

**IN THE CIRCUIT COURT OF SANGAMON COUNTY, ILLINOIS  
SEVENTH JUDICIAL CIRCUIT**

<b>Ronald Gidwitz, Gregory Baise and the</b>	)	
<b>Illinois Coalition for Jobs, Growth and</b>	)	
<b>Prosperity, a not-for-profit corporation,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>No. 2007 MR _____</b>
	)	
<b>v.</b>	)	<b>Honorable _____</b>
	)	
<b>BARRY S. MARAM, in his official capacity</b>	)	
<b>as Director, Illinois Department of</b>	)	
<b>Healthcare and Family Services; and</b>	)	
<b>DANIEL W. HYNES, in his official capacity</b>	)	
<b>as Comptroller of the State of Illinois,</b>	)	
	)	
<b>Defendants.</b>	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Ronald Gidwitz, Gregory Baise and the Illinois Coalition for Jobs, Growth and Prosperity, an Illinois not-for-profit corporation (collectively, “Plaintiffs”), by their attorneys Ungaretti & Harris LLP and for their Complaint against Defendants Barry S. Maram, in his official capacity as Director of the Illinois Department of Healthcare and Family Services, and Daniel W. Hynes, in his official capacity as Comptroller of the State of Illinois, state as follows:

**INTRODUCTION**

1. This action seeks declaratory and injunctive relief to stop violations of the Illinois Constitution and of Illinois’ statutes, including the Illinois Administrative Procedure Act (“APA”). Governor Rod Blagojevich, through his appointed Director of the Department of Healthcare and Family Services, has ignored and violated Illinois’ Constitution and laws by implementing, without statutory authority or appropriation, an “emergency” rule for a health-care program. The Illinois General Assembly previously rejected the Governor’s attempts to

authorize and fund, via a multi-billion dollar tax, this health-care program and the Joint Committee on Administrative Rules (“JCAR”) previously has rejected and suspended the “emergency” rule. Nevertheless, in contravention of the Illinois Constitution and state law, the Director has begun to implement the Governor’s program.

2. Most obviously, the Director’s actions are in disregard of the separation of powers critical to the Illinois Constitution. The General Assembly has not funded the program. The Governor and Director are implementing it by executive fiat.

3. As of December 1, 2007, enrollees into this new program will seek medical assistance with the expectation of receiving coverage from the State. That coverage will not be forthcoming. Medical providers will be left with the uncertainty of not knowing whether they will be compensated for their services.

4. The Director’s promulgation of this emergency rule violates several provisions of the Illinois Constitution because the Director exceeded his authority under the Illinois Public Aid Code and because, in any event, any claimed statutory delegation of authority to the Director would be unconstitutional. Moreover, the Director’s promulgation of an “emergency” rule regarding an expanded medical assistance program violated the APA because the standards for emergency rulemaking were not met and because the Director’s enforcement of the emergency rule violates the APA because JCAR has suspended this emergency rule, rendering it legally inoperative.

5. Plaintiffs seek a declaration that the Director’s promulgation and continued enforcement of the emergency rule violates Illinois’ Constitution and statutes, including the APA. Plaintiffs also seek entry of an order enjoining the Director from enforcing or

implementing this rule, and enjoining Comptroller Hynes from ordering payments from the State Treasury related to this new expanded medical assistance program.

## **THE PARTIES**

### **Plaintiffs**

6. Plaintiffs Ronald Gidwitz and Gregory Baise are the Chairman and Treasurer, respectively, of the Illinois Coalition for Jobs, Growth and Prosperity, as well as citizens, residents and taxpayers of the State of Illinois.

7. Plaintiffs the Illinois Coalition for Jobs, Growth and Prosperity is a 501(c)(4) not for profit corporation with members (business entities, associations and individuals) who are taxpayers and who are deeply interested in sound fiscal policy, constitutional budget processes and about the burden of excessive state debt on Illinois' economy and its adverse impact on the creation and growth of business. It represents its members before state government decisionmakers in Springfield in efforts to realize their objectives.

### **Defendants**

8. Defendant Barry S. Maram is sued in his official capacity as the Director of the Illinois Department of Healthcare and Family Services ("IDHFS"). IDHFS receives money for its medical assistance programs through appropriations of funds, including from the General Revenue Fund in the State Treasury.

9. Defendant Daniel W. Hynes is sued in his official capacity as the Comptroller of the State of Illinois. Pursuant to Article V, §17 of the Illinois Constitution and the State Comptroller Act, 15 ILCS 405, Comptroller Hynes is authorized to order payments into and out of funds held by the State Treasurer.

## **JURISDICTION AND VENUE**

10. This Court has jurisdiction over the subject matter pursuant to Article VI, §9 of the Illinois Constitution. This Court has personal jurisdiction over Defendants pursuant to the Code of Civil Procedure, 735 ILCS 2-209(a)(1), (b)(2), and (c).

11. Venue is proper under Sections 2-101 and 2-103 of the Code of Civil Procedure, 735 ILCS 5/2-101 and 2-103, because the acts from which this cause of action arose, or a substantial part thereof, took place in the County of Sangamon and because Defendants' principal offices are located in the County of Sangamon, State of Illinois.

## **ALLEGATIONS COMMON TO ALL COUNTS**

### *Relevant Provisions of the Illinois Constitution*

12. Article II, the Powers of the State article of the Illinois Constitution provides:

#### **Separation of Powers**

Article II, §1:

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

13. Article IV, the Legislature article of the Illinois Constitution provides:

#### **Legislature – Power and Structure**

Article IV, §1:

The legislative power is vested in a General Assembly consisting of a Senate and a House of Representatives, elected by the electors from 59 Legislative Districts and 118 Representative Districts.

and

#### **Passage of Bills**

Article IV, §8 states:

- (a) The enacting clause of the laws of this State shall be: “Be it enacted by the People of the State of Illinois, represented in the General Assembly.”
- (b) The General Assembly shall enact laws only by bill. Bills may originate in either house, but may be amended or rejected by the other.
- (c) No bill shall become a law without the concurrence of a majority of the members elected to each house. Final passage of a bill shall be by record vote. In the Senate at the request of two members, and in the House at the request of five members, a record vote may be taken on any other occasion. A record vote is a vote by yeas and nays entered on the journal.
- (d) A bill shall be read by title on three different days in each house. A bill and each amendment thereto shall be reproduced and placed on the desk of each member before final passage.  
 Bills, except bills for appropriations and for the codifications, revision or rearrangement of laws, shall be confined to one subject. Appropriations bills shall be limited to the subject of appropriations.  
 A bill expressly amending a law shall set forth completely the sections amended.  
 The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met.

14. Article V, the Executive article of the Illinois Constitution provides:

**Officers**

Article V, §1, provides, in relevant part, that:

The Executive Branch shall include a Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller and Treasurer elected by the electors of the State.

and

**Governor – Supreme Executive Power**

Article V, §8:

The Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws.

15. Article VI, the Judiciary article of the Illinois Constitution provides:

**Circuit Courts - Jurisdiction**

Article IX, §9:

Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve

or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

16. Article VIII, the Finance article of the Illinois Constitution provides:

**General Provisions**

Article VIII, §1(b):

The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.

and

**State Finance**

Article VIII, §2(b) provides, in relevant part, that:

The General Assembly by law shall make appropriations for all expenditures of public funds by the State.

17. Article IX, the Revenue article of the Illinois Constitution provides:

**State Revenue Power**

Article IX, §1 provides, in relevant part, that:

The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution.

***The Governor Announces His Illinois Covered Initiative And His Plan To Fund It And  
The Illinois General Assembly Unanimously Rejects That Plan***

18. On March 7, 2007, before a joint session of the Illinois House and Senate, Governor Rod Blagojevich delivered a combined State of the State and Budget Address. During the speech, the Governor discussed a broad expansion of the State-sponsored health care programs, known as the “Illinois Covered” Initiative.

19. The “Illinois Covered” Initiative included an expansion of the “FamilyCare” program (the “FamilyCare Expansion”), which provides medical assistance to parents and caretaker relatives with income below a certain income level. The FamilyCare Expansion would more than double the size of the current program: where FamilyCare had covered parents and caretaker relatives with income levels up to 185% of the federal poverty level (approximately

\$38,000 in annual income), the Governor's FamilyCare Expansion expanded coverage to all eligible individuals earning an income of up to 400% of the federal poverty level (approximately \$85,000 in annual income).

20. To pay for the FamilyCare Expansion included in the "Illinois Covered" Initiative, the Governor proposed a Gross Receipts Tax ("GRT"). The GRT essentially was a privilege tax imposed on virtually all business entities engaged in a trade or business conducted, in whole or in part, within the State of Illinois. The GRT would be assessed at a rate of 1% of gross receipts for manufacturing, retail, and wholesale companies and at a rate of 2% of gross receipts for all other businesses.

21. The Illinois General Assembly rejected the GRT. On May 10, 2007, the Illinois House of Representatives considered House Resolution 402, a resolution to express support for, or disapproval of, the GRT proposal. House Resolution 402 called on members to vote "aye" if they supported the GRT proposal and to vote "no" if they opposed it. The Resolution failed 107 to nothing: 107 members of the House voted to oppose the Governor's GRT proposal and not a single House member – Democrat or Republican -- voted to support it.

***The Governor's Funding for the FamilyCare Expansion  
Is Not Included in the Fiscal Year 2008 Budget***

22. In his proposed Fiscal Year 2008 Operating Budget offered during budgetary negotiations for Fiscal Year 2008 the Governor requested the inclusion of the sum of \$358 million for his "Illinois Covered" Initiative, including the FamilyCare Expansion.

23. The Governor promised that the appropriations for his "Illinois Covered" Initiative would be filed as a separate appropriations bill.

24. The Illinois General Assembly did not appropriate money in its Fiscal Year 2008 Budget for the “Illinois Covered” Initiative, nor did it pass a separate appropriations bill for that purpose.

***Rulemaking and Emergency Rulemaking Under the APA***

25. In a typical rulemaking situation, the APA requires that an administrative agency such as IDHFS give the public advance notice of its intent to promulgate a rule and an opportunity to comment. 5 ILCS 100/5-40.

26. In certain limited circumstances, however, Section 5-45 of the APA allows for adoption of an emergency rule. 5 ILCS 100/5-45(b). An “emergency” is defined as:

the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare

5 ILCS 100/5-45(a).

27. To adopt an emergency rule, the agency must state in writing its reasons for finding the existence of an “emergency” and file a notice of emergency rulemaking with the Illinois Secretary of State. The emergency rule may become effective immediately, but an emergency rule may not be effective for more than 150 days. *Id.*

28. With respect to IDHFS, Section 5-45 does provide that some rules “shall be deemed to be necessary” due to an emergency. However, with respect to the FY2008 Budget, those rules are limited strictly to rules related to State plans and Illinois waivers approved by the federal Centers for Medicare and Medicaid Services under Titles XIX and XXI of the Social Security Act. 5 ILCS 100/5-45(m).

***Notwithstanding The Lack of An Appropriation Or Funds, The Director Promulgates An “Emergency” Rule To Implement The Governor’s FamilyCare Expansion***

29. Governor Blagojevich, unhappy with the fact that he had been unable to create a funding source for his “Illinois Covered” Initiative, was quoted August 30, 2007 in the Chicago Tribune as stating, “Because we couldn’t get some legislators to support this, I’m acting unilaterally to expand health care.”

30. Effective November 7, 2007, the Director promulgated an emergency rule pursuant to the Public Aid Code, under 89 Ill. Adm. Code 120, entitled “Medical Assistance Programs.” *See* Illinois Register, Vol. 31, Issue 27 at 15424-26 and 15854-70 (November, 26, 2007), a copy of which is attached as Exhibit A.

31. In part, this emergency rule proposed an amendment to 89 Ill. Adm. Code §120.32 responding to a new development that likely was an emergency – the sunset of a federal health care program that some Illinois citizens in danger of losing State-provided health care.

32. The emergency rule also, however, created a new section, 89 Ill. Adm. Code §120.33. This new §120.33 was the Governor’s proposed FamilyCare Expansion – the funding for which had been rejected previously by the Illinois General Assembly. In addition to expanding coverage to all eligible individuals earning an income of up to 400% of the federal poverty level (approximately \$85,000 in annual income), it unlawfully sought to raise revenue for the Department to carry out the new program.

33. The new §120.33 FamilyCare Expansion was not based on any new development or emergency. The Director simply included the §120.33 FamilyCare Expansion rule with §120.32 in an attempt to fuse the two together

34. The statutory authority for the §120.33 FamilyCare Expansion identified by the Director was Sections 5-2 and 12-13 of the Public Aid Code, 305 ILCS 5/5-2 and 12-13.

35. Neither section of the Public Aid Code provided the Director with this authority.

36. Section 12-13 is simply the provision of the Public Aid Code generally granting authority to make rules and regulations. 305 ILCS 5/12-13

37. Section 5-2(2) of the Illinois Public Aid Code, 305 ILCS 5/5-2(2), is found in Article 5 of the Public Aid Code, which concerns State-provided “medical assistance,” or health care. Section 5-2(2) concerns classes of persons eligible for such medical assistance. It does provide for the expansion of healthcare in certain limited situations, but not an expansion of the sweeping character of the §120.33 FamilyCare Expansion. Section 5-2(2), in pertinent part, reads as follows:

Classes of Persons Eligible. Medical assistance under this Article shall be available to any of the following classes of persons in respect to whom a plan for coverage has been submitted to the Governor by the Illinois Department and approved by him:

\*\*\*\*

2. Persons otherwise eligible for basic maintenance under Articles III and IV but who fail to qualify thereunder on the basis of need, and who have insufficient income and resources to meet the costs of necessary medical care, including but not limited to the following:

(a) All persons otherwise eligible for basic maintenance under Article III but who fail to qualify under that Article on the basis of need and who meet either of the following requirements:

(i) their income, as determined by the Illinois Department in accordance with any federal requirements, is equal to or less than 70% in fiscal year 2001, equal to or less than 85% in fiscal year 2002 and until a date to be determined by the Department by rule, and equal to or less than 100% beginning on the date determined by the Department by rule, of the nonfarm income official poverty line, as defined by the federal Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981, applicable to families of the same size; or

(ii) their income, after the deduction of costs incurred for medical care and for other types of remedial care, is equal to or less than 70% in fiscal year 2001, equal to or less than 85% in fiscal year 2002 and until a date to be determined by the Department by rule, and equal to or less than 100% beginning on the date determined by the Department by rule, of the nonfarm income official poverty line, as defined in item (i) of this subparagraph (a).

(b) All persons who would be determined eligible for such basic maintenance under Article IV by disregarding the maximum earned income permitted by federal law.

305 ILCS 5/5-2(2).

38. Sub-paragraph (2)(a), above, allows only for the provision of medical assistance to individuals who might fall under Article III of the Public Aid Code (aid to the blind, aged, and disabled).

39. Sub-paragraph (2)(b), above, concerns Article IV, the Temporary Assistance to Needy Families (“TANF”) article and permits medical assistance for “[a]ll persons who would be determined eligible for such basic maintenance under [TANF] by disregarding the maximum earned income permitted by federal law.” 305 ILCS 5/5-2(2)(b). In order to qualify for expanded medical assistance under (2)(b), the recipient would have to otherwise qualify for each aspect of the TANF program, but for the income eligibility requirement. The proposed §120.33 does not exclude persons otherwise ineligible for TANF.

***The Joint Committee on Administrative Rules (“JCAR”)***

40. Emergency rules, like all other rules promulgated by an administrative agency, are subject to review by JCAR.

41. JCAR is a legislative support services agency that reviews administrative rules before they go into effect or, in the case of an emergency rule, reviews the rules as soon as it next meets after the adoption of that emergency rule. JCAR consists of twelve legislators, three each appointed by the respective leaders of the majority and minority caucuses of the Illinois General Assembly. 5 ILCS 100/5-90.

42. JCAR possesses the authority to examine any emergency rule to determine whether the emergency rule is within the statutory authority granted the agency and whether the

rule is in proper form. 5 ILCS 100/5-120. If JCAR objects to an emergency rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections. 5 ILCS 100/5-110.

43. If JCAR determines that a rule is objectionable, JCAR may issue a statement to that effect to the Secretary of State. The effectiveness of the rule shall be *suspended* immediately upon receipt of the certified statement by the Secretary of State. The agency may not enforce, or invoke for any reason, a rule that has been suspended under this subsection. 5 ILCS 100/5-125.

### ***JCAR Suspends The Director's Emergency Rulemaking***

44. At its meeting on November 13, 2007, JCAR considered the Director's "emergency" rulemaking, which consisted of the §120.33 "FamilyCare" Expansion and the other rule, §120.32, responding to the termination of a federal health-care law (89 Ill. Adm. Code).

45. During the hearing, the members of JCAR repeatedly requested that the Director separate the §120.33 FamilyCare Expansion rule because it was not based on an "emergency," while the other rule might well have been.

460. The Director declined.

47. JCAR voted to object to the Director's "emergency" rulemaking because the rule was not within the statutory authority granted the agency for emergency rulemaking—specifically, because no emergency existed that warranted adoption of the §120.32 FamilyCare Expansion. JCAR's statement of objection has been filed with the Illinois Secretary of State.

48. Under Illinois law, the "emergency" rule promulgating the FamilyCare Expansion has been suspended, and the Director may not enforce, or invoke for any reason, this rule. 5 ILCS 100/5-125.

49. Governor Blagojevich himself signed the legislation giving JCAR the authority to permanently suspend an emergency rule. *See* Public Act 93-1035 (amending Section 5-125 of the IAPA to provide that a JCAR objection to an emergency rule will result in a permanent suspension of that rule). Governor Blagojevich has taken an oath to uphold the Illinois Constitution and the laws of the State of Illinois.

***The Director Continues To Enforce  
The “Emergency” FamilyCare Expansion In Defiance of JCAR***

50. Notwithstanding the legal suspension of this “emergency” rule, and in clear violation of the APA, the Director has continued to enforce this “emergency” rule for the FamilyCare Expansion. The Director has enrolled, and continues to enroll, participants for this unlawful expansion of the FamilyCare program pursuant to his suspended rule.

51. New participants became eligible for this expanded FamilyCare program effective December 1, 2007.

52. The estimated annual cost of this FamilyCare Expansion is \$358 million.

***Declaratory and Injunctive Relief***

53. There is an actual, existing controversy present in this action in that the Director is currently enforcing an emergency rule that has been suspended and cannot be enforced. The expanded program began on December 1, 2007, at which time debt began being incurred against the State for this illegal and unconstitutional program. Moreover, the Director is enforcing this rule without statutory authority to do so, without appropriated funds and based on an unconstitutional delegation of authority from the Public Aid Code.

54. Plaintiffs have clearly ascertainable rights in need of protection. Sections 11-301 and 11-303 of the Illinois Code of Civil Procedure, 735 ILCS 5/11-301, 5/11-303, as well as

common-law principles, permit taxpayers and interested parties to sue to enjoin the unlawful disbursement of public monies by officers of the State.

55. Plaintiffs suffer and will continue to suffer irreparable harm as a result of the unlawful and unconstitutional actions set forth above. If left undeterred, the Director's implementation of the Governor's unlawful and unconstitutional expansion of FamilyCare will cause the State to incur debt in the millions of dollars. Further, in the absence of a court order enjoining these disbursements, Defendant Hynes will authorize the disbursement for expenses incurred thereunder. Public monies in Illinois are held in trust on behalf of all taxpayers, who are ultimately liable to replenish any diminution in those funds.

56. Plaintiffs have no adequate remedy at law because the funds expended under this illegal and unconstitutional expansion of FamilyCare will be irretrievably lost.

57. If allowed to continue enforcement and implementation of this now-suspended emergency rule, the Director will force the State to incur hundreds of millions of dollars in debt for which no money has been appropriated by the Illinois General Assembly. New enrollees under this expanded program and health care providers will be left without any certainty as to the source of payment for these medical services. The State will face ever-mounting debt for which no funds have been appropriated, for which no legislative authorization has been given, for which no source of revenue has been approved, and for which interest charges will continue to accrue. Medical providers may demand assurances from patients that, in the event of default by the State, the patients themselves will cover the cost of the medical assistance.

**COUNT I**  
**(Violation of the Illinois Constitution: Rulemaking in Excess of Statutory Authority)**

58. Plaintiffs incorporate paragraphs 1 through 57, above, as though fully set forth herein.

59. Article II, Section 1 of the Illinois Constitution requires that the executive, legislative, and judicial departments shall be separate, and that no branch of government shall exercise any powers belonging to the others.

60. Under the IAPA, an emergency rule may only be promulgated if there exists “any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.” 5 ILCS 100/5-45(a).

61. The emergency rule did not involve a threat to the public interest, safety, or welfare.

62. In promulgating an emergency rule that did not involve a threat to the public interest, safety, or welfare, the Director promulgated an emergency rule in violation of the IAPA.

63. The Director has no authority to exercise powers beyond those granted him by the Illinois General Assembly, pursuant to validly enacted state statutes.

**WHEREFORE**, Plaintiffs respectfully request that this honorable Court award the following relief:

- (a) entry of a declaratory judgment that the Director’s emergency rule, designated 89 Ill. Adm. Code §120.33, was not an “emergency” as required by the Illinois Administrative Procedure Act;
- (b) entry of a declaratory judgment that the Director lacked statutory authority to promulgate the emergency rule, designated 89 Ill. Adm. Code §120.33;
- (c) entry of a permanent injunction prohibiting the Director from enforcing this rule or from expending any public funds related to the expanded medical assistance plan created by the Director’s emergency rule, designated 89 Ill. Adm. Code §120.33;
- (d) entry of a permanent injunction enjoining Comptroller Hynes from authorizing payments related to the expanded medical assistance plan created by the Director’s emergency rule, designated 89 Ill. Adm. Code §120.33;
- (e) reasonable attorneys’ fees and costs pursuant to 5 ILCS 100/10-55(c); and
- (f) any other relief that this Court determines equitable and appropriate.

**COUNT II**  
**(Violation of the Illinois Constitution: Rulemaking and Enrollment  
in Absence of Statutory Authority)**

64. Plaintiffs incorporate paragraphs 1 through 57, above, as though fully set forth herein.

65. Article II, Section 1 of the Illinois Constitution, *see supra*, requires that the executive, legislative and judicial departments shall be separate, and that no branch of government shall exercise any powers belonging to the others. Article IV of the Illinois Constitution establishes the Legislature and requires in Section 8, *see supra*, that certain procedures for the passage of bills from which statutory authority may arise. Article V of the Illinois Constitution establishes the Executive Branch of Government and requires, at Section 8, *see supra*, that the Governor “shall be responsible for the faithful execution of the laws.” Article VIII, Section 1(b) of the Illinois Constitution, *see supra*, requires expenditures of public funds may be made only pursuant to law. Article IX, Section 1 of the Illinois Constitution, *see supra*, reserves to the General Assembly the exclusive right to raise revenue.

66. The Director has no authority to exercise powers beyond those granted him by the Illinois General Assembly, pursuant to validly enacted state statutes.

67. The Director has identified, as the statutory source of his authority to promulgate the FamilyCare Expansion, Section 5-2 of the Illinois Public Aid Code, 305 ILCS 5/5-2, and Section 12-13 of the Illinois Public Aid Code, 305 ILCS 5/12-13.

68. Neither of these provisions provides the Director with statutory authority to promulgate the FamilyCare Expansion by “emergency rule” or otherwise. Neither of these

provisions, nor any other, provides the Director with authority to raise revenue for the Department.

**WHEREFORE**, Plaintiffs respectfully request that this honorable Court award the following relief:

- (a) entry of a declaratory judgment that the Director lacked statutory authority to promulgate the emergency rule, designated 89 Ill. Adm. Code §120.33;
- (b) entry of a permanent injunction prohibiting the Director from enforcing this rule or from expending any public funds related to the expanded medical assistance plan created by the Director's emergency rule, designated 89 Ill. Adm. Code §120.33;
- (c) entry of a permanent injunction enjoining Comptroller Hynes from authorizing payments related to the expanded medical assistance plan created by the Director's emergency rule, designated 89 Ill. Adm. Code §120.33;
- (d) reasonable attorneys' fees and costs pursuant to 5 ILCS 100/10-55(c); and
- (e) any other relief that this Court determines equitable and appropriate.

**COUNT III**  
**(Violation of the Illinois Administrative Procedure Act)**

69. Plaintiffs incorporate paragraphs 1 through 57, above, as though fully set forth herein.

70. By operation of law, the §120.33 FamilyCare Expansion rule promulgated by the Director has been suspended upon JCAR's objection and certification of that objection to the Illinois Secretary of State.

71. The Director, therefore, may not enforce, or invoke for any reason, this emergency rule § 120.33.

**WHEREFORE**, Plaintiffs respectfully request that this honorable Court award the following relief:

- (a) entry of a declaratory judgment that the Director's emergency rule, designated 89 Ill. Adm. Code §120.33, is unenforceable and may not be enforced by the Director;

- (b) entry of a permanent injunction prohibiting the Director from enforcing this rule or from expending any public funds related to the expanded medical assistance plan created by the Director's emergency rule, designated 89 Ill. Adm. Code §120.33;
- (c) entry of a permanent injunction enjoining Comptroller Hynes from authorizing payments related to the expanded medical assistance plan created by the Director's emergency rule, designated 89 Ill. Adm. Code §120.33;
- (d) reasonable attorneys' fees and costs pursuant to 5 ILCS 100/10-55(c); and
- (e) any other relief that this Court determines equitable and appropriate.

**COUNT IV**  
**(Violation of the Illinois Constitution: Alternative Count**  
**for Unconstitutional Delegation of Authority)**

72. Plaintiffs incorporate paragraphs 1 through 57, above, as though fully set forth herein.

73. Article II, Section 1 of the Illinois Constitution, *see supra*, requires that the executive, legislative and judicial departments shall be separate, and that no branch of government shall exercise any powers belonging to the others.

74. If, alternatively, Sections 5-2(2) and 12-13 of the Public Aid Code, 305 ILCS 5/5-2(2) and 5/12-13, grant authority to the Director to enroll persons in and implement the Governor's FamilyCare Expansion, they constitute an overly broad, improper and unconstitutional delegation of legislative authority.

75. These provisions of the Public Aid Code allow the Director to set policy and exercise legislative power, in violation of the Illinois Constitution.

**WHEREFORE**, Plaintiffs respectfully request that this honorable Court award the following relief:

- (a) entry of a declaratory judgment that Sections 5-2(2) and 12-13 of the Public Aid Code, 305 ILCS 5/5-2(2) and 5/12-13, constitute unconstitutional delegations of authority to the Director;

- (b) entry of a permanent injunction prohibiting the enforcement of Sections 5-2(2) and 12-13 of the Public Aid Code, 305 ILCS 5/5-2(2) and 5/12-13;
- (c) entry of a permanent injunction prohibiting the Director from enforcing, or expending any public funds related to, the expanded medical assistance plan created by the Director's emergency rule, designated 89 Ill. Adm. Code §120.33;
- (d) entry of a permanent injunction enjoining Comptroller Hynes from authorizing payments related to the expanded medical assistance plan created by the Director's emergency rule, designated 89 Ill. Adm. Code §120.33;
- (e) reasonable attorneys' fees and costs pursuant to 5 ILCS 100/10-55(c); and
- (f) any other relief that this Court determines equitable and appropriate.

#### **COUNT V**

#### **(Violation of the Illinois Constitution: Raising Revenue Without Law and Spending It Without Appropriation In Violation of the Finance and Revenue Articles)**

76. Plaintiffs incorporate paragraphs 1 through 57, above, as though fully set forth herein.

77. Article VIII, Section 2(b) of the Illinois Constitution, *see supra*, requires expenditures of public funds may be made only from appropriated money. Article IX, Section 1 of the Illinois Constitution, *see supra*, reserves to the General Assembly the exclusive right to raise revenue.

78. If, alternatively, Sections 5-2(2) and 12-13 of the Public Aid Code, 305 ILCS 5/5-2(2) and 5/12-13, grant authority to the Director to enroll persons in and implement the Governor's FamilyCare Expansion, they constitute an overly broad, improper and unconstitutional delegation of legislative authority.

79. These provisions of the Public Aid Code allow the Director to set policy and exercise legislative power, in violation of the Illinois Constitution.

**WHEREFORE**, Plaintiffs respectfully request that this honorable Court award the following relief:

- (a) entry of a declaratory judgment that Sections 5-2(2) and 12-13 of the Public Aid Code, 305 ILCS 5/5-2(2) and 5/12-13, constitute unconstitutional delegations of authority to the Director;
- (b) entry of a permanent injunction prohibiting the enforcement of Sections 5-2(2) and 12-13 of the Public Aid Code, 305 ILCS 5/5-2(2) and 5/12-13;
- (c) entry of a permanent injunction prohibiting the Director from enforcing, or expending any public funds related to, the expanded medical assistance plan created by the Director's emergency rule, designated 89 Ill. Adm. Code §120.33;
- (d) entry of a permanent injunction enjoining Comptroller Hynes from authorizing payments related to the expanded medical assistance plan created by the Director's emergency rule, designated 89 Ill. Adm. Code §120.33;
- (e) reasonable attorneys' fees and costs pursuant to 5 ILCS 100/10-55(c); and
- (f) any other relief that this Court determines equitable and appropriate.

December 4, 2007

Respectfully submitted,

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