

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

FILED - 2

Richard P. Caro, a State of Illinois
Taxpayer on Behalf of and for the Benefit of
the State of Illinois, and Ronald Gidwitz and
Gregory Baise,

Plaintiff and Plaintiff-Intervenors,

v.

Hon. Rod Blagojevich, et. al,

Defendants.

2007 DEC 21 PM 3:46

CLERK OF THE CIRCUIT COURT OF COOK COUNTY
CHANCERY DIV.
No. 07 CH 034353
KOROTHY STOWN CLERK

Honorable James E. Epstein
Circuit Judge
Courtroom 2405

NOTICE OF MOTION AND RULE 19 NOTICE

To: See attached Certificate of Service

PLEASE TAKE NOTICE that on December 27, 2007 at 11:30 a.m., we shall appear before the Honorable James Epstein, or any judge sitting in his stead, in the Circuit Court of Cook County, Richard J. Daley Center, Room 2405, and present the attached Motion for Temporary Restraining Order and Preliminary Injunction, copies of which are attached hereto and hereby served upon you, and further hereby provide Supreme Court Rule 19 Notice of cause of actions herein by Plaintiff and Plaintiff-Intervenors which seek to declare unconstitutional and unlawful certain state agency rules, "in-effect" rules and Illinois statutes.

December 21, 2007



F. Thomas Hecht
Claudette Miller
Floyd D. Perkins
Ungaretti & Harris LLP - 34355
70 West Madison
Suite 3400
Chicago, Illinois 60602
(312)977-4400

Attorneys for Plaintiff-Intervenors
Ronald Gidwitz and Gregory Baise

Richard P. Caro
Attorney for Plaintiff, Pro Se
111 Greveland Avenue
Riverside, IL 60546

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that he/she caused the foregoing Notice of Motion and Rule 19 Notice, Motion for Temporary Restraining Order and Preliminary Injunction, Memorandum of Law in Support of Plaintiffs' Motion for TRO and Preliminary Injunction to be served on the following on December 21, 2007 by delivering true and correct copies thereof (in the manner indicated) to:

Counsel for the Honorable Governor Rod Blagojevich, Honorable Barry S. Maram and Honorable Damon Arnold; the Illinois Department of Public Health and the Illinois Department of Healthcare and Family Service:

Barnes & Thornburg, LLP (VIA E-MAIL AND HAND DELIVERY)
Larry D. Blust, Esq. (lblust@btlaw.com)
Marc S. Silver, Esq. (msilver@btlaw.com)
Katarzyna Dygas, Esq. (katarzyna.dygas@btlaw.com)
Suite 4400
One North Wacker Drive
Chicago, Illinois 60606-2833

Counsel for Honorable Daniel W. Hynes:


Office of the Attorney General (VIA E-MAIL AND HAND DELIVERY)
Roger Flahaven, Assistant Attorney General (rflahaven@atg.state.il.us)
Gary Griffin, Assistant Attorney General (ggriffin@atg.state.il.us)
100 W. Randolph St.
Chicago, Illinois 60606

Counsel for Honorable Lisa Madigan, Attorney General for the State of Illinois:

Office of the Attorney General (VIA E-MAIL AND HAND DELIVERY)
Paul J. Gaynor (pgaynor@atg.state.il.us)
Carl Bergetz (cbergetz@atg.state.il.us)
Peter C. Koch (pkoch@atg.state.il.us)
Alice E. Keane (akeane@atg.state.il.us)
100 W. Randolph Street
Chicago, Illinois 60601

Counsel for Intervenors Gregory Jacaway and Robin Jacaway

John Bouman (johnbouman@povertylaw.org) (VIA E-MAIL AND HAND DELIVERY)
Daniel J. Lesser (danlesser@povertylaw.org)
Margaret Stapleton (mstapleton@povertylaw.org)
Sargent Shriver National Center on Poverty Law – 44052
50 E. Washington St., Suite 500
Chicago, IL 60602



Floyd D. Perkins

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

Richard P. Caro, a State of Illinois)	
Taxpayer on Behalf of and for the Benefit)	
of the State of Illinois, and Ronald)	
Gidwitz and Gregory Baise,)	
)	No. 07 CH 034353
Plaintiff and Plaintiff-Intervenors,)	
)	Honorable James E. Epstein
v.)	Circuit Judge
)	Courtroom 2405
Hon. Rod Blagojevich, et. al,)	
)	
Defendants.)	

PLAINTIFFS' MOTION FOR A TRO AND PRELIMINARY INJUNCTION

Plaintiff Richard P. Caro, *pro se*, and Plaintiff-Intervenors Ronald ~~Gidwitz and Gregory Baise~~, by their attorneys Ungaretti & Harris LLP (collectively, "Plaintiffs"), pursuant to Sections 11-101 and 11-102 of the Illinois Code of Civil Procedure, 735 ILCS 5/11-101 and 102, move this Court for entry of a temporary restraining order (TRO) and a preliminary injunction against Defendants The Honorable Rod Blagojevich, Governor of the State of Illinois, the Illinois Department of Healthcare and Family Services and its Director, Barry S. Maram, in his official capacity as Director, against the Illinois Department of Public Health and its Director, Damon Arnold, in his official capacity as the Director, and against Daniel W. Hynes, in his official capacity as Comptroller of the State of Illinois. In support of their motion, Plaintiffs state as follows:

1. Governor Rod Blagojevich's plan for a health-care expansion funded by a massive "gross receipts tax" on Illinois businesses was rejected overwhelmingly by the General Assembly. Nonetheless, thereafter, in October Director Arnold and DPH moved to expand the Free Breast Cancer Screening program. In November, Director Maram and

DHFS promulgated a so-called “emergency” rule to implement the Governor’s expansion of the FamilyCare program in an effort to avoid not only the legislative process but also the traditional notice and public-comment process that accompanies administrative rulemaking. Worse yet, after the Joint Committee on Administrative Rules (“JCAR”) *rejected* this “emergency” rule – suspending the rule and rendering it inoperative as a matter of law -- Director Maram and DHFS simply ignored the suspension. As of December 1, 2007, they began to implement the Governor’s expanded FamilyCare program.

2. The expanded taxpayer-funded medical assistance programs being operated by the Defendant Directors and agencies are unlawful and unconstitutional and will cause the State of Illinois to incur debt for which no funds have been appropriated, for which no legislative authorization has been given and for which no source of revenue has been approved. An expanded pool of Illinois citizens, believing they are enrolled in legitimate State healthcare programs, will begin to receive medical assistance. They and their health-care professionals will be left in a state of uncertainty, with the strong likelihood that this program will ultimately be found invalid.

3. Plaintiffs seek an order temporarily restraining and preliminarily enjoining (i) the enforcement of these unlawful and unconstitutional rules and programs and (ii) the disbursement of any public monies related to these programs and rules.

4. For a temporary restraining order (TRO) and or a preliminary injunction to issue, Plaintiffs must establish: (1) that they possess a clearly ascertainable right in need of protection; (2) that they will suffer irreparable harm without the injunction; (3) that no adequate remedy at law exists for this injury; (4) a likelihood of success on the

merits; and (5) that, on balance, the equities favor an injunction. *Postma v. Jack Brown Buick*, 157 Ill. 2d 391 (1994); *Granberg v. Didrickson*, 279 Ill. App. 3d 886, 888-89 (1st Dist. 1996).

5. As set forth more fully in the attached supporting Memorandum of Law, Plaintiffs easily meet the criteria for a TRO and a preliminary injunction.

6. A draft Temporary Restraining Order is attached hereto.

WHEREFORE, Plaintiff Richard Caro and Plaintiff-Intervenors Ronald Gidwitz and Gregory Baise respectfully request that this Court:

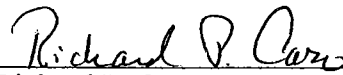
- (a) enter a TRO and a preliminary injunction prohibiting DHFS and Director Maram from enforcing the emergency rule designated 89 Ill. Adm. Code §120.33, from operating and conducting the expanded FamilyCare program and from enrolling persons in that program and from expending any public funds for the expanded medical assistance plan created by that emergency rule and/or as operated and implemented as the expanded FamilyCare program;
- (b) enter a TRO and a preliminary injunction prohibiting DHFS from collecting premiums from enrollees of the expanded FamilyCare program;
- (c) enter a TRO and a preliminary injunction enjoining the Comptroller from authorizing payments related to the expanded medical assistance plan created by the emergency rule, designated 89 Ill. Adm. Code §120.33, or the expanded FamilyCare program; and
- (d) grant such other and further relief that the Court determines equitable and appropriate;

WHEREFORE, Plaintiff Richard Caro respectfully requests that this Court:

- (a) enter a TRO and a preliminary injunction prohibiting DPH and Director Arnold from expending any public funds for breast cancer screening for persons who do not qualify for pre-October, 2007 eligibility;
- (b) enter a TRO and a preliminary injunction enjoining the Comptroller from authorizing payments for breast care cancer screening for persons who do not qualify for pre-October, 2007 eligibility; and
- (c) grant such other and further relief that the Court determines equitable and appropriate.

December 21, 2007

Respectfully submitted,



Richard P. Caro
111 Groveland Avenue
Riverside, IL 60546-2627
708-447-0721

Plaintiff *Pro Se*



F. Thomas Hecht
Claudette Miller
Ungaretti & Harris LLP - 34355
70 West Madison
Suite 3400
Chicago, Illinois 60602
(312)977-4400

Attorneys for Plaintiff-Intervenors
Ronald Gidwitz and Gregory Baise

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**Hon. Rod 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.

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) **No. 07 CH 034353**
)
) **Honorable James E. Epstein**
) **Circuit Judge**
) **Courtroom 2405**

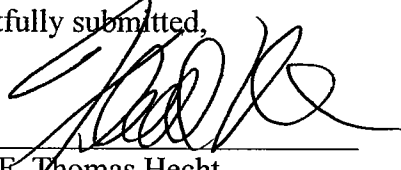
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PLEASE TAKE NOTICE that on December 21, 2007 we filed with the Clerk of the Circuit Court of Cook County the attached Notice of Motion and Rule 19 Notice, Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum of Law in Support of Plaintiffs' Motion for TRO and Preliminary Injunction, copies of which are attached hereto and hereby served upon you.

Respectfully submitted,

By: 
F. Thomas Hecht
Claudette P. Miller
Floyd D. Perkins
Ungaretti & Harris LLP – 34355
70 West Madison
Suite 3400
Chicago, Illinois 60602
Telephone: (312) 977-4400
Facsimile: (312) 977-4405

Attorneys for Plaintiffs

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Larry D. Blust, Esq. (lblust@btlaw.com)
Marc S. Silver, Esq. (msilver@btlaw.com)
Katarzyna Dygas, Esq. (katarzyna.dygas@btlaw.com)
Suite 4400
One North Wacker Drive
Chicago, Illinois 60606-2833

Counsel for Honorable Daniel W. Hynes:


Office of the Attorney General (VIA E-MAIL AND HAND DELIVERY)
Roger Flahaven, Assistant Attorney General (rflahaven@atg.state.il.us)
Gary Griffin, Assistant Attorney General (ggriffin@atg.state.il.us)
100 W. Randolph St.
Chicago, Illinois 60606

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Office of the Attorney General (VIA E-MAIL AND HAND DELIVERY)
Paul J. Gaynor (pgaynor@atg.state.il.us)
Carl Bergetz (cbergetz@atg.state.il.us)
Peter C. Koch (pkoch@atg.state.il.us)
Alice E. Keane (akeane@atg.state.il.us)
100 W. Randolph Street
Chicago, Illinois 60601

Counsel for Intervenors Gregory Jacaway and Robin Jacaway

John Bouman (johnbouman@povertylaw.org) (VIA E-MAIL AND HAND DELIVERY)
Daniel J. Lesser (danlesser@povertylaw.org)
Margaret Stapleton (mstapleton@povertylaw.org)
Sargent Shriver National Center on Poverty Law – 44052
50 E. Washington St., Suite 500
Chicago, IL 60602



Floyd D. Perkins