

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT COURT
SANGAMON COUNTY**

**SPRINGFIELD RIGHT TO LIFE; LAKE COUNTY
RIGHT TO LIFE COMMITTEE, INC.; KNOX
COUNTY RIGHT TO LIFE, NFP; HENRY
COUNTY RIGHT TO LIFE, INC.; CLINTON
COUNTY CITIZENS FOR LIFE; PRO-LIFE
ACTION LEAGUE, INC.; DIOCESE OF
SPRINGFIELD-IN-ILLINOIS; ILLINOIS RIGHT
TO LIFE ACTION; ILLINOIS FEDERATION FOR
RIGHT TO LIFE, on behalf of their Illinois taxpayer
members, and**

Case No. 2017-MR-1032

**REP. BARBARA WHEELER; SEN. DAN
MCCONCHIE; REP. MARK BATINICK; SEN.
KYLE MCCARTER; REP. STEVE REICK; SEN.
PAUL SCHIMPF; REP. KEITH WHEELER; and
SEN. DALE FOWLER, as Illinois taxpayers,**

**Hon. Jennifer M. Ascher,
Judge Presiding**

Plaintiffs,

v.

**FELICIA NORWOOD, Director of the Department
of Healthcare and Family Services; MICHAEL
HOFFMAN, Acting Director of the Department of
Central Management Services; MICHAEL
FRERICHS, Treasurer of the State of Illinois;
SUSANA MENDOZA, Comptroller of the State of
Illinois,**

Defendants.

**MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiffs, pro-life organizations and the Catholic Diocese of Springfield, representing their members who are Illinois taxpayers, and state legislators, as Illinois taxpayers, pursuant to Sections 11-101 and 11-102 of the Illinois Code of Civil Procedure, 735 ILCS 5/11-101 and 11-102, respectfully request that this Court enter a temporary restraining order and preliminary injunction, without bond, to enjoin and restrain the defendants, and all persons acting in concert

with them, from expending any funds in any way to prepare for funding or to fund elective abortions, or any other previously unfunded procedures that are newly allowed or required to be funded by House Bill 40 (“HB 40”).

In support of this motion, Plaintiffs submit their Taxpayer Complaint to Restrain and Enjoin the Disbursement of Public Funds, filed December 6, 2017, and Petition for Leave to File Taxpayer Complaint, filed November 30, 2017, together with the Declaration of Senator Dan McConchie, their proposed Verified Amended Taxpayer Complaint to Restrain and Enjoin the Disbursement of Public Funds, their Combined Memorandum in Support of Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction and Response to Defendants’ Motion to Dismiss, and the Declaration of Professor Michael New, submitted herewith.

Plaintiffs also state as follows:

Plaintiffs’ Entitlement To Immediate And Preliminary Injunctive Relief

1. Plaintiffs are entitled to the relief they seek because they readily demonstrate: (1) one or more clearly ascertained rights that are in need of immediate protection; (2) irreparable injury in the absence of injunctive relief; (3) lack of any adequate remedy at law; and (4) a likelihood of success on the merits. *See Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill.2d 52, 62 (2006); *County of DuPage v. Gavrilos*, 359 Ill.App.3d 1077, 1089 (2d Dist. 2007).

Plaintiffs Are Likely To Succeed on The Merits of Their Claims

2. Plaintiffs are likely to succeed on the merits of both of their claims. Enacting HB 40 without an adequate appropriation violates the Illinois Constitution. Implementing the law five months before its effective date violates both the Illinois Constitution and state statute.

3. “Because a preliminary injunction is designed to preserve the status quo pending a decision on the merits, the plaintiff need not carry the same burden of proof that is required to

support the ultimate issue. . . . [A] plaintiff need only raise a fair question as to the existence of the right which [it] claims and lead the court to believe that [it] will probably be entitled to the relief requested if the proof sustains [its] allegations.” *Stenstrom Petroleum Servs. Grp., Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1089 (2d Dist. 2007) (quoting *LSBZ, Inc. v. Brokis*, 237 Ill.App.3d 415, 425 (2d Dist. 1992)). Plaintiffs’ case far exceeds that standard.

Implementing HB 40 Violates the Appropriations Clause & Balanced Budget Requirement of the Illinois Constitution, article VIII, section 2(b)

4. HB 40 purports to provide new entitlements in the state Medicaid and employee health insurance programs, but the General Assembly neglected to appropriate the additional general revenue funds to support that entitlement.

5. The General Assembly also failed to adopt a revenue estimate, estimating funds available to pay for HB 40. Because the General Assembly has not adopted such an estimate, any putative appropriations to fund HB 40’s new reimbursements would be invalid under the Illinois Constitution’s Balanced Budget requirement. *See* Ill. Const., art. VIII, § 2(b).

Implementing HB 40 Violates the Illinois Constitution, article IV, section 10, and the Effective Date of Laws Act, 5 ILCS 75/2

6. Although both houses voted on HB 40 in April and May, the bill was subject to a motion for reconsideration in the Senate until September 25, 2017, when the motion was withdrawn and HB 40 passed out of the Senate and went to the Governor’s desk. Therefore, under Illinois Senate rules, HB 40 was finally passed on September 25, 2017. *See* Mason’s Manual of Leg. Proc. §§ 467(1), 737(5), 737(6); Ill. Sen. R. 7-15 (adopting Mason’s Manual’s parliamentary rules); *see also* Bill Status, HB 40, <http://www.ilga.gov/legislation/billstatus.asp?DocNum=40&GAID=14&GA=100&DocTypeID=HB&LegID=99242&SessionID=91> (citing September 25, 2017, as the date that HB 40 “Passed Both Houses”).

7. Section 9(a) of Article IV of the Illinois Constitution provides that, “Every bill passed by the General Assembly shall be presented to the Governor within 30 calendar days after its passage.” HB 40 could not have been presented to the governor until after final passage on September 25, 2017. The 30-day presentation clock began to run on September 25, 2017; therefore, HB 40’s “passage” was on September 25, 2017.

8. The Illinois Constitution provides that, “A bill passed after May 31 shall not become effective prior to June 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date.” Art. IV, § 10. HB 40 was passed after May 31, and therefore cannot take effect prior to June 1, 2018, per the Illinois Constitution.

9. The Effective Date of Laws Act, 5 ILCS 75/2, provides that, “A bill passed after May 31 of a calendar year shall become effective on June 1 of the next calendar year unless the General Assembly by a vote of three-fifths of the members elected to each house provides for an earlier effective date in the terms of the bill” HB 40 was passed after May 31, and therefore cannot be effective prior to June 1, 2018, per the Effective Date of Laws Act.

Plaintiffs Easily Satisfy The Remaining Preliminary Injunction Factors

Plaintiffs Have Clearly Ascertainable Rights in Need Of Protection

10. Petitioners are pro-life and religious organizations, representing their members who are Illinois taxpayers, and state legislators, who assert their rights as Illinois taxpayers. They seek injunctive relief against the current and pending illegal expenditures of Defendants in furtherance of HB 40.

11. “It has long been the rule in Illinois that . . . taxpayers have a right to enjoin the misuse of public funds.” *Barco Mfg. Co. v. Wright*, 10 Ill.2d 157, 160 (1956); *see also* 735 ILCS

5/11-301 (permitting taxpayers to bring suit to “restrain and enjoin the disbursement of public funds by any officer or officers of the State government”).

12. Plaintiffs have alleged specific and measurable monetary harms to the state treasury in the tens of millions of dollars for elective abortions and other procedures that will be reimbursed under HB 40. *See* Complaint Exh. A, ¶¶ 22-27.

*Absent Injunctive Relief, Plaintiffs And All Other Illinois Taxpayers
Will Suffer Irreparable Harm*

13. Unless this Court enjoins and restrains Defendants from disbursing public funds of the State of Illinois, Plaintiffs will suffer immediate and irreparable injury, in that Defendants will begin (or continue) to disburse State monies in preparation for the Illinois Medicaid, state employees’ health insurance plan, and related programs to begin expending state tax dollars for elective abortions and other procedures that were previously unfunded those programs but are newly allowed or required pursuant to HB 40 and, after January 1, 2018, will disburse State monies to administer and pay for those elective abortions and other procedures; and such disbursements will be illegal and in violation of the Constitution and laws of the State of Illinois. Plaintiffs are unable to recover any funds expended due to that power being vested exclusively with the Attorney General, under the Illinois Constitution.

14. Defendants admit that they anticipate spending “approximately \$900,000” on “HB 40 services” between January 1 and June 30, 2018. *See* Memorandum in Support of Defendants’ Motion to Dismiss (“Defs’ Memo”) at 6. Therefore, it is undisputed that, without an injunction, Illinois taxpayers will suffer immediate, irreparable injury.

Plaintiffs Have No Adequate Remedy at Law

15. Defendants admit that they intend to implement HB 40 starting January 1, 2018, including processing reimbursements thereafter for elective abortions and other procedures, if this Court does not grant Plaintiffs equitable relief. *See, e.g.*, Defs' Memo at 2-3.

16. The Supreme Court of Illinois "has always recognized . . . and has uniformly held that the taxpayers are, in equity, the owners of the property of a municipality, and whenever public officials threaten to pay out public funds for a purpose unauthorized by law or misappropriate such funds, equity will assume jurisdiction to prevent the unauthorized act or to redress the wrong, and this is because the right and interest are equitable in their nature, and are not recognized by courts of law." *Jones v. O'Connell*, 266 Ill. 443, 447 (1915).

WHEREFORE, Plaintiffs pray that a temporary restraining order be issued, and that the Court thereafter grant them a preliminary injunction and all other relief to which they may be justly entitled on the merits.

Respectfully submitted,

/s/Peter Breen
One of the attorneys for Plaintiffs

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