

**IN THE CIRCUIT COURT OF COOK COUNTY
OF THE STATE OF ILLINOIS**

**RICHARD P. CARO, A STATE OF ILLINOIS)
TAXPAYER ON BEHALF OF AND FOR THE)
BENEFIT OF THE TAXPAYERS OF THE)
STATE OF ILLINOIS,)**

Plaintiff,

-against-

**HON. ROD R. BLAGOJEVICH,)
GOVERNOR OF THE STATE OF ILLINOIS,)
THE ILLINOIS DEPARTMENT OF)
PUBLIC HEALTH,)
DAMON ARNOLD, DIRECTOR IDPH,)
THE ILLINOIS DEPARTMENT OF)
HEALTHCARE AND FAMILY SERVICES)
BARRY S. MARAM, THE)
DIRECTOR OF IDHFS, and DANIEL W.)
HYNES, COMPTROLLER,)**

Defendants.

CASE NO. 07 CH 034353

**HON. JAMES E. EPSTEIN,
Circuit Judge
Courtroom 2405**

**AMENDED PETITION FOR
LEAVE TO FILE A TAXPAYER
COMPLAINT PURSUANT
TO 735 ICLS 5/301 & 303**

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

Richard P. Caro, being duly sworn, deposes and says:

1. I am a citizen and taxpayer of the State of Illinois and hereby Petition this Court pursuant to 735 ICLS 5/11-301 and 11- 303 for leave to file the attached Complaint and if at the presentment hearing, leave is granted, to consider my application for a TRO pending a hearing and determination of my attached Motion for a Preliminary Injunction.

2. I seek leave to file the attached Complaint as a taxpayer on behalf of and for the benefit of the taxpayers of the State of Illinois to restrain and enjoin the expansion and the expenditure of moneys for the expansions of the two health care programs identified in the Complaint because the

Legislature neither approved the expansions nor made the requisite appropriations to pay for the costs of the expansions. Reasonable grounds exist which support this petition:

(a) On October 1, 2007, the Department of Public Health (“DPH”) expanded coverage under Illinois Free Breast Cancer Screening Program, 305 ILCS 305 5/5-2, to all uninsured Illinois women even if their income or personal assets exceed the statutory limitations for this medical service (see Exhibit 1 attached to the Complaint). DPH did this without prior authorization by the Legislature to expand this program and without there being an appropriation by the Legislature to pay for the costs of the expanded benefits. Furthermore, the DPH implemented this change without complying with the mandatory procedural and substantive requirements of the Illinois Administrative Procedure Act (“APA”). There was no advanced public notice or opportunity for comment or public hearings prior to DPH’s implementation of the change. As a result public funds are being expended without legislative authorization in violation of the Constitution and pursuant an agency rule that is invalid for failure to comply with the requirements of the APA.

(b) The Illinois Department of Healthcare and Family Services (“DHFS”) on November 7, 2007, implemented an “emergency” expansion of the Family Care Program to persons who do not qualify under the previously set 185% Federal Income Poverty Level standard but do under a 400% test. To make the change immediately effective, DHFS proceeded as if this expansion was needed to meet an emergency and although the General Assembly’s Joint Committee on Administrative Rules found that no emergency existed for this expansion and suspended the implementation of the emergency rules, the Executive did not suspend them and is processing applications for the expanded coverage. (See Exhibits 2-5 attached to the Complaint.) This legislatively unauthorized expansion is estimated as costing the State this fiscal year

approximately \$367 million, or more than \$30 million a month, beginning December 1, 2007. The Legislature has not approved this expansion and has not made an appropriation to pay for it. A legislatively unauthorized public debt is thus being created and public funds are being and will be paid to pay for the expanded health care coverage.

3. An individual citizen-taxpayer's standing to institute an action to restrain and enjoin the disbursement of state funds as being in violation of the Illinois Constitution or otherwise unlawful has been recognized by the Courts of Illinois, *see, e.g., Crusius v. Illinois Gaming Board*, 348 Ill. App. 3d 44, 49-50, 807 N.E. 2d 1207 (1st District 2004) and the cases cited therein and is authorized by statute, 735 ILCS 5/11-301 and 303.

4. The two Departments have stated that these expansions are being done pursuant to the Governor's instructions. The Governor has declared that he is expanding health care coverage for these and other programs solely on the basis of his Executive Authority as Governor. The Governor, however, does not have under Illinois' Constitution the authority to amend statutes to expand coverage or extend benefits to persons falling outside the bounds that have been legislatively approved, nor does he have the power to appropriate funds or expend funds not appropriated by the Legislature. Such acts are legislative in nature and are within the exclusive legislative powers granted by the Constitution to the General Assembly. The Governor's supreme executive power is to **faithfully execute the laws** and not to usurp the Legislature's exclusive constitutional powers.

5. In addition, the Departments' failures to comply with the mandatory applicable provisions of the APA render the expansions invalid as a matter of law. 5 ILCS 100/5-35(b).

6. As a result of these wrongful and unconstitutional actions public debts and State liabilities are being created that are being paid with public funds and which will continue to be paid

by public funds.

7. I am not in this action seeking to have the Court determine whether the expanded coverage is in the public interest. Quite the contrary, I am only concerned with our the Executive acting in conformity with constitutional limitations, statutory requirements, and otherwise lawfully in the public interest. Our democratic process may be slow, cumbersome and difficult, but it has served our State and Country well. It is to be respected and not disregarded no matter how noble and good the objective.

PRAYER FOR RELIEF

For the reasons stated above, the Court should find that the Complaint is based on reasonable grounds and the issues raised are meritorious, and, accordingly, grant that leave for the attached Taxpayer Complaint being filed and served; and, further, if upon the Court's hearing of the presentment of this Petition, leave is granted to file and serve the Complaint, that the Court immediately consider the application for TRO pending a hearing and determination for issuance of a Preliminary Injunction.

Dated: December 3, 2007

Richard P. Caro, Plaintiff Pro Se
111 Groveland Avenue
Riverside, IL 60546-2628
(708) 447-0721

Sworn to before me this 3rd day
of December 2007.

Notary Public