

**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, RONALD GIDWITZ,)
and GREGORY BAISE,)

Plaintiff and Plaintiff-Intervenors,)

v.)

Case No. 07 CH 34353

HON. ROD BLAGOJEVICH, Governor of)
the State of Illinois; THE ILLINOIS)
DEPARTMENT OF PUBLIC HEALTH;)
DAMON ARNOLD, Director of IDPH; THE)
ILLINOIS DEPARTMENT OF)
HEALTHCARE AND FAMILY SERVICES;)
BARRY S. MARAM, Director of IDHFS;)
and DANIEL W. HYNES, Comptroller,)

The Honorable James R. Epstein

Defendants,)

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STATE OF ILLINOIS,)

Intervenor.)

2008 FEB -7 PM 11:23
 CLERK OF THE COURT
 COOK COUNTY, ILL.

**PLAINTIFF-INTERVENORS' REPLY IN SUPPORT OF THEIR TRIAL BRIEF AND
MOTION FOR PRELIMINARY INJUNCTION AND IN RESPONSE TO
DEFENDANTS' OPPOSITION CONCERNING FAMILYCARE**

Plaintiff-Intervenors Ronald Gidwitz and Gregory Baise submit this Reply in support of their Trial Brief and Motion for Preliminary Injunction and in response to Defendants' Opposition thereto regarding the expansion of FamilyCare (the "Response").

INTRODUCTION

Defendants' Response relies largely on a faulty premise: that so long as the General Assembly has not expressly prohibited them from doing so, administrative agencies are permitted to implement or create whatever programs they wish. This view of administrative agency power is contrary to the basic Constitutional concept of the separation of powers. It also

up-ends the incontrovertible principle that administrative agencies may exercise only those powers granted to them by the Legislature.

Extending taxpayer-subsidized health insurance to families with incomes well above the median income level in Illinois requires weighing policy and financial considerations. Under the Illinois Constitution, it is a fundamentally legislative act, requiring the deliberation and authorization of the General Assembly. It is not to be undertaken by executive or administrative fiat. When the executive branch and administrative agencies view their power as plenary and that view manifests itself in unauthorized programs with little or no regard for Constitutional limitations, it is appropriate that their conduct be enjoined. That is what Plaintiff-Intervenors, Greg Baise and Ron Gidwitz, seek.

RELEVANT FACTS REDUX

Defendants' "Relevant Facts" are incomplete and misleading in several respects. *First*, Defendants devote considerable effort to a history of prior expansions of income limitations for CHIPA, arguing that since no one ever challenged those expansions, the expansion at issue here also must be appropriate. Response at 2, 3. Defendants fail to mention, however, that *each* of the prior expansions was within limitations that the General Assembly *expressly* authorized in CHIPA, 215 ILCS 106/1, *et seq.* See App., Ex. 3 at §15 (authorizing assistance at 133% to 200% of the FPL). The FamilyCare expansion has no comparable statutory authorization.

Second, Defendants declare that Section 5-2(2)(b) of Medicaid, 305 ILCS 5/5-2(2)(b), authorizes DHFS to "establish a cap of 400% of FPL." Response at 3. It does no such thing. Rather, Section 5-2(2)(b) provides transitional medical assistance under the Temporary Assistance to Needy Families Program which was designed to ensure that families moving from

