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SUPREME COURT

No. _____

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	Original Action Pursuant to Supreme
)	Court Rule 382.
Plaintiff,)	
)	
v.)	
)	
ROD BLAGOJEVICH, Governor of Illinois,)	
)	
Defendant.)	
)	
)	

**VERIFIED MOTION FOR TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY INJUNCTION**

The People of the State of Illinois, by and through their attorney, Lisa Madigan, Attorney General of Illinois, pursuant to notice, respectfully request a temporary restraining order and/or preliminary injunction enjoining Defendant Rod Blagojevich from acting as Governor of Illinois.

Introduction

1. On December 12, 2008, the People filed a Motion for Leave to File a Complaint, together with a Verified Complaint ("Complaint"), with this Court pursuant to Illinois Supreme Court Rule 382(a). The Complaint, with exhibits, is part of the Supporting Record filed with this motion.

2. In the Complaint, the People allege that Mr. Blagojevich is unable to serve as Governor due to disability and should not rightfully continue to hold that office.

3. Through this motion, the People request that the Court enter emergency injunctive relief enjoining Mr. Blagojevich from acting as Governor and naming the

Lieutenant Governor as Acting Governor until such time as the Court resolves the merits of this action or otherwise determines that such disability has been removed. In the alternative, the People request that this Court enjoin Mr. Blagojevich from exercising the following powers of the office: (1) appointing a Senator to fill the vacant Senate seat; (2) acting on legislation; (3) directing state agencies with regard to the negotiation and execution of contracts; (4) directing the activities of the Illinois Finance Authority; (5) directing the activities of the Illinois State Toll Highway Authority; and (6) directing the disbursement of state funds, and ordering that these duties be performed by the Lieutenant Governor pursuant to article V, § 6 of the Illinois Constitution and the provisions of the Governor Succession Act, 15 ILCS 5/0.01 – 5/1.

Parties

4. The People bring this action through the Illinois Attorney General, who has exclusive authority to appear for and represent the People of the State of Illinois before this Court in all cases in which the State or the People are interested. 15 ILCS 205/4 (2006).

5. Mr. Blagojevich is the Governor and chief executive of Illinois and occupies a position of great public trust. He originally was elected Governor in 2002 and was re-elected in 2006. His current term runs until January 2011.

Venue and Jurisdiction

6. This Court has original and exclusive jurisdiction over this action under article V, § 6(d) of the Illinois Constitution.

Factual Background¹

7. On December 9, 2008, Mr. Blagojevich was arrested by Federal Bureau of Investigation (“FBI”) agents on federal corruption charges. In a criminal complaint accompanied by a 76-page, 117-paragraph affidavit by FBI Special Agent Daniel W. Cain (together, “the federal complaint”), Mr. Blagojevich was charged with conspiracy to commit mail and wire fraud and solicitation of bribery. A copy of the federal complaint is attached as Exhibit A to the Complaint.

8. The federal complaint contains voluminous allegations against Mr. Blagojevich pertaining to actions he undertook as Governor. Some of the allegations concern Mr. Blagojevich’s actions as recent as December 5, 2008, and numerous allegations concern pervasive on-going criminal conduct and pertain to decisions that Mr. Blagojevich could make. *See* Supporting Record, Cain Affidavit at ¶¶ 3, 13.

Argument

9. Before this Court reaches a final decision on the merits of this action or otherwise determines that such disability has been removed, Mr. Blagojevich should be temporarily and preliminarily enjoined from acting as Governor because his continued occupation of that office could irreparably damage the State’s interests.

10. To be entitled to a temporary restraining order or preliminary injunction, the movant must demonstrate: (1) a clearly ascertained right in need of protection; (2) irreparable injury in the absence of an injunction; (3) no adequate remedy at law; and (4)

¹ The People’s factual allegations are fully set forth in their Complaint, filed with this motion as part of the Supporting Record, and are incorporated herein by reference.

a likelihood of success on the merits. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2007). Additionally, a court must balance the hardships to determine whether the equities support the grant of the injunction. *Bollweg v. Richard Marker Assoc.*, 353 Ill. App. 3d 560, 572 (2nd Dist. 2004). The question is whether the party seeking the injunction “had demonstrated a prima facie case that there is a fair question concerning the existence of the claimed rights.” *Mohanty*, 225 Ill. 2d at 62.

**The People Have a Clearly Ascertainable Right
In Need of Protection**

11. A plaintiff must have a clearly ascertainable right in need of protection. *See In re Marriage of Joerger*, 221 Ill. App. 3d 400, 405 (4th Dist. 1991). Such a right exists here, as the People have a definite constitutional right to the faithful and lawful exercise of the Governor’s duties. ILL. CONST. art. V, § 8. Indeed, “[i]n a large industrial state, executive duties are much too important to be left in doubt for any extended period of time.” George D. Braden and Rubin G. Cohn, *The Illinois Constitution: An Annotated and Comparative Analysis* 307 (1969). The People also have a certain right in the proper expenditure of public money and allocation of State resources that is directly implicated by the Governor’s decisions to disburse funds, award contracts, undertake short-term borrowing, and otherwise incur financial obligations on behalf of the State.

12. Every day, the Governor can direct state agencies to enter into contracts for programs or services that will cost millions of dollars and impact millions of Illinois residents. The Governor also can control the disbursement of state funds to entities that provide critical, necessary services to the citizens of this State, such as hospitals, day care

providers and pharmacies. Additionally, the Governor currently has on his desk several important bills that he can sign, veto or amendatorily veto. The People of Illinois have a significant interest in this legislation.

13. Based on Mr. Blagojevich's own words, as described in the federal complaint, he has ignored these duties and instead sought to trade campaign contributions for membership on state administrative boards, condition state benefits on campaign contributions, and threaten to withhold state assistance to induce the firing of members of the press critical of him.

14. Further, Mr. Blagojevich is alleged to have been involved in a conspiracy to sell the U.S. Senate seat recently vacated by the United States President-Elect. Illinois citizens have a clear and strong interest in the integrity of the appointment to fill President-Elect Obama's vacant U.S. Senate seat. The United States Senators from Illinois are vital in representing the interests of Illinois citizens in Congress, and the compelling interest the citizens of this State have in their congressional representation requires protection. U.S. Senate Majority Leader Harry Reid reinforced this point in his letter to Mr. Blagojevich asking him not to appoint a Senator and explaining that it is important that "Illinois is fully represented in the U.S. Senate as the important work of the 111th Congress moves forward." Complaint, Ex. B.

**The People Will Suffer Irreparable Harm
If the Injunction is Not Granted**

15. The People would suffer irreparable harm if the preliminary injunction is not granted. Once a protectable interest is established, there is a presumption that

irreparable harm will follow if that interest is not protected. *Mohanty v. St. John Heart Clinic, S.C.*, 358 Ill. App. 3d 902, 906 (1st Dist. 2005), *aff'd*, 225 Ill. 2d 52 (2007). An injury is irreparable when the injured party cannot be compensated adequately or where damages cannot be measured by a certain pecuniary standard. *Wilson v. Wilson*, 217 Ill. App. 3d 844, 855 (1st Dist. 1991). A party, however, need not show the injury is beyond compensation if it establishes that the injury is of a continuing nature. *Bollweg*, 353 Ill. App. 3d at 577.

16. As the State's chief executive, Mr. Blagojevich has substantial power and authority to set policy, direct administrative agencies, issue executive orders, provide for disbursement of funds, borrow money on behalf of the State, award contracts, and appoint state officials. Because of the pendency of the federal complaint, the executive decisions that Mr. Blagojevich makes are tainted. Indeed, every day this State is faced with an allegedly corrupt Governor making critical decisions that have no legitimacy. Furthermore, Mr. Blagojevich's continued exercise of the gubernatorial authority damages the public's faith and confidence in the Office and in the effectiveness of the state government.

17. Additionally, if Mr. Blagojevich appoints an individual to the vacant U.S. Senate seat, the appointee will be tainted by the allegations in the federal complaint that explicitly relate to Mr. Blagojevich's attempts to exchange that appointment for his personal, political, or financial gain, and the appointee may not even be seated by the U.S. Senate. Consequently, the appointee's ability to legislate would be damaged and the interests of Illinois citizens would not be adequately represented in Congress.

The People Have No Adequate Remedy At Law

18. A plaintiff's remedy at law is inadequate when it is not clear, complete and efficient. *See McArdle v. Rodriguez*, 277 Ill. App. 3d 365, 377-78 (1st Dist. 1995). Here, the harm suffered by the People cannot be adequately redressed through a legal remedy.

19. No adequate remedy at law can undo the decisions Mr. Blagojevich makes while continuing to act as Governor. As long as he is allowed to act as Governor, Mr. Blagojevich can and will make decisions tainted by his alleged criminal behavior and improper motivations that can never be wholly undone. Further, due to the federal complaint asserting repeated instances of corrupt decision-making, the General Assembly, state officials, state agencies, and the People no longer have the trust and confidence in Mr. Blagojevich to act honestly and in the best interests of the State. In such an environment, the proper governance of the state is fatally compromised, and no remedy at law can ever rectify these problems.

The People Raise a Fair Question of Likelihood of Success on the Merits

20. To prevail on a motion for interlocutory injunctive relief, a plaintiff need not prove her case on the merits, but need only raise a "fair question" of a likelihood of success. *Stenstrom Petroleum Serv. Group, Inv. v. Mesch*, 375 Ill. App. 3d 1077, 1089 (2d Dist. 2007). Supreme Court Rule 382(a) provides original jurisdiction in this Court to determine "the ability of the Governor to serve or resume office" under article V, section 6(d) of the Illinois Constitution. Ill. Sup. Ct. R. 382(a). Under article V, section 6(b), the Governor shall be replaced by his successor if the Governor "is unable to serve

because of death, conviction on impeachment, failure to qualify, resignation or other disability." ILL. CONST. art. V, § 6(b).

21. Mr. Blagojevich is unable to serve because he has a disability impairing his effective governance of the State. See ILL. CONST. art. V, § 6(b). A "disability" is a "disabled condition" or "that which disables or disqualifies." *Webster's New World Dictionary* 175 (Warner Books Ed.). To "disable" is to "make unable, unfit, or disqualified," *id.*, or "to take away the ability of, to render incapable of proper and effective action," *Black's Law Dictionary* 548 (Rev. 4th ed. 1968). Thus, under § 6(b), a disability is something that renders an individual unfit or unable to serve as Governor.

22. The text of § 6(b) provides further guidance as to the nature of the disability: the Governor is unable to serve because of "death, conviction on impeachment, failure to qualify, resignation, or *other disability*." ILL. CONST. art. V, § 6(b) (emphasis added). In no place in the statute is the term disability limited to just physical or mental impairment. Further, the use of the qualifying word "other" before disability means that the previous items in the list also qualify as disabilities. And those disabilities range from a physical disability (death) to a technical disability (failure to qualify) to an inability to lead (impeachment or resignation). Section 6(b), then, defines as a disability anything that renders the Governor unable to serve regardless of the specific nature of that disability. This common understanding of the term "disability" in § 6(b) – something that makes one "unable" or "unfit" to serve – also comports with the purpose of section 6 as a whole. As § 6(c) makes plain, that purpose is to force a timely succession of authority whenever the Governor "may be seriously impeded in the exercise

of his powers.” ILL. CONST. art. V, § 6(c).

23. Just as impeachment or resignation constitutes a disability that renders an individual unable to serve as Governor, pending federal criminal charges of this nature and severity are a disability that has rendered Mr. Blagojevich unable to serve. As a result of the federal complaint relating to his official acts, Mr. Blagojevich’s future official acts – many of which are the subject of the federal complaint – will be subject to challenge as illegal or improperly motivated. Because the integrity of Mr. Blagojevich’s future official acts will be in question, his ability to provide effective leadership is eliminated.

24. It is likely that Mr. Blagojevich’s future official actions will not be calculated to be in the best interest of the People, but rather will be designed to improve his public standing and his position with regard to the pending criminal charges. Furthermore, Mr. Blagojevich clearly will not be able to devote his attention to his official duties because of the pending charges and likely criminal trial.

25. The damage to Mr. Blagojevich’s leadership ability, in fact, already has been noted by U.S. Senate Majority Leader Harry Reid, who explained that any appointment Mr. Blagojevich made to the Senate “would raise serious questions.” Complaint, Ex. B. So in doubt is Mr. Blagojevich’s ability to provide effective leadership, in fact, that the entire United States Senate Democratic Caucus requested Mr. Blagojevich to step down as Governor and insisted that he not appoint a U.S. Senator. *Id.*

26. Each of this State’s elected constitutional officers recognized the same leadership crisis brought about by the federal complaint and asked Mr. Blagojevich to

resign because he can no longer provide effective leadership under the unique circumstances of the allegations in the federal complaint.

27. All of this establishes that Mr. Blagojevich cannot effectively perform the vital duties of the State's chief executive. Because he cannot effectively lead the State, he is unable to perform the duties of Governor and should be removed until the disability is removed.

Equity Supports a Grant of the Injunction

28. Additionally, the Court must balance the hardships to determine whether the equities support the grant of the injunction. *See Bollweg*, 353 Ill. App. 3d at 572. Without immediate action, the citizens of the State of Illinois face a prolonged period of illegitimate leadership from a Governor who no longer has the trust and confidence of the State's citizens and its public officials. The citizens of Illinois face these hardships at the very moment they are confronted with unprecedented political uncertainty and financial difficulty, including a budgetary crisis, pending legislation, a vacant U.S. Senate seat, and other significant challenges.

29. For instance, Mr. Blagojevich's ability to borrow money in his official capacity is compromised. The State has postponed a \$1.4 billion short-term debt offering because of the uncertainty over whether the State can provide the necessary accompanying certification that no threatened or pending controversy or litigation threatens Mr. Blagojevich's title to office. The State is also at risk of having its bond rating lowered due to concerns over the pending criminal charges.

30. When compared to the hardships facing the State, Mr. Blagojevich faces less hardship associated with the entry of an interlocutory injunction. Such an injunction merely requires Mr. Blagojevich to step aside while the underlying merits of this action are resolved and, in the meantime, allows the Lieutenant Governor to perform those actions necessary for the effective governance of the State.

31. As long as Mr. Blagojevich remains in office, the State is left without an effective governor, and immediate action is required to protect the People's interests and resources. The United States Attorney recognized the need for immediate action to stop what he saw as an on-going "political corruption crime-spree," but he cannot remove Mr. Blagojevich from office. As a result, a vacuum in state leadership exists.

32. The People have shown a prima facie case supporting the entry of an injunction and have demonstrated that a balancing of the equities strongly favors the People of the State of Illinois. Therefore, this Court should grant the People the interlocutory relief they seek to protect the State until such time as it resolves this action on the merits.

WHEREFORE, to remedy the inability of Mr. Blagojevich to continue to serve as Governor, the People of the State of Illinois respectfully request:

- a. A temporary and/or preliminary injunction preventing Mr. Blagojevich from exercising any powers or authority of the Office of the Governor or otherwise acting as Governor until such time as the Court resolves the merits of this action or otherwise determines that such disability has been removed; and/or
- b. A temporary and/or preliminary injunction prohibiting Mr. Blagojevich from performing the following tasks: (1) appointing a Senator to fill the vacant Senate seat; (2) acting on legislation; (3) directing state agencies

with regard to the negotiation and execution of contracts; (4) directing the activities of the Illinois Finance Authority; (5) directing the activities of the Illinois State Toll Highway Authority; and (6) directing the disbursement of state funds, and ordering that these duties will be performed by the Lieutenant Governor pursuant to article V, § 6 of the Illinois Constitution and the provisions of the Governor Succession Act, 15 ILCS 5/0.01 – 5/1 (2006); and/or

- c. A declaration that pursuant to the Governor Succession Act, the Lieutenant Governor shall assume the duties of the Governor of Illinois until such time as Mr. Blagojevich's disability is removed; and/or
- d. Any additional relief that this Court deems reasonable and just.

Respectfully submitted,



Attorney for The People of the State of Illinois

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VERIFICATION BY CERTIFICATION

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that he is an Assistant Illinois Attorney General, that he is authorized to make this verification by certification, and that the statements set forth in the Verified Motion for Temporary Restraining Order and/or Preliminary Injunction are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

DATED: December 12, 2008


MICHAEL LUKE
Assistant Attorney General