

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

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

**PETITION FOR LEAVE TO FILE
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Petitioners Ronald Gidwitz, Gregory Baise and the Illinois Coalition for Jobs, Growth and Prosperity, an Illinois not-for-profit corporation (collectively, “Petitioners”), by their attorneys Ungaretti & Harris LLP and pursuant to Section 11-303 of the Illinois Code of Civil Procedure, 735 ILCS 5/11-303, and Rule 19 of the Illinois Supreme Court, petition this Court for leave to file the attached Complaint for Declaratory and Injunctive Relief 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. In support of their Petition, Petitioners state as follows:

ARGUMENT

1. Petitioners seek leave to file a complaint for 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. 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.

3. 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.

3. Further, the Director's enforcement of the emergency rule violates the APA because JCAR has suspended this emergency rule, rendering it legally inoperative.

4. The Petitioners are concerned Illinois citizens, residents, taxpayers and associations. They seek leave to bring an action to obtain a judicial declaration that the Director's promulgation and continued enforcement of the emergency rule violates Illinois' Constitution and laws, to obtain 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.

5. Absent an order from this Court permitting the matter to proceed, the Petitioners will have no recourse. Petitioners seek only equitable relief.

WHEREFORE, for the foregoing reasons, Petitioners respectfully request that this Court grant this Petition and grant Petitioners leave to file the attached Complaint.

December 4, 2007

Respectfully submitted,

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