

**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)	CASE NO. 07 CH 24192
STATE OF ILLINOIS,)	
)	HON. Kathleen Mary Pantle, Circuit Judge
Plaintiff,)	
)	
-against-)	
)	
HON. ROD R. BLAGOJEVICH,)	
GOVERNOR OF THE STATE OF)	
ILLINOIS, ET AL.,)	
)	
Defendants.)	
)	

**PETITIONER’S REPLY TO DEFENDANTS’
OPPOSITION TO MOTION FOR RECONSIDERATION**

In Defendants’ November 2, 2007 Response to Petitioner’s Motion for Reconsideration, Defendants argue that none of the three alternative grounds for reconsideration set forth in *The North River Insurance Co. v. Grinnell Mutual Reinsurance Co.*, 369 Ill. App. 3d 563, 572 (2006) have been satisfied and hence reconsideration should be denied. Petitioner disagrees with that conclusion with respect to two of the three grounds warranting reconsideration. If the reconsideration motion is granted, then the Court should also issue injunctive relief.

I

TWO GROUNDS FOR RECONSIDERATION EXIST

Two of the alternative grounds warranting reconsideration clearly exist here. They are the existence of new evidence and error of law in the Court’s prior ruling. In satisfaction of the first ground the new evidence is the October 1, 2007 implementation of the Governor’s expanded Free Breast Screening Program for All Uninsured Illinois Women (See Exhibit 9) and the Board of Comprehensive Insurance’s Public Meeting which is scheduled to be held on November 15, 2007. Prior to the October 1 announcements by the Governor and the Department of Public Health, the only indications that the Governor would implement this expansion on his own

authority, *i.e.*, without prior legislative authorization, were his Press Releases of August 14 and 23, 2007, and September 27, 2007.¹ But, according to the Court's September 28, 2007 Decision, reliance on Press Releases and statements made at Press Conferences may not be had as a basis for a taxpayer action. The Court wrote (at 10):

“*** Courts cannot judicially interfere with abstract disagreements over policies and must wait until there has been formalized decisions and effects are felt in a concrete way. *National Marine [Inc. v. The Illinois Environmental Protection Agency]*, 159 Ill.2d [381] at 388 [(1994)]. Statements made in press releases, like campaign promises, often lead nowhere as the ideas and plans expressed by government officials may never come to fruition. Any action by this Court at this time would be unwarranted judicial interference with abstract propositions. A court cannot judge the legalities of a proposal based on declarations made by a government official during the course of a press conference.”

Under this view, the Governor is able to have public agencies proceed at his direction to expend public monies to develop and establish a new or expanded program without the requisite legislative authorization in violation of the Constitution with impunity only because the Governor and the public agency are not proceeding in a formal manner. Although the Court would be correct where an Administration is proceeding formally, *i.e.*, the Governor directing an agency to proceed in a certain way by issuance of an Executive Order and the agency complies with the requirements of the Illinois Administrative Procedure Act (“APA”) and publically announces its intended action and provides interested parties a fair, advanced opportunity to object or otherwise comment, the problem here is that the Administration is not so proceeding. No Executive Order was issued for this program and no formal agency announcement or proceeding was had prior to October 1, 2007. The only formal action of the Department of Public Health was the October 1, 2007 actual implementation of the expansion. Instead, prior to October 1, 2007 formal announcements there were only the Press Releases and a Press Conference. So what about the constitutionality of the money spent by the Department prior to October 1 to develop and put in place the expanded coverage? If this expansion required prior

¹ The Sept. 27, 2007 Press release was discovered by Petitioner on October 7, 2007, and is appended hereto as Exhibit 10.

legislative authorization, then both the work done to establish the expanded program, and now the awarding of the benefits to women previously ineligible under the Illinois statute, were and are unconstitutional, in violation of the Separation of Powers Provision. Public monies for both types of expenditures were and are being expended in usurpation of exclusive legislative authority and that is simply wrong no matter how noble or worthy the cause.

The pre October 1 expenditures should not be immune from challenge in a taxpayer action merely because the Department did not issue an official, formal announcement, or institute a formal proceeding. The Court's September 28 Decision, however, provides that immunity and, accordingly, should be modified.

Neither the Governor nor a public agency may amend a program established by the Legislature or establish a new program that requires prior enabling legislation. In 1977 the then Illinois Attorney General explained why that is beyond the Governor's authority:

“Your ... question is whether the relevant provisions of the Illinois Pension Code may be modified by executive order of the Governor or other exercise of executive authority. The answer clearly is that they cannot. Article V, section 8 of the Illinois Constitution of 1970 provides that ‘the Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws.’ It does not empower the Governor to change the laws.”
1977 Op. Ill. Atty. Gen. 167, 170 (No. S-1295, Sept. 30, 1977).

Although here there is no Executive Order, what the Governor may not constitutionally do by Executive Order, he can not do by **not** issuing an Executive Order. The Constitution's limitations on his authority apply whether he is acting formally or informally.

The same limitation applies to all state agencies, including the Department of Public Health, and any other agency charged with developing and administering the State's current health care programs: “[A]n administrative agency ... is and was constrained by [statutory] limitations. It has no general or common law authority. The only powers it possesses are those granted to it by the legislature, and any action it takes must be authorized by statute.” *Vuagniaux v. Dep't of Prof. Reg.*, 208 Ill. 2d 173, 186, 802 N.E.2d 1156 (2003); *see also Bio-Medical Labs., Inc. v. Trainor*, 68 Ill. 2d 540, 551, 370 N.E.2d 223 (1977) (“inasmuch as an administrative

agency is a creature of statute, any power or authority claimed by it must find its source within the provisions of the statute by which it is created”). Even where the Legislature has granted an agency rulemaking authority, that authority must be exercised consistently with the statute. “**A statute which is administered may not be altered or added to by the exercise of a power to make regulations thereunder.**” *Ruby Chevrolet, Inc. v. Dep’t of Revenue*, 6 Ill. 2d 147, 151, 126 N.E.2d 617 (1955) (emphasis added).

Here the expansion implemented by the Department at the direction of the Governor required prior legislative authorization.² Although Illinois statutes authorize the provision of such screening services (305 ILCS 5/5-5), no statutory authority for eliminating the income limitation exists. The Illinois health care statutes generally limit coverage to those on public assistance or to those who satisfy other low-income tests. *See* 305 ILCS 5/5-2. Although the Department and the Governor have authority to set specific eligibility standards under these general limits, no provision of the statute authorizes the setting of eligibility without regard to income.³ For example, paragraph 2 of the section grants the Department authority to include persons not eligible for public assistance, but limits eligibility to 100% of the poverty income level. Similarly, paragraph 4, which perhaps grants the agency its broadest authority to cover persons “not eligible under any of the” other eligibility tests, is still limited to those who do not have “sufficient money, property, or other resources” to meet needed expenses.⁴ Thus, the

² On October 5, 2007, I emailed the Defendants that I would try to have the return date for presentment set for October 19 and stated, “In the interim, if we are able to resolve any of the issues, we should attempt to do so. For example, if I am wrong about there being no legislative authorization for the expanded free breast cancer screening program, I will immediately drop that issue.” I received no response to that offer.

³ In the September 27, 2007 Press Release (p. 2) it is stated that “Before the expansion announced today, uninsured women only qualified [for free breast cancer screening] if their incomes were under 250 percent of the Federal Poverty Level (FPL) ***.” **This is an admission that the expansion did away with any applicable statutory financial prerequisite.**

⁴ Paragraph 4 probably does not give the Governor authority to expand this program for another reason. Paragraph 4 states that a plan may cover “[p]ersons not eligible under any of the preceding paragraphs who fall sick, are injured, or die, not having sufficient money, property or

expansion disregards any income or asset limitation in violation of statutory prerequisites and operates, as a consequence, as if the statute has been amended to eliminate any such income or asset limitation. Neither the Governor nor the Department of Public Health has the authority to do this under the Constitution!

This new evidence clearly requires the Court to grant reconsideration of its position that reliance may not be had on press releases and statements made at press conferences. It also establishes the need for the Court to address the second expenditure issue that was raised: that monies being spent to develop and put into effect a new or expanded programs that require, but lack, prior legislative authorization **are expenditures to further a usurpation of the exclusive authority of the legislature to amend, create or expand benefit programs, including by eliminating or altering previously enacted statutory prerequisites.** Not having addressed this issue opens the Court's decision to being a precedent that public funds can be unconstitutionally and unlawfully spent with impunity as long as no formal action, such as the issuance of an Executive Order or the agency's institution of formal proceedings, has taken place. Thus the second alternate ground for reconsideration is also satisfied here.

I doubt that the Court intended to allow monies be spent in violation of the Constitution free of being challenged in a taxpayer action as long as some formal official announcement, document, or order has not been issued or official action taken. If, however, that is the Court's position, such expenditures in violation of the Constitution will go unchecked as being beyond judicial review, and hence unchallengeable. So, for example, if the Department of Public Health spent \$1 million⁵ to set up and implement the expanded breast screening program those monies were expended to violate the Constitution and, according to the September 28, 2007 decision

other resources to meet the costs of necessary medical care or funeral and burial expenses.” 305 ILCS 5/5-2(4). Screening services are of course prophylactic; those receiving the services are in many cases not sick, injured, or deceased.

⁵ The actual amount is immaterial. A penny spent to further a constitutional violation is a penny that should have not been spent. Taxpayer actions exist to prevent and stop such expenditures.

nothing can be done about that because the Department did not act in a formal manner prior to October 1, 2007.

Similarly, if the Board of Comprehensive Insurance is expending monies to locate the 19 and 20 year olds who would be eligible for the All Kids Bridge Program and are formulating the scope and limitations of the insurance coverage to be provided and the amount of the subsidized premiums to be charged, any such activity and expenditure would be in violation of the Constitution. That would not be true if the Board were merely ascertaining as a general proposition what, if any thing, it could constitutionally and lawfully do⁶, but that is inconsistent with the Board's Chairman's public statements of what they are doing. If there is any doubt, discovery should be allowed or the Court direct that the Board and its Chairman state under oath exactly what it has been doing since August 28, 2007. Otherwise, the Board may simply announce that the All Kids Bridge Program is in effect just as the Department of Public Health did with the expanded breast screening program.⁷ Given the new informal *modus operandi* of

⁶ The Comprehensive Health Insurance Program has a statutory balanced-budget requirement as well. *See* 215 ILCS 105/1.1(c) ("The Comprehensive Health Insurance Plan Board shall operate the Plan in a manner so that the estimated cost of the program during any fiscal year will not exceed the total income it expects to receive from policy premiums, investment income, assessments, or fees collected or received by the Board and other funds which are made available from appropriations for the Plan by the General Assembly for that fiscal year.") As a result, the Board has no authority to expand eligibility if the expansion would result in projected expenditures in excess of appropriated funds. Since the Board is already operating at a deficit, if the All Kids Bridge coverage is to be at a subsidized rate as is coverage under the All Kids Healthcare Program for persons under the age of 19, the Board's deficit would only increase, with taxpayers having to foot the bill even though the new program was not authorized by the Legislature. Again, the Board has no authority to adopt a new subsidized insurance program that has not been authorized by the Legislature. Furthermore, if the Board is expending monies to set up the All Kids Bridge Program, the money spent increases the deficit that the Legislature will be requested to make the necessary appropriation to cover the deficit. 215 ILCS 105/2. A taxpayer action to prevent and stop any unconstitutional or unlawful expenditure by the Board is accordingly appropriate.

⁷ Defendants argue that I could have made a Freedom of Information Act request to ascertain what the Board is doing. They forgot that I did. On August 31, 2007, I submitted an

the Governor and his Administration, and the Department of Health's implementation of the expanded breast screening program on October 1, 2007, without any prior formal act by the Governor or the Department, the reliance that was placed on the Press Releases and Press Conference Statements by the Governor and the Board's Chairman should be found to be sufficient at least to the extent of requiring disclosure under oath by the Defendants of exactly what they have and are doing, and the money that is being spent to put into effect the All Kids Bridge Program.⁸ No affidavit has been submitted to the Court simply and plainly stating that the Board has not and is not expending money to develop the All Kids Bridge Program.

N.B. The Board Meeting for November 15, 2007

The Board rescheduled its next public meeting after the August 28, 2007 meeting from October 25, 2007, to November 15, 2007. As a result, what will be said concerning what it has done with respect to the All Kids Bridge Program is not yet known. There are several possibilities:

First, the Board may state that absent enabling legislation, it does not have the authority to establish the Program notwithstanding the Governor's request that it do so.

Second, it may state that since Defendants have conceded that the monies from the items that were vetoed on August 23, 2007, are unavailable to use for the All Kids Bridge Program, absent an appropriation to subsidize the program, the Board is unable to implement the program as was previously stated it was doing in the August 30, 2007 Press Conference.

Third, the Board may state that in accordance with its August 28, 2007 resolution that it is proceeding to set up the Program, that it has formulated (or is formulating) the terms of coverage,

email request for information using the Board's link for that and have not received any response to date to that information request. More than 60 days have elapsed since that request was made.

⁸ What instructions did the Governor issue to the Board, its Chairman, the Department of Public Health and any other agency or public state official with respect to establishing the All Kids Bridge Program and the expansion of the free breast screening program? What meetings were held and when? What were the reasons for these agencies proceeding informally, ignoring the requirements of the APA? What cooperative actions have the Board and other agencies taken respecting the All Kids Bridge Program at the Governor's instruction?

has determined the premium to be charged in accordance with the subsidized rates charged under the All Kids Healthcare Program, and that it has identified persons who are eligible for the coverage.

Finally, the Board may state that the Program will go into effect by a stated date or that it has implemented the Program.

The last two alternatives would constitute an admission that the Board has proceeded in violation of both the Constitution and statutory law and accordingly, such activity should be immediately enjoined. This issue is addressed in Point II below.

Under the first two alternatives, the action as against the Board and its Chairman would be moot except to the extent there has been an unconstitutional expenditure of public moneys and the question of what relief, if any, is available for recovery of money would have to be addressed.⁹ (See Point III below.)

Whatever the Board states at its November 15, 2007 Meeting, the agenda for which has not yet been posted, new facts will become available which will clarify exactly what the Board has done since August 28, 2007.

The Court stated in its September 28, 2007 Decision (at 9), **“If Caro had facts supporting the existence of such order, directive, or instruction, this case would proceed ***.”** (Emphasis added.) In the case of the Department of Public Health, we now have the facts about actions it took on October 1, 2007, implementing and putting into effect the expanded free breast cancer screening program for all uninsured Illinois women without regard to their income or personal assets. The Department’s and the Governor’s official announcements clearly also establish that the expansion was done at the Governor’s direction. This is sufficient if not conclusive evidence. Accordingly, under the Court’s September 28, 2007 Decision, there is an actual case or controversy amendable to judicial review.

⁹ If all the Board did was seek advice of counsel as to whether it could do anything without legislative authorization, and it did nothing more, the claim against the Board and its Chairman will be voluntarily withdraw. The Chairman’s August 30, 2007 statements, however, are to the contrary, assuming what he said is true.

In the case of the causes of action pertaining to the All Kids Bridge Program, since the Defendants have elected to proceed informally with only Press Releases and Press Conference Statements preceding implementation of a program, as is the case with the expanded breast screening program, reconsideration should be granted. Under such circumstances, the Court should not allow unconstitutional expenditures to escape judicial review solely because a formal order, directive or instruction has not been issued or made public. Such disregard of formal procedures and required disclosures should not be awarded by even a temporary immunity from suit as is now the case. At the very least, limited discovery or compelled disclosure ordered by the Court should be had.

II

IMMEDIATE INJUNCTIVE RELIEF SHOULD BE GRANTED

The proposed revised Complaint includes claims against the Department of Public Health with respect to its implementation of the expanded breast screening program. If the Court determines that such activity likely requires prior legislative authorization and that such authorization is lacking, a temporary injunction should be granted pending the filing and service of the Complaint and further hearing and argument on the constitutional and statutory issues. If Defendants agree that the Department has proceeded in error, then a permanent injunction on consent should be entered enjoining the program unless and until the Legislature authorizes the expansion. If the Court has to rule on the issue, then the injunction should issue if the Court determines that the expansion was unconstitutional or invalid under the APA.

With respect to Defendants' activities pertaining to the All Kids Bridge Program, the Court should set a hearing date for the submission and/or taking of evidence. And, if on November 15, 2007, the Board states that it has or is proceeding with the All Kids Bridge Program, a temporary injunction should issue pending the hearing if the Court determines that there is sufficient likelihood of success on the issue that the Board's actions required prior legislative authorization, absent which, the Board is proceeding and expending money in violation of the Constitution and/or statutory law. The statutory issues will now be briefly addressed.

A. The Administrative Procedure Act

(1) *The Department of Health's Expansion of the Breast Screening Program*

The Board and the defendant Departments and Officers fall well within the APA's definition of an "agency": "Agency means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative or judicial branch of State government ***" 5 ICLS 100/1-20.¹⁰ A "rule" is defined, in pertinent part as a "statement of general applicability that implements, applies, interprets or prescribes law or policy but does not include (i) statements concerning only the internal management of an agency not affecting private rights or procedures available to persons outside the agency ***." 5 ICLS 100/1-70. Under this definition, the adoption or implementation of the All Kids Bridge Program and the expanded breast screening program fall within the definition of a rule.

The APA mandates that "All rules of agencies shall be adopted in accordance with this Article." Thus all the APA's provisions for the adoption and implementation of a rule must be first complied with. 5 ICLS 100/5-10. The mandatory procedures are set forth in 5 ICLS 100/5-40, 5-45, or 5-50, which ever is applicable. 5 ICLS 100/5-25. The General Rulemaking Provisions set forth in 5 ICLS 100/5-40 are applicable to the agencies' proposed or actual adoption of the health benefits programs in issue in this case. 45 days advanced public notice of the agency's intended action is required. 5 ICLS 100-5-25(b). The Department of Health did not comply with this requirement.¹¹ The text of the old and new rules is to be set forth and the statutory authorization for the rule is to be cited. 5 ICLS 100-5-25(b)(1) and (2). Again, neither of these requirements were complied with by the Department. The agency must also set forth "The time, place and manner in which interested persons may present their views and comments

¹⁰ The definition's exclusions exclude the Governor from coverage. 5 ILCS 100/1-20(2).

¹¹ I pointed out previously that the Board should have complied with this provision prior to adopting any resolution respecting the Governor's proposal for the All Kids Bridge Program which was not listed as a matter on the Board's published Agenda for the August 28, 2007 Meeting. Had it instead stated that it would consider the proposal at the next Board Meeting, presently set for November 15, 2007, it would have had the benefit of receiving objections as to its constitutionality and legality prior to its taking any steps to implement the Program.

concerning the proposed rulemaking.” 5 ICLS 100-5-25(b)(5). The Department provided no such opportunity prior to its implementation of the expanded breast screening program. The other provisions of this statute and other applicable provisions of the APA¹² were also not complied with by the Department. Instead there were only the pre October 1, 2007, Press Releases!

These facts are uncontested. Thus the only question is whether the APA applies to the Department’s implementation of the expanded breast screening program. If the Court decides that it does, the injunction should issue even if the constitutional issue warrants further briefing.

(2) The Board’s and Departments’ Actions Respecting the All Kids Bridge Program

With respect to the All Kids Bridge Program, if the defendant agencies have taken any steps to set up the Program like those described by the Governor and Chairman Michael T. McRaith at the August 30, 2007 Press Conference, the defendant agencies were required to proceed in accordance with the APA’s procedures and requirements.¹³ That they haven’t to date is a fact. Indeed, the agenda for the Board’s November 15, 2007 Meeting is still not published as of the date of preparation of this Reply, November 8, 2007.

B. Finance Issues

There are potential statutory issues respecting the funds being used to finance the expanded breast screening program which may arise and which may have to be addressed at some point. For now I just want to alert the Court to these issues.

The State Finance Act provides agencies limited authority to transfer monies within appropriations funds, if funds in one authorized budget object ran out and funds remained in other authorized budget objects. *See* 30 ILCS 105/13.2 (as amended). First, subsection (a) creates a general authority to transfer moneys within a treasury fund, but limits that authority to

¹² For example, 5 ICLS 100/5-60 prescribing the information that is to be published in advance in the Illinois Register.

¹³ This does not apply to the agencies’ seeking advice of counsel respecting whether they were able to comply with the Governor’s directive or proposal without violating the Constitution or statutory law.

approved budget “objects”:

“Transfers among line item appropriations from the same treasury fund for the objects specified in this Section may be made in the manner provided in this Section when the balance remaining in one or more such line item appropriations is insufficient for the purpose for which the appropriation was made. [¶] No transfers may be made from one agency to another agency Transfers may be made only among the objects of expenditure enumerated in this Section, [with certain additional limits].” 30 ILCS 105/13.2(a), (a-1), (a-2).

Second, subsection (c) limits the total amount of transfers, and identifies the permissible budget objects for transfers: “The sum of such transfers for an agency in a fiscal year shall not exceed 2% of the aggregate amount appropriated to it within the same treasury fund for the following objects: Personal Services, Extra Help, [etc.]” 30 ILCS 105/13.2(c).

Thus, under the plain text of the statute, the Governor and an agency would have authority to transfer funds *only* if each of several specific requirements were met:

A transfer of money must be made “within the same treasury fund.” The Illinois legislature has established multiple, specific funds, often for particular programs. *See* 30 ILCS 105/5(a). An agency therefore does not have transfer authority over all money appropriated to it, as money cannot be moved across funds.

A transfer must be both from and to a budget “object” enumerated in the section by the legislature as being subject to the transfer authority.

A transfer may only be made “for the purpose for which the [original] appropriation was made.”

A transfer may only be made “when the balance remaining” for that specific budget object at some point in the year turns out to be “insufficient.”

The total transfers that an agency completes in a year may not be more than 2% of the aggregate amount appropriated to it – that is to the agency – for the objects enumerated in statute.

If any one of these conditions is not met, then a transfer of funds would not be authorized by section 13.2 of the State Finance Act.

Under the above analysis, the Department’s expenditure of any moneys from other

authorized budget items to pay for the legislatively unauthorized expanded breast screening program would be illegal under the State Finance Act.

A similar analysis may be made with respect to the money available to the Board. Premiums, investment income, assets, fees and other sources of income that the Board's legislatively authorized programs generate could not be used for the All Kids Bridge Program absent legislative authorization. To do so would be a breach of trust and the fiduciary obligations the Board owes the beneficiaries of these other programs and the State itself which covers the deficit generated by these other authorized subsidized health insurance programs. So even assuming that the Board could adopt the All Kids Bridge Program on its own authority, the Program would have to be totally self-sustaining, including with respect to its administrative costs and, as a result would not be a subsidized Program at all.

These issues arise because the Legislature has not authorized either program and has not made any appropriation for either. Neither the Department nor the Board, nor indeed the Governor, has the authority to impose additional financial burdens on the State, nor the taxpayers of the State without the consent of their duly elected representatives in the State Legislature. As the Illinois Supreme Court held in *County of Cook v. Ogilvie*, 50 Ill. 2d 379, 280 N.E.2d 224 (1972), held:

“*** Article III of the constitution of 1870, as well as section 1 of article II of the constitution of 1970, . . . preserves the separation of powers between the three branches of government The power to make appropriations is constitutionally vested in the General Assembly The question here is whether the Governor can be authorized to do what the General Assembly itself could do only by an act duly passed and approved, i.e., divert the funds appropriated for one particular purpose, thereby reducing one appropriation and increasing the other. While the Governor possesses the power to reduce an appropriation by means of an item veto, he could not exercise, nor could the legislature constitutionally delegate to him or a department of the executive branch of government, the power to transfer funds specifically appropriated for one program.” 50 ILL.2d at 384-85.

See also 1973 Op. Ill. Atty. Gen. 177, 179 (Op. No. S-643, Oct. 30, 1973), and 1976 Op. Ill. Atty. Gen. 192, 194 (Op. No. S-1097, May 27, 1979). Only the Legislature may impose taxes and

appropriate money for programs it authorizes.

III

RECOVERY OF PUBLIC MONIES SPENT IN VIOLATION OF THE CONSTITUTION OR LAW

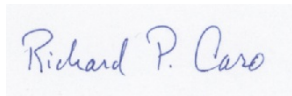
As previously pointed out, the State's position is that a taxpayer action may not seek the recovery of any moneys that have already been expended in violation of the Constitution or law. It may only seek to enjoin the expenditure. Assuming *arguendo* that is true, under the Court's equitable powers to provide full relief, as is necessary, just and proper, the Court may require the Defendants to make full or partial restitution or the Attorney General to recover the money. An unconstitutional or unlawful expenditure of public funds is a misuse of public funds, a breach of public trust. *Burke v. Snively*, 208 Ill. 328, 337, 70 N.E. 327 (1904). Recovery of such wrongfully spent public funds is appropriate if not required. *See, e.g., Laskowski v. Spellings*, 443 F. 2d 930 (7th Cir. 2006), *rehearing den.*, 456 F.3d 702 (7th Cir. 2006). For example, in *Board of Education of the City of Chicago v. Holt*, 41 Ill. App. 3d 625, 354 N.E. 2d 534 (First Dist., 1976), the Board of Education's action to recover public money paid as a salary to a teacher under a mistake of fact was allowed even though he performed the services. The State's obligation to recover unconstitutional and illegal expenditures is greater than monies mistakenly paid. In addition, here, because the defendant agencies did not comply even with APA's requirements as to how they were to proceed, their actions are also invalid and of no effect, void *ab initio*. 5 ILCS 100/5-35(b). Under *Perlstein v. Wolk*, 218 Ill. 2d 448, 457-67, 844 N.E.2d 923 (2006), equitable remedies are to be applied with flexibility to achieve a just and equitable result even, where as here, the actions are invalid. The Court thus has the discretion to determine who will have to make restitution and to what extent. Here the responsible public officials have not acted in good faith since the constitutional limitations and the APA's statutory requirements are clear and well established. The Departments and Board should, accordingly, be ordered to recover the unconstitutional, illegal expenditures from the responsible State Officials.

CONCLUSION

In the undersign's view, the constitutional and statutory violations that have occurred and are occurring are egregious. The responsible public officials in their oath of office swore to uphold the Constitution and the State's laws. If we expect our soldiers to oppose and refuse to obey an unconstitutional or illegal order of a superior officer, should not the State's high officials who have access to legal counsel be held to at least the same standard? Instead what has occurred is an agreement between the Governor and these agency officials to proceed informally, without complying with the APA's well established requirements and procedures, to effect violations of the Constitution. That's a conspiracy. This action is brought to stop such shameful activity and to prevent it from ever happening again.

November 8, 2007

Respectfully submitted,

A handwritten signature in blue ink that reads "Richard P. Caro". The signature is written in a cursive style and is contained within a light gray rectangular box.

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Exhibit 10

FOR IMMEDIATE RELEASE

September 27, 2007

Gov. Blagojevich announces major expansion of Illinois Breast and Cervical Cancer Program; Makes Illinois first state to ensure all women who need access to screenings and treatment can get it. With National Breast Cancer Awareness month days away, Governor launches "Take Charge, Get Screened" campaign to give more Illinois women benefits of early detection

CHICAGO – Standing with cancer survivors, doctors, advocates and legislators at Mercy Medical Center in Chicago, Governor Rod R. Blagojevich today announced a major expansion of the Illinois Breast and Cervical Cancer Program (IBCCP), which makes Illinois the first state in the nation to make sure all women who need access to potentially life-saving cancer screenings and treatment can get it. By expanding the program to all uninsured women, Gov. Blagojevich makes it possible for 260,000 more women to qualify for free cancer screenings and treatment regardless of income. As part of his new Take Charge, Get Screened campaign, the Governor today made stops throughout the state to urge women to take advantage of the newly available free screenings and treatments to reduce breast and cervical cancer mortalities through early detection and prompt treatment.

“Every woman in Illinois deserves access to the basic health screenings and treatment that could save her life. Doctors tell us that breast and cervical cancer, if detected early, can be treated and stopped, but many women can’t get the help they need because they can’t afford a mammogram or a Pap Test. Now, regardless of income, women in Illinois without health insurance have access to regular screenings through the Illinois Breast and Cervical Cancer Program,” said Gov. Blagojevich. “And with the new Take Charge, Get Screened campaign, we’re going to aggressively reach out to women and urge them to take time to get the preventative screenings that could save their lives.”

The most recent statistics show 8,604 women in Illinois were diagnosed with breast or cervical cancer in 2003. That same year, 2,057 women in Illinois died from breast or cervical cancer. It is estimated that almost 9,000 women will be diagnosed with either breast or cervical cancer this year, and approximately 1,700 will die. But, when breast cancer is diagnosed early, the five-year survival rate is 98 percent.

Under the newly expanded program, the IBCCP will now offer free pelvic exams and Pap tests to any uninsured women over the age of 35 and free breast exams to any uninsured woman over the age of 40.

Joining the Governor at Mercy Medical Center in Chicago today to advocate on behalf of women’s health in Illinois were Debbie Williams, RN, representative of the Susan G. Komen Breast Cancer Foundation, Jude Andrews, Executive Director of the Y-ME Foundation-Illinois, and Dr. Clement Rose, President of the American Cancer Society-Illinois.

“The expansion of the IBCCP program will help save thousands of lives through prevention and

early detection,” said Debbie Williams of the Komen Foundation and a breast cancer survivor. “I am very proud to be from Illinois today as the Governor is setting the precedent for women’s health for the rest of our nation.”

“The women who are most vulnerable in our state are the uninsured. This program will help relieve worry from women who don’t receive regular mammograms for fear of cost,” said Jude Andrews, Executive Director of Y-ME Illinois. “Now all women in Illinois can take care of themselves with greater freedom and ease.”

Launched in 1995, the Illinois Breast and Cervical Cancer Program (IBCCP), administered through the Illinois Department of Public Health, has provided almost 183,000 screenings – more than 109,000 of those screenings have been provided since 2003 under the Blagojevich administration. Before the expansion announced today, uninsured women only qualified if their incomes were under 250 percent of the Federal Poverty Level (FPL), which is about \$52,000 per year for a family of four.

Beginning October 1, 2007, more than 260,000 more women will be eligible for screening and treatment through the IBCCP. All uninsured women between the ages of 40 and 64 will qualify for mammograms and breast exams, and uninsured women between 35 and 64 will qualify for pelvic exams and Pap tests. On a case-by-case basis, younger, symptomatic women who meet the guidelines are considered for the program. The screening program is free.

This is the third time Gov. Blagojevich has made changes to benefit women in need of breast and cervical screenings. Previously, if a woman was eligible for IBCCP but was diagnosed with breast or cervical cancer outside of the program, she was not eligible for treatment. But last year the Governor expanded the program to allow women who met IBCCP eligibility requirements, but were diagnosed outside the IBCCP sites, to go straight into the free treatment program through the Department of Healthcare and Family Services. This gave women more choices and also avoided penalizing women who did not know about the program but who were screened and diagnosed by their doctor, community health center or other health care facility.

Uninsured women diagnosed with breast or cervical cancer will qualify for comprehensive healthcare coverage provided by Healthcare and Family Services (HFS) as long as they need treatment for breast or cervical cancer. Women diagnosed with a pre-cancerous cervical cancer condition who need follow-up diagnostic tests will also qualify for HFS coverage to determine whether they actually have breast or cervical cancer. Healthcare coverage will include doctor visits, inpatient and outpatient hospital care, emergency services, prescription drugs and more. Women who need treatment will pay modest co-payments for doctor visits, brand name prescription drugs and inpatient stays.

Women can find out how to get breast and cervical cancer screening and treatment by logging onto www.cancerscreening.illinois.gov or by calling the Women’s Health-Line at 888-522-1282 or for TTY (hearing impaired use only), 800-547-0466. Information on IBCCP and other women’s health and programs can also be found on the IDPH website, www.idph.state.il.us.