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; MORGAN COUNTY RIGHT TO LIFE, INC., 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.** 2017MR001032
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,	)	
Petitioners,	)	
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,	)	
Respondents.	)	

FILED
NOV 30 2017
Clerk of the Circuit Court

PETITION FOR LEAVE TO FILE A TAXPAYER ACTION TO RESTRAIN AND ENJOIN THE DISBURSEMENT OF PUBLIC FUNDS

Petitioners, by their undersigned counsel, petition this Court, pursuant to 735 ILCS 5/11-303, that they be granted leave to file their taxpayer Complaint, attached hereto as Exhibit A, and state in further support as follows:

1. Petitioners' taxpayer Complaint challenges the imminent illegal expenditure of general revenue funds by the Illinois state government, through the state's Medicaid and employee health insurance plans, under House Bill 40 ("HB 40"). HB 40 strips away the current bar in Illinois law against the funding of elective abortions[1] by the state's Medicaid and employee health insurance programs. *See*, Full Text of HB 40, found at http://www.ilga.gov/legislation/100/HB/PDF/10000HB0040lv.pdf. HB 40 further affirmatively mandates coverage by Medicaid for all "reproductive health care that is otherwise legal." *Id.,* p. 8, lns. 4-8.

2. Currently, the state's abortion providers perform approximately 40,000 abortions per year, nearly all of which are paid for by non-state-taxpayer sources, as current law prohibits those reimbursements. *See*, Abortion Statistics, Ill. Dep't of Public Health, found at http://www.dph.illinois.gov/data-statistics/vital-statistics/abortion-statistics; *see also*, Full Text of HB 40. Under HB 40, the taxpayers of Illinois would be compelled to pay for 20,000 to 30,000 or more elective Medicaid abortions per year, at a cost in the tens of millions of dollars. *See*, Exh. A, ¶¶ 21-26.

3. HB 40 passed out of the Senate, and both houses of the General Assembly, on September 25, 2017. Pursuant to the clear terms of the Illinois Constitution and Effective Date of Laws Act, HB 40 cannot be effective until June 1, 2018. Yet Defendants are believed to be treating HB 40 as if it were effective January 1, 2018. *Id.*, ¶ 42. Defendants thus are or will soon be illegally spending taxpayer dollars to prepare for and, after January 1, to pay for elective abortions and related services—services that are prohibited from reimbursement under current law, at least until June 1, 2018.

[1] "Elective abortions" as used herein means abortions performed for reasons other than (1) to preserve the life of the mother or (2) in cases where the pregnancy results from an act of rape or incest.

4. Moreover, the General Assembly has neither appropriated funds to cover the new expenses under HB 40, nor adopted an estimate of revenues to support any putative appropriations arguably covering these new expenses, as required by the Appropriations and Balanced Budget provisions of the Illinois Constitution, Art. VIII, Sec. 2(b). Without an appropriation and revenue estimate, no state funds may flow to prepare for, to administer, or to pay for providing the procedures newly allowed or mandated under HB 40. Any actions of Defendants to the contrary violate the Illinois Constitution.

I. Plaintiffs Have Standing As Taxpayers to Challenge the Misuse of Public Funds.

5. Petitioners are pro-life organizations and the Catholic Diocese of Springfield, 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.

6. "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). Public funds are the taxpayers' money, and taxpayers are liable to replenish the treasury when public funds are depleted. *Id.* When public funds are misused, taxpayers are injured. *Id.*; *see also Martini v. Nestch*, 272 Ill. App. 3d 693, 695-97 (1st Dist. 1995) (taxpayer had standing to challenge provision of abortions at Cook County Hospital).

7. Plaintiffs have alleged specific and measurable monetary harms to the state treasury in the tens of millions of dollars for the elective abortions and other procedures mandated or provided for by HB 40. Exh. A, ¶¶ 22-27. Plaintiffs have standing as taxpayers whether the amount of misused funds is "great or small." *Snow v. Dixon*, 66 Ill. 2d 443, 450 (1977) (*quoting Krebs v. Thompson*, 387 Ill. 471, 475-76 (1944)). In addition to suing to stop moneys from flowing out of the state treasury, Plaintiffs may also sue to stop the use of state

funds to administer an illegal program, even if the total cost of the program is alleged to be a net positive to the state government. *Id.*, 450-51.

II. Reasonable Grounds Exist to Allow the Filing of this Complaint.

8. Illinois law requires that taxpayers seeking to redress illegal government spending by state officials to petition for leave to file a complaint. 735 ILCS 5/11-301 & 5/11-303.

9. The standard for judging a petition for leave to file a taxpayer complaint is whether there is "reasonable ground for the filing of such action." 735 ILCS 5/11-303. "The purpose of this requirement [is] to establish a procedure which would serve as a check upon the indiscriminate filing of such suits." *Strat-O-Seal Mfg. Co. v. Scott*, 27 Ill. 2d 563, 565 (1963) (*citing Barco Manufacturing Co. v. Wright*, 10 Ill.2d 157 (1956)).

10. A petition presents "reasonable ground" for filing suit when there is nothing to indicate that the purpose of the petition "is frivolous or malicious." *Id.* at 566. In *Strat-O-Seal*, the Supreme Court reversed the Circuit Court for Sangamon County and allowed the filing of a taxpayer complaint, recognizing that it is "important that suits which do not appear unjustified are not barred or foreclosed." *Id.* The Supreme Court noted that, in allowing the petition, it was not ruling one way or the other on the allegations of the underlying complaint. *Id.*

11. As described herein, Petitioners' claims provide much more than bare "reasonable grounds" to allow the Complaint to be filed. The Complaint presents a textbook taxpayer lawsuit, as it alleges that the expenditure of general revenue funds in relation to HB 40 is illegal and unconstitutional in several respects.

III. Immediate Action is Necessary to Prevent Harm to Taxpayers.

12. Unless this Court grants leave to file the attached Complaint seeking to enjoin and restrain Defendants from disbursing public funds of the State of Illinois, Petitioners are likely to suffer immediate and irreparable injury, in that: (a) FELICIA NORWOOD, Director of the

Department of Healthcare and Family Services, will begin or continue to disburse State monies in preparation for the Illinois Medicaid and related programs to begin expending state tax dollars for elective abortions and other procedures that were previously unfunded under the Medicaid and related programs and 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; (b) MICHAEL HOFFMAN, Acting Director of the Department of Central Management Services, will disburse State monies in preparation for the Illinois state employees' health insurance plan and related programs to begin expending state tax dollars for elective abortions and other procedures that were previously unfunded under the Illinois Medicaid and related programs and 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; (c) SUSANA MENDOZA, State Comptroller, upon determining that public funds are due any person, will be required by 15 ILCS 405/10.01 to direct MICHAEL FRERICHS, State Treasurer, to pay the amount due; and (d) such disbursements of large sums of money will be illegal and in violation of the Constitution and laws of the State of Illinois.

IV. Plaintiffs' Claims Plainly Meet the Not "Frivolous or Malicious" Test.

13. Plaintiffs' Complaint need only be better than "frivolous or malicious" to warrant the granting of this Petition. The Complaint properly alleges that Plaintiffs have taxpayer standing, Exh. A, ¶¶ 3-15; that the state's general revenue funds are at risk, *Id.*, ¶¶ 1, *et seq.*; and it asserts two plausible, colorable, and meritorious claims based on Illinois' Constitution and laws, *Id.*, Counts I & II.

V. Count I: No Funds May be Expended in Furtherance of HB 40 As No Valid Appropriation or Revenue Estimate Supports HB 40.

14. Article VIII, § 2(b), of the Illinois Constitution provides that:

> (b) The General Assembly by law shall make appropriations for all expenditures of public funds by the State. Appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year.

15. "Only the General Assembly is authorized by our constitution to make appropriations for all State expenditures of public funds. An appropriation involves the setting apart from public revenue a certain sum of money for a specific object. No money belonging to or left for the use of the State shall be expended or applied except in consequence of an appropriation made by law and upon the warrant of the State Comptroller." *American Federation of State, etc. v. Netsch*, 216 Ill. App. 3d 566, 575 (4th Dist. 1991). Here, where the new costs are projected to be significant, in the tens of millions of dollars, and the General Assembly did not account for them in its prior appropriations for the Fiscal Year, this Court should not presume that the General Assembly has provided the required appropriations for HB 40.

16. This concern is all the more heightened in the absence of the estimate of revenues for such spending, which is required by the Constitution.

> Section 2(b) of article VIII, relied on by respondent, complements these balanced budget provisions by providing that the legislature must limit its annual appropriations each fiscal year so as not to "exceed funds estimated by the General Assembly to be available during that year."
> * * *
> We think it is clear that the requirements of section 2(b) of article VIII would be complied with so long as the total appropriations for any fiscal year, including the amounts appropriated to pay principal and interest on outstanding Transportation Bonds, do not exceed the estimated available funds.
> *People ex rel. Ogilvie v. Lewis*, 49 Ill. 2d 476, 490-491 (1971).

17. Fiscal Year 2018 appropriations of general revenue funds for existing services under Medicaid and the state health insurance program were enacted on July 6, 2017. P.A. 100-21. Those appropriations, which cover the fiscal year from July 1, 2017 to June 30, 2018, did not account for or include amounts to support HB 40's tens of millions in new spending, as required by the Illinois Constitution's Appropriations clause, Art. VIII, Sec. 2(b).

18. Moreover, the General Assembly has not adopted an estimate showing available revenues to support any putative appropriations for HB 40, as required by the Illinois Constitution's Balanced Budget requirement. *See*, Ill. Const., Art. VIII, Sec. 2(b); Commission on Government Forecasting and Accountability Act, 25 ILCS 155/4(a). Without an estimate of revenues available, any such putative HB 40 appropriations are illegal and unconstitutional.

19. Nor could an estimate of revenues be adopted to support HB 40's new spending, as there are no revenues actually available for HB 40. It is estimated that the existing appropriations in P.A. 100-21 are already approximately $1.7 billion greater than expected revenues. *See*, *e.g.,* "Illinois Economic and Fiscal Policy Report," 10/12/17, Governor's Office of Management and Budget, https://www.illinois.gov/gov/budget/Documents/Economic%20and%20Fiscal%20Policy%20Reports/FY%202017/Economic_and_%20Fiscal_%20Policy_%20Report_10.12.17.pdf.

20. The Appropriations and Balanced Budget requirements of the Constitution were explained to the People of Illinois as follows:

> Only the General Assembly has the power to decide how state funds are to be spent. The General Assembly cannot authorize spending more money in any fiscal year than it expects to receive from all sources.
> 7 Record of Proceedings, Sixth Illinois Constitutional Convention 2667, 2733.

21. The Report of the Committee on Revenue and Finance similarly notes, that, "The second sentence [of § 2(b)] reinforces the idea of a balanced budget." 7 Record of Proceedings, Sixth Illinois Constitutional Convention 2023.

22. In describing the requirement that the General Assembly adopt an estimate of revenues, Delegate S. Johnson stated that:

> The second thing is it gives the General Assembly—it requires the General Assembly to establish an estimate. Whether they adopt the governor's estimate or whether they modify it themselves, **it requires the General Assembly to**

> **establish a ceiling of revenues within which they must appropriate and beyond which they may not go.**
> Remarks of Delegate S. Johnson, 2 Record of Proceedings, Sixth Illinois Constitutional Convention 883-84 (emphasis supplied).

23. In answering further questions about the revenue estimate, Delegate Johnson was asked whether "the second sentence of section 4 would not limit the General Assembly in making appropriations to the amount of available funds estimated by the governor in his Budget[,]" to which he replied:

> Mr. S. JOHNSON: * * * It does not prohibit them from amending the governor's estimate either up or down and **using that as a ceiling within which they must appropriate**.
> Remarks of Delegates Fay and S. Johnson, 2 Record of Proceedings, Sixth Illinois Constitutional Convention 885 (emphasis supplied).

24. In the absence of an appropriation accounting for the tens of millions of dollars required to administer and pay for the elective abortions and other services allowed or mandated by HB 40, Defendants may not expend state moneys in furtherance of those new services. Even if a putative appropriation were to found to support HB 40's services, it would not be within actual revenues. And in the absence of the constitutionally required estimate of revenues—establishing the "ceiling" beyond which they may not go—showing that there are funds available for such a putative appropriation, the General Assembly cannot authorize and Defendants cannot expend state moneys in furtherance of HB 40's new services.

VI. Count II: HB 40 Cannot Be Effective Prior to June 1, 2018.

A. HB 40 Finally Passed the Illinois Senate, and Both Houses of the General Assembly, on September 25, 2017.

25. HB 40 received a simple majority vote in the Illinois House on April 25, 2017, passed out of the House, and arrived in the Senate on April 26. See, Bill Status of HB 40, found at http://www.ilga.gov/legislation/billstatus.asp?DocNum=40&GAID=14&GA=100&DocTypeID=HB&LegID=99242&SessionID=91.

26. HB 40 received a simple majority vote in the Illinois Senate on May 10. However, on that same day, Senator Don Harmon, who voted in favor of HB40, filed a motion to reconsider the vote. *Id.*

27. On September 25, 2017, Sen. Harmon withdrew the motion to reconsider. HB 40 passed out of the Senate that day and was sent to the governor. *Id.*

28. The governor signed HB 40 on September 28. *Id.*

29. The text of HB 40 does not include an effective date. See, Full Text of HB 40.

30. A bill is not finally passed by the Senate until the bill is out of the Senate's possession. *See, Mason's Manual*, § 737(5) "Passage of Bills" ("When a house has passed a bill and it is out of that body's possession . . . jurisdiction of the bill has been lost and it has been finally passed."). And a bill subject to a motion to reconsider cannot "pass out of the possession of the Senate until after the motion has been decided or withdrawn." Ill. Sen. R. 7-15.

31. A motion to reconsider suspends all action on a particular vote and renders the vote ineffective, until the motion is resolved. *See*, *Mason's Manual of Leg. Pro.* (2010), § 467(1); Ill. Sen. R. 12-2 (adopting *Mason's*); *Ceresa v. City of Peru*, 133 Ill. App. 2d 748, 753 (3d Dist. 1971).

32. A bill subject to a motion to reconsider is thus not finally passed until after the motion is resolved. *See also, Mason's Manual*, § 737(6) "Passage of Bills" ("When a bill has been voted upon favorably by both houses, but a motion to reconsider its action in passing the bill is pending in the house last acting on the bill and the bill is still in its possession, the bill has not been finally passed by both houses.").

33. The motion to reconsider the Senate vote on HB 40 was not resolved until September 25, 2017. HB 40 was thus not passed by the Senate, and not passed by both houses of the General Assembly, until September 25, 2017.[2]

B. A Bill is Not "Passed" Under the Effective Date of Laws Act and the Presentation Requirement of the Illinois Constitution Until it has "Finally Passed" Both Chambers.

34. 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 . . . ."

35. The Effective Date of Laws Act, 5 ILCS 75/3, provides that "a bill is 'passed' at the time of its final legislative action prior to presentation to the Governor pursuant to paragraph (a) of Section 9 of Article IV of the Constitution."

36. 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. The foregoing requirement shall be judicially enforceable."

37. HB 40 was not ready to be, and could not have been, presented to the governor until after resolution of the motion to reconsider and final passage, on September 25, 2017.

38. To hold otherwise—that a bill subject to a motion to reconsider must be sent to the governor, on pain of mandamus action and despite not having been finally passed—strikes against longstanding legislative practice and rules.

39. "[E]very legislative body has the inherent right to reconsider a vote on an action previously taken by it." *Mason's Manual of Legis. Pro.* (2010), § 450 (*citing People ex rel.*

[2] The Illinois General Assembly website also reflects September 25, 2017 as the date that HB 40 "Passed Both Houses." See, Bill Status of HB 40.

MacMahon v. Davis, 284 Ill. 439 (1918)). "When a vote is reconsidered, that vote is canceled as completely as though it had never been taken." *Id.*, § 468(1).

40. A bill subject to reconsideration is still in flux: the Senate can still cancel its vote "as though it had never been taken." And there is no indication in the debates of the Illinois Constitutional Convention that the framers intended bills subject to reconsideration by the Senate, whose passage is still in question, to be presented to the governor for signature. Instead, the point of the 30-day presentation requirement, along with its judicial enforceability provision, is to ensure that the General Assembly does not sit on a bill that has been finally passed. *See, generally,* 3 Record of Proceedings, Sixth Illinois Constitutional Convention, 1339-45.

41. The aim of the framers in putting forth the 30-day presentation requirement, and its accompanying right to bring legal action against the General Assembly, was described by Delegate Young in this way:

> We are certainly not attempting to have the legislature mandamused to do something that was within their discretion. Here they are ordered to present the bill within the thirty-day period, and it is an administrative act with no discretion. *Id.*, 1344.

42. On the contrary, the making and resolution of a motion to reconsider is not "an administrative act with no discretion." Such a motion is made by an elected member of the General Assembly, at his or her discretion, and it has legislative impact, rendering ineffective the underlying substantive vote, until the motion is resolved by the Senate.

43. To allow a mandamus against the Senate for a bill not finally passed would also invade the separation of powers, striking directly at the Senate's authority, for "[a] motion to reconsider rests exclusively in the discretion of a body whose action it is proposed to reconsider and no other body or tribunal has a right to treat a reconsideration as void." *Mason's Manual of Legis. Pro.* (2010), § 460(3).

44. Further, in recent years, Senators have repeatedly exercised their authority to impose motions to reconsider, for more than 30 days, on bills that have received majority support in both chambers. *See, e.g.,* Bill Status, Senate Bill 1, (5/31/17 "Senate Concurs," 5/31/17 "Motion Filed to Reconsider Vote," 7/31/17 "Motion Withdrawn," 7/31/17 "Passed Both Houses," 7/31/17 "Sent to the Governor"), found at http://www.ilga.gov/legislation/billstatus.asp?DocNum=1&GAID=14&GA=100&DocTypeID=SB&LegID=98844&SessionID=91&SpecSess=0.

45. Setting "passage" at a date well before actual final passage of a bill would mean that the Senate has repeatedly violated the constitution's 30-day presentment requirement—a violation subjecting the Senate to possible mandamus action. The framers of the Constitution could not have intended such an intrusion into the parliamentary prerogatives of the General Assembly.

C. A Bill Cannot be Considered "Passed," Consistent with the Intent and Purpose of the Illinois Constitution's Effective Date of Laws Section, Until it has "Finally Passed" Both Chambers.

46. The Illinois Constitution's Effective Date of Laws Section was amended in 1994 to provide 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, Sec. 10.

47. A critical purpose of the Effective Date of Laws Section is to set an end point to the General Assembly's session. The Section achieves this by prohibiting bills passed after May 31 from being effective until the conclusion of the following year's legislative session, June 1.[3] This takes away any advantage to passing bills between June 1 and December 31, since those

[3] Except via supermajority consent of both houses to a shorter effective date.

same bills could be passed just the same in the following year's legislative session, with June 1 or sooner effective dates.

48. Senate President Pate Philip sponsored the 1994 Amendment, explaining that:

> House Joint Resolution Constitutional Amendment 35, sponsored in the House by Speaker Madigan, and sponsored by myself, very simply stated, changes our adjournment date from June 30th to May 31st. The rationale and the reason behind it: As you know, I've been around here a long, long time, and I've always felt very strongly that we waste a lot of time down here. . . . I think we ought to start earlier, work harder and get out sooner. . . . There's no reason we couldn't start early and get out of here by the last day in May.
> Ill. Sen. Tr., 5/6/94, p. 9 (HJRCA 35).

> In supporting the amendment, Senator Frank Watson also noted the importance of the General Assembly concluding its work earlier:

> Our education community out there each year tries to establish budgets for their school years which oftentimes begin in August. The fact that we don't get out of here oftentimes until the middle of July and then the Governor's action takes forever to get done, schools have no idea what kind of budgets and what kind of money they can expect from the State. This would enable them to at least get that information a little bit earlier. Also, State agencies. This does not impact the fiscal year. Fiscal year remains July 1st to June 30th. This does not impact that. This gives our State agencies the opportunity to have a little bit more notice as to what kind of funding they can expect.
> Ill. Sen. Tr., 5/6/94, p. 10 (HJRCA 35).

> And Speaker Michael Madigan, House sponsor, noted similarly:

> This Constitutional Amendment is relatively simple, simply changes the effective date of laws from June 30, July 1 to May 30, June 1, which would bring us into compliance with what our goal has been over the last couple of years, which is to end the Session at the end of May.
> Ill. House Tr., 4/19/94, p. 6 (HJRCA 35).

49. The explanations of the members of the General Assembly in 1994 echo those of the Illinois Constitution's framers in 1970. At that time, the Legislative Committee of the Constitutional Convention explained that one of the purposes of its original proposed "Effective Date of Law" Section was "the desire to encourage the General Assembly to conclude its

proceedings during the first half of each year." 6 Record of Proceedings, Sixth Illinois Constitutional Convention, 1390.

50. The Convention delegates debated the idea of an end point vigorously. In fighting off a hostile amendment by Delegate Sommerschield on the Convention Floor—to strip the effective date provision and allow the General Assembly to set its own effective date for bills passed after June 30—Delegate Perona argued the Legislative Committee's intent for the provision:

> [T]he other attempted provision was to compel or at least encourage the legislature to finish its work by June 30. . . .
>
> We felt that the legislature could easily accomplish all the work needed during a six-month period and that the three-fifths' requirement after June 30 would ensure that they would not be able to pass—or would not encourage them to pass legislation after that date. It would encourage them to get the job done.
>
> In connection with this point, can you imagine how long this Convention would have gone on if the pay isn't going to run out August 8? I think that we have a prime example here of the need for some sort of termination date. Human nature being what it is, we go on and on and on; and I think that this would encourage the legislature to finish by June 30. It would not unduly hamper them if there was something that had to be passed after July 1 because the three-fifths requirement is not unsurmountable; and yet it gives the people of the state some freedom from the legislature being in the position to pass laws. I think we have way too many laws passed today, and if we can cut down a few of them, we will be better off.

4 Record of Proceedings, Sixth Illinois Constitutional Convention, 2902-03.

Delegate Elward similarly opposed the measure noting that:

> One of the most salutary things about the Illinois experience, compared to what I have read about the Washington experience, is that there is a time when—even though we sometimes have to stop the clock and pretend it's still June 30 for a day or two—things do come to an end; and I think this is healthy and desirable.
>
> I think the Sommerschield amendment is bad. I think it opens us up to continuous sessions without any real gain to them. . . .
>
> If you don't have a cut-off date—and the way you have a cut-off date is by saying, "Not that you have to quit, gentlemen, but after that date it's going to take a higher figure, so you either agree by that date, or else"—you're liable to wind up with the situation you've got in Washington where, for the fiscal year '69 and '70, some of the final appropriation bills, as we know, weren't passed by Congress until February of 1970. Now, they can run Washington on IOUs and joint

> resolutions and so on, but that isn't permitted to a little state like Illinois; and I would hate to see us open the door to a situation where we would be nine months into the next year of a budget before we'd adopted our budget or before we'd adopted some other laws.
>
> I don't think the language of the committee report is all that perfect, but I'm afraid by doing away with the requirement for a higher vote after July 1 or after whatever other date that it might be, you are opening the door to unending sessions without any particular benefit thereby, and with a great deal of loss in terms of stability to the general public, to the business and economic community of our state.

Id., 2903.

51. And in the final Official Text of the Proposed 1970 Constitution, disseminated to the People of Illinois prior to the vote, this Section is explained as follows: "The extraordinary majority of three-fifths vote is required to advance the effective date of legislation passed after July 1st of each annual session. This encourages the General Assembly to conclude its regular business by that date." 7 Record of Proceedings, Sixth Illinois Constitutional Convention 2667, 2702.

52. As noted *infra*, a bill subject to a motion to reconsider remains in flux. Its relevant votes can be voided. The General Assembly has not completed its work on the bill.

53. The framers of our 1970 Constitution, the members of the General Assembly who approved the 1994 Amendment, and the People of this State who approved both the Constitution and the Amendment have expressed their consistent insistence that the business of the General Assembly be completed by a date certain, by May 31. The compulsion chosen by the People is an extended effective date for any bill not passed by May 31—the bill cannot be effective before June 1 of the following year.

54. Considering a bill "passed" at an earlier date than final passage, to avoid the effect of the Constitution's Effective Date of Laws Section, violates the clearly and repeatedly expressed will of the People of Illinois for conclusion to the General Assembly's business.

D. HB 40 Cannot Be Effective Before June 1, 2018.

55. Whether under the Effective Date of Laws Act or the Constitution's Legislative Article, §§ 9(a) & 10, only a bill that is finally passed can be considered "passed." Petitioners' reading of "passed" is the only one that respects the language and spirit of both the Constitution's 30-day Presentation requirement and its Effective Date of Laws Section.

56. Because HB 40 did not pass out of the Senate, and both houses of the General Assembly, until September 25, 2017, it cannot be effective prior to June 1, 2018, pursuant to the Illinois Constitution, Art. IV, § 10, and Effective Date of Laws Act, 5 ILCS 75/2.

57. However, should HB 40 be allowed to be effective January 1, instead of June 1, the people of this State will be forced for an extra five months to pay millions of dollars for elective abortions that are not eligible for reimbursement. *See*, Exh. A, ¶ 27. Plaintiffs thus properly seek to enjoin Defendants from expending taxpayer dollars in preparation for the changes made by HB 40 and expending taxpayer dollars to provide funding for the newly authorized or required services beginning January 1, 2018, instead of June 1, 2018. *See*, Exh. A, ¶¶ 42; Bill Status of HB 40.

VII. Relief Sought by this Petition

58. Pursuant to 735 ILCS 5/11-303, upon filing and presentation of this Petition to this Court, Petitioners ask this Court to enter an Order:

a. Setting a date for hearing on this Petition, not less than 5 days nor more than 10 days thereafter;

b. Commanding Petitioners to give notice in writing to each Defendant named herein and to the Attorney General, specifying in such notice the fact of the presentation of this Petition and the date and time when the same shall be heard, at least 5 days before the hearing.

59. Pursuant to 735 ILCS 5/11-303 & 11-304, at the hearing on this Petition, that this Court find there is reasonable ground for the filing of the Complaint, grant this Petition, and enter an Order that the Complaint be filed and process issue, directing a date not less than 5 days nor more than 10 days thereafter for the Defendants to appear and respond to the Complaint.

WHEREFORE, Petitioners urge that this Court grant this Petition, provide them the relief sought, and for all other relief on the premises to which they may be entitled.

Respectfully submitted,

/s/Peter Breen
One of the attorneys for Petitioners

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EXHIBIT A

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT COURT
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SPRINGFIELD RIGHT TO LIFE; LAKE COUNTY RIGHT TO LIFE COMMITTEE, INC.; KNOX COUNTY RIGHT TO LIFE, NFP; MORGAN COUNTY RIGHT TO LIFE, INC., 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.**
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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.	)	

TAXPAYER COMPLAINT TO RESTRAIN AND ENJOIN THE DISBURSEMENT OF PUBLIC FUNDS

Plaintiffs, by their undersigned counsel, complain of Defendants as follows:

1. This taxpayer Complaint challenges the imminent illegal expenditure of general revenue funds by the Illinois state government, through the state's Medicaid and employee health insurance plans, under House Bill 40 ("HB 40"). HB 40 strips away the current bar in Illinois

law against the funding of elective abortions[1] by the state's Medicaid and employee health insurance programs. HB 40 further affirmatively mandates coverage by Medicaid for all "reproductive health care that is otherwise legal."

2. Plaintiffs present two primary claims in this Complaint: First, no funds may flow to support the procedures newly allowed or mandated under HB 40, because the General Assembly has not validly appropriated funds or estimated revenues to cover their cost, as required by the Illinois Constitution, Art. VIII, § 2(b). Second, House Bill 40 cannot be effective prior to June 1, 2018, because it did not pass out of the Senate until September 25, 2017, well after the May 31 deadline imposed for an early effective date under the Illinois Constitution, Art. IV, § 10, and the Effective Date of Laws Act, 5 ILCS 75/2.

I. Plaintiffs.

3. SPRINGFIELD RIGHT TO LIFE is an Illinois not-for-profit corporation dedicated to the dignity and protection of innocent human life and brings suit here on behalf of its hundreds of members who are Illinois taxpayers.

4. LAKE COUNTY RIGHT TO LIFE COMMITTEE, INC., is an Illinois not-for-profit corporation dedicated to the dignity and protection of innocent human life and brings suit here on behalf of its hundreds of members who are Illinois taxpayers.

5. KNOX COUNTY RIGHT TO LIFE, NFP, is an Illinois not-for-profit corporation dedicated to the dignity and protection of innocent human life and brings suit here on behalf of its hundreds of members who are Illinois taxpayers.

[1] "Elective abortions" as used herein means abortions performed for reasons other than (1) to preserve the life of the mother or (2) in cases where the pregnancy results from an act of rape or incest.

6. MORGAN COUNTY RIGHT TO LIFE, INC., NFP, is an Illinois not-for-profit corporation dedicated to the dignity and protection of innocent human life and brings suit here on behalf of its hundreds of members who are Illinois taxpayers.

7. HENRY COUNTY RIGHT TO LIFE, INC., is an Illinois not-for-profit corporation dedicated to the dignity and protection of innocent human life and brings suit here on behalf of its hundreds of members who are Illinois taxpayers.

8. CLINTON COUNTY CITIZENS FOR LIFE, is an Illinois not-for-profit corporation dedicated to the dignity and protection of innocent human life and brings suit here on behalf of its hundreds of members who are Illinois taxpayers.

9. PRO-LIFE ACTION LEAGUE, INC., is an Illinois not-for-profit corporation dedicated to the dignity and protection of innocent human life and brings suit here on behalf of its hundreds of members who are Illinois taxpayers.

10. DIOCESE OF SPRINGFIELD-IN-ILLINOIS is an Illinois not-for-profit corporation dedicated to the dignity and protection of innocent human life, with a mission that includes "making Christ visible in our world through worship, proclamation of the Word and service to all God's people." The DIOCESE OF SPRINGFIELD brings suit here on behalf of its many thousands of members who are Illinois taxpayers.

11. ILLINOIS RIGHT TO LIFE ACTION is an Illinois not-for-profit corporation dedicated to the dignity and protection of innocent human life and brings suit here on behalf of its thousands of members who are Illinois taxpayers.

12. ILLINOIS FEDERATION FOR RIGHT TO LIFE is an Illinois not-for-profit corporation dedicated to the dignity and protection of innocent human life and brings suit here on behalf of its thousands of members who are Illinois taxpayers.

13. REPRESENTATIVE BARBARA WHEELER is a resident of McHenry County, Illinois, and an Illinois taxpayer. She represents the 64th District in the Illinois House, and brings suit here as a taxpayer.

14. SENATOR DAN MCCONCHIE is a resident of McHenry County, Illinois, and an Illinois taxpayer. He represents the 26th District in the Illinois Senate, and brings suit here as a taxpayer.

15. REPRESENTATIVE MARK BATINICK is a resident of Will County, Illinois, and an Illinois taxpayer. He represents the 97th District in the Illinois House, and brings suit here as a taxpayer.

16. SENATOR KYLE MCCARTER is a resident of St. Clair County, Illinois, and an Illinois taxpayer. He represents the 54th District in the Illinois Senate, and brings suit here as a taxpayer.

17. REPRESENTATIVE STEVE REICK is a resident of McHenry County, Illinois, and an Illinois taxpayer. He represents the 63rd District in the Illinois House, and brings suit here as a taxpayer.

18. SENATOR PAUL SCHIMPF is a resident of Monroe County, Illinois, and an Illinois taxpayer. He represents the 58th District in the Illinois Senate, and brings suit here as a taxpayer.

19. REPRESENTATIVE KEITH WHEELER is a resident of Kendall County, Illinois, and an Illinois taxpayer. He represents the 50th District in the Illinois House, and brings suit here as a taxpayer.

20. SENATOR DALE FOWLER is a resident of Saline County, Illinois, and an Illinois taxpayer. He represents the 59th District in the Illinois Senate, and brings suit here as a taxpayer.

21. All Plaintiffs are Illinois taxpayers or represent Illinois taxpayers, who have paid and continue to expect to pay Illinois state taxes. As Illinois taxpayers, Plaintiffs have an equitable ownership interest in public funds and will be liable to replenish the public treasury for the unlawful depletion of public funds to prepare for and to pay for the new services mandated and allowed by HB 40.

II. Defendants.

22. FELICIA NORWOOD is the Director of the Department of Healthcare and Family Services, which administers the state's Medical Assistance Program and would authorize payments out of general revenue funds for the elective abortions and other services mandated by HB 40. She is sued in her official capacity.

23. MICHAEL HOFFMAN is the Acting Director of the Department of Central Management Services, which administers the state's employee and retiree health insurance programs and would authorize payments out of general revenue funds for the elective abortions and other services mandated by HB 40. He is sued in his official capacity.

24. MICHAEL FRERICHS is the Treasurer of the State of Illinois. He is sued in his official capacity.

25. SUSANA MENDOZA is the Comptroller of the State of Illinois. She is sued in her official capacity.

III. Jurisdiction and Venue.

26. This Court has subject matter and personal jurisdiction over this lawsuit, which challenges the effectiveness of an Illinois statute under the laws and Constitution of this state and

the lawfulness of any spending pursuant to the statute. Plaintiffs seek injunctive relief pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/11-301 & 5/11-303, the Illinois Constitution, and under this Court's common law equitable powers.

27. Venue lies in Sangamon County as the government officials sued here in their official capacities work or have principal offices here.

IV. Projected Fiscal Impact of HB 40.

28. Currently, the state's abortion providers perform approximately 40,000 abortions per year, nearly all of which are paid for by sources other than state taxpayers. *See*, Abortion Statistics, Ill. Dep't of Public Health, found at http://www.dph.illinois.gov/data-statistics/vital-statistics/abortion-statistics.

29. Approximately 75% of pregnant women obtaining abortions have an income below 200% of Federal Poverty Level, according to the Guttmacher Institute, the former research arm of Planned Parenthood.[2]

30. The State of Illinois provides that pregnant women with incomes up to 213% of Federal Poverty Level are presumptively eligible for Medicaid, through the state's "Moms & Babies" program.[3]

31. Under HB 40, at least 20,000 to 30,000 or more of the state's annual 40,000 abortions would become eligible for and be paid for by Medicaid.

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[2] Jerman J, Jones RK and Onda T, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, New York: Guttmacher Institute, 2016, https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014.

[3] Illinois considers a pregnant woman's unborn child as a person for presumptive eligibility determination under Medicaid, such that a pregnant woman has a family size of at least 2 people. *See*, http://www.dhs.state.il.us/page.aspx?item=14091.

32. According to data from the Illinois Department of Healthcare and Family Services, the state's average cost per abortion over the past five years is between $750 and $1,000.

33. HB 40 would require the people of Illinois to pay tens of millions of dollars for elective abortions, with none of the elective abortion expenses in HB 40 eligible for the standard 50% Medicaid match, which the U.S. government provides the state for federally recognized medical procedures.

V. HB 40 Lacks the Appropriation Required for Funding Its Services.

34. The framers of the 1970 Illinois Constitution added to the Legislative Article two complimentary provisions on the expenditure of state taxpayer funds: first, they affirmed the exclusive power of the General Assembly to appropriate public funds; and second, they imposed the specific constraint of a balanced budget on the General Assembly, by requiring that the General Assembly estimate available funds and appropriate only within the bounds of that estimate. Art. VIII, § 2(b).

35. HB 40 purports to provide new entitlements in the state Medicaid and employee health insurance programs, but no new or supplemental appropriation of funds was enacted by the General Assembly to provide the additional general revenue funds that would be required to be expended to support that entitlement.

36. Fiscal Year 2018 appropriations of general revenue funds for existing services under Medicaid and the state health insurance program were enacted on July 6, 2017. P.A. 100-21. Those appropriations, which cover the fiscal year from July 1, 2017 to June 30, 2018, did not account for or include amounts to support HB 40's tens of millions in new spending.

37. The General Assembly also did not adopt a revenue estimate, estimating funds available, to pay for HB 40.[4] Because the General Assembly has not adopted such an estimate, any putative appropriations alleged to pay for HB 40's services would be invalid, in violation of the Illinois Constitution's Balanced Budget requirement. Art. VIII, § 2(b).

38. And in fact, there are no funds available for HB 40, as the appropriations in SB 6 are already approximately $1.7 billion greater than actual expected revenues. *See*, *e.g.,* "Illinois Economic and Fiscal Policy Report," 10/12/17, Governor's Office of Management and Budget, https://www.illinois.gov/gov/budget/Documents/Economic%20and%20Fiscal%20Policy%20Reports/FY%202017/Economic_and_%20Fiscal_%20Policy_%20Report_10.12.17.pdf.

39. As a result, any and all spending pursuant to HB 40 is prohibited by law.

VI. HB 40 Passed the Illinois Senate, and Both Houses of the General Assembly, on September 25, 2017.

40. HB 40 received a simple majority vote in the Illinois House on April 25, 2017, passed out of the House, and arrived in the Senate on April 26.

41. HB 40 received a simple majority vote in the Illinois Senate on May 10. However, on that same day, Senator Don Harmon, who voted in favor of HB40, filed a motion to reconsider the vote.

42. On September 25, 2017, Sen. Harmon withdrew the motion to reconsider. HB 40 passed out of the Senate that day and was sent to the governor.

43. The governor signed HB 40 on September 28.

44. A motion to reconsider suspends all action on a particular vote and renders the vote ineffective, until the motion is resolved. *See*, *Mason's Manual of Leg. Pro.* (2010), § 467(1);

[4] The method of adoption for that revenue estimate, a joint resolution of the House and Senate, is prescribed by the Commission on Government Forecasting and Accountability Act, 25 ILCS 155/4(a).

Ill. Sen. R. 12-2 (adopting *Mason's*); *Ceresa v. City of Peru*, 133 Ill. App. 2d 748, 753 (3d Dist. 1971).

45. A bill is not finally passed by the Senate until the bill is out of the Senate's possession. *See, Mason's Manual*, § 737(5) "Passage of Bills" ("When a house has passed a bill and it is out of that body's possession . . . jurisdiction of the bill has been lost and it has been finally passed."). And a bill subject to a motion to reconsider cannot "pass out of the possession of the Senate until after the motion has been decided or withdrawn." Ill. Sen. R. 7-15.

46. A bill subject to a motion to reconsider is thus not finally passed until after the motion is resolved. *See also, Mason's Manual*, § 737(6) "Passage of Bills" ("When a bill has been voted upon favorably by both houses, but a motion to reconsider its action in passing the bill is pending in the house last acting on the bill and the bill is still in its possession, the bill has not been finally passed by both houses.").

47. The motion to reconsider the Senate vote on HB 40 was not resolved until September 25, 2017. HB 40 was thus not passed by the Senate, and not passed by both houses of the General Assembly, until September 25, 2017.

48. The Illinois General Assembly website also reflects September 25, 2017 as the date that HB 40 "Passed Both Houses." Bill Status of HB 40, found at http://www.ilga.gov/legislation/billstatus.asp?DocNum=40&GAID=14&GA=100&DocTypeID=HB&LegID=99242&SessionID=91.

VII. HB 40 Cannot Be Effective Prior to June 1, 2018.

49. 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 be effective prior to June 1, 2018, per the Illinois Constitution.

50. The Effective Date of Laws Act, 5 ILCS 75/3, provides that "a bill is 'passed' at the time of its final legislative action prior to presentation to the Governor pursuant to paragraph (a) of Section 9 of Article IV of the Constitution."

51. 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."

52. HB 40 was not ready to be, and could not have been, presented to the governor until after final passage on September 25, 2017.[5] On that date, the 30-day presentation clock began to run. Under the Effective Date of Laws Act, HB 40 passed on September 25, 2017.

53. 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.

54. Plaintiffs believe and are informed that some or all of the Defendants instead believe that HB 40 is effective January 1, 2018, and are preparing now to reimburse for elective abortions and for other procedures newly allowed or mandated by HB 40, beginning on January

[5] Otherwise, the Senate has repeatedly acted unconstitutionally by following its Rules on motions to reconsider, and not sending bills to the governor that have not finally passed. *See, e.g.,* Bill Status, Senate Bill 1, (5/31/17 "Senate Concurs," 5/31/17 "Motion Filed to Reconsider Vote," 7/31/17 "Motion Withdrawn," 7/31/17 "Passed Both Houses," 7/31/17 "Sent to the Governor"), found at http://www.ilga.gov/legislation/billstatus.asp?DocNum=1&GAID=14&GA=100&DocTypeID=SB&LegID=98844&SessionID=91&SpecSess=0.

1, 2018, despite the constitutional and statutory requirement that HB 40 cannot be effective prior to June 1, 2018.

Count I
Violation of the Appropriations Clause & Balanced Budget Requirement
of the Illinois Constitution, Art. VIII, § 2(b)

1.- 54. Paragraphs 1 through 54 are realleged as if fully set forth herein.

55. The General Assembly has not appropriated any funds for the new services in HB 40, as required by the Illinois Constitution's Appropriations Clause, Art. VIII, § 2(b).

56. Any Fiscal Year 2018 appropriations arguably supporting HB 40's elective abortions and other services were made without adopting the estimate of revenues required by the Illinois Constitution's Balanced Budget requirement, Art. VIII, § 2(b), and provided in the Commission on Government Forecasting and Accountability Act, 25 ILCS 155/4(a).

57. Any Fiscal Year 2018 appropriations arguably supporting HB 40's elective abortions and other services would be greater than revenues available, in violation of the Illinois Constitution's Balanced Budget requirement, Art. VIII, § 2(b).

58. As a result, any and all spending pursuant to HB 40 is prohibited by law.

59. Plaintiffs are interested and have standing to sue here as taxpayers of the State of Illinois, to enjoin the imminent unlawful expenditure of funds under HB 40.

60. Despite the lack of a valid appropriation and revenue estimate, Defendants will illegally expend state dollars to carry out the terms of HB 40, in violation of the Illinois Constitution, Art. VIII, § 2(b).

61. The Code of Civil Procedure, at 735 ILCS 5/11-301, provides that, "An action to restrain and enjoin the disbursement of public funds by any officer or officers of the State government may be maintained either by the Attorney General or by any citizen and taxpayer of

the State." And at 735 ILCS 5/11-303 provides that, "Such action, when prosecuted by a citizen and taxpayer of the State, shall be commenced by petition for leave to file an action to restrain and enjoin the defendant or defendants from disbursing the public funds of the State." Such a petition has been filed, presented, heard, and adjudicated.

62. Plaintiffs will be substantially affected, especially damaged, and irreparably harmed by the illegal expenditure of general revenue funds, for the loss of which they have no adequate remedy at law.

63. The equities strongly favor Plaintiffs as against Defendants, particularly as the only acts to be abated or enjoined are illegal acts.

WHEREFORE, Plaintiffs pray that the Court:

a. Enjoin Defendants from expending any funds in any way preparing for or in furtherance of elective abortions, or any other previously unfunded procedures that are newly allowed or required to be funded by HB 40; and

b. Grant all other relief to which Plaintiffs may be entitled on the premises.

Count II
Violation of the Illinois Constitution, Art. IV, § 10, &
Effective Date of Laws Act, 5 ILCS 75/2

1.-63. Paragraphs 1 through 63 are realleged as if fully set forth herein.

64. HB 40 did not pass the General Assembly on or before May 31, 2017.

65. HB 40 thus cannot be effective before June 1, 2018, per the Illinois Constitution, Art. IV, § 10, and the Effective Date of Laws Act, 5 ILCS 75/2.

66. Plaintiffs are interested and have standing to sue here as taxpayers of the State of Illinois, to enjoin the imminent unlawful expenditure of funds under House Bill 40.

67. Despite its June 1, 2018 effective date, Defendants will illegally expend state dollars to prepare for and to provide elective abortions, and other new procedures allowed or mandated by HB 40.

68. The Code of Civil Procedure, at 735 ILCS 5/11-301, provides that, "An action to restrain and enjoin the disbursement of public funds by any officer or officers of the State government may be maintained either by the Attorney General or by any citizen and taxpayer of the State." And at 735 ILCS 5/11-303 provides that, "Such action, when prosecuted by a citizen and taxpayer of the State, shall be commenced by petition for leave to file an action to restrain and enjoin the defendant or defendants from disbursing the public funds of the State." Such a petition has been filed, presented, heard, and adjudicated.

69. Plaintiffs will be substantially affected, especially damaged, and irreparably harmed by the illegal expenditure of general revenue funds, for the loss of which they have no adequate remedy at law.

70. The equities strongly favor Plaintiffs as against Defendants, particularly as the only acts to be abated or enjoined are illegal acts.

WHEREFORE, Plaintiffs pray that the Court:

a. Enjoin Defendants 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 HB 40, until at least June 1, 2018; and

b. Grant all other relief to which Plaintiffs may be entitled on the premises.

Respectfully submitted,

/s/Peter Breen
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