

**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 Plaintiffs-Intervenors,)

v.)

Case No. 07 CH 34353

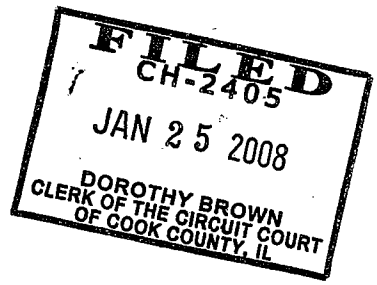
HON. ROD BLAGOJEVICH, Governor of)
the State of Illinois; THE ILLINOIS)
DEPARTMENT OF PUBLIC HEALTH;)
DAMON ARNOLD, Director of IDPH; THE)
ILLINOIS DEPARTMENT OF)
HEALTHCARE AND FAMILY SERVICES;)
BARRY S. MARAM, Director of IDHFS;)
and DANIEL W. HYNES, Comptroller,)

The Honorable James R. Epstein

Defendants,)

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STATE OF ILLINOIS,)

Intervenor.)



PLAINTIFFS' TRIAL BRIEF FOR PRELIMINARY INJUNCTION

Plaintiff Richard P. Caro and Plaintiff-Intervenors Ronald Gidwitz and Gregory Baise submit this Trial Brief in support of their Motion for Preliminary Injunction.

RELEVANT STATUTES AND FACTS¹

As of October 1, 2007, the State of Illinois provided taxpayer-funded medical assistance under the following statutes. For persons below the threshold of 133% of the Federal Poverty Limit ("FPL"), direct medical assistance at no cost was provided pursuant to Medicaid, Article V of the Public Aid Code, 305 ILCS 5/5-1 *et seq.*, a copy of which is Exhibit 2 of the Appendix. For children and their parents/caretakers with annual incomes from 133% to 200% of the FPL,

¹ An Appendix with cited materials is attached. The Joint Stipulation is Exhibit 1.

medical assistance was made available through the Children's Health Insurance Plan, 215 ILCS 106/1 *et. seq.* (CHIPA), a copy of which is Exhibit 3 of the Appendix, a state run, taxpayer-funded health plan. Families with annual incomes of 133% to 150% of the FPL could enroll children and parents/caretakers in CHIPA and receive benefits without paying premiums, while families with annual incomes of 150% to 185% of the FPL could enroll but were required to pay premiums. Also, the Covering All Kids Act, 215 ILCS 170/1 *et seq.*, a copy of which is attached as Exhibit 4 of the Appendix, allowed children, but not parents/caretakers in families with an annual income in excess of 200% of the FPL to enroll in a state run, taxpayer-funded All Kids health coverage plan with premiums required for coverage.

On September 30, 2007, a federal expansion of income eligibility limits for federal funding of state CHIP programs was rejected and the waiver that had enabled parents/caretakers to participate in the program expired. Uncertainty arose as to whether federal SCHIP matching funds for these parents/caretakers would be available. App., Ex. 1, Stip Nos. 24 and 31.

On November 7, 2007, DHFS -- which operates CHIPA, Covering All Kids and Medicaid -- purportedly in response to the federal funding issue, promulgated an "emergency" rule, a copy of which is attached as Exhibit 5 of the Appendix. The "emergency" rule, in relevant part, dealt with providing taxpayer-funded medical assistance to two groups of persons. First, it purported to move a group of adult parents/caregivers with family annual incomes between 133% and 185% of the FPL from enrollment in CHIPA to enrollment in a health coverage plan administered under Medicaid. *See* App., Ex. 5. Second, it purported to authorize inclusion of an entirely new group of persons for medical assistance, by providing enrollment for adult parents/caretakers with incomes between 200% and 400% of the FPL into a Medicaid funded health coverage plan. *Id.*

