, if the appropriation authority in P.A. 99-0524 proves to be insufficient to pay for all of Plaintiffs' services, from the enactment of additional appropriation authority by the Governor and the legislature.

CONCLUSION

For the foregoing reasons, along with those stated in the accompanying motion to dismiss, Defendants, Bruce Rauner, in his official capacity as Governor of Illinois, *et al.*, respectfully request that this Honorable Court deny Plaintiffs' Renewed Motion for Preliminary

Injunction and grant Defendants' Motion to Dismiss Plaintiffs' Third Amended Complaint with prejudice .

Respectfully Submitted,

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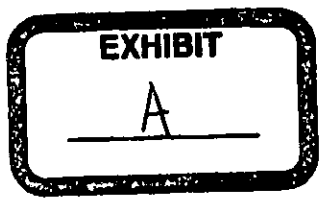
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ILLINOIS COLLABORATION ON YOUTH, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	Case No. 2016 CH 6172
v.	)	
	)	Hon. Rodolofo Garcia
BRUCE RAUNER, GOVERNOR OF ILLINOIS, in his official capacity, *et al.*,	)	
	)	
Defendants.	)	

AFFIDAVIT OF SUE SCROEDER

1. My name is Sue Schroeder.
2. I am executive director of Stepping Stones of Rockford, Inc. ("Stepping Stones").
3. In fiscal year 2016, Stepping Stones had three contracts with the Illinois Department of Mental Health.
4. Stepping Stones is presently owed over $819,847 on these contracts.
5. Stepping Stones has exhausted its line of credit of $1,050,000 and has no cash reserves
6. In recent days - on Friday July 22 and Monday July 25 2016 - Stepping Stones received two payments that total $324,772 on one of the three contracts for fiscal year 2016.
7. Stepping Stones is still owed $64,955 on this contract.
8. There have been no payments on the other two contracts.
9. Stepping Stones is using the State money just received - as well as an advance of Medicaid funds - only to meet overdue payables. These include overdue payments on vehicle leases, shut-off notices and overdue employee health insurance.



Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Date: July 27, 2016

Signed: Susan J Schroeder CEO
Sue Schroeder

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.
>
> * * *
>
> 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
One of Plaintiffs' Attorneys

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IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

American Federation of State, County and Municpal Employees, Council 31; IllinoisTroopers Lodge No. 41, Fraternal Order of Police; Illinois Nurses Association; Illinois Federation of Public Employees, Local 4408 IFT-AFT; Illinois Federation of Teachers, Local 919; International Brotherhood of Electrical Workers; Illinois Fraternal Order of Police Labor Council; Laborers International Union of North America – ISEA Local 2002; Service Employees International Union, Local 73; SEIU Health Care Illinois & Indiana; SEIU Local 1; Teamsters Local Union **No. 705, Affiliated with the International Brotherhood of Teamsters; Conservation Police Lodge of the Police Benevolent and Protective Association,**	Case No. 15CH475
Plaintiffs,	
v.	
State of Illinois and Leslie Geissler Munger in Her Official Capacity as Comptroller for the State of Illinois,	
Defendants.	

FILED
ST. CLAIR COUNTY
JUL 10 2015
CIRCUIT CLERK

TEMPORARY RESTRAINING ORDER WITH NOTICE

Cause coming before the court on Plaintiffs' Motion for Temporary Restraining Order, the responses of the Attorney General for the State of Illinois and the Comptroller in her Official Capacity (State) and on Motion of the Comptroller (Comptroller) to Disqualify the Attorney General as Counsel for the Comptroller. The court has reviewed the pleadings and heard the argument of counsel and finds as follows:

1) Notice of Plaintiffs' Motion for TRO has been given to the Defendants, the Attorney General of the State of Illinois appears for the State of Illinois and for the Comptroller in her Official Capacity and attorneys of Brown, Hay and Stephens, LLP, appear for Leslie Geissler Munger, Comptroller of the State of Illinois;

2) The Comptroller's Motion to Disqualify is taken under advisement;

3) The State's Motion to Dismiss, in which the Comptroller does not join, on the grounds of sovereign immunity is denied as to Comptroller and allowed as to the State of Illinois. Plaintiffs' Motion seeks to have the Comptroller perform her job — that she stands ready and willing to do. The Comptroller is not a nominal party sued as a cutout for a claim that correctly belongs in the Court of Claims. The court properly takes subject matter jurisdiction to hear Plaintiffs request for an order of court to direct the Comptroller to exercise her clearly defined official authority and to insure that State employees are paid in such a manner as not to impair Plaintiffs' members rights under their respective Collective Bargaining Agreements as guaranteed by the Statutes and the Constitution of the State of the Illinois.

4) The AG also contends that Plaintiffs' Complaint does not state a cause of action against the Comptroller. However, the Comptroller, by separate counsel, agrees that Plaintiffs' have stated a case. Further, the Comptroller moves that this court authorize the Comptroller to process pay checks and direct deposits in order to meet the July 15, 2015, payday for the members of the Plaintiff labor organizations *and* all other employees of the State who are paid twice a month.

   The AG's Motion to Dismiss for failure to state a cause of action is denied. To go into some detail, Section 2(a) of Article VIII of the Illinois Constitution (Ill. Const., art. VIII, § 2(a)) requires the Governor to submit a budget in accordance with State law and Section 8 of Article IV (Ill. Const., art. IV, § 8) requires the Speaker of the House and the President of the Senate to "certify that the procedural requirements for passage have been met" for each bill that passes both houses.

   In this case, the executive and legislative branches of state government have failed to reach an agreement on the budget and appropriations are frozen beginning July 1, 2015. Payment for work performed and to be performed will be withheld. This inaction threatens the financial survival of the employees of the State of Illinois. The Illinois Supreme Court recognizes judicial authority to assure that the action or inaction of the executive and legislative branches do not deprive workers of wages earned and owing under the statutes and by the Constitution. ***Dixon Ass'n v. Thompson,*** 91 Ill.2d 518, 440 N.E.2d 117 (1982). The Supreme Court has also held that a court order based upon the State Constitution could provide the Comptroller "expenditure authority other than appropriation" to draw warrants for the expenditure of funds from the State Treasury. ***Jorgensen v. Blagojevich,*** 211 Ill. Ed 286, 315 (2004). The court finds that Plaintiffs' have stated a proper cause of action for impairment of contract.

5) Plaintiffs' Motion for a TRO with notice is granted. Plaintiffs' members have a clear right under their respective collective bargaining agreements. Rights guaranteed by the Public Labor Relations Act that mandates the Comptroller to maintain the status quo, as to the personnel code pay plan. Plaintiffs' members also have a constitutional right that bars impairment of their employment contracts pursuant to Article I, Section 16 of the Illinois Constitution

6) In addition, Plaintiffs' members, among others, have no adequate remedy at law. The process to collect economic damages from the State in the Illinois Court of Claims dooms to financial ruin the ever expanding number of employees living paycheck to paycheck. Furthermore, the burden and hardship of missed paychecks imposed on the workers and their families are separate noneconomic losses, for which there is no recovery.

7) The AG's motions aside, none of the parties assert that people who work for the State should not be paid. Nor has the AG suggested that it is error based on the record as established on the afternoon of July 9, 2015 for the court to decide the issue in this TRO of whether the failure of the executive and legislative branches of government to provide an appropriation to pay wages to Plaintiffs' members constitutes an impairment of contract under Article I, Section 16 of the Illinois Constitution. The court concludes that the failure to provide the appropriation to pay workers who are required to go to work constitutes an impairment of contract. The court concludes that the Plaintiffs have demonstrated a likelihood of success on the merits.

8) The balance of equities clearly favors the members of the Plaintiff labor organizations. Families should not suffer while the legislature and the executive vie for a result favorable to their political agenda. Additionally, the denial of the relief requested could expose the State to great liability because of remedies available to employees under the Fair Labor Standards Act that include economic loss, interest, liquidated damages and attorney fees.

Based upon the factors that justify preliminary relief, the court hereby orders that the Comptroller draw and issue warrants accomplishing payment of wages to the Plaintiffs' members at their normal rates of pay. Further, at the request of the Comptroller, the court finds that this order authorizing payment is applicable to all other state employees at their normal rates of pay until further order of court. The AG's Motion for Stay of this order is denied.

July 10, 2015

Robert P. LeChien, Circuit Judge

c.c All attorneys

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

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Clerk of the Court

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TDD: (217) 524-8132

FIRST DISTRICT OFFICE
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Chicago, Illinois 60601-3103
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July 17, 2015

Mr. Brett Emerson Legner
Assistant Attorney General
Civil Appeals Division
100 W. Randolph Street, 12th Floor
Chicago, IL 60601

In re: People State of Illinois, et al., appellees, v. Leslie Geissler Munger etc., et al., appellants. Appeals, Circuit Courts (Cook and St. Clair). No. 119525

Today the following order was entered in the captioned case:

Emergency motion by appellee People State of Illinois in case No. 1-15-1877, and appellant State of Illinois in case No. 5-15-0277, for direct appeal pursuant to Supreme Court Rule 302(b) and other relief. Motion Denied.

Order entered by the Court.

cc: Clerk of the Appellate Court, First District
Clerk of the Appellate Court, Fifth District
Clerk of the Circuit Court of Cook County
Clerk of the Circuit Court of St. Clair County
Mr. David C. Gustman
Mr. Stephen Anthony Yokich
Mr. Joel Abbott D'Alba
Ms. Carolyn E. Shapiro
Alissa Camp
Michael Woodruff Basil

Gmail

Cynthia Cunningham <[redacted]>

FY16 billings in eCCPIS
11 messages

AGING.Occs <Aging.Occs@illinois.gov> Tue, Aug 16, 2016 at 2:17 PM
To: [redacted]

The FY16 billings have been closed. Any billings for the period ending June 30, 2016 should be submitted using the court of claims process within eCCPIS. This process is the only mechanism that we have that will allow us to continue to receive your reject cleanups as well as submit any final FY16 billings. Please know that once the information is input into eCCPIS, it will require a manual process of the Department's fiscal staff to create the

vouchers that will need to be submitted for payment from the Comptroller's office (provided there are funds available).

As you all know, the Stop Gap Bill that was passed provided funding levels that may not be adequate for all of CCP billing, therefore a balanced budget is key. Also please be advised that without a signed balanced budget, these claims cannot be processed for payment through the Court of Claims. The Court of Claims process requires an appropriation and a signed balanced budget . A Stop Gap Spending Bill is not a budget. However, as long as funding is available the agency will process payments on a first in first out basis.

Thank you for your continued support and patience as we all work through a year that has never been witnessed in Illinois history, should you have any questions please contact the Director for the Dept. on Aging at the information listed below.

jean.bohnhoff@illinois.gov

Jean Bohnhoff, Director

Illinois Dept on Aging

100 Natural Resource Way, Suite #100

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

Illinois Collaboration on Youth, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 16 CH 6172
	)	
James Dimas, Secretary of the Illinois Department of Human Services, in his official capacity, et al.,	)	Honorable Rodolfo Garcia
	)	
Defendants.	)	

NOTICE OF FILING

TO: Thomas H. Geoghegan
Michael P. Persoon
Sean Morales-Doyle
Samantha Liskow, *Of Counsel*
Despres, Schwartz & Geoghegan
77 W. Washington Street, Suite 711
Chicago, Illinois 60602

PLEASE TAKE NOTICE that the attached **Defendants' Reply in Support of Their Motion to Dismiss Plaintiffs' Third Amended Complaint** was filed with the Clerk of the Circuit Court of Cook County, Illinois, County Department, Chancery Division, at the Richard J. Daley Center, Chicago, Illinois 60602.

Respectfully Submitted,

LISA MADIGAN, #99000
Attorney General of Illinois

By: Amy M. McCarthy

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the aforementioned document was served upon the above named individuals, at the above address by U.S. Mail, postage prepaid, and via electronic mail delivery, on August 24, 2016.

Amy M. McCarthy

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

Illinois Collaboration on Youth, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 16 CH 6172
	)	
James Dimas, Secretary of the Illinois Department of Human Services, in his official capacity, et al.,	)	Hon. Rodolfo Garcia
	)	
Defendants.	)	

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' THIRD AMENDED COMPLAINT

Defendants, Bruce Rauner, in his official capacity as Governor of the State of Illinois, *et al.*, by their attorney Lisa Madigan, the Illinois Attorney General, submit this Reply in Support of their Motion to Dismiss Plaintiffs' Third Amended Complaint ("TAC").

INTRODUCTION

Plaintiffs' contracts with the State of Illinois are expressly "contingent upon and subject to the availability of funds." Unfortunately, for nearly all of fiscal year 2016 (FY2016), the appropriations required to make payments under Plaintiffs' contracts were caught up in the budget debates between the Governor and General Assembly. As a result, the State did not have an operations budget that funded contracts for social service providers for nearly all of FY2016. While the delay in the passage of legislation authorizing payments to the Plaintiffs has caused them serious hardships, the State's sovereign immunity bars their effort to have this Court intervene and order the State to pay for the services rendered under their State contracts. Instead, under the Illinois Constitution and laws, only the Governor and General Assembly can take action to ensure payment pursuant to the Plaintiffs' contracts. And recently, on June 30, 2016,

the legislature passed and the Governor signed an appropriations bill that authorizes the expenditure of State funds to cover operations for FY2016 and part of FY2017, and includes authorization to pay for some or all of the social services provided by Plaintiffs. See P.A. 99-0524.

In an effort to avoid the State's sovereign immunity, Plaintiffs deny that they are asserting claims against the State "founded" on a contract, and instead argue that they have alleged other legal theories and that the relief they seek — a judgment requiring the payment of State funds to Plaintiffs for their past contractual services — somehow qualifies as prospective injunctive relief rather than a "present claim" against the State. As described below, Plaintiffs' arguments in this regard are unconvincing. Plaintiffs' claims are clearly based on their contracts with various State agencies, and the relief they seek is the payment of State funds for providing the services specified in those contracts.

Plaintiffs also attempt to avoid the clear legal effect of the fact that each of their respective contracts is expressly made subject to appropriations. Plaintiffs offer a variety of arguments why the appropriation contingency in their contracts does not mean what it says or has been rendered inoperative, and that sufficient appropriations should either be deemed to have been enacted (by appropriation bills for which Plaintiffs contest the validity of the Governor's vetoes) or are legally unnecessary. Again, these arguments are unpersuasive.

The Illinois Supreme Court's analysis in *State of Ill. Dep't of Cent. Mgmt. Servs. v. AFSCME, Council 31,* 2016 IL 118422 (rehearing denied May 23, 2016) ("*State (CMS) v. AFSCME*"), is directly controlling here. Plaintiffs' attempt to distinguish that opinion, and instead suggest it supports Plaintiffs' position, is equally unavailing.

In response to Defendants' dispositive arguments, Plaintiffs primarily assert that they are seeking the same kind of preliminary injunctive relief that was entered by the Circuit Court of St. Clair County, and affirmed by the Fifth District in a nonprecedential order, authorizing payment of State employees' wages and salaries without an appropriation. See *AFSCME v. State of Ill.*, St. Clair Co., Case No. 15 CH 475, Jul. 10, 2015 Order, attached as Exhibit 1 to Plaintiffs' August 18, 2016 Combined Memorandum (Pltf. Aug. 18, 2016 Combined Mem.); *AFSCME v. State*, 2015 Il App (5th) 150277-U (Pltf. Aug. 18, 2016 Combined Mem. at p. 1). But Plaintiffs' reliance on that preliminary injunction and order by the Fifth District affirming it — neither of which has precedential effect, and both of which predated the Supreme Court's opinion in *State (CMS) v. AFSCME* — is misplaced and not controlling here.

Plaintiffs further contend that this Court, based on an appeal to "the equities" of the situation, can order the expenditures Plaintiffs request. (Pltf. Aug. 18, 2016 Combined Mem. at p. 3). But the Illinois Constitution vests in the General Assembly the exclusive power — through the appropriation process — to authorize such expenditures. That principle, which is expressed in each of Plaintiffs' contracts, must be given effect here.

Thus, for these reasons and those stated below, as well as those reasons stated in Defendants' Motion to Dismiss and Combined Memorandum of Law, Plaintiffs' Third Amended Complaint should be dismissed.

ARGUMENT

I. This Court lacks subject matter jurisdiction to consider Plaintiffs' claims.

A. This Court lacks jurisdiction over Plaintiffs' claims founded on their contracts.

The relief requested by Plaintiffs in this case seeks to control the actions of the State and subject it to liability. Specifically, Plaintiffs demand immediate payment of the vouchers

submitted for services provided under their contracts in FY2016, regardless of whether there are sufficient appropriated funds; payment for vouchers which are overdue by 90 days or more; and permanent injunctive relief to ensure that Plaintiffs receive full payment of their contracts for FY2016. (TAC at pp. 15, 17). Plaintiffs are clearly seeking payment for the contractual services they rendered in FY2016, and accordingly, such claims are barred by sovereign immunity. See *Currie v. Lao*, 148 Ill. 2d 151, 158 (1992).

As Plaintiffs' claims are primarily founded upon their contracts with the State, they cannot evade sovereign immunity. Even Plaintiffs' contracts unambiguously provide that any claim against the State arising out of the contracts must be filed *exclusively* with the Court of Claims. (See e.g., TAC, Exhibit A, p. 10, Section 4.14; see also Exhibit I).

Accordingly, because this Court lacks subject matter jurisdiction, Plaintiffs' entire action must be dismissed pursuant to Section 2-619(a)(1).

B. The officer suit exception to sovereign immunity is not applicable.

At the outset, Plaintiffs incorrectly assert that Defendants have not specifically denied that they acted unlawfully or *ultra vires*. (Pltf. Aug. 18, 2016 Combined Mem. at pp. 3, 8-10). Contrary to Plaintiffs' assertion, Defendants not only denied such allegations, but affirmatively established that Plaintiffs cannot invoke the officer suit exception to sovereign immunity in this case. (Def. Aug. 11, 2016 Combined Mem. at pp. 10-14). Moreover, because Defendants acted within the scope of their legal discretion, it is immaterial that Defendants do not themselves "seek a ruling that in conducting business in this way, they acted within lawful authority." (Pltf. Aug. 18, 2016 Combined Mem. at p. 8).

Again, Plaintiffs unsuccessfully attempt to turn their ordinary breach of contract claim into a constitutional claim. There is also no merit to Plaintiffs' contention that Defendants'

actions are fraudulent and unconscionable, or that such actions would suffice to convert a "present claim" for recovery based on past acts, barred by sovereign immunity, into a claim for prospective injunctive relief against *ultra vires* acts. *First*, the Governor had the express constitutional authority to veto the June 25, 2015 and June 10, 2016 appropriations bills, which arguably would have provided full funding for Plaintiffs' FY2016 contracts. (TAC ¶¶ 37, 62). ILL. CONST. art. IV, § 9. *Second*, Defendants did not act unlawfully in failing to terminate Plaintiffs' contracts or to process vouchers for Plaintiffs' services without a budget for FY2016. Again, the Illinois Constitution (ILL. CONST. art. VIII, §2(b)), the State Comptroller Act (15 ILCS 405/9(c)), and the plain language of Plaintiffs' contracts (TAC, Exhibit I) expressly provide that these contracts are contingent upon sufficient, appropriated State funds. Thus, it would have been unlawful for Defendants to *authorize* payment for Plaintiffs' services under their contracts without an enacted, sufficient appropriation. Plaintiffs' reliance on *Smith v. Jones*, 113 Ill. 2d 126 (1986) (Pltf. Aug. 18, 2016 Combined Mem.) is misplaced, for that case does not hold, as Plaintiffs suggest, that fraudulent conduct by State officials (which Defendants deny occurred here) is by itself enough to avoid the State's sovereign immunity, regardless of the relief sought. Even if there were any merit to Plaintiffs' claim that Defendants acted in an *ultra vires* manner, thus triggering the officer suit exception, such a claim would not support the remedy Plaintiffs ultimately seek in this case. Again, Plaintiffs seek court-ordered payments for the past services they performed in FY2016. Plaintiffs cannot construe their breach of contract claim as one for declaratory and injunctive relief.

Plaintiffs additionally allege that Defendants are acting in a quasi-judicial capacity to determine which contractual claims will be honored, and that such conduct amounts to a constitutional violation. (TAC ¶¶ 119-128). But there is no merit to Plaintiffs' claim that they are

seeking prospective relief, *i.e.*, "an injunction to control how individual funding decisions will be made in the coming weeks and months" and an order "to ensure that all the plaintiff agencies are treated equally and fairly in the funding decisions to be made." (Pltf. Aug. 18, 2016 Combined Mem. at p. 13). In their current prayer for relief, Plaintiffs demand immediate payment in full for all of the services they provided, regardless of appropriations; payment of the vouchers submitted for services rendered in FY2016; payment for vouchers which are overdue by 90 days or more; and permanent injunctive relief to ensure that Plaintiffs receive full payment of their contracts for FY2016. (TAC at pp. 15, 17). Simply stated, Plaintiffs are not seeking prospective injunctive relief. Rather, Plaintiffs seek retroactive monetary relief for past services rendered in FY2016.

Even if Plaintiffs truly seek prospective injunctive relief regarding the future processing of vouchers, the payment of State funds is an executive function statutorily designated to the Comptroller and the Treasurer. See 15 ILCS 405/1 *et seq.* and 15 ILCS 505/0.01 *et seq.* Defendants are still in the process of determining how to disburse the appropriated State funds in light of the recent June 30, 2016 enactment of P.A. 99-0524. The simple fact that Defendants are advising their vendors, including Plaintiffs, that P.A. 99-0524 does not constitute a balanced State budget (see Exhibit 3 to Ptf. Aug. 18, 2016 Combined Mem.) does not make Defendants' conduct unconstitutional. As the payment of vouchers submitted in FY2016 is an ongoing, fluid situation, it is unknown how much money will be paid to each Plaintiff and when each payment will be made. But certainly, P.A. 99-0524 now authorizes Defendants to begin payment on Plaintiffs' contracts. See P.A. 99-0524, articles 74, 997, and 998. And any disagreement as to the amount of payment owed and/or the timing of such payment must be raised in the Court of Claims, as expressly provided in Plaintiffs' contracts and in accordance with Illinois law.

Therefore, because Plaintiffs' attempt to invoke the officer suit exception fails, this case must be dismissed pursuant to sovereign immunity.

II. Defendants cannot be ordered to pay Plaintiffs for services under their contracts without a sufficient appropriation.

A. Plaintiffs' requested relief is barred by the Illinois Constitution and State Comptroller Act.

Plaintiffs suggest that this Court has authority to order Defendants to make full payment on their contracts. Such an order, however, is contrary to the Appropriations Clause of the Illinois Constitution (ILL. CONST. art. VIII, §2(b)) and the State Comptroller Act (15 ILCS 405/1, *et seq.*).

As an initial matter, Plaintiffs' claims implicate the separation of powers among the different branches of government. See *AFSCME v. Netsch*, 216 Ill. App. 3d 566, 568 (4th Dist. 1991) ("any attempt by the comptroller to issue the funds in the absence of an appropriation bill signed into law by the governor would create obvious problems under the separation-of-powers doctrine"). "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." *State (CMS) v. AFSCME*, 2016 IL 118422, ¶ 42. Yet in this case, Plaintiffs contend that executive-branch officials could, and did, create a legally enforceable obligation for the expenditure of State funds without a corresponding appropriation by the legislature. Plaintiffs further contend that this Court, based on an appeal to "the equities" of the situation, can now order such expenditures. (Pltf. Aug. 18, 2016 Combined Mem. at p. 3). Neither contention is sound, for the Illinois Constitution vests in the General Assembly the exclusive power — through the appropriation process — to authorize such expenditures. That principle, which is expressed in each of Plaintiffs' contracts, must be given effect here.

In support of their position, Plaintiffs rely on the preliminary injunction granted by the Circuit Court of St. Clair County and subsequently affirmed in an unpublished Fifth District appellate decision. See *AFSCME v. State*, 2015 IL App (5th) 150277-U. In *AFSCME v. State*, the plaintiff unions filed suit in the Circuit Court of St. Clair County, alleging that their members were contractually entitled to be paid the salaries specified in their collective bargaining agreements, despite the lack of appropriations for those payments, and that the failure to pay these salaries constituted an unconstitutional impairment of contract. *Id.* at ¶ 4. The circuit court entered a temporary restraining order (TRO) requiring the Comptroller to pay the normal salaries of all State employees, not just union members. *Id.* at ¶ 12. The Fifth District affirmed, holding that the circuit court did not abuse its discretion in granting the TRO. *Id.* at ¶¶ 38-39. However, neither the circuit court's order nor the appellate court's order has any precedential effect, and the latter may not even be cited as precedent. *Price ex rel. Massey v. Hickory Point Bank & Trust*, 362 Ill. App. 3d 1211, 1220-21 (4th Dist. 2006); *In re Donald R.*, 343 Ill. App. 3d 237, 244 (3d Dist. 2003). Moreover, the Fifth District relied on the appellate court opinion in *State (CMS) v. AFSCME,* 2014 IL App (1st) 130262. *Id.* at ¶ 28 ("at least one recent decision strongly supports the arguments advanced by the unions in this case"). But that appellate decision was subsequently reversed by the Illinois Supreme Court in *State (CMS) v. AFSCME*, which rejected the very impairment of contract theory advanced by Plaintiffs here. 2016 IL 118422 (rehearing denied May 23, 2016). Thus, Plaintiffs cannot rely on the TRO entered in the Circuit Court of St. Clair County to justify the relief requested in the instant suit.

The Illinois Supreme Court's holding in *State (CMS) v. AFSCME* is controlling here. In that case, the Court reversed the lower courts and vacated an arbitration award directing the State to pay a wage increase to State employees covered by a multiyear collective bargaining

agreement. 2016 IL 118422, ¶¶ 1-2. The Court held that the arbitration award violated Illinois public policy, as reflected in the Appropriations Clause of the Illinois Constitution, ILL. CONST. art. VIII, §2(b), and Section 21 of the Illinois Public Labor Relations Act, 5 ILCS 315/21. *Id.* at ¶ 2. Although the Governor's proposed budget to the General Assembly provided full funding under the collective bargaining agreement, the budget that was actually passed by the General Assembly did not contain sufficient appropriations to implement the wage increases set forth in that agreement. *Id.*at ¶¶ 8-9. The Illinois Supreme Court recognized that the failure to enact sufficient appropriations to pay wage increases specified in a CBA was not an unconstitutional impairment of that agreement where the agreement was, by statute, contingent on appropriations. *Id.* at ¶ 52.

Similarly, in this case, although there were proposed appropriations bills authorizing payment for the majority of Plaintiffs' contracts, if not all of them, those contracts were all explicitly subject to enacted appropriations, and the lack of appropriations for all of the services specified in those contracts cannot "impair" them. The appropriations authorized by P.A. 99-0524 and enacted on June 30, 2016 may not ultimately provide for full funding of all of Plaintiffs' contracts. Although that shortfall will cause hardship, an order compelling Defendants to make full payment on Plaintiffs' contracts without a sufficient, enacted appropriation is contrary to Illinois law.

Plaintiffs mistakenly assert that the Illinois Supreme Court in *State (CMS) v. AFSCME* did not address the Appropriations Clause of the Illinois Constitution, ILL. CONST. art. VIII, §2(b), and even implicitly endorsed the legal theory they advocate here. (Pltf. Aug. 18, 2016 Combined Mem. at p. 2-6, 9-10). That is an inaccurate reading of the Court's opinion. Plaintiffs suggest that the Court relied solely on a statutory disclaimer provision in Section 21 of the Public

Labor Relations Act. However, the Court unequivocally held that the arbitration award violated public policy, as expressed in both Section 21 of the Public Labor Relations Act *and* the Appropriations Clause. *Id.* at ¶ 2.

Although Plaintiffs' contracts do not involve collective bargaining agreements subject to Section 21 of the Public Labor Relations Act, there are other statutory provisions which expressly provide that these agreements are subject to *sufficient* appropriated State funds. In particular, the State Comptroller Act, 15 ILCS 405/1, *et seq.*, bars the expenditure of public funds without a corresponding appropriation. See 15 ILCS 405/9(c) ("If [the Comptroller] determines that unencumbered appropriations or other obligational or expenditure authority are not available from which to incur the obligation or make the expenditure, the Comptroller shall refuse to draw a warrant"). Without a sufficient appropriation, this Court simply cannot grant Plaintiffs' requested relief.

B. Plaintiffs' contracts expressly provide that they are contingent upon sufficient appropriations.

Besides the Appropriations Clause of the Illinois Constitution (ILL. CONST. art. VIII, §2(b)) and the State Comptroller Act (15 ILCS 405/9(c)), the plain language of Plaintiffs' contracts also precludes the relief requested in this case. One way for the State to make a contract contingent on appropriation, or to reaffirm such a contingency imposed by statute or the Constitution, is to make that contingency explicit in the contract. But even if there is no such express contingency, under general contract law principles, "statutes and laws in existence at the time a contract is executed are considered part of the contract," and "[i]t is presumed that parties contract with knowledge of the existing law." *State (CMS) v. AFSCME,* 2016 IL 118422, ¶ 53 (citations and internal quotation marks omitted). Thus, at a bare minimum, Plaintiffs should have been aware that the Appropriations Clause of the Illinois Constitution and the State Comptroller

Act bar the expenditure of State funds absent an appropriation. And here, the contracts themselves expressly place Plaintiffs on notice of this contingency, *i.e.*, the contracts indisputably state that they are contingent upon and subject to the availability of sufficient funds. (TAC, Exhibit I).

Plaintiffs argue that the initial language in their contracts explicitly making them subject to appropriation adds nothing to the contracts' additional language stating that if appropriations are not enacted, the relevant agencies may terminate the contracts. But these provisions are cumulative, not inconsistent, and Plaintiffs' reading would reduce the first provision to mere surplusage. In addition, for purposes of the instant motion, Defendants are not trying to excuse their contractual obligations or otherwise exclude liability for the services rendered by Plaintiffs in FY2016, as Plaintiffs claim, but are relying on the plain and express terms of Plaintiffs' contracts which indicate that they are subject to sufficient appropriations. And Defendants' decision to not exercise their discretion under the contracts to terminate or suspend Plaintiffs' services does not operate to nullify the express appropriation contingency in these contracts, which conforms to the Illinois Constitution and applicable statutory law.

Therefore, any order compelling Defendants to make full payment on Plaintiffs' contracts in the absence of sufficient, appropriated State funds is contrary to the express terms of Plaintiffs' contracts.

III. Plaintiffs have not alleged a constitutional impairment of contract claim.

Plaintiffs' claim that the Governor's June 25, 2015 and June 10, 2016 vetoes, as well as the enactment of P.A. 99-0524, constitutionally impaired their contracts is also legally unfounded. As previously stated, it is entirely within the Governor's express constitutional

authority to veto appropriations bills. ILL. CONST. art. IV, § 9. Thus, the Governor's exercise of this constitutional power cannot be construed as an unconstitutional impairment of contract.

Nor is the enactment of the partial budget a constitutional impairment of contract. To the contrary, the enactment of the June 30, 2016 partial budget (P.A. 99-0524) now provides Defendants with spending authority. See P.A. 99-0524, articles 74, 997, and 998. Although Plaintiffs state that the enacted appropriation is insufficient in that it does not provide full payment for the contractual services rendered in FY2016, such a claim does not amount to one for an unconstitutional impairment of contract. See *State (CMS) v. AFSCME*, 2016 IL 118422, ¶ 52 (holding that the wage increases in a collective bargaining agreement were always contingent on legislative funding, and, therefore, the "failure of that contingency to occur cannot 'impair'" the parties' agreement).

Even if, despite the appropriation contingency in Plaintiffs' contracts, they had a contractual right to payment in excess of actual appropriations by the General Assembly (which Defendants do not concede), a Contracts Clause violation does not arise from a governmental body's failure to perform its contractual obligations, for it "would be absurd to turn every breach of contract by a state or municipality into a violation" of the constitution. *Horwitz-Matthews, Inc. v. City of Chicago*, 78 F.3d 1248, 1250 (7th Cir. 1996); see also *Council 31, AFSCME v. Quinn*, 680 F.3d 875, 885-86 (7th Cir. 2012) (rejecting argument that legislature unconstitutionally impairs the obligations of a contract when it fails to appropriate funds sufficient for the State to meet its alleged contractual obligations to its employees). As discussed above, any potential breach of contract claim should be brought in the Court of Claims, as expressly provided in Plaintiffs' contracts and consistent with Illinois law.

There is also no merit to Plaintiffs' contention that the enactment of the partial budget (P.A. 99-0524) makes full payment of their contracts less secure, if not impossible. The mere fact that some of the Defendant agency heads, such as the Director of the Department on Aging, have advised Plaintiffs of the obvious, unfortunate situation that the partial budget did not provide full funding for their contracts does not automatically imply that the enactment of this appropriation bill impairs or otherwise eliminates the possibility of a legal remedy for non-payment in the Court of Claims.

IV. Plaintiffs cannot allege constitutional violations of their right to due process and equal protection.

As Plaintiffs stand on their arguments regarding the merits of their due process and equal protection claims, (Pltf. Aug. 18, 2016 Combined Mem. a p. 10), Defendants hereby incorporate and adopt those arguments warranting the dismissal of said claims raised in the underlying Motion to Dismiss and Combined Memorandum of Law in Support.

CONCLUSION

Wherefore, for the foregoing reasons as well as those stated in Defendants' Motion to Dismiss and Combined Memorandum of Law in Support, Defendants respectfully request that this Honorable Court grant their Motion to Dismiss Plaintiffs' Third Amended Complaint pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure.

Respectfully Submitted,

LISA MADIGAN, #99000
Attorney General of Illinois

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Exhibit C

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ICOY, et. al.

v.

Dimas, et al.

No. 16 CH 6172

ORDER

This matter coming to be heard on Plaintiffs' Motion for Preliminary & Permanent Injunction and Defendants' Motion to Dismiss and the Motion by various third parties' to appear as Amici Curiae, all parties having been heard, the Court having been fully advised in the premises and a partial record of proceedings having been made due to the tardiness of the court reporter, it is HEREBY ORDERED & Permanent:

1. Plaintiffs' Motion for a Preliminary Injunction is DENIED;
2. Defendants' Motion to Dismiss is GRANTED with prejudice;
3. Motion for leave to appear as Amici Curiae is GRANTED; and
4. Final judgment is entered in favor of Defendants and against Plaintiffs.

ENTERED
Judge Rodolfo Garcia
ENTERED: AUG 31 2016
Circuit Court – 1727

Attorney No.: 70814
Name: Sean Morales-Doyle
Atty. for: Pls
Address: 77 W. Washington St., Ste 711
City/State/Zip: Chicago, IL 60602
Telephone: (312) 372-2511

Dated: _____, _____

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Exhibit D

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ILLINOIS COLLABORATION ON YOUTH, ADDUS HEALTHCARE INC., AIDS FOUNDATION OF CHICAGO, CARITAS FAMILY SOLUTIONS, CENTER FOR HOUSING AND HEALTH, CENTER FOR YOUTH AND FAMILY SOLUTIONS, CHILDREN'S HOME + AID, CONNECTIONS FOR THE HOMELESS, DUPAGE YOUTH SERVICES COALITION, FAMILY FOCUS, HAVEN YOUTH AND FAMILY SERVICES, HEARTLAND HUMAN CARE SERVICES, HOUSING OPPORTUNITIES FOR WOMEN, ILLINOIS COALITION AGAINST SEXUAL ASSAULT, INTERFAITH HOUSING DEVELOPMENT CORPORATION, INSPIRATION CORP. JEWISH CHILD AND FAMILY SERVICES, JEWISH VOCATIONAL SERVICE AND EMPLOYMENT CENTER, KEMMERER VILLAGE, LESSIE BATES DAVIS NEIGHBORHOOD HOUSE, LUTHERAN CHILD AND FAMILY SERVICES, MEDICAL GEAR, LLC, MIDWEST YOUTH SERVICES, NEW AGE ELDER CARE, NEW MOMS, METROPOLITAN FAMILY SERVICES OMNI YOUTH SERVICES, ONE HOPE UNITED, POLISH AMERICAN ASSOCIATION, PROJECT OZ, PUERTO RICAN CULTURAL CENTER RAMP, INC., RENAISSANCE SOCIAL SERVICES, REVIVE SHELTER, INC., SINNISSIPPI CENTERS, STEPPING STONES OF ROCKFORD, INC., THE BABY FOLD, THE FELLOWSHIP HOUSE, THE HARBOUR, THE NIGHT MINISTRY, THE OUNCE OF PREVENTION, TREATMENT ALTERNATIVES FOR SAFE COMMUNITIES., UNIVERSAL FAMILY CONNECTION, UNION COUNTY, UNITY PARENTING WESTERN ILLINOIS MANAGED HOME SERVICES, WHITESIDE COUNTY HEALTH DEPARTMENT, YOUTH ADVOCATE PROGRAM, YOUTH CROSSROADS, YOUTH OUTREACH SERVICES,

Plaintiffs,

16-CH-6172

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 GEISSER MUNGER,)
COMPTROLLER FOR THE STATE OF ILLINOIS,)
in her official capacity, and BRUCE RAUNER,)
GOVERNOR OF ILLINOIS, in his official capacity,)
)
Defendants.)

NOTICE OF APPEAL

PLAINTIFF-APPELLANTS Illinois Collaboration on Youth, Addus Healthcare Inc., AIDS Foundation of Chicago, Caritas Family Solutions, Center for Housing and Health, Center for Youth and Family Solutions, Children's Home + Aid, Connections for the Homeless, DuPage Youth Service Coalition, Family Focus, Haven Youth and Family Services, Heartland Human Care Services, Housing Opportunities for Women, Illinois Coalition Against Sexual Assault, Interfaith Housing Development Corp., Inspiration Corp. , Jewish Child and Family Services, Jewish Vocational Services, Kemmerer Village, Lutheran Child and Family Services, Lessie Bates Davis Neighborhood House, Medical Gear LLC, Metropolitan Family Services, New Age

Elder Care, New Moms, OMNI Youth Services, One Hope United, Polish American Association, Project Oz, Puerto Rican Cultural Center, RAMP, Shelter Inc., Stepping Stones, The Baby Fold, The Fellowship House, The Harbour, The Night Ministry, The Ounce of Prevention, Treatment Alternatives for Safe Communities, Universal Family Connection , Union County, Unity Parenting, Western Illinois Managed Home Services, Whiteside County Health Department, and Youth Outreach Services, appeal to the Appellate Court of Illinois, First District, from the order and final judgment entered on August 31, 2016 by the Circuit Court of Cook County denying plaintiffs' motions for preliminary and permanent injunction and granting defendants' motions to dismiss under 735 ILCS§ 5/2-615 and 619 and entering final judgment against plaintiffs and in favor of defendants

Respectfully submitted,

Dated: September 13, 2016

By: _____
Thomas H. Geoghegan
One of Plaintiffs' Attorneys

Thomas H. Geoghegan
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Sean Morales-Doyle
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Exhibit E

	Caritas Family Solutions, et al. v. James Dimas, et al., No. 17 CH 112 (St. Clair County)	**Ill. Collaboration on Youth., et al. v. James Dimas, et al., 16 CH 6172 (Cook County)**
Plaintiffs	38 of the 44 are also plaintiffs in the Cook County case The claims of the 6 plaintiffs unique to the St. Clair County case are identical to the claims of the other 38	
Defendants	6 of the 7 are also defendants in the Cook County case The 7th heads an agency where the only contracts with a plaintiff were funded only by federal monies	
Claims	Ultra vires conduct (officer suit exception to sovereign immunity) [Ct. I] Violation of Article VIII, Section 2 of Ill. Const. [Ct. I] Equal protection violation [Ct. I] Due process violation [Ct. I] Impairment of obligation of contracts [Cts. II, III, IV, V]	Ultra vires conduct (officer suit exception to sovereign immunity) [Ct. I] Violation of Article VIII, Section 2 of Ill. Const. [Ct. I] Equal protection violation [Cts. I, III] Due process violation [Cts. I, III] Impairment of obligation of contracts [Ct. III] Violation of separation of powers [Ct. III]

Exhibit F

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT

ST. CLAIR COUNTY, ILLINOIS

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 31; ILLINOIS TROOPERS LODGE No. 41, FRATERNAL ORDER OF POLICE; ILLINOIS NURSES ASSOCIATION; ILLINOIS FEDERATION OF PUBLIC EMPLOYEES, LOCAL 4408 IFT-AFT; ILLINOIS FEDERATION OF TEACHERS, LOCAL 919; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL; LABORERS INTERNATIONAL UNION OF NORTH AMERICA - ISEA LOCAL 2002; SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 73; SEIU HEALTH CARE ILLINOIS & INDIANA; SEIU LOCAL 1; TEAMSTERS LOCAL UNION NO. 705, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS; CONSERVATION POLICE LODGE OF THE POLICE BENEVOLENT AND PROTECTIVE ASSOCIATION,

Plaintiffs,

vs.

STATE OF ILLINOIS AND LESLIE GEISSLER MUNGER IN HER OFFICIAL CAPACITY AS COMPTROLLER FOR THE STATE OF ILLINOIS,

Defendants.

No. 15-CH-475

5-17-0061

R.1

REPORT OF PROCEEDINGS

Before the HONORABLE ROBERT P. LECHIEN, Circuit Judge

July 9, 2015

APPEARANCES:

MR. STEPHEN A. YOKICH & MR. JOEL A. D'ALBA
Attorneys at Law
On Behalf of the Plaintiffs; and,

MS. ALISSA CAMP, MR. SEAN COOMBE, MS. SARA M. WOOLEY & MR. ROBERT P. OSGOOD, Attorneys at Law
On Behalf of the Defendant Comptroller; and,

MR. BRETT E. LEGNER & MS. KAREN MCNAUGHT
Attorneys at Law
On Behalf of the Defendant Attorney General; and,

MR. JACK VRETT, Attorney at Law
On Behalf of CMS.

MARY JO JALINSKY, CSR
Official Court Reporter
C.S.R. License No. 084-003202

R2

BE IT REMEMBERED AND CERTIFIED that heretofore, on to-wit: July 9, 2015, being one of the regular judicial days of this Court, the matter as hereinbefore set forth came on for hearing before the HONORABLE ROBERT P. LECHIEN, Circuit Judge in and for the Twentieth Judicial Circuit, St. Clair County, Illinois, and the following was had of record, to-wit:

****

THE COURT: All right, would everybody introduce themselves to me.

MR. YOKICH: For the plaintiff, Stephen A. Yokich, Cornfield and Feldman.

MR. LEGNER: For defendant, Brett Legner.

MS. MCNAUGHT: And Karen McNaught.

MR. LEGNER: For the Attorney General's Office.

THE COURT: Okay.

MS. MCNAUGHT: Hi, Your Honor.

MR. COOMBE: For the Comptroller, Sean Coombe.

MS. CAMP: Alissa Camp, Comptroller.

THE COURT: Okay.

MS. WOOLEY: Sara Wooley for the Comptroller.

MR. OSGOOD: Robert Osgood for the Comptroller.

THE COURT: Okay. Is there some significance to the seating arrangement with respect to the motion to

R3

disqualify the Attorney General?

MS. MCNAUGHT: Only that there wasn't enough room at the table, Your Honor.

THE COURT: Okay, let's get some chairs. There's a red one there, and there's an orange one there.

Okay, well, do we have a starting point that's agreeable?

MS. MCNAUGHT: Your Honor, we have no motion from the Comptroller's Office, so that would be a nice place to start.

THE COURT: Okay. You mean you don't have a copy of the motion that was filed --

MS. MCNAUGHT: Correct.

THE COURT: -- today not long ago?

MR. WOOLEY: Your Honor, we have a copy that we can provide. They were e-mailed.

MR. LEGNER: To whom?

THE COURT: I do have an additional copy of that if anyone would like to take a look at it. There you go.

MS. MCNAUGHT: Thank you, Your Honor.

THE COURT: Okay. As far as how to proceed, any --

RH

MR. LEGNER: Well, Your Honor, the Attorney General certainly objects to the motion, and so having just seen it, I would ask leave to be able to brief it and file a response in writing.

THE COURT: Okay. On behalf of the plaintiffs?

MR. YOKICH: On behalf of plaintiffs, we would like to see the hearing good forward. I don't know how that plays into the dispute among the Attorney General and the Comptroller, but for the record, we're prepared and ready.

MS. CAMP: And, Your Honor, if I may on behalf of the Comptroller and with all due respect to the Attorney General. We work with them all the time, have the utmost respect for them, however, we feel that this case is in direct conflict with a case that is pending before the First District Appellate Court in Chicago.

What happened is essentially on behalf of the People of the State of Illinois they directly sued the Comptroller, and we took a position that in order to comply with FLSA that we should make all State payroll payments, and they have staunchly taken a different opinion. And essentially they won on Tuesday before the Circuit Court in Cook County. We have appealed, and at this point on this particular topic we just feel we're

R5

at odds.

And so what we have done is briefed and put out our law indicating why we believe that we should be entitled to independent representation.

THE COURT: Would you care to state in a little more detail exactly what the conflict is between what you see the direction of the case versus that of the AG?

MS. CAMP: The AG -- and I won't speak -- and Brett argued it, so, obviously, he can speak to it.

THE COURT: I have read your motion so I --

MS. CAMP: Okay. Essentially, they argue that the only thing we could pays was FLSA. And what we have argued under a variety of theories, both legal and operational, is in order to comply with FLSA we need to make full payroll. Operationally, it's impossible for us to just pay FLSA immediately.

THE COURT: All right, for the record, would you care to elaborate on the initials? What is FLSA?

MS. MCNAUGHT: Fair Labor Standards Act.

THE COURT: Okay.

MS. CAMP: Oh, Fair Labor Standards Act -- I'm sorry -- which would allow us to pay covered employees federal minimum wage.

THE COURT: That's what the Comptroller has

R6

been ordered to do, and your response is that's administratively not within the realm of --

MS. CAMP: We have other legal responses too, and we also have outside legal counsel on that case, and I feel ill-equipped -- my staff can help me here -- but we filed a TRO yesterday which was partially granted -- excuse me, a motion to stay.

THE COURT: What is the position of the Attorney General in this case? Is it -- let me ask a leading question. Is it to say that you only owe the minimum wage, the State, the Comptroller only should provide the minimum wage?

MR. LEGNER: Your Honor, the plaintiffs have not advanced that theory here. So that that theory is not before this court at all in this case. If there was a Fair Labor Standards Act on assertion, in that we would deal with it, you know, as appropriately, but again, that point is not here. The argument here is, not looking at that, everybody should be paid, everything under an Impairment of Contract Clause claim, to which we're raising sovereign immunity, for instance.

THE COURT: All right.

MR. LEGNER: We can do that equally well, but again, Your Honor, I would like to brief this in

R7

writing. This is the first we've heard of this.

THE COURT: If the Attorney General is saying it's either all or none and you're saying all or none because of the administrative difficulties, what is the difference between the two positions?

MR. COOMBE: Your Honor, I would say they didn't take the position it's all or none, they took the position of minimum FLSA or none, and we are saying that we can't comply with minimum FLSA. That has been our position all along, and we are at adversarial odds in this case.

Furthermore, the reason why this motion came directly to you is because we received no communication or no notice of the filings that were put before this court on our behalf.

MS. MCNAUGHT: Until this morning. And I realize time has been of the essence in this case. And I would also point out that AFSCME has enjoined with us in the case in the First District, so, therefore, we feel that we are -- I'm not saying we support them in entirety, but we're much more closely aligned with them at this point in time. And, frankly, we would just like independent representation.

MR. WOOLEY: And, Your Honor, under the State

R8

Indemnification Act, the Comptroller is entitled to retain her own attorney, so the facts that were just brought up don't even matter. We have the right --

THE COURT: Well, yeah, you also cited the whole statute, which included "with the approval of the AG's office." I haven't heard any detail on what the standard is for the exercise of the discretion of the Attorney General in regard to accepting or rejecting a request for private or outside separate counsel.

MS. MCNAUGHT: Would you like to hear that, Your Honor?

THE COURT: Well, I would like to get back to my question, which was since it's not raised, I -- since the plaintiff's not asking for a minimum compliance, and you're not requesting that as some middle ground, and the Comptroller is not as of yet named counsel in the case but has advised us that they're not requesting that, I'm not yet seeing the conflict.

MR. COOMBE: Well, Your Honor, the Attorney General's pleadings on this case, we weren't allowed to even put input in or to bring issues which we felt were favorable and important to the independent constitutional office of the Comptroller. The Attorney General filed these in our name and on our behalf with

R9

without ever providing any sort of communication or consultation with either the Comptroller or her legal staff, and that is why the motion was brought before you here today.

THE COURT: Well, I'm aware of -- that the Attorney General will do that. I think Judges when we're sued by whoever wants to sue us are defended by the Attorney General, and I don't believe we're consulted in the fine points of the proceedings. So I do understand what you're saying from a practical standpoint.

MR. WOOLEY: Your Honor, can we also raise the point that that would violate the Rules of Professional Conduct by us being the client and --

THE COURT: Well, I would rather not get into that since that's not an issue that the Supreme Court wants trial courts to head off and try to determine how a defense or a prosecution of a case is to proceed by making ethical rulings or professional regulation-type rulings.

So I think we can do it on the basis of the statute and any cases that describe the discretion that is involved in the Attorney General's decision. I'm not ignoring your request for time to take a look at the

request for the separate counsel.

In exercising any discretion a Judge always wants to know what difference does it make. What difference does it make that I should proceed in some manner other than to say, for instance, call your first witness?

So I don't care if you stand or if you don't, I just would like to have some understanding that we go in an orderly fashion with respect to what's being discussed.

In deference to the individual assertions of the officeholder, I'll let the Comptroller state whatever it is they would like to state -- she would like to state now as a point of -- bearing in mind the brackets that I put on the conversation thus far regarding the conflicts, and how I should exercise discretion against the decision apparently to decline representation, and how I should exercise any additional time to be given to the AG to respond. Both of those are kind of in the same discussion area. Have you decided who's going next?

MS. CAMP: I'm going to go. Then he's going to go.

THE COURT: All right.

MS. CAMP: The Comptroller is in a very

R 11

precarious position right now because she is the one who makes State payments, and obviously with no budget the pressure that has been put upon her personally and upon the office in general is large. And we are represented by the Attorney General's Office. They do an excellent job on several other cases. We just feel in these matters, based on the experience that we had with the cases brought in Cook County that we are at odds in our theory in terms of what we are federally and constitutionally supposed to pay. And that is very rapidly pending. I think people are filing stuff right now.

In the First District Appellate Court there was a ruling last night at 5:00, and we feel that we want -- the Comptroller feels that she wants to put what she wants to do out there, and we don't feel that we're on the same message in terms of what we believe we are legally required to do. And her position has been since the beginning of this whole -- I don't know what you call it -- occurrence, incidence realizing we're not going to have a budget is she wants to follow the law. And at this point in time we feel that we're not in agreement to what is the law that is applicable to her in terms of what she has to pay. And it's still being

R12

litigated before the Appellate Court and, obviously, in this court, and the reason we brought the motion -- time is of the essence in all of these because everybody is asking for expedited everything.

We found out about this hearing, I don't know, yesterday? So -- you know and pulled together and worked late and did -- so time is of the essence and all we're asking is that we can have our own appointed counsel so the Comptroller can share with her what she feels is her legal obligation to pay in this budget crisis.

MR. COOMBE: Yeah, Your Honor, the Comptroller and the Attorney General are both elected constitutional officers, they hold elected constitutional offices, and they are both co-equal members of the executive branch. They both have their independent constitutional obligations, and right now we are at an impasse as to our views on those obligations. We have inherent conflicts of interest if these cases.

THE COURT: Well, all of those are legal conclusions that as of yet I don't understand. I'm suggesting -- I'm not suggesting I will ultimately disagree with you. I just -- I still don't understand what the difference is. If we're starting fresh, let's

R13

say I'm not taking direction from the case in Cook County because it doesn't give us direction. So if this is a court properly convened to hear the issue as presented by the pleadings, then I would start from the standpoint that nothing's been decided, no position has been set forth wherein the elected lawyer for officeholders is in conflict with the properly designated private counsel of the Comptroller.

MR. COOMBE: The big issue, as we see it, is we would like to advance theories that were not present in the Attorney General's briefs.

THE COURT: Yeah, I get that, but I'm not sure exactly what those theories are and why -- and whether or not they'll be before me. Let's hear from the plaintiff and ask the question that is asked in small claims, what do you want? What does the plaintiff want?

MR. YOKICH: So, we want an order that says that the Comptroller should process the full payroll for State employees in the manner that she has heretofore been processing that payroll in terms of what they're paid, and the -- who's paid, and the wages that they're paid at.

So, you know, to put it a different way, you know, there's a payroll right now for work in 2015 that's over

R14

at the Comptroller's Office for paychecks to be cut on July 15th. And instead of reducing that payroll to zero or reducing it to FLSA minimum wage, we think that the entire payroll should be paid.

THE COURT: Okay. Who disagrees with that?

MS. CAMP: Not us.

MS. MCNAUGHT: We do.

THE COURT: You agree that the full payroll should be paid?

MS. CAMP: We believe so, yes.

MR. COOMBE: We have legal theories that we can advance that would support that notion, yes, Your Honor.

MS. CAMP: Correct, and we have been allowed to hire outside legal counsel in the other case, and they are congruent. That might be too strong of an adjective, but they're similar. We agree that until such time as we have a very definitive court order we need to pay everyone to be in compliance with FLSA. Attorney General's Office -- I'm not going to state their position because they are here and they, obviously, can do so -- but we disagree on that point.

THE COURT: All right.

MS. CAMP: We agree with AFSCME on the point plaintiffs just made.

THE COURT: All right, so the Comptroller says let's just pay everybody as we have until the Supreme Court --

MS. CAMP: Correct.

THE COURT: -- has a ruling on the issue?

MS. CAMP: Correct, and we're on an expedited schedule, so we're moving up.

MR. YOKICH: Your Honor --

THE COURT: And you want to preserve the defenses that the office -- outside the officeholder's difficulties, the office representing the State, what defenses you believe are within the Rule 137 pleading necessities of your representation?

MR. LEGNER: That's absolutely true, Your Honor, but I would also like to reiterate the Comptroller's theory as to why everybody should get paid is because. She has to pay certain people certain things under the Fair Labor Standards Act, that's impractical so, therefore, she gets to pay everybody everything.

We disagree. That's the fight in Cook County. That's not this case. That's not the legal theory in this case. Last night our office asked Miss Camp identify the conflict. We're still waiting. We are

still waiting for the answer to that, and we got apparently this motion that we have just now seen for the first time.

There's no conflict in the legal theories as this case is framed by the plaintiffs in this case. This is not an FLSA case. This is an impairment of contracts case. This is a sovereign immunity case.

MR. COOMBE: Your Honor, I would answer that the conflict is in the fact that we weren't allowed to consult with the briefs that were filed on our behalf and in our name, and we would like to advance contract impairments arguments that have been before these courts and that are currently awaiting Supreme Court review and advance other legal theories that the Attorney General refuses to advance, and that they have not communicated with us to ask us what we would like to advance. They filed these on our behalf without any communication.

MS. CAMP: Your Honor -- I'm sorry.

THE COURT: I recognize there can be a difference between what judgment the Comptroller makes with respect to how to handle the problem and what the Attorney General would judge how to preserve its defenses and the constitutional issues that it raises.

MR. LEGNER: Your Honor --

THE COURT: And I have no desire to limit anyone's ability to come to an agreement on how to proceed.

MR. YOKICH: Steve Yokich for the plaintiffs. I just want to make one point. I'm happy to see that the Attorney General concedes that the case up in Chicago is an FLSA case, the case down here is an impairment of contract case. They're different cases, and when we get to arguing the merits of our motion for a temporary restraining order, that will be important.

MS. CAMP: Your Honor --

THE COURT: Okay.

MS. CAMP: -- and I'll be brief. I mean, we received the response --

THE COURT: You do not waive -- nor, I'm not sure if you could -- you do not waive the sovereign immunity issue or you don't care to address the sovereign immunity issue?

MR. COOMBE: We don't necessarily agree with the sovereign immunity issue, because we believe it's more impairments of contract than a breach of contract, Your Honor, and in a way we are in some agreement with the plaintiff on their legal theories in this case. The Attorney General is in firm opposition to our beliefs

and is representing us despite that fact.

MS. CAMP: And --

MR. LEGNER: This is the first we've heard of that, Your Honor. We've asked them to identify this. There's a process that our office goes through working with other officeholders and working on finding somebody that is reasonably suitable to appoint counsel, and we will go through that process.

Now, apparently, they have identified the conflict, but that process still needs to go through instead of surprising with a motion to disqualify right before we're supposed to argue a TRO. At the very least let us brief the motion or let this process play out with a conversation between our offices about this where they identify what the specific conflicts are.

MS. CAMP: Your Honor, I apologize and I apologize to the Attorney General if we've caused any offense. This has gone quickly. And ultimately -- and anyone here please correct me if I'm wrong -- even in the event we acquire our own counsel, AG's Office will still have a voice representing the State of Illinois. What we're asking is that Leslie Geissler Munger be allowed to seek her own counsel.

THE COURT: Well, the State of Illinois isn't

R19

here because of sovereign immunity. That much I agree with. It's the officeholder that is here, and whether that officeholder is duty bound to do certain things or is prohibited by constitutional restrictions, statutory restrictions from exercising that which is requested by the plaintiffs.

So as far as the sovereign immunity issue goes, I don't think we're going to be in disagreement on that, but that doesn't end the discussion.

MR. LEGNER: Well, Your Honor, certainly it is our position that sovereign immunity goes not just to the State of Illinois defendant but also to the officeholder defendant, because when a suit -- you look at not just who the named defendant is, as you know, but if it's, in fact, a suit against the State. Suing a constitutional officer in her official capacity is a suit against the State. It's clearly -- that prong is clearly met, it's a suit against the State.

Given that, then the question becomes is it a claim founded upon a contract or, you know, Court of Claims, exclusive jurisdiction, sovereign immunity analysis, but the analysis runs also to the officeholder, and that's not something -- sovereign immunity is not -- well, yeah, so...

THE COURT: Yes, sir, Mr. Yokich.

MR. YOKICH: If we're going to discuss sovereign immunity, I'm ready to talk, but that can wait till we get to the merits, as well.

THE COURT: Well, as I put it to you, until I see a conflict on the issues in this case, I will not go to decide an issue that need not be decided, and as far as participation of counsel for the Comptroller goes, we'll see if at any point more or less is required.

Now, there is a motion to dismiss on file.

MR. LEGNER: Yes, Your Honor.

THE COURT: And it sets out your sovereign immunity and some other issues.

MR. LEGNER: Yes.

THE COURT: Is that a good thing to talk about now or do we have other things to talk about before that?

MR. LEGNER: I would like to address it.

MR. COOMBE: Your Honor, may I bring up one other point on the conflict issue, if I may?

THE COURT: Okay.

MR. COOMBE: One of the big issues is the Attorney General is relying on the Netsch decision, the AFSCME v. Netsch, and the Comptroller would rely on

CMS v. AFSCME, State of Illinois v. AFSCME, which is opposite of Netsch. It's a current case. It's going before the Supreme Court. It was recently decided, and we feel that that is more applicable in this case than Netsch. The Attorney General didn't even bring up that case in their briefs. This is where the conflict lies. We would like to advance legal theories that are inapposite to the Attorney General.

MR. LEGNER: Your Honor, if we are going to debate the merits of that we can. Netsch involved a request by unions --

THE COURT: I've read it.

MR. LEGNER: -- to pay employees' payroll. And the answer was no, your appropriations clause says no. CMS, the State -- the AFSCME versus the State case in no way involves a lack of appropriations.

MR. YOKICH: Sure, that was exactly what it involved. It didn't involve the lack of a whole State budget. That's the key difference.

MR. LEGNER: Regardless --

THE COURT: Netsch did not preclude the courts from action when intervening in events where the legislative and executive branches failed to perform their obligations.

R22

MR. LEGNER: Netsch you're talking about, Your Honor?

THE COURT: Yes.

MR. LEGNER: Yes, the very end of Netsch, the last paragraph of Netsch.

THE COURT: Okay, I'll take that as a point of departure from the holding there which was on those facts and as a way to think about this case, because that is why we're here, I believe. That's what the plaintiffs pled.

MR. LEGNER: These are the same facts though. That was a lack of a wholesale, lack of a budget.

THE COURT: Remind me what -- you say that you have a different approach, you want to go with another case. And I take it that you --

MR. YOKICH: I have a suggestion, Judge.

THE COURT: Yes.

MR. YOKICH: All right, because the arguments are going very free form.

THE COURT: Yes, they are.

MR. YOKICH: And normally I'm okay with that, but what I would say is let's do this sort of in a regular way. The Attorney General wants to present their argument on sovereign immunity. I want to

R23

respond. If the Comptroller has additional arguments they want to make, then I don't think that there's any harm in the court hearing them.

MR. LEGNER: We would object to that.

MR. YOKICH: All right, I'm just trying to make it a streamline process.

THE COURT: I was starting that way when -- I forgot your name -- when you stood up to remind me that there was a distinction between your view of what the law is and what the AG's view was. Right before that, I had said that we would take up what conflicts may arise as we proceed down the line. And you said that you did have a disagreement about the controlling authority in the case. You've got a lot of things clipped together in a file. Do you want to hand something up?

MS. MCNAUGHT: Judge, here's the problem with allowing the Comptroller to make her own argument. The representation -- the State Employee Representation and Indemnification Statute, which is 5 ILCS 350/1, says that if they're going to have their own appointed lawyer it has to be approved by the Attorney General. There has been no appointment. There was not a request, and there has been no appointment. So they can't come in here and argue themselves without some kind of an

R24

appointment.

THE COURT: I understand that. They're not on the State's clock.

MR. LEGNER: Right.

MS. MCNAUGHT: Correct.

MS. CAMP: There actually was an appointment request.

MR. LEGNER: Not on this case.

MS. CAMP: Yes, there was. We didn't provide names, but I made a formal request.

MS. MCNAUGHT: And you said that you were going to give names.

MS. CAMP: But then --

THE COURT: Hold on. You can talk to yourselves and I'll just step out.

MS. CAMP: I'm sorry. I apologize, Your Honor.

THE COURT: That's all right. It happens. This is an arbitrator case, okay. Is this the one that said that appropriation can mean something other than the legislative and executive process, that it could be theoretically a judicial order appropriation?

MR. COOMBE: I believe what you are referring to is Jorgenson v. Blagojevich --

THE COURT: Oh.

MR. COOMBE: -- But that case cites it heavily, I believe. But, yes, Jorgenson is what first advanced that theory that the judicial branch can essentially appropriate money through a judicial order and order the Comptroller to make payments in the absence of a legislative appropriation.

THE COURT: Is that the Comptroller's position in this case?

MR. COOMBE: Correct, Your Honor.

THE COURT: Okay. It's the AG's motion to dismiss.

MR. LEGNER: Thank you, Your Honor.

THE COURT: You're welcome.

MR. LEGNER: Your Honor, as a threshold matter -- the cases teach us that as a threshold matter in court should consider whether it has subject matter jurisdiction over the case before it before it addressed any other thing.

Now, we have several facets to our motion to dismiss, but I would like to start by first turning to the sovereign immunity point.

MS. MCNAUGHT: Your Honor, this case is about contracts, and as the plaintiff has pled it, it's an impairment of contract, which means that we're talking

about contracts. And what Mr. Yokich just told you that he -- the relief that he wants is he wants for State employees to be paid. So he's hooked himself right into the very concepts of why sovereign immunity applies in this case, because he's obligating the State to pay money from its treasury on a contract. That's the essence of sovereign immunity. When you have such an allegation against the State to obligate the State to pay money on a contract, it's barred by sovereign immunity.

Every -- or the Supreme Court has looked at sovereign immunity on contract cases many, many, many times. The Appellate Courts have looked at sovereign immunity cases many, many, many times. I can go through several of them. One Is AFSCME v. Schwartz. It's -- I'm sorry -- that's not a contract case. There's PHL v. Pullman Bank and Trust Company, 216 Ill.2d 250. That was a case where there were two prospective buyers -- or they had mortgage loans, and they wanted to have those -- they wanted the State treasurer to allow them to reduce the amount of money that they owed. It started in Madison County. It went all the way up to the Supreme Court. The Supreme Court said this is a contract. You're asking for some kind of relief, which

included money against the State. It was barred by sovereign immunity.

There's President Lincoln Hotel Venture v. Bank One Springfield, 271 Ill.App.3rd 1048. Those were commercial developers that had received State funded loans. Once again, the Appellate Court said it's barred by sovereign immunity because you're talking about contracts and you're talking about State resources.

There's --

THE COURT: Okay, I get your drift. The point that I mentioned earlier that this is a -- I think a case that is one that involves the exercise of duties by an officeholder and isn't strictly a contract issue between the State and a vendor.

The Appellate Court, recognizing that that ultimate decision was overruled, did explain why the sovereign immunity defense did not apply to the named individual public employees in the case, and I think --

MS. MCNAUGHT: What case are you referring to, Your Honor?

THE COURT: Oh, it is Sklodowski, and as I said, I recognize that it was overruled by the Supreme Court on different grounds, but as to the issue of sovereign immunity the case makes a distinction that I

R28

don't think has been overruled by the Supreme Court, that there is a difference between an officeholder's exercise of duties, constitutional duties, and the contractual obligations of the State of Illinois.

MS. MCNAUGHT: Your Honor, the Supreme Court has said you have to look at the relief that's sought and where you're getting it from. That's Healy v. Vaupel. It's a 1990 case. If the Comptroller were personally writing a check out of her own bank account that would be an individual capacity case, and then sovereign immunity would not apply, but you're looking at money that she holds that is State money and whether or not she should write those checks to pay those State employees out of State coffers. So it obligates the State to pay something out of its treasury. That is the essence of sovereign immunity. She's not going to pay this out of her own personal account, she's paying it out of State resources.

So under Healy, which is a Supreme Court case, it's --

THE COURT: Okay. Does that mean when the officeholder has a constitutional duty to do something that they don't have to do it?

MS. MCNAUGHT: No.

THE COURT: It means that they have to do it?
MS. MCNAUGHT: Yes.
THE COURT: Which means then if there's a constitutional duty to pay these people, then they have to pay them?
MS. MCNAUGHT: When the money is appropriated, and the money hasn't been appropriated.
MR. YOKICH: That gets to the merits of the case, not to the sovereign immunity.
THE COURT: That remains to be seen whether there is more to this than just that. So time out. What did you want to add, or what did you want to nuance?
MR. YOKICH: Your Honor, on paragraph 40 of our TRO motion, page 13 of the motion we cite a number of Illinois Supreme Court cases, Senn Park Nursing Center, Bio-Med v. Trainor, County of Cook v. Ogilvie, and we cite a Fifth District case, Wilson v. Quinn where the courts specifically held that sovereign immunity did not bar litigation against an elected officeholder that would result in the payment of money, and that the plaintiffs could go forward with the relief that they sought because they were arguing that the elected officeholder was acting outside their statutory or

R30

constitutional authority.

And I think the best case for this court is Wilson v. Quinn, which involved an allegation that the executive branch was not paying sheriffs their stipends, and the Fifth District, the Appellate Court over St. Clair County, held that the plaintiffs set forth a lawsuit that could go forward and specifically rejected the sovereign immunity claim in that case.

And, as I say, that's cited in paragraph 40 of our motion on page 13.

THE COURT: You said motion?

MR. YOKICH: Our motion for temporary restraining order.

MS. MCNAUGHT: Your Honor, there are cases where the Appellate Courts have said that -- such as in Jorgenson as in -- and as in the Wilson case, but those are distinguishable from what we have here, because in Wilson there was a statutory obligation to pay those monies. That money had been appropriated. There was a law, and it said you have to pay. And when the governor said, no, I'm not going to pay that's when the court stepped in and said, yeah, you have to pay. Sovereign immunity doesn't apply in that because there's already a mechanism, there's already a law that says that you have

to do that.

In this case there is no appropriation, so there's no law to say you have to pay.

MR. YOKICH: Well, that's not even right, and I'll tell you why it's not right. And this is what we cite in the motion for temporary restraining order. In -- first of all, in paragraph 31 there is a law called the personnel code. Under the personnel code the State promulgates a pay plan that establishes wage rates for public employees. That pay plan has the force of law by virtue of the provisions of the personnel code.

Now, under what is going to happen beginning next week everybody's pay under that pay plan will be reduced to zero. And that is squarely in conflict with the provisions of that pay plan.

In addition, the State is party to many collective bargaining agreements. Those collective bargaining agreements are binding, and they set rates of pay. And under -- what will start to happen next year -- next week the rates of pay under those contracts will be reduced to zero, as well.

Those contracts are contracts that were negotiated under the auspices of the Public Labor Relations Act, and the case that Miss McNaught cites, AFSCME v.

R32

Schwartz, another Fifth District decision that's cited on page -- it's cited on page --

THE COURT: Do you have a copy of the motion for the temporary restraining order? Apparently, the only thing that's hit the file is the verified complaint for declaratory judgment and injunctive relief. So my paragraph -- my --

MR. YOKICH: I see, so you're going off a different paragraph than I'm going off of?

THE COURT: Yes, that's why when I heard "motion" I wondered now what am I missing?

MR. YOKICH: Here is a copy of the -- we filed this motion yesterday at 3:30 in the afternoon, and I apologize that it didn't make its way to your chambers, Your Honor.

THE COURT: You were saying that the collective bargaining agreement is in the structure of things considered on par with --

MR. YOKICH: State law. And the reason I was saying that is that the Public Labor Relations Act which deals with the enforceability of public labor relations contracts has in it a specific provision that says you can go to Circuit Court to enforce those contracts after you go through your administrative remedies under those

contracts, and it also has in it a specific provision that waives sovereign immunity for the State with respect to those contracts.

And so I don't want to get too far into this tangent, because this is not a breach of contract case, but in every impairment of contract case you go through an analysis that says is there a contract that's being impaired? You have to do that. That's step one. And in step one of this case we believe that we have contract rights, both set up by our collective bargaining agreement and set up by the personnel code that are being impaired by the fact that people are being directed to work and they may or may not receive payment at the rates that they have been paid at and have expected to be paid at under that direction to work.

MR. LEGNER: Your Honor, the Court of Claims Act provides -- and this is at 705 ILCS 505/8(b), all claims against the State founded upon any contract entered into with the State of Illinois are barred from this court's jurisdiction. They were within the exclusive jurisdiction of the Court of Claims.

MR. YOKICH: Your Honor, the Court of Claims contains a specific exception for the Public Labor

Relations Act.

MR. LEGNER: Is this an Unfair Laborer's Act, a claim under the PLRA? No, it's not. Or an arbitration review? No, it's not. This is not an action under the PLRA that allows for certain review of certain labor decisions after you go through a statutory procedure. But, Your Honor, going back to my claim, if I could please finish the point I was making. The Court of Claims Act 8(b) says claims founded upon a conflict with the State are barred. That's what the complaint is. The complaint, paragraph --

THE COURT: Okay, all right, so that the people who don't get paid can sue?

MR. LEGNER: In the Court of Claims. It's a contract claim.

MR. YOKICH: No, Section 16 of the Labor Relations Act --

THE COURT: That's what you're saying, that's what you're saying, you think that the people who are dependent upon their wages have an adequate remedy, and it's the Court of Claims?

MR. LEGNER: Well, for individuals represented who are collective bargaining unit members there are statutory provisions under the Public Labor Relations

Act that provides for ways that those claims can be brought, but it's not this.

THE COURT: Okay. You were addressing something along those lines.

MR. YOKICH: Right. We're mixing and matching a little bit analytically, all right? I'm going to try to unmix and unmatch a little bit. You cannot get away -- if we didn't have a contract right that was at issue and we brought a suit for impairment of contract, the first thing that the Attorney General would say, is well, you don't have a contract in the first place, how can it be impaired, all right?

So as part of any impairment analysis you have to look at the issue of, well, is there a contract there that's being undermined? Then the court has to look at the second issue, which is has the contract been impaired? And I think that's the main difference here. We say the contract's been impaired because people are being told to come to work. They don't know when they're going to get paid and they don't know how much they're going to get paid, and under the Attorney General's theory of the case there's no guarantee that they will get paid the wage rate they were making when they were told to come to work. And that is an

impairment of the contract as opposed to a mere breach of the contract, because under the Attorney General's analysis the failure to appropriate money means that the contract isn't really binding. And if the contract's not really binding how can we then sue for breach of that?

MR. LEGNER: That's not our theory of the case.

MR. YOKICH: That was the issue that the Attorney General pushed in the case that the Comptroller cited, State of Illinois v. AFSCME case, and that was the theory that the court rejected in that case. And when the Attorney General argued in State of Illinois v. AFSCME, well, there's a constitutional provision involved, the court answered that by saying, well, there's a constitutional provision involved the other way too, which is the State's policy against impairment of contracts.

The Illinois Supreme Court has been very clear, just a month ago in the pension case they spent a considerable amount of time in their decision talking about how important the Impairment of Contract Clause in the Constitution was and how under that clause it is very hard for the State to back out of the contracts that it's agreed to. And in that case they didn't talk

about, well, is there a difference between breach, and is a breach impairment, or is an impairment breach, they looked at the common sense issue has the State's conduct undermined the benefits that people are getting from that contact? And that is what our argument is here.

To bring that back to sovereign immunity, Your Honor, that means that if the State or a constitutional officer is about to take action that violates that constitutional prohibition you have the authority under all of the cases that we cite in paragraph 40 of our motion to take action to stop that perspective action of the State that's going to violate the Constitution.

MR. LEGNER: Your Honor --

THE COURT: Yes, sir.

MR. LEGNER: -- plaintiffs raise one legal theory in this case, one legal theory, an impairment of obligation of contract claim. Mr. Yokich is absolutely correct that the first element of the impairment of contract analysis is is there a contract, is there a contract? But once you've answer that element and once you realize that there is a contract and you're suing the State based upon the contract this case is outside of this court's jurisdiction. The Court of Claims Act does not say only breach of contract cases against the

State are outside the court's jurisdiction. The Court of Claims Act doesn't differentiate between a breach of contract action or a Constitutional Contracts Clause impairment of contract action. The Court of Claims Act says all claims against the State of Illinois founded upon any contract, all claims.

Once you answer, once you look at or one you realize that somebody is making a claim founded upon any claim founded upon a contract with the State as the impairment of contract theory is, it states that we have contractual rights with the State that are being violated, therefore, they are claims founded upon contract with the State, and they are outside of this court's jurisdiction.

THE COURT: Miss McNaught, I believe I interrupted you at one point. Did you -- were you able to finish what you wanted to add?

MS. MCNAUGHT: Well, no, I still have a lot more no say about sovereign immunity, but I'll just kind of shore up and make it a little bit shorter, and I'll piggyback onto my co-counsel's argument. It doesn't matter what kind of a contract. It doesn't have to be just a breach of contract, it can be a tortious interference of contract or with contractual relation.

That's Carmody v. Thompson, 2012 IL App (4th) 120202. Once again, tortious interference with contractual relations barred by sovereign immunity when you're a State employee.

So the bottom line here is if it's a contract, if it's a contractual claim brought against the State for seeking damages or seeking money from the State Treasury, as this case is, it's barred by sovereign immunity.

THE COURT: Yes, sir.

MR. YOKICH: I'll say four sentences, Your Honor. I think there's a difference between a claim based upon contract and a claim based upon a constitutional principle. What we're bringing is a case based upon a constitutional principle to stop a violation of the Constitution. And there's no case that holds that if you bring a case to enjoin a violation of the Constitution and that will also cost the State money, that that has to be brought under the Court of Claims. And there's no case that says that an impairment of contract claim has to be brought in the Court of Claims. And I respectfully suggest that the State v. AFSCME case suggests precisely the opposite, that where the contract involved is a collective

bargaining agreement, that that claim is properly in the Circuit Court.

THE COURT: Anything not previously said?

MR. LEGNER: The AFSCME v. State case that the parties are discussing was not an Impairment of Contracts Clause case. The Impairment of Contracts Clause theory in that case was raised and rejected by the Seventh Circuit in a case called AFSCME v. Quinn. And there is no case, Your Honor, that says that impairment of contracts cases may be brought in a circuit court.

MR. COOMBE: Your Honor, may I say something real quick?

THE COURT: Yes.

MR. COOMBE: I would just like to say we do, in fact, agree with the plaintiff on this, and that is where the conflict arises between ourselves and the Attorney General.

MR. LEGNER: Your Honor, would you like to hear other argument on the other motion to dismiss theories or are we just staying with sovereign immunity right now?

THE COURT: No, we're not going to stay with that, because I'm going to deny the sovereign immunity

R41

defense.

You do have other points --

MR. LEGNER: Yes.

THE COURT: -- as you were saying?

MR. LEGNER: Yes.

THE COURT: Go ahead.

MR. LEGNER: May I go with those --

THE COURT: Yes.

MR. LEGNER: Okay, thank you, Your Honor. Your Honor, an additional reason to dismiss the case is because it fails to state a claim for which leave can be granted. Again, as we have already discussed, the sole theory that plaintiffs advance in this case is impairment of the obligation of contracts. The -- this case fails to State a claim for impairment of the obligation of contracts because, first, you -- a contract -- an obligation of contracts claim is different than a breach of contract claim.

The Seventh Circuit, for instance, has recently specifically in the AFSCME v. Quinn case that I cited and just mentioned specifically said, any time the government breaches a contract it has with an individual or a vendor that does not become a constitutional problem. There are differences for when a government

breaches a contract or a government constitutionally impairs the obligation of contract. And the difference is this. The difference -- well, the pertinent difference is twofold. One is to bring a case -- to raise a case from breach of contract status to impairment of obligation of contract status there has to first be action by the legislature. There needs to be a legislative enactment, and the cases we cite talk about an impairment of obligations must be -- arise from a legislative enactment.

Here, the plaintiffs' theory is predicated on the exact opposite, the absence of legislation, but a legislative enactment is a legislative enactment that must trigger an obligation of contracts. And that makes sense given the remedy for an obligation of contract. The remedy for an obligation of -- a contract violation is not specific performance of a contract, it's invalidation of the offending legislation. Here, there's no offending legislation to invalidate because the legislature has not done anything other than, at most, not conceivably done this, but at most, breached a contract, and that allows for contract defenses, and contract theories, and contract claims.

So there needs to be a legislative enactment, and

R43

it needs to be something different than a mere breach. It needs to be something different than the State just violating its contract. It needs to be something other than the State violating the collective bargaining agreements or violating the alleged contractual rights under the personnel code and the pay plan. Those are just breach of contract claims. The legislature has to affirmatively do something that takes away the State's defenses for breaching that contract. In other words, the legislative enactment must be something that the legislature does that changes the terms of the contract, that harms the other parties' rights in the contract and fundamentally changes the contract. Nobody is saying that the General Assembly has changed the collective bargaining agreements here by any legislative enactment. At most, again, it's a breach. The General Assembly has not passed any legislation that says that from now on you can only get $3.00 an hour, for instance. That -- and so then when the State pays $3.00 an hour and then the other party sues for breach and the State says we're not breaching, there's legislation here that says you only get $3.00 an hour. That would be an impairment of the contractual obligations.

That's not what's happening here. Nobody is saying

R44

that the parties who work under the collective bargaining agreement have lost their rights they have under that agreement by any actual action by the legislature. That's why this is a breach of contract action and not a constitutional impairment of the obligation of contract action. I understand the desire to dress it up and make it seem constitutional, but it's just not.

Do you want me to turn to other grounds or theories or should I --

THE COURT: No, let's knock this one around a bit. Do you have anything you'd want to add on that?

MR. YOKICH: Just want to say a couple things. First of all, I have never been able to understand the difference -- the linguistic difference that is proposed by Mr. Legner with respect to what breach is or what impairment is, and I respectfully would say to the Court, having been the person that actually did the case of AFSCME v. Quinn, that the Seventh Circuit -- we squared off in AFSCME v. Quinn. I'm hoping to do better the second time around, but I think the Seventh Circuit's view on what's a breach and what's an impairment is really out of sync with all of the other federal courts. And I think in that vein it's important

R45

to know that there is no Illinois authority that's cited by Mr. Legner in his motion to dismiss or in the papers opposed to the temporary restraining order.

And, in fact, if you look at the most recent Illinois Supreme Court decision that talks about impairment of contract, which is the pension case, they don't make a distinction between impairment and breach either. They seem to think that any action which undercuts my right to get what I'm entitled to under a contract has that constitutional domain to it.

Now, I would add that in this case we don't know when the legislature is going to appropriate and we don't know how much the legislature is going to appropriate, yet the members of my clients are being told report to work and work, maybe you'll get paid, maybe you'll get paid the same wage rates. We hope that happens. Okay?

And that is -- respectfully, that's an impairment if there ever was one, because who knows what the legislature will do and who knows what money will be available, and if that money's not available the people that my clients represent will not be able to sue to get it because it won't be there.

That's the principle that the court recognized in

AFSCME v. Schwartz when the court said that a union could get injunctive relief based upon its contract in situations like this.

The third thing that I would say is that we cite to you a couple cases in our motion on page 9 of the motion, paragraph 30 that deal with the idea that the failure to act has the same constitutional dimension as a positive step to act.

One case is the case that we have talked about State v. AFSCME where the court said, the award furthers the express constitutional policy forbidding the General Assembly from passing any acts, including insufficient appropriation bills that impair the obligation of contracts. Well, here the General Assembly has passed appropriate bills of zero, and that's impairing the wage rates and the right to be paid that the members of the unions that I represent have under their contracts.

And I also cite White v. Davis, which is a California Supreme Court case, where the California Supreme Court case said that the failure to appropriate money impaired the California Constitution. And I cite a case from Iowa where the State's failure to allocate money to fund an arbitration award was looked at as an impairment by the Iowa Supreme Court. And I cite a case

from the State of Washington where what the legislature said is we're going to defer your wage increase. You won't get it this year, but you might get it next year, and that was looked at as an impairment of contract.

So I really think, Your Honor, that when the legislature or the State takes action that says, well, we're not going to make available the money that we promised you in a -- either an employment agreement or in a collective bargaining agreement, that that is really what the impairment of contracts provision of the Constitution is all about, and that's why we think we state a valid claim for relief under that theory.

MR. LEGNER: A couple points, Your Honor. The pension case decided by the Illinois Supreme Court in May dealt with the Pension Clause, not the Contracts Clause, and there is relevant different language in the two.

It is true that our authority on impairment of obligation of contracts is generally federal authority. We also cite to you, Your Honor, that Illinois Supreme Court case is saying that the Illinois Contracts Clause and the Federal Contracts Clause are substantively identical and interpreted the same way.

Therefore, when the Seventh Circuit said it would

be absurd to turn every breach of contract by a State or municipality into a constitutional obligation of -- an impairment of contracts claim it applies equally to claims brought under the federal Constitution's Contracts Clause, as well as the Contracts Clause of the Illinois Constitution. And the Seventh Circuit is not an outlier on that, they certainly rely on decisions from other circuits in the AFSCME v. Quinn decision.

Additionally, Your Honor, and Mr. Yokich raises the instance of another State deferring raises, and the court indicated that could be an impairment of contracts. That case they did it by statute; they did it by statute. Here, there has been no legislative enactment.

Again, the remedy for a violation of an impairment of contracts claim is the overruling or the invalidation of the offending legislation. Here, there is no offending legislation. The legislature has not done anything to remove a breach of contract claim for the plaintiffs. That is how you know whether it's a breach of contract or an impairment of contract claim. Because the legislature has not done anything to remove a breach of contract claim, it's not an impairment of contract, it's just a breach of contract.

THE COURT: But I thought labor agreements were treated differently.

MR. LEGNER: Labor agreements -- in what way, Your Honor? I'm sorry.

THE COURT: Well, in the way that makes a difference when you cited the notion that the contracts are treated not as impairments but as breaches.

MR. LEGNER: No, Your Honor. For instance, the AFSCME v. Quinn Seventh Circuit case where Mr. Yokich and I were on opposite sides, that's a labor agreement. That was an AFSCME case. There's nothing that -- there's nothing that changes -- collective bargaining agreements are not contracts of a different nature for impairment of obligations cases, if that's the point. There's nothing that makes CVA super contracts or different contracts in the sense that they're not subject to the same constitutional analysis.

THE COURT: Do you agree with that?

MR. YOKICH: No. And I'll tell you why. So Mr. Legner and I squared off in AFSCME v. Quinn in the Seventh Circuit. And that was a case where the legislature supposedly did not appropriate enough money to fund contracts. And the parallel State court litigation in that case had to do with the enforcement

of the arbitration award that said pay.

In that case, the parallel State case, that involves the same facts as AFSCME v. Quinn is State of Illinois v. AFSCME, which I quoted from. And that was the case where the Appellate Court said that the failure to appropriate money impairs a contract under State law, and that it implicates an important constitutional provision. And I think that is a very significant example of how State law protects labor agreements more than the federal courts did in AFSCME v. Quinn. And I think that's why the impairment of contract claim in this case is coming before is because the Appellate Court in State v. AFSCME so ringingly endorsed it.

MR. LEGNER: Your Honor, that point wasn't raised by the parties.

THE COURT: Let me ask this question. Anything to suggest along this argument that there is a difference between the Comptroller and the AG's representation?

MR. COOMBE: Yes, Your Honor, this discussion goes to the heart of it really. And, you know, our position is the failure to appropriate sufficient funds is an impairment; and, if so, the failure to appropriate any funds is also an impairment. And that is where we

significantly diverge with the Attorney General.

THE COURT: Okay. You were about to say something when I asked that last question.

MR. LEGNER: Yes. Can I turn briefly to that last question?

THE COURT: Address the issues as you feel best.

MR. LEGNER: Thank you, Your Honor. With regard to the now apparent conflict, this is the first our office has heard about this conflict but, again, I would urge you to let us go through the process of appointing counsel, if necessary, and the statutory -- the statutory process for handling that issue instead of disqualifying the Attorney General at this point.

With regard to the AFSCME v. Quinn and the State v. AFSCME case, Your Honor, again, the court said -- Mr. Yokich is right, the court did say that the failure to pass a sufficient appropriation bill could impair the obligation of contracts. The court said that in dicta. It was not raised by the parties. It was not relevant to the holding, and the impairment of contracts theory was rejected by the Seventh Circuit in AFSCME v. Quinn.

THE COURT: Okay, sum up what you want me to do with the law as you see it.

MR. LEGNER: Your Honor, with the law as I see it in terms of their sole -- and I'll limit this to the Contracts Clause argument, yes, Your Honor, because I have other motion to dismiss theories but --

THE COURT: I understand.

MR. LEGNER: So with regard to the Contracts Clause, Your Honor, and not just any breach of a contract is a constitutional impairment of contract. If the State has contracts with individuals, if the State gives contract rights to individuals and the State allegedly violates those contract rights, that is breach of contract. That is not an obligation of contract. That's not a constitutional claim unless there is a legislative enactment that acts as a defense to the breach of contract. And the claim fails on both of those reasons. There is no legislative enactment here. There is no legislative enactment here. And there is nothing the legislature has done that is a breach to -- a defense to a breach of contract claim.

Therefore, because those basic elements of an Impairment of Contracts Clause claim are not -- are not met, this case -- that's their sole legal theory, this case should be dismissed, Your Honor.

THE COURT: Okay, your motion to dismiss with

respect to those grounds is denied.

MR. LEGNER: May -- next ground?

THE COURT: Yes, sir.

MR. LEGNER: Thank you, Your Honor. Your Honor, the Illinois Constitution precludes the relief that plaintiffs seek in this case. The Appropriations Clause of the Illinois Constitution is very short, and it says very specifically that the General Assembly shall be required -- the General Assembly is required to pass appropriations bills essentially, that the State shall not spend money in the absence of an appropriation. I'm sorry, here -- I was fumbling for it. Here it is. The General Assembly by law shall make appropriations for all expenditures of public funds by the State. Much better than I possibly was saying it. And that's Section 2(b) of Article VIII of the Illinois Constitution, the Finance Article.

That Appropriations Clause, Your Honor, was construed by the Appellate Court in the same factual circumstances that are present here in the AFSCME v. Netsch case. In the AFSCME v. Netsch, Your Honor -- in AFSCME v. Netsch the General Assembly failed to -- and the governor had failed to pass an appropriations bill. The union sued, saying pay us in the absence of an

appropriations legislation. The Appellate Court said no. The Appellate Court said, pursuant to the Appropriations Clause, we cannot do that. Any attempt by the Comptroller to issue the funds in the absence of an appropriations bill signed into law by the governor would create obvious problems under the separation of powers doctrine.

The court in Netsch gave effect to the idea that the legislature has the power of the purse. In the absence of an appropriation -- in the absence of an appropriation, the Comptroller cannot just pay State workers. That's exactly the holding of Netsch.

Under Netsch's interpretation of the Appropriations Clause then, Your Honor, rejecting the very same relief that plaintiffs here request, and this, I will add, was explicitly recognized by the Circuit Court of Cook County on Tuesday. The Circuit Court of Cook County explicitly ruled, explicitly said that the court is bound by Netsch and that Netsch handles this claim for the payment of all wages in the absence of an appropriation.

Your Honor, under Netsch, under the Appropriations Clause, plaintiffs are not entitled to the relief they seek. The Illinois Constitution bars it.

THE COURT: Let me ask counsel for the Comptroller did I understand you to say earlier that there was a point of departure on this issue?

MR. COOMBE: Well, correct, Your Honor. I mean, currently the Attorney General is on the other side of the appeal that we filed. We filed an emergency stay for that order that Mr. Legner just mentioned, and we are currently on opposite sides of that issue. We do not follow their interpretation of the law. We have a much different interpretation. That is why we're asking the court to grant us the opportunity to brief our own position as opposed to being lumped in with the Attorney General's position.

THE COURT: All right. And Mr. Yokich, would you respond?

MR. YOKICH: Yeah. So in AFSCME v. Netsch the plaintiffs made a statutory argument based upon Section XIII of the Comptroller Statute, which says that employees will be paid semi-monthly. And the court rejected that argument because it held that the Appropriations Clause of the Constitution trumped the Comptroller Act. We're not making the same type of statutory argument here, we're making a constitutional argument. And that constitutional argument was not part

of the litigation in Cook County. It was not part of Judge Larsen's holding in Cook County. She felt that she was bound under AFSCME v. Netsch, which was not a constitutional case, to make the ruling that she made.

So I think you have to -- you have to parse the issue here two ways. One way is you need to look at does the State have a legal obligation to pay the salaries of the people who are working, who are due to be paid next week? And we think they do. They have that legal obligation under the collective bargaining agreements, they have the legal obligation under the labor relations law, and they have that legal obligation under the personnel code in the pay plan. None of those legal obligations permits in State to unilaterally reduce somebody's salary to the minimum wage or to zero.

So then the question is is, well, if they have that legal obligation can money be expended? The court in Jorgenson v. Blagojevich said that a court order could authorize the expenditure of the money under the Illinois Constitution. And it went on to add that where a statute unambiguously says spend money, that that too can be enough to spend money under the Illinois Constitution.

In Wilson v. Quinn the Appellate Court through this

R51

District said that where there was some sort of constitutional requirement not to decrease a sheriff's salary during their term of office, that they were entitled to sue for the money that they lost when their salary was decreased during their term of office, that they were entitled to mandamus against public officials to do what they were supposed to do under the law because it was a constitutional obligation.

And what we're saying here is that there's a constitutional obligation under the Impairment of Contracts Clause, which wasn't argued in front of the court in Netsch, that would pass muster under the test that's articulated in Jorgenson v. Blagojevich and Wilson v. Quinn.

MS. MCNAUGHT: Your Honor, I would like to respond.

THE COURT: Go ahead.

MS. MCNAUGHT: First of all, I would like to quote from the report of the proceedings in the Cook County case. This was Mr. Yokich speaking, and at page 28 he says -- he argues, and just recently the Appellate Court held in a case that is currently before the Illinois Supreme Court, a case called State of Illinois v. AFSCME, that the failure to appropriate money that

was owed under a State employee contract constituted an impairment of contract under the Illinois State Constitution. So he did argue impairment of contract in the Cook County case.

What the plaintiff is asking -- what the plaintiffs are asking you to do is to decide that money should be appropriated so that State employees can be paid. They're asking you to be the General Assembly in appropriating the money and then telling the Comptroller to pay it. That is a separation of powers problem, because the judiciary should not be telling the General Assembly to appropriate, they should -- the judiciary shouldn't be appropriating the money, and certainly the judiciary should not be telling the executive how to pay that money. That's not this court's job. It's a separation of powers problem.

The other thing that I'd like to talk about very briefly is the duplication of cases. We already have a case that's up in Cook County. What plaintiff has done -- he doesn't like -- or the plaintiffs don't like the decision up in the Cook County case, so they run down here to you hoping that you'll accept their legal theory and grant them relief. We ask this court not to do that, because the alternative is that when we don't like

a decision we can go to some other Judge or some other court and get a different opinion.

MR. YOKICH: Well, I'm not a very fast runner, and I would like to say I've got the same report of proceedings that opposing counsel has, and she's right, I cited that case to the Court in our arguments on Tuesday morning. The court did not consider that argument, didn't rule on it. Instead, the court said, the court's decision is constrained by the Illinois Constitution, and the Netsch case clearly states that since the legislature has not passed an appropriation, the Comptroller is prohibited from issuing paychecks.

Now, she didn't rule on the constitutional issue that's set up in this case, and there's a good reason why she didn't rule on the constitutional issue. It was not part of the pleadings that the Attorney General filed.

On Wednesday night at 11:59 the Attorney General filed a lawsuit in Cook County for declaratory judgment. The next day less than 18 hours later we filed the lawsuit down here. We were supposed to have a status on Tuesday after the 4th of July weekend, and the status turned into a full blown argument on the merits, and so we all argued the merits as best we could, but we didn't

run down here because we got -- because the Attorney General filed a declaratory action suit against the Comptroller up there. We ran down here because we -- and, in fact, I can show you the Fair Labor Standards Act consents and authorizations that we have been collecting for a week prior to the Attorney General's action in Cook County. If anybody is doing forum shopping it's the Attorney General because they knew we were going to sue down here. They asked me, where are you going to sue? And I told them, and they then sued in Cook County that night at 11:59. So that's the midnight running that's involved in this case.

Now, we're not asking you to be the General Assembly. We're asking you to uphold the fundamental principle that when people work they should get paid, because they have been directed to work, and they've been directed to work even though there's no budget, okay?

And this could play out in all sorts of different ways, but so far they've agreed to work. Most of the union plaintiffs in this case have signed agreements that they won't strike, or walk out, or not provide services during the month of July. Our people are in terrible risk. They're in an untenable position because

R61

they've been told come to the office. And I get this question every day, well, when am I going to get paid and how much am I going to get paid? And I say, I can't tell you.

And so far nobody from the Attorney General's Office have stood up and said, yeah, of course, they'll get paid what they're due eventually. Then can't guarantee that. Only the court can say, hey, there's a contract there, and if people work they should get paid.

THE COURT: Yes, sir.

MR. LEGNER: We're not saying anybody who works won't get paid. We're not here -- and we're not here unsympathetically. We certainly have sympathy for the situation, a situation that's not our doing, nonetheless, the Illinois Constitution exists and creates certain requirements of how things have to proceed.

THE COURT: That's -- I was wondering where does the court fit in when there's this frozen political process?

MR. LEGNER: When there's a frozen political process, Your Honor, the court generally -- as a general rule does not usurp that process. The court, for instance that's what Netsch said. That was the relief

that was requested in Netsch and that was explicitly rejected. The court does not act as the appropriations making body then. That is not the court's role.

Now, for instance, in the Cook County case the court could and did, for instance, do what was authorized by Jorgenson and say that judicial operations continue, because the Judicial Assembly does not have the power to withhold that appropriation. That is Jorgenson; that is the specific discussion of Jorgenson.

There's a limited role for the court in that, but the role for the court is not to take over the power of the purse. The Illinois Constitution specifically gave that power of the purse to the General Assembly, and it's for the General Assembly and the governor to come up with a budget.

Is it a bad situation? Yes. Is it a difficult situation? Yes, absolutely it is.

THE COURT: Does it have to exist?

MR. LEGNER: Does it have to exist? If -- well, in terms of does it have to exist, no, it doesn't have to exist if the legislature and the governor can come to an agreement, but in the absence of that, in the absence of an enacted annual appropriations legislation or other valid spending power there's nothing the

R63

Comptroller can do, there's nothing the court can do to change that. That is the separation of powers that's built into the Constitution. The court has a very narrow role in all of this.

THE COURT: Okay. Where does the Comptroller stand on this nuance? I think we might have touched on it earlier -- much earlier, but --

MR. COOMBE: On what nuance, Your Honor? I'm sorry.

THE COURT: This -- the idea that we necessarily must remain frozen.

MR. COOMBE: We do not necessarily subscribe to that theory. We --

THE COURT: What do we necessarily need to do then?

MR. COOMBE: We've always followed Jorgenson v. Blagojevich, which allows the court in certain circumstances to appropriate money through the judicial process, and the Comptroller's Office has always abided by those orders. I can cite a few of them, Quinn v. -- or Madigan and Cullerton v. Quinn up in Cook County, I believe it was sometime last year. The Judge in that case -- despite an appropriation for legislative salaries, the Judge relied on Jorgenson and appropriated

via judicial order, and we followed that. Our system is able to do that. We have it set up in our computers for a judicial appropriation. It's nothing the Comptroller has not been used to and has not followed.

THE COURT: Well, I can understand that that an officeholder would accept the order of the court permitting them to do what they would normally do under the circumstances. That makes a lot of sense to me that that's the approach the Comptroller would take. And I can see a conflict between that kind of a two-tiered concern. One is I represent the People. This doesn't feel like I'm representing the People. And secondly, I'm in charge of this administratively, and it's a nightmare to do what has been ordered.

So I do see that there is a distinction, because you -- the AG's Office must by virtue of its -- by virtue of its oath of office stand behind its view of what the proper role of government is in the respective branches and its view of the Constitution.

Mr. Yokich, I guess you -- because I think you cite it -- you agree that there is a role for a judicial order that maintains the status quo in terms of the paychecks pursuant to judicial order while the executive and legislative branches get disentangled and come up

with a typical type resolution?

MR. YOKICH: So, the Illinois Constitution says that the governor and the legislative branch are supposed to work together to do a budget. Governor submits a budget. It has to be balanced. Legislature acts on a budget. It's supposed to be in accord with what the revenues are supposed to be. They are supposed to work together. The governor has line veto authority, has item veto -- you know, reduction veto authority the legislature can override. It's a back and forth process. It's a dynamic process and a fluid process. That's how it's supposed to go. And you're supposed to have a budget by July 1, okay?

So there has been -- and the frozen process is symptomatic of a process that's not working very well. Inside of the court in Jorgenson v. Blagojevich was that, quote, it's the duty of the judiciary to construe the constitution and determine whether its provisions have been disregarded by the either of the other branches of government. If officials of the executive branch exceeded their lawful authority, the courts then hesitated and must not hesitate to say so.

So, if you find that the Constitution applies in terms the Impairment of Contracts Clause and make an

order based upon the Impairment of Contracts Clause I think that's squarely within your power as a court. And I don't think that that power is foreclosed by the Netsch decision. I don't think it's foreclosed by anything that has been cited by the Attorney General in this case.

And, you know, I agree it's bad and it's difficult, but it's a situation where acting and not acting, they're both going to have consequences. And so if you think that we have established a fair chance of prevailing on our impairment of contract claim, then I think you should issue the order and the political bodies will sort themselves out as a result.

MR. LEGNER: Your Honor --

THE COURT: Yes, sir.

MR. LEGNER: -- the political process in Illinois exists in all the other states and exists in the federal government. When the federal government reaches an impasse you can't go to court and order everybody get paid. It doesn't work. It shuts down. Things stop happening. Courts don't have that power. Same in other states. Courts do not have the power to take over the appropriations process.

Jorgenson says nothing different. Jorgenson was a

separation of powers case. Jorgenson said that when the General Assembly and the governor can't reach -- and there was an appropriation, I will add, there but when the -- Jorgenson says that the legislature and the governor cannot ask to not fund the judiciary, because that's a separation of powers, but Netsch also says that when the judiciary would take over the appropriations power from the General Assembly, that is a separation of powers. That is the exact type of separation of powers problem that's presented by plaintiffs' relief. The Illinois Constitution clearly says that only the General Assembly has the appropriations authority. Courts, except in some extraordinarily small circumstances, cannot usurp that or take that away. Jorgenson is an example of the extraordinarily strong circumstances, because it involves the judiciary, which is uniquely susceptible to the political process. That's throughout Jorgenson, a very long discussion of the separation of powers principles and the unique fragility of the judiciary in the three branches of government.

Your Honor, granting the plaintiffs the relief they request is not allowed under the Illinois Constitution. It's not allowed in three branch systems of government generally. It would write the Appropriations Clause and

Netsch right out of the law.

THE COURT: When the federal government doesn't have money and it shuts down does it makes its people come to work?

MR. LEGNER: So, Your Honor, there is a case pending right now in federal court that was brought under the Fair Labor Standards Act for its individuals who worked and did not receive timely payments. They were ultimately paid but -- so I guess the answer to your question certain parts of that are being litigated, but it shows that when the federal government had an impasse some people went to work.

THE COURT: Well, yes.

MR. LEGNER: And the people who went to work --

THE COURT: The defined group that were of national importance, yes. Okay, that was a tad far afield there on my part.

What other arguments would you ask me to take up?

MR. LEGNER: Additionally, Your Honor, I would argue that this court should decline to exercise power over this case because of the possibility of entering conflicting orders with another case that already exists, the Cook County case, which is now on appeal and there's an order from the Appellate Court in that case.

The cases that we cite in our brief specifically indicate that one court has assumed jurisdiction over a subject matter. Circuit courts shall not, shall not also exercise jurisdiction over that same subject matter because the possibility of conflicting orders and the erosion of the judiciary that results from that. So, because of the possibility --

THE COURT: It's not a collateral process. I mean this is a collateral process. That is not one where all the parties are talking about all the issues or are required to bring all of the issues to the court in Cook County. What the Appellate Court does as an interim housekeeping matter isn't of any significance here because it isn't precedential.

MR. LEGNER: Well, an Appellate decision is precedential to a Circuit Court certainly, but just in terms of realistic real world application of courts even precedential or not, another Circuit Court order isn't precedential to --

THE COURT: Yes.

MR. LEGNER: -- Your Honor, but the risk of conflicting orders justifies the claim to consider this case.

THE COURT: Well, justifies that a higher court

R70

resolve them.

MR. LEGNER: And plaintiffs, Your Honor, are in the Cook County case. They intervened in that case before they filed their complaint here.

MR. YOKICH: Actually, at the same time.

MR. LEGNER: Really?

MR. YOKICH: Yeah, I was going over to court and we were filing our complaint at the same time.

MR. LEGNER: Okay, as plaintiffs were filing their complaint there they were intervening in the Cook County case. And so because of the possibility of conflicting orders, Your Honor, we'd ask that this court not address the issues.

MS. MCNAUGHT: Your Honor, there is one other thing that you probably need to be aware of, and it doesn't really go so much to the lack of appropriation in this case, but attached to the plaintiffs' verified complaint in this case there is a tolling agreement that says that those employees will continue to come to work. So AFSCME has told its employees to come to work.

MR. YOKICH: Well, they've been directed to come to work. We wouldn't want to put them in peril by saying don't come to work when you're told to come to work.

THE COURT: Right, and they reserved all rights to go to court to talk about it.

MR. YOKICH: We didn't waive any of our rights to do that, correct.

THE COURT: Right, the impairment issues aren't changed by that. Anything to add that further clarifies the distinction between the Comptroller and the Attorney General?

MR. COOMBE: Yes, Your Honor. I mean, I believe Miss McNaught brought it up when she said that the plaintiffs were unhappy with the Cook County decision. Well, we were too, because we were on the other side of that case. The Attorney General filed suit against the Comptroller, in which case AFSCME intervened. That is what we believe has a clear and inherent conflict of interest, and we believe this court should order disqualification of the Attorney General and that we should not have to submit to the Attorney General's process for counseling due to the inherent conflict. This is a very similar issue, and we are on opposite sides of it from both a legal theory and up in the Cook County case an adversarial position.

MR. LEGNER: There's no justification to avoid the statutory process for appointment and selection of

private counsel for the Comptroller if and when it's justified. Again, Your Honor, let us respond in writing to this if, you know, the desire is to not let that process play out, which it should play out.

MR. COOMBE: Your Honor, we provided that justification in our memorandum. The court has the inherent authority to do so.

MR. LEGNER: We just saw the justification and haven't had a chance to respond to it.

MS. MCNAUGHT: Your Honor, we would ask that you not forget that there is a pending case in Cook County. They've run down here to specifically ask you to change the decision of the Cook County case. And had they gotten the relief that they wanted in Cook County, they wouldn't be down here.

THE COURT: Okay.

MR. LEGNER: For those reasons --

THE COURT: I understand what you're saying. I think that's kind of a jury argument. It doesn't speak to the issues before me today, because they weren't considered by that Judge in full.

MS. MCNAUGHT: It is one of the issues in this case, because we've raised it in our motion to dismiss. There's a pending --

THE COURT: No, I didn't mean it's not an issue to discuss today about what the significance of that case is. I meant to say that that case did not consider the range of issues that have been presented today here under the plaintiffs' case, under the response of the Comptroller's discussion regarding the conflict, as it's been termed.

I am going to take under advisement the issue of whether or not the Attorney General should yield representation to allow the State to respond in writing, as requested several times. That doesn't stop anything else from happening as far as I can see.

Now, we've hit on many of the issues that are the flip side of which you began with this lawsuit. What do you want me to find by way of a finding of fact and conclusions of law in my order? The same invitation goes to all parties. What would you propose to me to be in that order? And recognizing the urgency, I would ask, from a housekeeping standpoint, when does the on switch have to be moved in order to make these transfers to accounts occur, if that's what happens, and checks to go in the mail? That process has to start if it hasn't already and we're just waiting for the red phone to light up.

R74

MR. COOMBE: July 9th is our stated deadline in order to get payroll into people's bank accounts by July 15th, which is the proper payday.

THE COURT: What's today?

MS. CAMP: July 9th.

MR. LEGNER: 9:00 a.m. July 9th was what they told --

MR. COOMBE: The agencies have to have the payroll tapes over to our office in order for those tapes to be processed and direct deposits should go through by July 15th. We also have an operational expert from our office who can further expand on that if Your Honor would so like.

THE COURT: No, I'll accept your representation unless there's some dispute. I would hope that there isn't any breakdown in the chain of events because of the delay that has happened between 9:00 this morning and --

MR. COOMBE: It won't end the world. Our payroll staff will have to work a little bit of overtime.

MR. LEGNER: I would just add that they told the Circuit Court of Cook County they need to know by 9:00 this morning.

THE COURT: Okay. I was asking what do you need to prove and to include in your findings of fact and conclusions of law to remedy your case, and what does the State want other than a blanket dismissal in order to substantiate its case for any next step?

MR. YOKICH: So, stop me if I go on too long, all right, but --

THE COURT: I don't know if I could stop myself from stopping you.

MR. YOKICH: Okay, good, good. And the way I would write an order that was a full order as opposed to just an order that cited the normal elements of a TRO and gave relief is I would say that the first thing we have to show is a clear right needing protection, that we have clear rights based upon our collective bargaining agreements, the statutes of the State, particularly the Public Labor Relations Act, which imposes the obligation on employers to maintain the status quo and not change terms and conditions of employment, and the personnel code in the pay plan, and that those are all protectable legal rights in the sense that courts use them in the temporary restraining order/preliminary injunction analysis.

I would say, second, that we have demonstrated a

R76

likelihood of success on the merits, that we have provided legal authority to the court that the Legislature's failure to appropriate money and that the requirement of the employer that people go to work despite the failure to appropriate money constitutes an impairment of contract, and that we've established a fair issue there, which is the legal standard that will succeed on the merits of those claims.

Third, I would say that we've established irreparable harm. The salaries and wages paid to State employees will be drastically reduced under either scenario. If they're paid under the Fair Labor Standards Act they'll be reduced to $7.25 an hour, which is about $1200.00 a month, which probably if you do the multiplication is anywhere to a fifth or a sixth of what the average State employee is making now. And that that reduction in salary is something that will cause great harm to their families and to themselves because they will be unable to sustain themselves and purchase the necessities of life.

I would say that they have no adequate remedy of law on the basis that we don't know when the budgetary impasse will end, and we don't know how it will end. So it's completely unclear whether they will be able to

recoup the salary that's been lost to them while they work during this impasse.

I would say that the balance of equities favors the employees, because as things stand right now, people are working, and if the court renders an order people will get paid for the money that they -- paid for the work that they do.

Any other order of the court exposes the State to great liability, because under the federal proceedings that were cited by Mr. Legner, the court has already held that the individuals who worked during the shutdown and were paid are entitled to liquidated damages under the Fair Labor Standards Act. And so there's a liability out there that will be imposed upon the State if people work and they are not timely paid in full for what they do.

And in addition to that, the State might have to pay attorney's fees and interest to its employees if that Fair Labor Standards action is successful.

And so based upon those legal factors that justify preliminary relief, we would ask the court for an order that the Comptroller process the vouchers that are currently there and process the vouchers that are submitted for other State employees who perform work in

the 2016 fiscal year at their normal rates of pay.

THE COURT: Thank you, sir. Mr. Legner?

MR. LEGNER: Your Honor, we certainly ask that this court dismiss the plaintiffs' action for the grounds we have discussed at length today, including sovereign immunity and failure to state a claim.

Absent that, Your Honor, turning to the merits of the TRO, we would argue that there is no fair likelihood of success on the merits because the Illinois Constitution and the Netsch case explicitly preclude the judiciary from taking on the appropriations power in the event of a budget impasse.

Additionally, the plaintiffs in their only legal theory have suggested nothing other than what is a breach of contract claim. Their claims, which are founded upon contracts with the State, do not rise to a constitutional obligation -- impairment of obligation of contracts level.

Additionally, there is an adequate remedy of law because any plaintiffs who have contractual rights have the right to seek recourse for payment for work they do. That exists. That right -- that right exists. That has not been extinguished by the General Assembly in this case.

For these reasons, Your Honor, for the fact that they have adequate remedy of law, no fair chance of likelihood of success on the merits, the fact that this court lacks jurisdiction over this matter, we ask that you deny the temporary retraining order.

In the event that Your Honor grants injunctive relief, it should be limited by the fact that the plaintiffs are only the named collective bargaining units, and so any relief that goes towards them should -- or any relief that is granted should be directed only to payment of those plaintiffs. Certainly not all State employees, because not all State employees are plaintiffs in this action, and that certainly that exceeds the permissible scope of what the plaintiffs' complaint and motion is for.

And additionally, Your honor, if this court is inclined to order injunctive relief, we would ask for a stay of that relief.

Thank you.

THE COURT: I think you probably made your position clear regarding the difference of opinion in approach to the case.

Well, I'm going to adopt the findings and conclusions as stated by Mr. Yokich and ask that those

findings and conclusions be made a matter of a written record, and as an administrative matter, that I would order the Comptroller to proceed to begin and complete the process of administrating the payment of the checks as we have discussed.

MS. MCNAUGHT: Does that mean that you are denying the stay, Your Honor?

THE COURT: Yes, I would deny any stay that would delay payment of the wages pursuant to --

MR. COOMBE: Your Honor, for the Appellate record -- I'm sorry, I didn't mean to interrupt you.

THE COURT: I'm sorry, I didn't hear you. I'm going to let you say what that was.

MR. COOMBE: I'm going to let you finish your order, Your Honor. I thought you were finished.

THE COURT: I was just answering the question and denying a stay of my order pending the next step in the case.

MR. COOMBE: For a matter of the Appellate record, the Comptroller's name is on these briefs, and we are taking an opposite position up in the Cook County case which is currently in the Appellate Court. We would ask that the Attorney General, if you so choose, be given the opportunity to brief our motion for

disqualification and remove them as -- or remove our name from their pleadings for the matter of the Appellate record so that we're not in conflict between the case down here and the case up there.

THE COURT: When you say "your names" you mean --

MR. COOMBE: I mean Comptroller Munger.

THE COURT: -- your lawyer names or your --

MR. COOMBE: No, no, Comptroller Munger. I'm sorry.

THE COURT: Well, I think I have to rule on their motion before we get to the most superficial point of the thing.

MR. COOMBE: Correct.

THE COURT: Do you want to delay -- this is an appealable order anyway as an injunction -- a preliminary injunction.

MR. LEGNER: A preliminary injunction or a temporary retraining order, Your Honor? I think we're only here on the motion for a temporary retraining order.

THE COURT: Okay, then let's call it a temporary retraining order with notice.

Then what time do you need to put in on the

conflict issue?

MR. LEGNER: Your Honor, we can have our response on file tomorrow.

THE COURT: Well, and you can give yourself another 12 hours. Okay, what's tomorrow, Friday? Do you want to have it in by tomorrow close of business or do you want Monday?

MR. LEGNER: Close of -- well, if we could have till Monday morning I would be thrilled to have till Monday morning to file a brief on that.

THE COURT: I would be thrilled to wait if it doesn't hurt any of the functioning of the record. Speak up if you think --

MR. COOMBE: That should be fine, Your Honor.

THE COURT: -- it stops anything.

Okay, anything else to add to the record?

MR. LEGNER: One point of clarification, if I may. Is the order directing the Comptroller to process payroll payments directed to the payroll payments for everybody or plaintiffs or plaintiffs' members?

THE COURT: I don't believe I can enter an order that is broader than the requested relief of the plaintiffs. I'm not super Judge --

MR. LEGNER: Thank you, Your Honor.

THE COURT: -- as you had pointed out. I don't have the appropriation power for all employees of the State.

MR. LEGNER: Thank you, Your Honor.

MR. COOMBE: Your Honor, if we were allowed to we would have asked for all employees to be paid, because it is an impossibility for the Comptroller to be able to so sort this out, especially in the short time window that we have here. So we respectfully ask that all employees be allowed to be paid and not just bargaining unit employees.

MR. LEGNER: Your Honor, it's not hard to figure out who is a bargaining unit employee and who's not. That's well known. Those payroll processes will not take long to do.

MR. VRETT: Your Honor, as an officer of the court, I'm the deputy general counsel of CMS, and I can provide testimony on behalf of AFSCME, plaintiff or the Comptroller that would develop that factual record of the possibility of CMS to process payrolls that do not reach all employees and only those covered by collective bargaining agreements.

MS. MCNAUGHT: And we object to that, because this is at a preliminary -- or I'm sorry, it's at a

temporary restraining order stage. The pleadings haven't been joined, there's no answer, and it's inappropriate to take testimony at this stage.

THE COURT: Well, I don't know about --

MS. MCNAUGHT: Carriageway [ph] versus somebody, and I can come up with another case too.

THE COURT: Okay, this being with notice, we fell on a little different footing. The Comptroller can ask for what relief they think makes the management of their operation soundest, and it would seem the ultimate in conflict if the Attorney General would stand in opposition to that point. So I wouldn't have a problem with having the order stated in such a manner that the jurisdiction of the court is invoked on behalf of the named plaintiffs, there's no difference between what I would do, but nonetheless, if you ask for an order and the plaintiff does not object and the Attorney General objects, then I guess I decide whether to sign it. So if you want to propose that, it's your move.

MR. LEGNER: Thank you, Your Honor.

MR. COOMBE: Thank you, Your Honor.

MR. YOKICH: So, Your Honor --

THE COURT: Where are we, huh?

MR. YOKICH: Well, the question that I have is

this, and it's purely because I have not been to your courtroom before and I apologize. In terms of drawing an order, I have done it a couple different ways. One would be do recite what I said orally and put that in a document and have you sign it. Another would be to write out something and attach the transcript pages. If you could educate me as to which you would prefer, I would be happy to proceed in either way.

THE COURT: There will be a transcript ordered, I believe.

MR. COOMBE: Your Honor, we have some language we would be willing to submit too.

THE COURT: I liked his because I thought it was eloquently on point. What I would do in that regard is to have the transcript prepared and adopt it as the order.

MR. YOKICH: Okay.

THE COURT: If that would expedite matters, that's fine with me.

MR. YOKICH: I think that would be the easiest thing. If I had to recreate what I spontaneously said --

MR. LEGNER: So is an order being entered today?

R86

THE COURT: You mean you were just making that up?

MR. LEGNER: Is an order being entered today, just for appeal purposes?

THE COURT: Yes, if...

(Whereupon there was a conversation held off the record and the proceedings subsequently continued as follows:)

THE COURT: I'm going to sign the order tomorrow.

MR. LEGNER: All right, so the order will be entered tomorrow?

THE COURT: Yes.

MR. LEGNER: For appeal purposes, that's the entered date.

MR. YOKICH: Thank you, Your Honor.

THE COURT: Okay, you're welcome. And please give me your best e-mail addresses to Cassie so that the order goes out to the right folks.

MS. MCNAUGHT: Judge, if our response to the Comptroller's motion is sent via e-mail and electronically filed will you get it or do we need to send you a courtesy copy?

THE COURT: I have a business card there with

R87

my e-mail address on it.

MR. LEGNER: Thank you, Your Honor, for considering all of this.

THE COURT: You're welcome. Your welcome.

(End of proceedings.)

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R88

STATE OF ILLINOIS)
TWENTIETH JUDICIAL CIRCUIT) SS.
COUNTY OF ST. CLAIR)

I, MARY JO JALINSKY, CSR No. 084-003202, one of the Official Court Reporters in and for the Twentieth Judicial Circuit, St. Clair County, Illinois, do hereby certify that I reported in shorthand the proceedings had in the above-entitled cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I certify to be a true and accurate transcript of the proceedings.

Mary Jo Jalinsky
MARY JO JALINSKY, C.S.R.
Official Court Reporter

Dated this 13th day of July, 2015.

R89

Exhibit G

State of Illinois

IN THE TWENTIETH JUDICIAL CIRCUIT, ST. CLAIR COUNTY, BELLEVILLE, ILLINOIS

AFSCME
PLAINTIFF

vs.

RAUNER, ET AL.,
DEFENDANTS.

No. 15 CH 475

FILED
ST. CLAIR COUNTY
FEB 16 2017
15
CIRCUIT CLERK

ORDER

This cause coming before the Court, the Court being fully advised in the premises and having jurisdiction of the subject matter;

The Court finds:

IT IS THEREFORE ORDERED:

(1) THE PETITION FOR LEAVE TO INTERVENE BY THE PEOPLE OF THE STATE OF ILLINOIS IS GRANTED;

(2) THE MOTION TO DISSOLVE THE PRELIMINARY INJUNCTION IS DENIED;

(3) THE MOTION TO STAY PENDING APPEAL IS DENIED.

Enter:

Attorneys:

STEVEN YOKICH
Plaintiff

KELTON SICARIM
BRETT LEGNER
Defendant

Judge

LeChien

White – CC; Yellow – Plaintiff; Pink – Defendant

FORM 11-4-13

Exhibit H

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT

ST. CLAIR COUNTY, ILLINOIS

THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL 31 et al.,

Plaintiffs,

vs.

Case No. 15-CH-475

BRUCE RAUNER, the Governor of the State of Illinois; MICHAEL HOFFMAN, Acting Director of Central Management Services; ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES; and SUSANA A. MENDOZA, The Comptroller for the State of Illinois,

Defendants.

REPORT OF PROCEEDINGS

Before the HONORABLE ROBERT LECHIEN, Circuit Judge

February 16, 2017

Monica L. Schrader, CSR
Official Court Reporter
License No. 084-004267

A P P E A R A N C E S

MR. BRETT LEGNER, Deputy Solicitor General,
MR. R. DOUGLAS REES, Assistant Chief Deputy Attorney General,
MS. KAREN L. MCNAUGHT, Bureau Chief,
On Behalf of the People of the State of Illinois;

MR. DENNIS MURASHKO, General Counsel,
MR. KENTON J. SKARIN, Deputy General Counsel,
Appointed as Special Assistant Attorneys General,
On Behalf of Governor Bruce Rauner,
CMS, and Director Michael Hoffman; and,

MR. STEPHEN A. YOKICH, Attorney at Law,
On Behalf of AFSCME Council 31,
IFT Locals 4408, 919, 4717, 4460,
4051 and 4407; and,

MR. TYSON ROAN, General Counsel,
On Behalf of SEIU Local 73; and,

MR. JOSHUA M. FILE, Attorney at Law,
On Behalf of Illinois Nurse's Association; and,

MS. ELLEN SCHANZLE-HASKINS, General Counsel,
On Behalf of Laborers' Local 2002.

BE IT REMEMBERED AND CERTIFIED that heretofore, on to-wit: February 16, 2017, being one of the regular judicial days of this Court, the matter as hereinbefore set forth came on for hearing before the HONORABLE ROBERT LECHIEN, Circuit Judge, in and for the Twentieth Judicial Circuit, St. Clair County, Illinois, and the following was had of record, to-wit:

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(Court convened.)

THE COURT: Good afternoon, everybody. Are we ready to proceed on the petition?

MR. LEGNER: Yes, Your Honor.

THE COURT: Would you remind me, give your entry of appearance for the benefit of the record, please.

MR. LEGNER: Sure, Your Honor. Brett Legner, Deputy Solicitor General with the Attorney General's Office. I'm movant here on behalf of the People of the State of Illinois.

MR. REES: Good afternoon. My name is Doug Rees, R-E-E-S. I'm also with the Attorney General.

MS. MCNAUGHT: And I'm Karen McNaught, also with the Attorney General.

MR. MURASHKO: Good afternoon, Your Honor.

R92

Dennis Murashko, General Counsel to the Governor by appointment as a Special Assistant Attorney General representing the Defendants, CMS, Bruce Rauner and Director Hoffman.

THE COURT: I'm sorry. Would you spell your last name, please.

MR. MURASHKO: Sure. M-U-R-A-S-H-K-O, Murashko.

MR. SKARIN: Good afternoon, Your Honor, Kenton Skarin, S-K-A-R-I-N, Deputy General Counsel to the Governor, also appearing as a Special Assistant Attorney General on behalf of the Governor, CMS, and the Director of CMS.

MR. YOKICH: Good afternoon, Your Honor. Steve Yokich on behalf of the plaintiffs, AFSCME Council 31, IFT Locals 4408, 919, 4717, 4460, 4051 and 4407.

THE COURT: All right. Any other --

MR. FILE: Morning, Your Honor. Josh File on behalf of Plaintiff Illinois Nurse's Association, and I will be filing my formal appearance with the clerk after this.

THE COURT: All right.

MR. ROAN: Your Honor, I'm Tyson Roan. I'm the representative for SEIU Local 73.

R93

THE COURT: All right.

MS. SCHANZLE-HASKINS: Your Honor, I'm Ellen Schanzle-Haskins on behalf of Laborers' Local 2002 in Springfield.

THE COURT: Good afternoon. Is that it for the attorneys?

All right. Let's get under way then, Mr. Legner.

MR. LEGNER: Thank you, Your Honor.

As I guess maybe a -- hopefully a housekeeping matter, before the Court is our petition for leave to intervene and then our motion to dissolve the injunction. So I guess technically, procedurally speaking, I should turn first to our petition for leave to intervene --

(Off-the-record discussion held between the Court and Clerk Katz.)

THE COURT: So you want me to grant a motion to intervene?

MR. LEGNER: Yes, Your Honor.

THE COURT: Granted.

MR. LEGNER: Thank you very much.

And then if I may turn to our motion to resolve the preliminary injunction?

THE COURT: All right then.

MR. LEGNER: Thank you, Your Honor.

Your Honor, there is no question that the Illinois Constitution requires an enacted appropriation for authority to spend money. Of course we stand here, the People stand here before you, and we believe that state employees, in fact, all people and organizations who work for -- who work or provide services for this state should be paid for their work. But, Your Honor, we must insist that the payment of state money be made legally and Constitutionally.

The issue the People present to the Court today in the motion to dissolve the preliminary injunction is a very narrow issue raising a precise legal point. Your Honor, that issue is whether the preliminary injunction should be dissolved because the only legal claim, the only legal basis for that injunction is invalid.

Again, the People stress that their effort is not to cause undue hardship, but the People must insist that the requirements of the Illinois Constitution be honored, and the appropriations clause is a basic part of the structure of government in Illinois since the original 1818 Constitution that cannot be ignored as a matter of convenience as the Illinois Supreme Court

recently reaffirmed in *State vs. AFSCME*.

To start with, there are a couple fundamental and basic precepts of law.

First, a preliminary injunction as you know is an extraordinary remedy that is not to be granted lightly.

Which leads to second, to be entitled to a preliminary injunction plaintiffs must meet every element of their prima facie case, and that includes establishing a likelihood of success on the merits of a legal claim justifying their relief.

Third, if the plaintiffs do not have a likelihood of success on the merits on their legal claim upon which their injunction is based they cannot receive injunctive relief.

Fourth, as a basic matter of procedure the injunction motion and the complaint frames the issue, frame the issues before the Court, and they must support a legal claim to the extraordinary remedy.

And finally, fifth, it is equally well established that a Court abuses its discretion if it refuses to dissolve an injunction based upon a mistake of the law. Here, as I mentioned before, the plaintiffs have advanced exactly one legal claim in their complaint

and accompanying motion for injunction, that the failure to pay state employee wages as required by the terms of their collective bargaining agreements was an impairment of contracts in violation of a contracts clause of the Illinois Constitution.

But Your Honor, in the *AFSCME vs. State* case from last year that we attached to our motion, the Illinois Supreme Court has squarely rejected that theory, the sole legal basis for an injunction. Because the only legal basis for the injunction has failed, they cannot meet -- plaintiff's cannot meet this required element of their prima facie case and the injunction must now be dissolved.

In that Illinois Supreme Court case, *State vs. AFSCME*, the Court was confronted with the failure of the General Assembly to appropriate money sufficient to pay certain -- pay raises that were required by a collective bargaining agreement. The Court rejected the theory, rejected the argument that the failure to appropriate the money was an impairment of contract in violation of the Illinois Constitution.

And again, Your Honor, that's the same legal claim, the same legal theory upon which the plaintiffs have proceeded here. When this case, when the original

injunction from July 2015 went up to the Appellate Court, the sole authority the Appellate Court relied on in support of to find that the plaintiffs have a likelihood of success on the merits of their claim was the Appellate Court version of the *State vs. AFSCME* case that the Supreme Court then reversed, removing the legal foundation for their claim.

Now we stand before you, 19 months later, and to argue and to explain that the Illinois Supreme Court has reaffirmed the importance of the appropriations clause and has reaffirmed the notion that this is not an impairment of contract.

First, in the *State vs. AFSCME* case at paragraph two, the court explained that the arbitrating -- the procedural posture of the case was that there was an arbitration award that had ordered that the State pay the raises and that was challenged, and the Court ultimately found that the arbitration award was unenforceable as a matter of Illinois public policy.

In paragraph two of *State vs. AFSCME*, the court explained that the public -- that the arbitration award violated the public policy as reflected in the appropriations clause of the Illinois Constitution and

R98

section 21 of the Illinois Public Labor Relations Act. In that paragraph, Your Honor, the Court thus announced the twin bases for its holding: The Constitutional reason, which was the appropriations clause; and the independent statutory reason, which was the Public Labor Relations Act or the PLRA. Those independent grounds are equally at work here where plaintiffs assert that the failure to appropriate funds to pay them as required by their collective bargaining agreements impairs the obligation of contracts, for the same reasons as explained in the Illinois Supreme Court decision where the failure to appropriate money to pay employees under their CBAs in that case was not an impairment of contract so it must be here.

In paragraph 42 of the Supreme Court decision, the court explained that Illinois public policy is first and foremost -- that's quoting the court -- first and foremost expressed in the Illinois Constitution. And the Constitution expresses that appropriations are necessary and that only the General Assembly has the authority to make appropriations; appropriations are necessary to spend money, for the -- to authorize the expenditure of state money.

In paragraph 45, the court noted that the

provision of the Public Labor Relations Act which is section 21 which stated that multiyear collective bargaining agreements are subject to appropriation, quote, was consistent with and reinforces the public policy of the appropriations clause.

In other words, the court, when it was relying on that provision, that statutory provision of the Public Labor Relations Act, was signifying that the statute reinforced the overriding and dominant Constitutional principle embodied by the appropriations clause.

In paragraph 52 of that decision, the court held that the appropriation of money by the General Assembly is a necessary contingency to a contract and the failure of that contingency cannot impair -- that's a quote -- cannot impair the union's agreement with the State for the obligation of the contract.

And finally in paragraph 56, the Court explained that section 21 of the Public Labor Relations Act, considered in light of the appropriations clause, establishes a public policy that collective bargaining agreements are subject to the appropriation power of the State, a power which may only be exercised by the General Assembly. And, Your Honor, for the legal issue

R100

that's presented that forms the basis of the injunctive relief that this Court granted initially back in July 2015, this case is squarely on point and it rejects that sole legal theory. Therefore, the injunction must be dissolved.

Now plaintiffs filed a response yesterday, and in part of that response they argue that the *State vs. AFSCME* case is distinguishable because they claim they are asserting their rights under tolling agreements that they have entered. The tolling agreements are agreements that the unions and the employers have entered after the collective bargaining agreements have expired, the term of the multiyear bargaining agreements has run. They enter into tolling agreements while they continue to negotiate, and in those tolling agreements -- some of which are attached to the original complaint in this case -- in those tolling agreements they say we will agree to renegotiate and we will continue to be bound by the terms of the collective bargaining agreement. The fact that they may be asserting rights under a tolling agreement, which is meant to continue in effect the parties' rights under the collective bargaining agreement while they continue to negotiate, does not make this case distinguishable

from the situation in *AFSCME vs. State*, in part because the Supreme Court's decision rested on two bases: First, section 21 of the Public Labor Relations Act which applies to multiyear collective bargaining agreements, but also and principally the appropriations clause of the Constitution. And that in that sense it does not matter whether plaintiffs are asserting rights under a multiyear collective bargaining agreement, or a tolling agreement to the extent that's even separable, or some other contract. The principle reaffirmed in *State vs. AFSCME* is that you need -- that there must be an enacted appropriation or enacted expenditure authority before those contracts may be paid. The appropriations clause essentially is not limited to only multiyear collective bargaining agreements and there is no legal basis for holding it so restricted.

But additionally, the tolling agreements by their expressed terms continue the parties' obligations under the multiyear collective bargaining agreements. Those multiyear collective bargaining agreements, the terms of which are continued by the tolling agreements, are subject to appropriation. That is the unmistakable holding of *State vs. AFSCME* under multiple different rationales. It would make no sense to believe that a

R102

tolling agreement could be used to subvert the appropriations clause of the Illinois Constitution or section 21 of the Public Labor Relations Act. There is no justifiable legal basis for that. Therefore, the preliminary injunction should be dissolved.

That is the only issue before this Court, but I would like to turn for a minute to other issues raised in response to our motion by the plaintiffs and by the Governor and CMS to explain what will or will not happen when the injunction is dissolved.

First and foremost, the People have asked this Court to dissolve the injunction effective February 28th, so immediately nothing will happen. Immediately, the Governor and the General Assembly have yet another opportunity to fulfill their Constitutional obligations, but for the first time in 19 months they would not have the political expediency offered by an injunction, by this Court's injunction hindering that process. This would give the Court -- by asking that the injunction be dissolved effective February 28th, this would give the political process another chance to resolve the matter and to enact an appropriate and full budget.

Second, despite certain claims in the pleadings, the entire government will not shut down. As

plaintiffs acknowledge there are some enacted appropriations. There was the so-called stop gap budget that contained appropriations for the first half of fiscal year 2017; it contained some full year appropriations, and it contained some appropriations which were not entirely spent down. If there are enacted appropriations for personal services, i.e. employee pay, the injunction doesn't matter to that one way or another because those employees are being paid because of appropriate legislation, not because of the Court order. That would be unaffected one way or the other by dissolution of the injunction.

Additionally, the Governor raises the issue of continuing appropriations and consent decrees and what happens to continuing appropriations and consent decrees. But Your Honor, these issues are directly and specifically addressed by a Court order entered in *People vs. Munger* case in the circuit court of Cook County. Most recently, in July 2016, the Court reentered an order which is attached as Exhibit B to the reply that I filed yesterday. The court then reentered the order that expressly states that in the absence of enacted appropriations legislation the Comptroller shall authorize the payments of, among other things, judicial

operations, all continuing appropriations and those expenses necessary to meet the State's obligations under the consent decrees.

The court -- and this was Exhibit C to my filing -- the court expressly retained jurisdiction to consider all matters related to that order, i.e., to the payment of continuing appropriations, to the making of payments pursuant to consent decrees. Not only are those issues already handled by that court, it would be entirely inappropriate for this Court to assume jurisdiction over that matter and enter orders that modify or alter or conflict or affect the orders entered by that other circuit court, let alone for all the consent decrees. Those have been entered in courts in which the parties can go into those courts that entered the actual decrees and seek to enforce those decrees, and parties have been doing that robustly over the last 19 months.

But the point with regard to the continuing appropriations and consent decrees is the dissolution of this injunction has no effect on that. To the extent any party claims an issue about continuing appropriation or consent decree or payments under the consent decree, those are covered by the separate Cook County litigation

and that is the forum in which to go in and ask the court to clarify or to explain or say must these payments be made. Those matters are already handled by that other circuit court case.

And finally, Your Honor, employees who are not covered by continuing appropriations for operations necessitated by consent decrees, for those employees there may be other essential services of government that may continue what the Governor I think refers to as certain police powers actions. But to be clear, there is no complaint before this Court, there is no request for relief before this Court predicated upon determining who essential employees are.

While the parties both -- while the plaintiffs and the Governor both argue that the motion to dissolve should not be granted because the Attorney General, who has not pointed out who essential employees are -- I would say it's certainly not the Attorney General's burden to justify the preliminary injunction. I would also add that that point again is not relevant to the direct issue, which is, should a preliminary injunction be maintained based on the impairment of contracts theory that is raised by the plaintiffs on behalf of the union members.

Moreover, in June 2015, the Attorney General provided guidance and offered to help the determination of who essential employees are, and that's Exhibit A to the reply brief we filed yesterday. Additionally, this issue is beyond the scope of this theory and is more appropriately addressed in the Cook County litigation where the Attorney General, on behalf of the People, filed an action seeking a declaration, a broader declaration as to what type of expenditures need be made in the absence of an enacted appropriations legislation. That's never been the focus of this Court's case. This case that was in this complaint concerned whether certain contracts were being impaired as a Constitutional matter under the Illinois Constitution. The Illinois Supreme Court has answered that question and that answers the scope of this litigation.

So in sum, Your Honor, the only issue before this Court is whether there is a legal basis to justify continuing the preliminary injunction. The injunction rests on one claim and that claim must fail as reaffirmed by the Illinois Supreme Court in the *AFSCME vs. State* case. The parties raise other issues to distract the Court's attention and the People are sensitive to those concerns, but there is no legal

theory properly pleaded before this Court that merits continuation of the extraordinary relief. Since this Court entered its initial injunction in July 2015, over three billion dollars in unappropriated funds have been spent on employee pay. It is time to return -- after 19 months, after 19 months and three billion dollars of unappropriated funds -- it is time to return the power, the appropriation power, to where the Constitution places it. It is time for this Court to dissolve the preliminary injunction.

Thank you very much, Your Honor.

THE COURT: Thank you, sir.

Yes, Mr. Yokich. Go right ahead.

MR. YOKICH: So, Your Honor, 20-year-old boys play a game called Chicken. And it's a game where you line one car up at one end of the street and another car up at the other end of the street, and you drive towards each other at high speed and whoever swerves off the road first is Chicken and loses the game. And the essential thesis that the Attorney General brings to this Court is we've been playing Chicken for 19 months, it's time to strap everybody's feet to the accelerators and hope that something good comes of it. Because the essential thesis of the Attorney General's motion is

that we come to the Court today to precipitate the threat of a shutdown, to precipitate the threat of layoffs and 25,000 employees or more to put others on different wages and to deny services to taxpayers, and we don't see that as an appropriate job description for the Attorney General. *State vs. AFSCME* was decided in March of 2016. Rehearing was denied in May of 2016. And here we are, almost a year later, and we're finally to the point where the Attorney General's in this Court asking everybody to just -- let's move those cars together faster in the hope that something good will come of that.

So there are three legal points that are key to this Court's resolution of this case. Legal point number one is that we believe that the General Assembly sanctioned this Court's order when it enacted the budget on June 30th of 2016. The General Assembly passed an 800-page budget bill -- I've got it in my hand, this is only half the size because it's printed on both sides of the page. And in that 800-page budget bill, on page 800, they wrote Article 996. And Article 996 says, All appropriation granted in this act shall not supersede any order of this Court directing the expenditure of -- supersede any order of any court directing the

R109

expenditure of funds for Fiscal Years 2016 or 2017. If you look at the dictionary definition of Supersede it includes such things as obliterate, render unnecessary, suspend, stay, make useless. And so I think, and the plaintiffs believe, that Article 996 was a clear indication by the General Assembly that they knew about the Court's order and that they were authorizing the expenditure of funds pursuant to the Court's order.

Now in the memorandum that we filed yesterday I cited a number of Supreme Court cases. And those cases indicate that when the General Assembly acts, that you presume that the General Assembly knows what the law is, that they know what cases have come down. And those cases apply to situations where both the General Assembly acts or the General Assembly doesn't act.

So in this case, if you look at the sequence of events prior to the Supreme Court's decision in *State vs. AFSCME*, the General Assembly passed an appropriation bill. That was in December of 2015. In that appropriation bill they didn't say, oh, Judge LeChien's order of July 10th, that's invalid because it wasn't based on the Constitution. *State vs. AFSCME* came down in March of 2016. And in April of 2016, the General Assembly passed another appropriations bill, this one

R110

helping universities. And in that bill, the General Assembly didn't indicate that they thought that the order of this case was somehow inconsistent with *State vs. AFSCME*. Rehearing was denied in *State vs. AFSCME* in March of 2016. And on June 30th of 2016, the General Assembly passed what we call the stop gap budget. And in that stop gap budget, they acknowledged the existence of court orders authorizing the expenditure of state funds. And in that stop gap budget, they said we are not meaning to interfere with any of those orders.

Now you can construe what the General Assembly did a number of different ways, but the most logical way you construe it is that they were sanctioning the expenditure of funds under the July 10th order because otherwise you would have to conclude that the General Assembly spent a month trying to come to a stop gap budget and left a gaping hole in the middle of it, that being the continuation of state employee salaries. That is not a very reasonable assumption.

You also have to assume that they spent a month coming to a stop gap budget when the next day Mr. Legner could walk in to court and say shut it down, shut the whole state down right after we enacted the budget because we don't have appropriations in here for many

R111

essential state services. And that assumption isn't a very good assumption either.

So the best way to read the sequence of events in terms of the legislative intent here is to conclude that the General Assembly knew that the July 10th order existed, that it knew that *State vs. AFSCME* existed, and that it meant to authorize the continued expenditure of the funds that were contained in that July 10th order.

Now Mr. Legner argues, and a lot of Courts have said loosely, that the only way you can spend state money is to have an appropriation. And as we point out in our brief, that's just not the law. It hasn't been the law for a long time. And in 1971, in the *Lindberg* case, the Supreme Court case said -- it observed that billions of dollars have been spent without appropriations, both under the 1870 Constitution and the 1970 Constitution. And in *Jorgensen* vs. Blagojevich, they had a situation where the General Assembly had not appropriated money for cost of living allowances and the court said we don't need that appropriation, the court order is enough.

And if you read the Comptroller Act, the Comptroller Act doesn't talk about appropriations. It talks about sources of legal authority. And if you look

at *Jorgensen*, and if you look at the cases that cite *Jorgensen* -- they're cited in our brief as well -- the *Wilson* case and the *Hammer* case, both of those cases involve courts directing the expenditure of funds without legislative appropriation.

So it won't do to come in here and say, well, because there wasn't a specific personal services appropriation for X, Y and Z, the order is invalid. The most you could argue would be, well, the General Assembly didn't do the technical thing, they didn't say personal services of blank, but I think that in -- if you step back and you look at what they did, instead of spelling it out agency by agency, line by line, they just said let the Court orders continue. And when they said let the Court orders continue, under any reasonable interpretation of what was in front of them at the time, I think that means that they said let this Court order continue.

Now in addition to raising the issues that deal with the specific language on appropriations, they -- the State, the Attorney General raises the issues of separation of powers. And I think it's instructive to look at the cases on separation of powers because the cases on separation of powers they don't say

that there's a rigid demarcation, the executive can only do X, the General Assembly can only do Y, the judiciary can only do Z. Instead, they say that the branches of government are supposed to work together to accomplish the purposes that the branches of government are set therefore, to serve the will of the people that live here and that pay taxes here. And if you take a look at some of the precedent that exists in situations where the branches of government besides the judiciary are having trouble getting their act together to make sure that they do what they're supposed to do under the Constitution, those cases give the power to the courts to act, to unstick the process to let the process move forward.

In the November order that Your Honor issued with respect to the payments of state money to the healthcare funds, the personal assistance that are funded by the state, this Court said that, While the employees have complied with the CBA in all respects, the fiddle while burning posture of other branches of State government provokes the judicial branch to act to preserve the status quo because it is necessary for the State to secure the financial stability of the funds 2015 and 2016. It was a very candid acknowledgment by

Your Honor that sometimes one branch of government has to step in when the other two are stuck. And in one of the cases that the Attorney General has relied on frequently, in *AFSCME vs. Netsch* from the Fourth District, the Appellate Court went to the extent of saying that, While we hold now that the issue of general breakdown of government is not before us, we are not saying that the courts are barred from intervening in the event that the legislative or executive branches fail to perform their Constitutional functions.

Now I think a very instructive case in this situation is a case called *Rock vs. Thompson*, and it was a case decided in 1982 when the Illinois Senate was having difficulty passing a rule to allow it to conduct business. And so the majority leader at the time, Mr. Rock -- Senator Rock -- and the Governor, they were in court and they went to the Illinois Supreme Court to get a resolution. And the Court awarded the writ of mandamus telling the Senate to do certain things. And Justice Simon wrote a concurrence, and I think he put it very well. He said that by the time we issued our order on February 9th it was clear that the Senate was unable to resolve its impasse without help and the judiciary was the only body that it could turn to for help. Had

we not acted, the work of the Senate would have gone undone or been open to challenge and senators once having resorted to physical conflict in trying to resolve a controversy might have continued to do so.

Again, there are situations where the courts have the power to step in and unstick the other branches of government and, as I'll discuss in a minute, the Attorney General doesn't really contest that principle.

So it's our argument that the General Assembly authorized the continued expenditure of money under the Court's order, and that for the Court to reaffirm its order in light of the Attorney General's motion is perfectly appropriate because I think in view of that legislative authorization there's a fair chance of success on the merits. And as we've pointed out in our brief, the balance of harm really hasn't changed much from last July.

Now our second argument on the merits and the second legal argument that the Court needs to look at is the issue of *State vs. AFSCME* and does *State vs. AFSCME* truly eliminate any basis for preliminary injunction in this case. And my answer to that is no and I think the answer is no for two reasons: Number one, in *State vs. AFSCME* the Court was very clear that it was dealing with

multiyear contracts under section 21 of the Labor Act, and I'm going to read paragraph 54 of the Court's decision. Paragraph 54 says, 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.

And then in paragraph 56 or -- so that -- excuse me. So the Court was very clear that it was dealing with one kind of a contract. And as we pled in our complaint and as is the case, the tolling agreement is not a multiyear collective bargaining agreement. And that has an enormous impact in terms of the analysis here because in *State vs. AFSCME* the Court was able to say we have a statute, the statute is implied into the contract, the contract was negotiated as the statute was in effect, and so under section 21 the contract is dependent on appropriations. Now we disagreed with that then and disagree with it now, but it's what the Supreme Court said in *State vs. AFSCME*.

If section 21 had not been a basis for the Court's decision, the Court would have had to confront a square conflict between two Constitutional provisions: One, the appropriations clause on one hand. And second, the impairment of contracts clause on the other hand. It didn't have to confront what happens when two Constitutional provisions point opposite ways because it had the statutory basis to rely on, and that's why it was able to say, whatever other cases might be, this case is under section 21.

Well, here, the Court -- this Court and whatever reviewing courts -- are going to have to confront the fact that there is a square conflict between Constitutional provisions. And the Illinois Supreme Court has been very protective of the impairment of contracts provision.

In *Heaton vs. Quinn*, which we cite in our brief, there was a discussion of the pension clause but also the impairment of contracts clause. And in that case the Supreme Court said we give a lot of weight to impairment of contracts, and because we give a lot of weight to the impairment of contracts that clause alone would have allowed us to get to the result that we got to here.

And the Supreme Court said something else interesting in *Heaton vs. Quinn*. They said that where the State impairs a contract for financial reasons that the State has an interest in, that that impairment is especially suspect. And it cited the U.S. Supreme Court case of the *United States Trust vs. New Jersey*, a 1978 case which has been on the books for a long time and which has never been overruled by the U.S. Supreme Court.

So in order to make a decision on the merits in this case on the issue of the impairment of contract, this Court is going to have to look at the issue of what is the conflict between the appropriations clause and the impairment of contract clause. And until that issue is resolved, you can't say that the plaintiffs do not have a fair chance of success on the merits and, therefore, you need to uphold the injunction.

Now there's another piece of *State vs. AFSCME* that's important here. *State vs. AFSCME* was a case that was decided on a full record -- there was pretrial discovery, there were 340 stipulations of fact that were worked out between the lawyer for the Department of Central Management Services and the lawyer for AFSCME, there were five witnesses that testified at the trial

R119

that stretched over several days -- and the circuit court judge had a very substantial record in front of him and was able to conclude, based upon that substantial record, that the appropriations were not sufficient to meet the contract.

Here, the Court's got no record in front of it. Nothing. It doesn't even have the budget bill in front of it to be able to know whether there are no appropriations for the warrants that this Court has ordered be drawn in its order of July 10th. And we submit that if the Court's going to make a decision based upon *State vs. AFSCME*, which deals with insufficiency of funds, it's got to resolve the factual issue of whether funds are actually sufficient. And you can't do that without knowledge of a budget bill and without knowledge of what money has been spent under the budget bill, what's left to be spent; and more importantly where, if you have one pot of money for ordinary contingent expenses, can you use that money for personal services even if there's not a personal services line that's there in the appropriations. And I know the Court's very steeped in that analysis because the Court's got a case involving the Illinois State Troopers and the Fraternal Order of Police where that's

R120

one of the issues. And that's just one department and one part of this bill. They're looking at 51 boards, agencies, and other departments of the executive branch that are contained in this bill. So you would have to take the factual analysis that the Court has been doing in that case and multiply it by 51 in order to get to the conclusion that section 21 could apply to this case because of insufficiency of appropriations.

So on that basis as well, *State vs. AFSCME* doesn't really apply here. And if you were to faithfully take the analysis of *State vs. AFSCME* we'd have to sit down and we'd have to do discovery, we'd have to have an evidentiary hearing and a trial in front of this court on whether the money was actually insufficient.

So that's two of the legal points that I think are critical here: One legal point being that the General Assembly specifically authorized the money that's being spent pursuant to this Court's order to continue being spent. And the second being *State vs. AFSCME* doesn't really apply here because we're not dealing with a multiyear collective bargaining agreement and there's been no threshold showing that funds are insufficient.

R121

There's a third point -- and I think it's really the most interesting point of all -- and that is that the Attorney General cannot square its argument for dissolution of the injunction with any Court decree that allows for the continued payment of essential state employees. So think about this for a second. Let's say that as in June of 2015, when the Court decree in this case didn't exist and when the Supreme Court decision in *State vs. AFSCME* didn't exist, let's say that we get the same result, there's an impasse in negotiations. And let's say that the impasse continues, government has to shut down because under the Attorney General's theory there's no authorization for money to be appropriated.

Now if government shuts down, does that mean that we close the prisons and the institutions for veterans and the institutions for the mentally ill and the developmentally disabled? And do we take the state troopers off the road, and do we tell the snow plows that they can't go plow if we have a snow in February? Well, I think the Attorney General would say no. No, we can't do that. We're going to have essential employees come to work.

So the Court needs to ask itself, what is the Constitutional or statutory authority for the executive

branch to say come to work, we direct you to come to work and patrol the roads, or keep the doors to the prison shut, or make sure that the mentally ill get treated in our centers for the mentally ill. And that's not in the motion. That's not in anybody's motion.

And in fact, if you go around and you look at other states, what happens when you have government shutdowns is you have a court rule that certain functions are essential and nonessential. That's what happened in Minnesota. But the source of authority for a court to step in is exactly the source of authority that I talked about a few minutes ago. It's the source of authority that the judicial branch has when the other branches get stuck. And the Fair Labor Standards Act is not some sort of miracle that saves that from having to happen.

Fair Labor Standards Act says if you put people to work you have to pay them in a timely way. Those are the cases that the Attorney General relies on. And the Fair Labor Standards Act says when you pay them in a timely way you have certain minimum wages and overtime requirements that you must meet. Fair Labor Standards Act doesn't say you have to have a correctional system. It doesn't say you have to have state troopers on the

road. It doesn't say that you have to have a system for developmentally disabled or mentally ill taxpayers. And it doesn't say that you have to have a system where people are wards of the state and are protected by the Department of Children and Family Services. And so the Fair Labor Standards Act is not an answer to what happens if there's a government shutdown.

Now that has a number of implications that the Court has to weigh when it's looking at this case. One implication is that some court somewhere is going to have to decide who's essential and who's not essential, all right. Now personally I think that this court is the right court to do that because this is the court that issued the order that said draw the warrants to pay people, and so this is the appropriate court to be in to say, well, draw the warrants to pay X or Y or Z.

The court in Cook County has never issued an order that says draw warrants to pay people, and the issue of essential employees was never presented to Judge Garcia. Regardless, though -- and you know, I could have got to court a lot quicker this morning if I was going to see Judge Garcia, even though it was a beautiful day for a drive. Regardless, some court someplace is going to have to decide who's essential or

not, and if it's Judge Garcia it would be foolish for you to dissolve your injunction here before we know who's going to work and who's not going to work, Your Honor.

And so regardless of where we do it and how we do it, the injunction should say stay in place until we know who's essential and who's not essential.

Now the second point is that if this Court has the power to say there's a group of several thousand employees that go to work, i.e., the people that run the prisons, the people that staff the centers for the developmentally disabled, the mentally ill, the people that patrol the roads and chase after the bad guys, the people that keep young children from being abused and neglected; if the Court's going to say those people are essential to keep working, and if the Court has the power to do that -- and it must for the Attorney General to avoid the horrible effects of a complete government shutdown -- then the Court's also got the power to say they should be paid their full pay, that they should continue to receive what they've been getting all along, that they should get their full pay, they should get their full benefits, and I don't think there's any way out of that logical conundrum in this case.

R125

Now I think it's unthinkable that we could walk out of here and have a situation where you told correctional officers, go to work in Pontiac and Menard and Logan, and be scared all day because you're with hundreds of people that are very dangerous and you don't have a weapon but you get the minimum wage -- which is sorta kinda what the Attorney General's edging up to here, $7.25 an hour to be a correctional officer. And I think that's an unthinkable prospect for the state, for state families, for the tax payers that depend on state services.

But if you think that unthinkable prospect just for a moment then you have to think of, well, okay, how can I ameliorate that harm a bit for state employees. And there's two things that I think the Court would have to do in any injunction that cover what is who essential employees are and what work they should do. And one thing is I think the Court would have to say, people don't volunteer, okay. You can't have the Governor say, anybody volunteers to come to work today, they should be able to come to work. It's either got to be all or nothing.

And the other thing you have to say is that you can't change their terms and conditions of work during

the period of that government shutdown.

Now on the issue of essential, it's very easy to talk in broad terms about who's essential and not essential. But once you get down to the specifics of who's essential and not essential it's a lot harder to do.

So for example, in the pleading that the Attorney General filed yesterday in response to what the Governor filed the day before, there are some documents with respect to the Fair Labor Standards Act, and then there's an untitled document that says, quote, Guidance To Determine Essential Employees. And on the very first page of it, it says, States without formal policies for designating essential personnel seem to engage in a chaotic ad hoc process. And that is exactly where we are because we've got no formal policy for designating essential personnel when the government shuts down.

Now one thing the Attorney General might say is, well, in the Public Labor Relations Act we've got a definition of Essential Employee, but that's a much stricter statute because that's a statute where you construe who's essential very narrowly because you're taking away from people the statutory right to strike.

In terms of having a government shutdown and

R127

making sure the taxpayers actually get what they're paying for by their taxes, it seems to me you might have a broader definition of Essential. And it's critically important to think about what essential employees do; they do the most vital things. And the idea that you could run a prison on minimal staffing as opposed to regular staffing is a very dangerous idea. Almost every prison in Illinois has double celling in every single cell. If you look at the state rankings in terms of capacity in prisons, for example, Illinois has some of the most overcrowded prisons in the entire nation in any state government. And so for a litigant to show up here and talk about, well, we're going to get away with minimal staffing during the period of a government shutdown just really puts employees and their families at great risk, and that's not what we're about here and I'm sure nobody wants to go down that road.

So the way we see it is -- let me put it in two ways. The way we see it in terms of the options the Court has in terms of decision is you've got Choice A, and that is to say the Attorney General's right -- you can't spend money, you can't make a commitment to spend money without an appropriation -- and if they're 100 percent right then Choice A is we shut down everything.

Everything. Everybody gets laid off and we have, you know, forty to fifty thousand state employees and their families at home hoping something happens with the political process.

Choice B is you continue your order, and that Choice B, at least we know what we're getting. Now you could say, well, you know, we need to move the political process a little bit. And you know, that's a nice idea, and it was a nice idea back in July of 2015, but you know we've had terrible harm to our universities, we've had terrible harm to our social safety net, and those things have not moved the political process either.

And so the idea of, well, it might happen if we have terrible harm to our state employees and their family and terrible harm to people that depend on state services, that's going to do it. Nobody whether knows whether that's going to do it. Anybody that stands up here and tries to predict what will happen, they'll be as wrong as many times as I have been.

So you've got Choice A, shut everything down because that's the logic with what they're arguing.

Or Choice B, which is continue the order of July 10th.

You've got Choice C, which is you have some

provision for essential state employees. Now we don't thing you need to go to Choice C. We think we've got very good legal grounds to keep the order of July 10th in existence. But if you were to go to Choice C, then two things would have to happen: One, we have to have a hearing on whether or not appropriations are sufficient so that we know who's in and who's out based upon the budget. And the other thing is, we'd have to have a hearing with respect to essential state employees and who's in and who's out based upon whatever definition of essential we get out of the executive bodies and other parties in this room. And we have to know how those two things go together to weigh the impact of what a Court order might mean.

And that leads me to my final suggestion, and that is, we put forth some legal arguments for the Court that say you should just deny the motion. We've identified some factual issues for the Court as well. And it seems to me that the most logical thing for the Court to do is to look at those legal issues, to read the briefs of the parties, hear the arguments of the parties, and make its rulings. And then if the rulings then demand further focus on the factual issues, let's get out our calendars and set dates where we can do the

R130

discovery and trial work that's necessary to determine those factual issues before we dissolve the injunction and not afterwards.

THE COURT: Thank you.

MR. SKARIN: Judge, I'll be brief because I think you've heard a lot of what you need to hear from Mr. Yokich. I'm glad that everyone here appears to believe on some level that state employees, when they show up for work, should be paid appropriately for the services that they provide. That's been the Governor's position and CMS's position all along and that remains the position of the Governor today: If an employee is going to come to work they deserve to be paid.

In our papers that we filed we provided a number of reasons why you need to consider other bases under which employees can be paid rather than act precipitously, dissolve the TRO and wait to see what happens. Those bases are things that should be considered in the event that Your Honor is going to head in that direction.

The second point that I really want to address is this notion of urgency that the Attorney General is trying to inject into this process, and Mr. Yokich talked a little bit about that as well. But I was

R131

trying to think as I was sitting here -- and it reminds me a little bit of Claude Rains in Casablanca, the Attorney General is shocked that there's gambling going on in here -- there's no shock here and there's no emergency. The Attorney General has known about the AFSCME decision from the Supreme Court that is the basis for their motion here for almost a year. They've known about it because they, in fact, participated in that case. And they've known that there were tens of thousands of state employees being paid under that order for months. And for them to come in and tell you as Mr. Legner did that you can't ignore the *AFSCME* decision from the Supreme Court as a matter of convenience because of some newfound importance of the appropriations clause is ironic because ignoring that decision has been exactly what the Attorney General has chosen to do for the last year. And so when you're thinking about what you need to do -- and the State obviously has explained in its filing that it wants your TRO to continue in place to protect those state employees who are coming to work -- you should think not to act with the arbitrary sense of urgency that the Attorney General was trying to inject into these proceedings, but rather to recognize that this is a

R132

matter that requires due deliberation and that this is a matter that is not going to suddenly become a Constitutional crisis by virtue of continuing to do exactly what the Attorney General has been allowing to happen all along. Thank you.

THE COURT: Who else would like to be heard? Mr. Legner.

MR. LEGNER: Thank you, Your Honor. I'll be brief and reply to a few of the points, the many points that have been raised and discussed today.

First, with regard to the issue that both the Governor's office and the plaintiffs have raised regarding the timing of the motion. It is true of course that the *AFSCME vs. State* case was handed down by the Supreme Court. It became a final decision on June 27th of 2016. It was issued, Mr. Yokich moved petition for rehearing in that case. The Court denied the rehearing and then mandate issued in June.

The Attorneys General and the People are standing here saying we know that it is a serious issue to come in to ask this Court to dissolve the injunction. It's not something that we do lightly and we have been reluctant to do so.

When the *AFSCME vs. State* decision became

final, the Supreme Court issued its mandate in June. Shortly thereafter, the parties agreed to the so-called stop gap budget. And while we agree, or where we had serious reservation, we felt that that budget was incomplete and insufficient and it had serious flaws, we felt that it pretended actual progress and had the hope that an actual resolution to the budget impasse, the budget crisis, was at hand.

But now that that stop gap budget has expired, we felt that it was time to say, enough is enough. It has been 18 months. We've given you as many opportunities as we could. We litigated the AFSCME decision, the *AFSCME vs. State* decision, that took us through the end of June of 2016. At that point there was a stop gap budget that provided some hope. That has expired. And now we reluctantly come in to this Court to ask for this Court to do what's right, ask this Court to do what's right and to dissolve the injunction.

Mr. Yokich presented you with a choice towards the end of his remarks, but Your Honor, that's a false choice he presents. We are not standing here asking you to dissolve the injunction and shut down the government. My remarks at the beginning were predicated largely upon what does not get shut down when the injunction is

dissolved. Our position is not that only annual enacted appropriations legislation is necessary to get paid, that is generally the truth. But continuing appropriations are duly enacted sources of authority to pay for operations of government, and there are continuing appropriations that are being paid and they're being paid because the Attorney General got a court order in Cook County making sure they got paid. Same with judicial operations as provided by the *Jorgensen* decision and the same as operations required under consent decrees.

It is not a choice between dissolve the injunction and shut down the entire state government, okay, that is an entirely false choice. Certain things are appropriately paid when there are not enacted appropriations legislation -- or annual appropriations legislation I should say, continuing appropriations, things required by federal law, federal mandates, consent decrees, court orders along those lines -- but the fact remains that your appropriations clause still mean something. The appropriations clause still must mean something. And the General Assembly has the duty, the Constitutional obligation to appropriate funds that allows a transparency that allows the public to see what

public funds are being used for. That is the reason for the appropriations clause, the reason the Federal Constitution has an appropriations clause. Justice Story, in his Constitutional commentaries in 1833, described that that was the purpose of the appropriations clause.

The General Assembly has not sanctioned this Court's order by enacting Article 996 of the stop gap budget. First of all, the stop gap budget is expired, okay. It largely ended. It largely went through the end of last year, okay. While there are some full-year appropriations there, that is not an ongoing concern.

But Article 996 that said that no provision shall supersede this Court's order, that was not a legislative enactment of an appropriation. It proves a point that the legislature and the executive branch used this Court's order as an excuse not to actually enact valid appropriations that are publicly transparent and that comply with the Constitution. Mr. Yokich held up the budget, 800 pages. Article 996 is on one page, that's true. The other 799 pages contained actual appropriations, but the General Assembly and the executive didn't have to do their jobs in this important case because of the Court's order. That's not -- that

doesn't justify continuation of the Court order when there's no legal basis to do so. It's just a sign of the problem that is created by the Court order.

The General Assembly certainly knows how to enact an appropriation. It has done so for years and years and years and has continually done so until the last 19 months when this process has essentially ground to a halt. This is not, though, the Court's job to unstick the other branches. In fact, the branches remain stuck 19 months later after the Court entered its order. It's not the Court's job to unstick these branches and usurp the appropriation power.

Mr. Yokich again argues, as I suggested that he would, that *State vs. AFSCME* is distinguishable, a Supreme Court case upon which we rely is distinguishable. But his remarks ignore, first of all, the basic general rule that the appropriation clause requires an enacted appropriation for the payment of state funds. That is -- and I went through in my opening remarks in a detailed discussion of specific paragraphs explaining the Court's twin bases; it was not just the section 21 of the Public Labor Relations Act decision, it was also an appropriations clause decision. And the Court made clear to specify that the section 21

R137

of the Public Labor Relations Act was consistent with or reflected the appropriations clause, but the appropriations clause first and foremost -- that's the Court's language -- first and foremost reflected the public policy of the state, that you need an appropriation before you can pay -- you can authorize the expenditure of state funds.

THE COURT: What does the conclusion of paragraph 56 say?

MR. LEGNER: Sure.

Paragraph 56, Appropriation. Paragraph 56, so the -- How much of the paragraph are you asking about -- I'm sorry -- the whole thing?

THE COURT: Yes, please.

MR. LEGNER: Okay. Sure.

Okay. So paragraph 56, for all the reasons discussed above, we hold that section 21 of the Public Labor Relations Act, when considered in light of the appropriations clause, evinces a well-defined and public -- a dominant public policy under which multiyear collective bargaining agreements are subject to the appropriation power of the State, a power which may only be exercised by the General Assembly.

THE COURT: That's all right.

R138

MR. LEGNER: That language, again, certainly discusses section 21 of the Public Labor Relations Act to be sure, but it does so in light of the appropriations clause. And before that paragraph the Court explained that the appropriations clause is the primary basis. In paragraph two, it said because the appropriations clause and section 21 -- not or -- he said both. That was paragraph two of that same decision.

Additionally, the notion that the tolling agreements don't fall within this because they're not multiyear collective bargaining agreements ignores the reality that those tolling agreements are meant to continue in effect the terms of multiyear collective bargaining agreements. And *AFSCME vs. State* unequivocally states that those terms are subject to appropriation, include this "subject to appropriation" language. That term, just like all the others, are continued on with the tolling agreement.

So even if this Court were to find that *AFSCME vs. State* did not rest on -- independently rest on the appropriations clause, even if section 21 of the Public Labor Relations Act was irrelevant to the analysis, it still would be equally applicable here because those

tolling agreements by their expressed terms carry on the terms of the CBAs which include the appropriations power and the appropriations limitation or "subject to appropriations" language that unquestionably applies to multiyear collective bargaining agreements.

Mr. Yokich also discusses the fact that there is no -- it is unclear whether there are sufficient appropriations, but again that is beside the point. There are sufficient appropriations to pay certain personal services. They'll get paid. The appropriations process works as such: When the agencies, the directors of the agencies -- every two weeks somebody in each agency's office certifies to a controller a payroll, and they say, hey, these payments can be made pursuant to this authority. They identify the spending authority as well as the object, what it's for -- personal services, normal payroll, contract payroll, et cetera -- the directors of those agencies know -- they know if they have appropriations and continue to pay for personal services, and that's fine and those will be paid. Those get paid regardless of this Court's order. That's a side issue. That's not a reason to dissolve the injunction or not to not dissolve the injunction, and it's not a reason to find *AFSCME vs.*

R140

State somehow inapplicable here.

Which gets to the point and the discussion of the essential employees. A few points on this. Mr. Yokich cited some other examples of other states in dealing with essential employees when they're dealing with a shutdown. That admission speaks volumes. Other states actually deal with shutdowns when they don't have a budget as the Constitutional process requires them to. The states go through that process. They realize we can't just order -- the court, the judiciary just can't take over the entire state payroll in place of the executive and legislative branch fulfilling their Constitutional obligations.

Mr. Yokich asked for, well, what's the -- what would be the support, what is the textual support of paying or allowing essential employees to come to work in the absence of enacted appropriations legislation. Well, again, you remember in my final and from my opening talk, employees are being paid pursuant to continuing appropriations, other employees are being paid pursuant to consent decrees, and some are being paid pursuant to enacted annual appropriations.

For those that are not under any of those baskets, there are some who are performing essential

R141

services. Now I've not stood up here and said that those who are performing essential services may come to work without appropriations and be paid only Federal minimum wage. I have not made that argument. I have not injected the FLSA into this at all. That's not the position that I'm advancing to.

But the point is, there is guidance on how to determine essential employees -- oh, and I meant the text, the same as in Minnesota, this order that Mr. Yokich has said -- in Minnesota, they were faced with a shutdown and they were dealing with how do we continue essential services, what's the authority. And they found in their Constitution the requirements in other Constitutional provisions regarding the executive officers, the duty to provide for certain core functions of the State. That's the same -- the Illinois Constitution, the provisions are essentially the same. That is the textual support, that there are inherent in the executive article of the Illinois Constitution certain core functions that must continue. Those, read together with the appropriations clause, suggest that in the absence of an appropriation narrowly construes -- so as not to pre-empt the appropriations clause more than is necessary -- narrowly construes certain essential

functions can continue.

We provided guidance in 2015 -- and that's attached and Mr. Yokich referred to it -- as to how you determine essential employees. That guidances comes from the Minnesota case and that comes from the federal guidance that the federal government sends around because they need to go undertake a similar analysis when they have a government shutdown -- and they do, they do have government shutdown, short lived, but they undertake this same analysis.

Now, again, we are not asking that this injunction be dissolved right now today. We're asking the Court to dissolve it effective February 28. This would give, you know, the agencies time to identify -- this gives the agency time to identify who is paid under a continuing appropriation, who is paid under consent decree. Again, those are covered by the Cook County litigation, who is paid by an actual enacted appropriation that's in effect right now and who would be deemed essential. It gives them time to figure that out and that's built in to our request unquestionably.

But again, insofar as Mr. Yokich requested for an evidentiary hearing regarding essential employees, Your Honor, that's not before this Court. I'd like to

R143

return you -- the complaint frames the issues before this Court. The preliminary injunction motions frames the issues before this Court, and that is an impairment of contract theory -- not for all employees, but for the members of the plaintiff unions, okay. And there's certainly plenty of state employees who are not members of the plaintiff's unions that would not be subject to the scope of this complaint, okay. But there is no affirmative request asking this Court for a determination of, well, what essential functions may continue, a declaration as to what essential functions may continue in the event of a lack of enacted appropriations legislation. That may be an appropriate cause of action, but that's just not before you right now. And that does not provide an independent basis for refusing to deny the injunction nor does that require us to have an evidentiary hearing right now. Again, the Court should dissolve the injunction because there's no longer any legal basis for it. *AFSCME vs. State* controls that and the general principle, the general Constitutional principle that you need an appropriation pursuant to the appropriations clause to justify the expenditure of state money. The essential employee issue is not before the Court affirmatively right now --

it's not properly before the Court. But regardless, dissolving it effective February 28th allows the parties to make that determination. And if in that process the parties need to go in to court and have the Court help them make that determination, they can do that. That's fine. But saying -- but the same time saying that, well, there's been no determination or principles made -- no determination made as to who essential employees are at this time, that doesn't justify keeping an injunction in place. Failure to comply, failure to anticipate, failure to do a party's job does not justify the violation of the Illinois Constitution.

One last thing I will address, one last point. Mr. Yokich suggested that this Court needs to square a conflict between the appropriations clause and the impairment of contracts clause, but that's not true. That's not true. *AFSCME vs. State* essentially did that. *AFSCME vs. State* says, shows that the general rule is that a contract requires an appropriation. A contract requires an appropriation. You read them together in that way. The -- I'm sorry -- and there's nothing to suggest that that can't happen and that should not happen here. That's how you read those Constitutional provisions. The Courts should read Constitutional

R145

provisions together to harmonize them.

It is not harmonizing those two Constitutional provisions to say that, oh, the appropriations clause doesn't matter as long as parties have agreed to a contract. That destroys the entire force and effect of the appropriations clause. The appropriations clause does matter, as the Supreme Court in *AFSCME vs. State* reaffirmed, as have countless cases before that time.

For these reasons, Your Honor, I'd just like to reaffirm and point out one last time that we are not asking -- the People are not asking the State -- or that this Court shut the state down. And in fact, the government will not completely shut down upon dissolution of this order. Things will be paid pursuant to this Cook County order. Things will continue. Essential employees would be allowed to go to work. And more importantly, the General Assembly and the Governor can get together and work out and enact appropriations legislation.

Again, Your Honor, we ask that you dissolve the injunction and return the appropriations power to the Constitutionally mandated agencies -- to the legislature, the General Assembly -- to enact appropriations legislation and send that to the

R146

Governor.

Thank you very much for your time.

THE COURT: Thank you, Mr. Legner.

Any further responses?

MR. YOKICH: Just a couple things, Your Honor. It's painfully evident that the Attorney General can't spell out what would be affected by dissolution of this Court's order. We don't know what pots of money affect what pots of essential services and what employees. And there's no guidance given to that in the briefs of the Attorney General in terms of Corrections, in terms of the Department of Human Services, in terms of the Secretary of State, in terms of all of the fifty thousand people whose livelihoods are dependent upon public appropriations.

And that absence of guidance to this Court speaks volumes because it's essentially saying, hey, let's put this artificial deadline on things and let's put school buses at the end of each street and head them towards each other and hope that somebody comes to their senses at some point and some budget gets passed.

And in my opening remarks I meant to point out that if a budget got passed for 2017 it would be in effect for four months, we'd be right back at it in four

months after this, and there's no guarantee that anything that we do here today will affect those negotiations either. So we could be in for two budget shutdowns just like they had in the federal government in 1995 and '96. In 1995 and '96 they had a six-day shutdown. Then they had a three week shutdown. In Minnesota, they had a three-week shutdown.

In California, they had budget crises that went on for months and months and months where people didn't get paid. All of those things are horrible things to imagine for state employees and their families and for taxpayers who paid their taxes and don't get the services that they're supposed to get for those services. And so it's very much our position that if the Court rejects the legal arguments that we've made, then before it should touch that injunction it's got to sit down and it's got to figure out: Here's the payroll of people that are getting paid that are subject -- that are state employees, here are the ones that are essential, here are the ones that are subject to continuing appropriations, here are the ones that might be paid out of other pots of monies. How does that all fit together so that employees and their families know what's going to happen and that the residents of this

state who pay the taxes know, do I need to go get my driver's license right away because I'm going away on March 15th, or can I wait until I get word that the license is going to be shut down, or if I mailed it in am I going to get it back, okay. Those are all sort of basic things that have to be resolved before this Court can do anything.

On the issue of the law, the Attorney General's brief is silent on the issue of where the authority of anybody to come to work without any guarantee of getting paid might come from. And the way they read *State vs. AFSCME* is that you can work, work, work, work, work, and if the money doesn't show up through the General Assembly, you're not going to get paid. And we have a whole Amendment about that, it's called the Thirteenth Amendment. You can't require people to come to work unless you can do something about their payment. And there's nothing cited in their brief. There's nothing put before the Court. There's an allusion to Minnesota. Well, you know, our Constitution has some differences from the Constitution in Minnesota and our collective bargaining law has some differences. That's not something that the Court should undertake at this point this afternoon to resolve in order to determine whether

R149

to dissolve an injunction.

As I explained -- and I think this is my last point -- you know, the Court in *State vs. AFSCME* went back and forth between section 21, the appropriations clause, but because it had section 21 it never had to get to the issue of other state contracts. And they were very careful to spell that out at the very end of their decision. They said the dissent is talking about other cases, not this one, because this case is controlled by section 21.

Well, the case you have in front of us doesn't deal with the multiyear collective bargaining agreement. Multiyear collective bargaining agreements are a special type of thing because they commit the employer to spend money during the out years of the contract. Tolling agreement is a much more limited doctrine.

And in addition to that, in *State vs. AFSCME* there was a factual finding based upon a complete record that the money wasn't there, and we're nowhere close to that here. So we don't think there's any basis to dissolve the injunction. We think we have good legal arguments that the General Assembly knew what it was doing when it passed Section 996 and said we're not meaning to cut off anything that's going on right now.

R150

And we think that we have a good basis to argue that this case still has vitality even after *State vs. AFSCME*, so we think the injunction should stay in place.

The whole idea that the Attorney General is entitled to jump start the political process but the Court has no role to play we think mixes up the job descriptions of the relevant Constitutional remedies here and for that reason we ask you to deny the motion.

THE COURT: Mr. Yokich, would you explain to me why section 21 should be applied differently in this case than it was in the Supreme Court case?

MR. YOKICH: Well, there's two reasons. One reason is that there's been no showing here, a factual showing of the factual insufficiency, and so it can't apply it without having a trial without having evidence.

The other thing is, is that section 21 is designed to deal with what happens when you make a four-year contract and there are raises in years two and three and four and can you get those raises in two and three and four. The tolling agreement just kept the status quo. Nobody's gotten any raises. And, in fact, nobody's even gotten any raises due to seniority owing to the State's interpretation of the tolling agreement. And so what the tolling agreement says is that we'll

keep the status quo, which is what the General Assembly sanctioned when it passed Section 996, which is let's keep the spigot going exactly like it's been going. And so you don't have the same issue under the tolling agreement that you would under say a four-year contract.

THE COURT: What exactly do we have now? What does the union have by way of an agreement with the State? What would you -- you said it's carryover based on the tolling agreement, but what is that?

MR. YOKICH: So I don't have everything that I'd like to show you if I was going to argue that point, Your Honor, because you know that's -- that might be next week's case, actually.

But we had a contract that lasted from 2015 through -- from 2012 through 2015. And it set numerous conditions of employment, some that were you know when you get called to work and what hours you work, things of that nature, and other things like your wages and benefits.

What the tolling agreement provides is that everything that you had on June 30th, 2015 you have until there's been a resolution of the negotiations, either by contract or by a definitive ruling that the negotiations can't go any further, all right. And so

R157

what the tolling agreement did was keep in effect what existed on that day as the parties continued to negotiate. But it in no way resembles a contract that said, well, in 2014 you're going to get this raise and 2015 you're going to get that raise and, in 2016, you're going to get that raise plus some more.

In fact, so if you look at -- I have a copy of the verified complaint with me, Your Honor, and it has in the back of it an example of the tolling agreement. And this isn't the one that the parties are subject to now -- can I approach?

THE COURT: Yes.

MR. YOKICH: This isn't the one that they are subject to as we sit here because they executed a number of agreements after that and after the complaint was filed. But it's the very last clause of the agreement that says that the contract rights that you had on June 30th are the ones that you'll have as we go forward and negotiate some more. But the contract didn't have any raises in it after June 30th, and it didn't have a general wage increase of two percent like it did in 2013, or a two percent like it did in 2014, and so it just keeps the parties in the status quo.

THE COURT: Mr. Legner, what do you think about

R153

that point that section 21 doesn't guide me in this determination?

MR. LEGNER: I think two points. One, I think that *AFSCME vs. State* rests on independent grounds from section 21 so you don't need to get there. But insofar as you want to rest on the part of that decision that did apply, section 21, it does apply because the same language Mr. Yokich just pointed out, the same entitlements and contractual rights that exist on June 30th, 2015 shall remain in force and effect.

AFSCME vs. State explicitly said that those contractual rights you have are subject to appropriation. And in that way section 21 unquestionably governs and makes those multiyear collective bargaining agreements and those rights under those agreements subject to appropriation. Those same rights are carried forward by the tolling agreement.

It would be -- it makes no legal sense for the General Assembly to essentially sanction or allow year-by-year tolling agreements to get around the appropriation provision that it explicitly put in the Public Labor Relations Act. There's no sound reason for doing that. And I know Mr. Yokich referenced sometimes they have for different steps and different raises as

R154

the years go on, and that's fine. But the "subject to appropriation" language is not limited to raises or different steps. It's limited to payment, any rights at all under the agreement.

So insofar as the tolling agreement continues the rights that parties have and the tolling agreement is the source of the rights the parties have, the source of those rights is the collective bargaining agreements and those are governed by section 21 so it gets us to the same place. The Court needn't get into section 21 because it was independent of appropriations clause rationale, but if it does, the tolling agreement just continues on the section 21 requirement that comes from the multiyear collective bargaining agreement.

MR. YOKICH: So I have to respectfully disagree with what Mr. Legner says about the scope of section 21.

First of all, it only applies to portions of contracts that are subject to appropriations. So if a contract were to say your work week is Monday through Friday, I don't think that that means that that is something that you would have to renew every year or that that would be subject to section 21 because the General Assembly said, well, we're not appropriating money. Therefore, you don't get the same work week you

R155

would meet.

Secondly, section 21 is designed to deal with a specific issue, and that was having a contract that lasted more than a year. Because before the Labor Relations Act was enacted, in a case called *Leganza vs. City of Round Lake Beach*, the Second District held that if you didn't have the appropriation for the upcoming year at the time you made the contract you could not be bound by the contract. And so the legislature put section 21 into the Act to make it clear that you could have a contract that lasted longer than one year.

Tolling agreement doesn't say that it's a multiyear contract and it's wholly different than a contract that lasts, by its terms, from 2012 to 2015, with a raise every year in between, and that's why it's not subject to section 21.

THE COURT: You're here because of a change in circumstances and the change is the Supreme Court case we're talking about. Is there any other change that you suggest that would say -- that would bear upon the merits of the claim that there is no appropriation -- there's no money for the appropriation of application money to the employees.

MR. LEGNER: Yeah. So in terms of the legal

R154

argument as to the requirement of an appropriation of money to the employees, yeah, the change is the Supreme Court case. No other circumstances affecting the legal validity of the impairment of contracts theory have happened.

Now we certainly discuss and bring up other facts such as that this has gone on for 19 months and the legislature isn't doing anything and essentially acquiescing this Court's order instead of doing appropriations as being relevant communication that they're ceding their appropriation authority to the Court. But in terms of the legal argument itself, the Supreme Court's decision in AFSCME is the changed circumstance.

THE COURT: Final word?

MR. MURASHKO: Your Honor, do you mind if I speak to that point real quick?

THE COURT: Go right ahead.

MR. MURASHKO: Thank you. So this is the most puzzling part of the dispute from my perspective is because Mr. Yokich several times suggested there is appropriations on the table, right. In June of 2016, the General Assembly passed the stop gap budget, what's referred to as the stop gap budget. The Governor signed

it. There's a section in that budget, Section 966, which says that it does not displace, it does not supersede Court orders.

So presumably Mr. Legner would accept -- the Attorney General would accept that the General Assembly can say verbatim, we are hereby appropriating whatever is necessary to pay the July 2015 Court order. That's what effectively they did. They didn't use those words, but you don't have any requirement in the Constitution to use some magic language by which the General Assembly can, in the words of Mr. Legner, approve or sanction this Court's order. And I think you know that that was the intent of the legislature because you have the majority leader, Barbara Flynn Currie, on the floor of the House to the question about whether there's any appropriations in this act to pay state employees. She says, employees will be paid pursuant to Court orders.

So you have the General Assembly acting against the backdrop of this Court's order, and what they're doing is they're writing that order and all the other Court orders into the stop gap appropriations. So I'm not sure why it's prohibitive or telling to talk about no appropriations for this exercise. I think you have a bill from the General Assembly which the Governor signed

and that effectively creates a continuing appropriation for pay for state employees. And there's really no requirement that you have to have some specific appropriation, you just have to have an appropriation, and we would argue that you have that in that bill from the General Assembly.

MR. LEGNER: Your Honor, I would just like to disagree, as a profound matter of Illinois Constitutional law, that that was an effective continuing appropriation or that it was in any way in a proper appropriations bill, given the requirements that appropriations bills have under the Illinois Constitution.

But regardless, that stop gap budget that essentially funded operations through December 31st --

THE COURT: What requirements does the Constitution impose on the appropriations power?

MR. LEGNER: So the Constitution requires the General Assembly to make a clear and unequivocal appropriation of money. It may do so -- and there's a case, an Illinois Supreme Court case, *Graham vs. Illinois State Toll Highway Authority* -- State toll way authority (sic) -- the toll ways -- that explain that under the appropriations clause of the 1970 Constitution

R-159

continuing appropriations are authorized, but you need to make clear, you need to say the money for this purpose shall be continually appropriated, and that's done in a separate statute. That's not done as an addendum to an appropriations bill that just adopts or says we're not overriding a Court order. There has to be some kind of affirmative legislative enactment that appropriates funds. To do it as a continuing appropriation, as a continual appropriation statute, they're placed differently in the Illinois Code, and they say -- they specifically say funds shall be continually appropriated.

THE COURT: Well, what is -- what then is the legislative intent in that section?

MR. LEGNER: The legislative intent of that section was not to have to negotiate over state pay.

THE COURT: Is that what it says? I thought it said that --

MR. LEGNER: Yeah, that was --

THE COURT: -- that Court orders have to be obeyed and people get paid.

MR. LEGNER: Yeah, orders have --

THE COURT: But what I don't understand is how could the Governor and the General Assembly proceed with

R160

a budget that doesn't cover employees being paid.

MR. LEGNER: That's why we're here. They did.

THE COURT: But they did. How did they do that? They did it by adopting the Court order as their way of proceeding. I think that's clearly the intent of the legislature here, signed by the Governor, that they intended that this continue on the status it is.

MR. LEGNER: They -- Okay. So Your Honor, just a couple points to that.

First, the point of an appropriation is to specify sums for purposes to allow for transparency. Adopting a Court order does not provide that transparency. Additionally, all that section is is a statement that we will continue to comply with the Court order. We would acknowledge that we would continue to be bound by it and we intend to comply with it as long as it functions. It does not, though, take the place of or substitute for their actual appropriation authority or requirement.

THE COURT: Well, isn't spending authority, what you're talking about, isn't that a separate matter from the appropriation --

MR. LEGNER: Well --

THE COURT: -- because you're talking about

R-161

spending authority.

MR. LEGNER: Uh-huh.

THE COURT: -- that there's no declaration of what -- in the budget there's no declaration of what people are authorized to use the money for.

Well, it doesn't happen there. Spending authority is part of the basis of organizing government based upon the availability of general revenue.

MR. LEGNER: Sure.

THE COURT: And in this budget bill the general revenue per se was said to not apply to personal services. So the only place in that budget that covered salaries was on the basis of this Court order we're talking about --

MR. LEGNER: That's true.

THE COURT: And I think that's a distinctly different situation than what the Supreme Court dealt with in that multiyear contract where a factual determination was made that there simply wasn't enough money.

MR. LEGNER: Well, Your Honor, I respectfully disagree. I would point out that the stop gap budget is over. There were certainly some appropriate year-long appropriations in it and there may be some

R.162

appropriations that were not entirely spent down, that's fine. And all of that as far as that provided appropriation authority or power or appropriation authority in the Court's order isn't necessary anyway.

THE COURT: What I --

MR. LEGNER: Then the Court's order -- if there is to the extent a stop gap budget which basically provided, in principle, for operations through December 31st -- with some exceptions for year-long to be sure, that is lightly done, though, right? It doesn't say that -- if the point is and that -- if the Court -- if the point is that that was an adequate appropriation, whether in the Court's order is not necessary anyway and should be dissolved because the case is moot because there's an appropriation.

But again, Your Honor, I just want to highlight -- and I understand your basis for disagreement -- I just want to highlight that the point of the appropriations clause, after the General Assembly does its job and sends the bill to the Governor, is to have a publicly transparent assignment of money to purposes and functions and Article 996 does not do that. And since this injunction order has been in place, that's been three billion dollars of unappropriated money, otherwise

R-103

unappropriated money that has not gone through this public transparency process that is at the heart of the appropriations clause and has been so since 1818.

MR. YOKICH: I'd like to respond to some of those statements, Your Honor. One thing is is that, number one, it's absolutely clear that it's wrong to say that the stop gap budget is expired. There are three provisions at the end of the budget: Article 996, Article 997 and Article 998. 996, you know about. That's the one that says that any appropriation authority shall not supersede any order of the Court for Fiscal Years 2016 or 2017.

So the General Assembly, they knew what they were talking about, 2016 and 2017. Article 997 says appropriations in Articles 174 through 223 are for costs incurred through December 1 of 2016. And then Article 998 says that appropriations in Articles one through 73 are for Fiscal Year 2016. And appropriations in Article 75 through 225 are for Fiscal Year 2017.

Well, if you look through the budget and you start at Article 75 and go through Article 225, there are 500 pages of appropriations in those articles that are good for the entire Fiscal Year '17. So that's one point in terms of the expiration.

R-104

Second point is, is that Mr. Legner doesn't cite anything in terms of the Illinois Constitution but gets more specific what an appropriation must look like. And in fact, there have been years where in major state departments the General Assembly has said, State Department of Human Services, you get 400 million to operate your centers for the mentally ill. That's all they said. And that's not a lot of transparency. That's no more or less transparent than a Court order that says keep doing what you're doing.

And in fact, as Your Honor knows, if you were to go on the website of the Comptroller today, you could find a thousand-page document that would go agency by agency and show the expenditures line by line by line. And in fact, as Your Honor knows from the Troopers' case, what the Comptroller did in reaction to the Court's order is it created a budget. It broke out appropriations by different lines in the budget the way they are normally broken out if there is action by the General Assembly. And anybody who's interested in knowing what was spent where can follow those appropriations in that transparency very well.

So both in terms of time and the purpose of an appropriation bill, the purpose of an appropriation bill

R. 1105

is for the General Assembly and the Governor to put their imprimatur on expenditure money, and that's what they did in 996 and that's why this Court's order should remain in effect.

MR. LEGNER: Your Honor, for a Court order to act as a legislative appropriation is a rewriting of the separation of powers and a duty assigned by the Illinois Constitution. The General Assembly was not appropriating money or undertaking its appropriations duty when it said the Court order remains in force and effect. It was just acknowledging that there was a Court order so we don't have to deal with this.

Normally, the General Assembly, the legislature would -- they would discuss, they would fight, they would compromise and they would come up with a budget that would include -- and this is a significant part of the state budget -- they would include personal services within that. They avoided all of those obligations by simply relying on the Court's order. But to suggest that this is a legislative -- or it's an act essentially using this Court's order as a continuing appropriation forever -- this is a preliminary injunction. This is a temporary emergency relief. It's not a basis of a legislative appropriation.

R-164

THE COURT: Well, that probably needs clarification. I think at this time it is correct to refer to the order of July 2015 as a preliminary injunction, not a temporary restraining order.

The Appellate Court wanted compliance with determining the further status of the TRO because they believed that it had to have a fixed period of time. So this is why we are dealing with a preliminary injunction, but go ahead. I just wanted to clarify that.

MR. LEGNER: I said my piece, so.

THE COURT: All right. I can guess the issue presented is whether or not there is no likelihood of success in the causes of action alleged to be the basis of this preliminary injunction resting on the AFSCME and State case saying that since there's no specific appropriation there is no basis to honor the contracts clause.

I think this case is different than the one before the Supreme Court. It is 19 months later, things have not moved. You don't want to create the situation discussed about the game of Chicken.

Because of the issue about the application of section 21 and the issues of the Tolling Agreement not

R-147

amounting to a multiyear collective bargaining agreement, a finding very stressed by the Supreme Court, the multiyear nature of the agreement, I don't think that in the light of the balancing of the equities that it is so clear that there is no merit of likelihood of success.

Balancing the equities here clearly has to be in favor of paying the employees. If there's some factual issue that needs to be raised regarding about whether or not there is, in fact, appropriation for these obligations, then we would have I guess a similar trial as they did in the Supreme Court case. But I guess that remains open if you want to pursue that line of attack on the preliminary injunction.

I'm not going to dissolve the preliminary injunction. I would ask, if there would be some suggestion about terms and modifying other provisions, is there any conditions that you wish to have leave to assert in further pleadings? In other words, do you see that there is any need for -- do any of the parties see a need for further injunctive relief aside than what's been provided? Because all the parties are here, in other words, nobody else wants another remedy.

MR. LEGNER: Right.

R-168

THE COURT: All right. Well, that stated, the motion to dissolve is denied.

MR. LEGNER: So, Your Honor, just to be clear in writing the order, it can reflect that the People's petition for leave to intervene was granted?

THE COURT: Yes.

MR. LEGNER: And that the motion to dissolve the preliminary injunction was denied?

THE COURT: Yes.

MR. LEGNER: Thank you.

THE COURT: All right. Thank you, gentlemen.

MR. LEGNER: Your Honor, before I complete -- if I may, I would just ask that you stay the decision to deny the dissolution of the injunction.

THE COURT: All right.

MR. YOKICH: I don't know what that would mean, Your Honor.

MR. SKARIN: Yes, Your Honor. I'm not sure what that would mean at all.

THE COURT: I think that's another way of saying it's dissolved.

MR. SKARIN: I think that's correct.

MR. LEGNER: Pending appeal.

THE COURT: Thank you, gentlemen. Very nicely

R-169

argued. Will you be drawing up a written document for our records? Will you be doing an order?

MR. LEGNER: Yeah, I was going to draft an order reflecting these things right now --

THE COURT: Yes, let's enter it now. Let's enter it right now.

(At which time the proceedings were concluded.)

R-170

STATE OF ILLINOIS)
TWENTIETH JUDICIAL CIRCUIT) SS.
COUNTY OF ST. CLAIR)

I, Monica L. Schrader, IL CSR #084-004267, an Official Court Reporter for the Circuit Court of St. Clair County, Twentieth Judicial Circuit of Illinois, reported the proceedings held in the above-entitled cause and transcribed the same, which I hereby certify to be a true and accurate transcript of the proceedings held before the Honorable Robert LeChien, Circuit Judge, on February 16, 2017.

Monica L. Schrader, CSR
Official Court Reporter

Dated this 7th day
of March, 2017.

R-171