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
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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,

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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

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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.

LISA MADIGAN, #99000
Attorney General of Illinois

Respectfully Submitted,

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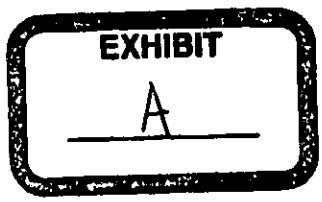
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

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