

No. _____

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF
ILLINOIS,

Plaintiff-Movant,

v.

ROD BLAGOJEVICH, Governor of
Illinois,

Defendant-Respondent.

) On Motion for Leave to File an
) Original Action Pursuant to Supreme
) Court Rule 382.

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**BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE VERIFIED
COMPLAINT PURSUANT TO SUPREME COURT RULE 382(a)**

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POINTS AND AUTHORITIES

	<u>PAGE(S)</u>
ILL. CONST. art. V, § 6(b)	9
15 ILCS 5/1 (2006)	9
ILL. CONST. art. V, § 6(d)	9
A. Article V, 6(b) requires the removal of a Governor who is “unable” or “unfit” to serve	9
<i>People v. Purcell,</i> 201 Ill. 2d 542 (2002)	9
<i>Nevitt v. Langfelder,</i> 157 Ill. 2d 116 (1993)	9,11
<i>City of Chicago v. Holland,</i> 206 Ill. 2d 480 (2001)	9
<i>Eden Ret. Ctr., Inc. v. Dep’t of Revenue,</i> 213 Ill. 2d 273 (2004)	9
Webster’s New World Dictionary 175 (Warner Books ed. 1987)	10
Black’s Law Dictionary 548 (Rev. 4th ed. 1968)	10
ILL. CONST. art. V, § 6(b)	10
ILL. CONST. art. V, § 6(c)	10
III RECORD OF PROCEEDINGS OF THE SIXTH ILLINOIS CONSTITUTIONAL CONVENTION	11
<i>People ex rel. Daniher v. Sweitzer,</i> 328 Ill. 549 (1928)	11
ILL. CONST. 1870, art. V, § 17	12
B. Mr. Blagojevich is unable to serve as Governor	13

NATURE OF THE CASE

On December 9, 2008, federal agents arrested Governor Rod Blagojevich to stop what the United States Attorney for the Northern District of Illinois described as a "political corruption crime spree." The federal criminal complaint filed against Mr. Blagojevich alleges a sweeping scheme of solicitation, bribery, and conspiracy to commit fraud, all with the purpose of using his public office to personally enrich himself, his wife, and others. Mr. Blagojevich is alleged to have committed some of these corrupt acts as recently as last week.

The criminal complaint includes allegations that Mr. Blagojevich traded campaign contributions for membership on state administrative boards, conditioned state benefits on campaign contributions, threatened to withhold state assistance to induce the firing of members of the press critical of Mr. Blagojevich, and engaged in a current and ongoing conspiracy to sell the Senate seat recently vacated by the United States President-Elect. Federal authorities quoted Mr. Blagojevich as characterizing his criteria for selecting a new United States Senator in the following order of priority: Mr. Blagojevich's "legal situation," his "personal situation," and his "political situation," without mention of the best interests of the People of Illinois. Notwithstanding his arrest and the filing of these serious federal charges, Mr. Blagojevich refuses to resign his office.

These criminal allegations strike directly at Mr. Blagojevich's decision-making process and specifically at his capacity to separate his personal financial and other interests from the exercise of his public, executive authority. The pervasive nature and severity of these pending charges disable Mr. Blagojevich from making effective decisions on critical, time-sensitive issues, including filling the United States Senate seat, signing or vetoing legislation, dispersing state funds, or awarding state contracts. And the charges have severely hampered the State's ability to continue to borrow money to fund essential state services, such as medical care, schools, day-care centers, nursing homes, and mental health institutions.

Under these unique circumstances, this Court should grant the People leave to file the Verified Complaint, enjoin Mr. Blagojevich from exercising the powers of the Office of Governor and declare that pursuant to the Governor Succession Act, 15 ILCS 5/0.01 - 5/1 (2006), the Lieutenant Governor shall assume those duties until such time as Mr. Blagojevich's disability is removed. In the alternative, the Court should enjoin Mr. Blagojevich from performing any of the following duties, each of which relates directly to allegations in the federal criminal complaint: (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 direct that these duties be performed by the Lieutenant Governor pursuant to article V, § 6 of the Illinois Constitution and the Governor Succession Act.

JURISDICTIONAL STATEMENT

This is an original action brought under Supreme Court Rule 382. This Court has jurisdiction under Article V, § 6(d) of the Illinois Constitution of 1970 to determine the Governor's ability to serve in office.

STATEMENT OF FACTS

The Governor's Powers and Duties

Defendant Rod Blagojevich, Governor of Illinois, was first elected in 2002 and was re-elected in 2006. His current term runs until January 2011. As Governor, Mr. Blagojevich has supreme executive power and is responsible for the faithful execution of the laws. ILL. CONST. art. V, § 8. He also exercises supervisory power over the executive administrative departments and agencies. As such, Mr. Blagojevich formulates departmental and agency policy and may reassign functions to or reorganize the executive agencies directly responsible to him. ILL. CONST. art. V, § 11.

Further, as Governor, every bill passed by the General Assembly is presented to Mr. Blagojevich for his consideration. ILL. CONST. art. IV, § 9(a). Mr. Blagojevich submits the state budget to the General Assembly, ILL. CONST. art. VIII, § 2(a); 15 ILCS 20/50-5 (2006), and plays a critical role in directing the disbursement of funds, the sale of state bonds, the creation of

state programs, the award of state contracts, the decision to short-term borrow on behalf of the State and the implementation of the borrowing proposed. He also has the power to issue executive orders, to grant pardons and other relief, to appoint all officers whose election is not otherwise required, and to remove any officer he appointed for malfeasance or neglect of duty. ILL. CONST., art. V, §§ 8, 9, 10, 12. And in the event of a vacancy in one of the State's United States Senate seats, Mr. Blagojevich is required to make a temporary appointment to fill the vacancy until the next congressional election. 10 ILCS 5/25-8 (2006).

The Criminal Charges

On December 9, 2008, Mr. Blagojevich and his Chief of Staff, John Harris, were arrested by Federal Bureau of Investigation (FBI) agents on federal corruption charges. In the federal criminal complaint, Mr. Blagojevich was charged with conspiracy to commit mail and wire fraud and solicitation of bribery, all directly relating to actions he undertook as Governor. See Ex. A to Complaint.

The federal complaint asserts that Mr. Blagojevich schemed with others, including the previously convicted Antoin Rezko, Stuart Levine, and Ali Ata, to obtain financial benefits for himself and his family in exchange for appointments to state boards and commissions. Ex. A, Cain Aff. at ¶¶ 13a, 16, 19-30, 34-48, 50-51, 53-58. Mr. Blagojevich allegedly maintained a list of parties from whom he sought to solicit funds, and many of those parties have

state contracts or have received public benefits from Mr. Blagojevich acting in his official capacity as Governor. Ex. A, Cain Aff. at ¶¶ 44, 60.

Mr. Blagojevich also is charged with accelerating corrupt fundraising activities in October 2008 to accumulate funds before new state ethics legislation, Public Act 95-971, goes into effect on January 1, 2009, that will prohibit any individual or entity with existing state contracts of more than \$50,000 from contributing to political campaigns. See Ex. A, Cain Aff. at ¶¶ 14, 59-60, 67-68.

Mr. Blagojevich has allegedly engaged in repeated, flagrant, and continuing efforts to obtain personal compensation in exchange for an appointment to the United States Senate seat vacated by President-Elect Barack Obama. See Ex. A, Cain Aff. at ¶¶ 13c, 86. That compensation included a substantial private salary for himself, a corporate board position for his wife worth up to \$150,000/year, promises of campaign funds, including immediate payment of cash, or a cabinet post or ambassadorship for himself. Ex. A, Cain Aff. at ¶¶ 86-116. The federal complaint also asserts that Mr. Blagojevich considered appointing himself to the Senate to avoid impeachment by the General Assembly. Ex. A, Cain Aff. at ¶¶ 101a, 111, 116.

In addition, according to the federal complaint, Mr. Blagojevich asked a highway contractor for a \$500,000 campaign contribution, and Mr. Blagojevich was willing to commit more funding to an Illinois State Toll

Highway Authority project beneficial to the contractor depending on how much additional money the contractor raised for Mr. Blagojevich. Ex. A, Cain Aff. at ¶¶ 62-63, 67. Further, Mr. Blagojevich allegedly stated his intention to seek a \$50,000 campaign contribution from the chief executive officer of Children's Memorial Hospital in exchange for \$8 million in state funds for the Hospital; if he did not receive the campaign contribution, the Children's Hospital would not receive the state money. Ex. A, Cain Aff. at ¶¶ 65, 68. Among other things, Mr. Blagojevich also is charged with threatening, in November and December 2008, to withhold public assistance from Wrigley Field unless the Tribune Company, which owns the ballpark, fired editorial staff members who had called for Mr. Blagojevich's impeachment. Ex. A, Cain Aff. at ¶¶ 13b, 69-85.

Ability to Govern

As long as Mr. Blagojevich retains the position of Governor, he has the ability to make many important decisions affecting the State regarding the appointment of a new U.S. Senator, the enactment of legislation, the disbursement of state funds, appointments to state boards and commissions, and approval of contracts. Some of these decisions relate directly to the substance of the criminal complaint, such as the U.S. Senate appointment, whether to sign a bill allocating casino revenue to the horse racing industry, and whether to approve state financial assistance for Wrigley Field.

Other important legislation either currently before or soon to be presented to Mr. Blagojevich includes House Bill 5151, appropriating \$40 million from the Tobacco Settlement Recovery Fund to the Illinois Department of Healthcare and Family Services for catastrophic relief payments to hospitals; Senate Bill 0934, amending insurance statutes to provide coverage for autism spectrum disorders; Senate Bill 1987, a clean coal technology/renewable energy bill; Senate Bill 2275, amending the Juvenile Court Act definition of "delinquent minor"; Senate Bill 2688, requiring schools to teach law enforcement skills to students to address incidents of crisis and emergency; and Senate Bill 2860, prohibiting the sale of children's toys containing certain amounts of lead and requiring certain product warnings.

Further, in light of the federal complaint, a \$1.4 billion bond issue scheduled for December 11, 2008, intended to address the State's serious cash shortage and critical need to pay state vendors, was postponed, and Standard & Poor's Ratings Service has stated that it may downgrade the State's general bond rating based in part on the legal charges facing Mr. Blagojevich. www.reuters.com/article/bondsNews/idUSN1144902520081211.

On December 10, 2008, United States Senate Majority Leader Harry Reid sent Mr. Blagojevich a letter, signed by all members of the Democratic Senate caucus, insisting that Mr. Blagojevich step down and that he not exercise his authority to make an appointment to fill the vacant Senate seat.

Exhibit B attached to Complaint. Senator Reid stated that any appointment by Mr. Blagojevich "would raise serious questions" and explained that if Mr. Blagojevich made the appointment, the Senate would use its constitutional power to determine whether to seat the candidate.

President-Elect Obama has called for Mr. Blagojevich to resign his office, as has every elected constitutional officer of this State. Mr. Blagojevich has refused to resign. Meanwhile, it is unclear how long impeachment proceedings and, if necessary, a trial in the Senate would take.

ARGUMENT

This Court should declare that Mr. Blagojevich is currently disabled from serving as Governor. Under the Illinois Constitution, the Governor shall be replaced by a successor if he “is unable to serve because of death, conviction on impeachment, failure to qualify, resignation or other disability.” ILL. CONST. art. V, § 6(b); *see* 15 ILCS 5/1 (2006). The determination of the Governor’s ability to serve under this provision is a matter for this Court to decide. ILL. CONST. art. V, § 6(d).

A. Article V, § 6(b) requires the removal of a Governor who is “unable” or “unfit” to serve.

Under the plain language of § 6(b), Mr. Blagojevich is unable to serve because he has a disability impairing his ability to govern the State effectively. The rules of statutory construction apply to the interpretation of constitutional provisions. *People v. Purcell*, 201 Ill. 2d 542, 549 (2002); *Nevitt v. Langfelder*, 157 Ill. 2d 116, 134 (1993). “The best guide to interpreting the Illinois Constitution is the document’s own plain language.” *City of Chicago v. Holland*, 206 Ill. 2d 480, 497 (2001); *see Purcell*, 201 Ill. 2d at 549 (same). Where the provision’s plain language is unambiguous, the court should not look to any interpretative aids or consider legislative history. *Eden Ret. Ctr., Inc. v. Dep’t of Revenue*, 213 Ill. 2d 273, 292 (2004).

The term “disability” in § 6(b) is unambiguous. A “disability” is a “disabled condition” or “that which disables or disqualifies.” Webster’s New

World Dictionary 175 (Warner Books ed. 1987). 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.

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). 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).

Mr. Blagojevich may attempt to rely upon a brief exchange during the constitutional convention debates to argue that "disability" is somehow limited to physical or mental impairment, but such an argument fails.

During the convention debates, Delegate Davis was asked whether providing the General Assembly with the authority to establish procedures to question and determine the "ability of the governor to serve" in what ultimately became § 6(d) would impose additional eligibility requirements on the Governor. III RECORD OF PROCEEDINGS OF THE SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 1359 (question by Delegate Stahl). And he responded that "other disability" referred to "the physical or mental capacity" of the governor and did not impose additional eligibility requirements. *Id.* at 1360. But Senator Davis's comment should not be read to limit the meaning of the phrase "other disability" in § 6(b).

As explained, the plain meaning of the phrase "other disability" and its context in § 6 establish that the term has a much broader scope than merely a physical or mental disability. In light of the plain language of this unambiguous term, it is inappropriate to resort to the constitutional convention debates at all. Where a constitutional provision is clear, this Court has "no occasion to consult the convention debates": "a basic rule of statutory construction forbids a court to canvass legislative history for evidence of legislative intent if the meaning of a provision can be determined from its text. That principle applies equally to constitutional interpretation." *Nevitt*, 157 Ill. 2d at 134; see *People ex rel. Daniher v. Sweitzer*, 328 Ill. 549, 551 (1928) (explaining that, "[w]here the language used in the Constitution is

clear, there is no occasion for referring to the debates of the convention to ascertain the meaning of the provisions”).

Indeed, if the framers had intended to limit the nature or scope of the “other disability” that may render the Governor unable to serve under § 6(b), they easily could have added “physical or mental” to modify “disability.” But they did not do so, and the decision not to add those terms must be given effect.

Furthermore, the comments of one delegate not explicitly referencing the “other disability” language during the debate are of little import. That is especially true where the “other disability” language pre-dated the 1970 Constitution. *See* ILL. CONST. 1870, art. V, § 17 (“In case of the death, conviction on impeachment, failure to qualify, resignation, absence from the state, or other disability of the governor, the powers, duties and emoluments of the office . . . shall devolve upon the lieutenant governor.”). As such, Senator Davis could not have purported to provide the framers’ interpretation of the “other disability” language because he did not frame that language. Thus, the reference to “other disability” in § 6(b) is not limited to physical or mental disabilities. The term must be given its plain meaning, which describes a Governor who is unable or unfit to serve or who has been rendered incapable of proper and effective action.

B. Mr. Blagojevich is unable to serve as Governor.

The pervasive nature, volume, and severity of the illegal acts charged in the complaint indicate that Mr. Blagojevich is unable to distinguish between his financial interests and his official duties and between illegal acts and legal conduct, rendering him incapable of legitimately exercising his authority as Governor. The nature and volume of those acts clearly evidence 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 has been eliminated and the state government is paralyzed.

Given the serious criminal charges that he faces, it is also very likely that Mr. Blagojevich's future official actions will not be calculated to advance the best interests of the People, but rather will necessarily be designed to improve his public standing and 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.

Further, 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 challenge 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.

Each of this State's elected constitutional officers has recognized the catastrophic crisis in leadership brought about by the federal complaint, and has asked Mr. Blagojevich to resign. The damage to Mr. Blagojevich's leadership ability also is recognized 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 that, in fact, the entire United States Senate Democratic caucus requested Mr. Blagojevich to step down as Governor and insisted that he not appoint a Senator. *Id.* The Senators went so far as to tell Mr. Blagojevich that any appointment he made would be subject to a Senate determination as to whether that body would seat his appointee, *id.*, an extraordinary step rarely taken by the Senate.

The extraordinary remedy sought herein is compelled by the extraordinary conduct of the Governor. Collectively, these unprecedented circumstances establish that Mr. Blagojevich is "unable" and "unfit" to serve effectively as Governor of the State of Illinois. His pending criminal charges impugn the very process by which Mr. Blagojevich makes decisions as

Governor and taint any future actions in that capacity, the nature and severity of the charges likely make it impossible for him to devote proper time and energy to the duties and obligations of his Office, and other state and federal officials have made plain that his circumstances make it impossible for him to govern effectively. Accordingly, Mr. Blagojevich is "disabled" within the meaning of Article V, section 6(b) of the Illinois Constitution, and this Court should remove him from office during the pendency of the disability.

In the alternative, this Court should enjoin Mr. Blagojevich from performing any of the following duties, each of which relates directly to allegations in the federal criminal complaint: (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 order that these duties be performed by the Lieutenant Governor pursuant to article V, § 6 of the Illinois Constitution and the Governor Succession Act, 15 ILCS 5/1 (2006).

CONCLUSION

For the foregoing reasons, the Plaintiff-Movant respectfully requests that this Court grant leave to file the Verified Complaint.

Dated: December 12, 2008

Respectfully submitted,

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

VERIFIED COMPLAINT

Plaintiff People of the State of Illinois, by and through their attorney, Lisa Madigan, Attorney General of Illinois, ask this Court to determine that Defendant Rod Blagojevich is currently unable to serve as Governor of Illinois.

Parties

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

2. Defendant Rod Blagojevich is Governor of Illinois, a position of great public trust. He was elected Governor in 2002 and was re-elected in 2006. His current term runs until January 2011.

Venue and Jurisdiction

3. This Court has original and exclusive jurisdiction over this action under article V, § 6(d) of the Illinois Constitution. The General Assembly has not exercised its authority to specify the procedures to question and determine the ability of the Governor to serve, so this Court may make that determination under appropriate rules that it adopts. See Ill. Const. art. V, § 6(d); see also 155 Ill. 2d R. 382(a).

Statement of Facts

A. Powers and Duties of the Governor.

4. As the State's chief executive, Mr. Blagojevich owes a duty to the People to discharge the requirements of his public office honestly and with integrity.

5. The Governor has supreme executive power and is responsible for the faithful execution of all laws. ILL. CONST. art. V, § 8. He exercises supervisory power over the executive administrative departments and agencies. As such, the Governor formulates departmental and agency policy. The Governor may reassign functions to or reorganize the executive agencies directly responsible to him. ILL. CONST. art. V, § 11.

6. Every bill passed by the General Assembly is presented to the Governor for his consideration, and he has the power to veto or amendatorily veto such legislation. ILL. CONST. art. IV, § 9(a).

7. The Governor has the power to issue executive orders to executive departments and agencies.

8. The Governor has the power to grant pardons and other relief. ILL. CONST., art. V, § 12.

9. The Governor submits the state budget to the General Assembly, ILL. CONST. art. VIII, § 2(a); 15 ILCS 20/50-5 (2006), and plays a critical role in directing the disbursement of public funds, the sale of state bonds, and the development of state programs, and in arranging short-term borrowing on behalf of the State. The Governor also has the power to enter into contracts and bind the State.

10. The Governor has the power to appoint officers whose election is not otherwise required. ILL. CONST. art. V, § 9. He also may remove any officer he appointed for malfeasance or neglect of duty. ILL. CONST. art. V, § 10.

11. In the event of a vacancy in one of the State's United States Senate seats, the Governor has the power to make a temporary appointment to fill the vacancy until the next congressional election. 10 ILCS 5/25-8 (2006).

B. Federal Criminal Charges against Mr. Blagojevich.

12. On December 9, 2008, Mr. Blagojevich and his Chief of Staff, John Harris, were arrested by Federal Bureau of Investigation (FBI) agents on federal corruption charges.

13. 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 hereto as Ex. A.

14. The federal complaint contains voluminous criminal allegations against Mr. Blagojevich pertaining to actions he undertook in his official capacity as Governor. Some of the allegations concern actions as recent as December 5, 2008, and numerous allegations concern ongoing criminal conduct and pertain to official decisions that Mr. Blagojevich soon will make. See Ex. A, Cain Aff. at ¶¶ 3, 13.

15. Many allegations charge that Mr. Blagojevich has engaged in repeated, flagrant, and continuing efforts to obtain personal compensation in exchange for an appointment to the United States Senate seat vacated by President-Elect Barack Obama. See Ex. A, Cain Aff. at ¶¶ 13c, 86.

16. That compensation included a substantial private salary for himself, a corporate board position for his wife worth up to \$150,000/year, promises of campaign funds, including immediate payment of cash, or a cabinet post or ambassadorship for himself. Ex. A, Cain Aff. at ¶¶ 86-116. The federal complaint asserts that Mr. Blagojevich was recorded as describing the vacant Senate seat as "a [expletive] valuable thing, you just don't give it away for nothing." Ex. A, Cain Aff. at ¶ 90.

17. The federal complaint also asserts that Mr. Blagojevich considered appointing himself to the Senate seat to avoid impeachment by the General Assembly. Ex. A, Cain Aff. at ¶¶ 101a, 111, 116.

18. In addition, the federal complaint asserts that Mr. Blagojevich schemed with others, including Antoin Rezko, Stuart Levine, and Ali Ata, to obtain financial benefits for himself and his family in exchange for appointment to state boards and commissions. Ex. A, Cain Aff. at ¶¶ 13a, 16, 19-30, 34-48, 50-51, 53-58. Messrs. Rezko, Levine, and Ata all have been convicted of serious crimes arising as a result of their relationship with Mr. Blagojevich and others in his administration.

19. Mr. Rezko was one of Mr. Blagojevich's principal fundraisers and was convicted in federal court of scheming to defraud the State of Illinois by demanding kickbacks and political contributions to Mr. Blagojevich's campaign in return for the exercise of Mr. Levine's official influence on a state board. Mr. Levine was appointed by Mr. Blagojevich to be a member of both the Teachers' Retirement System and the Illinois Health Facilities Planning Board, and was convicted of obtaining money for Mr. Blagojevich's campaign in exchange for Mr. Levine's

official influence. Mr. Ata testified in federal court that he made two substantial campaign contributions to Mr. Blagojevich in exchange for a state job.

20. The federal complaint asserts that Mr. Blagojevich accelerated corrupt fundraising activities in October 2008 to accumulate funds before new state ethics legislation, Public Act 95-971, goes into effect on January 1, 2009. This legislation will prohibit any individual or entity with existing state contracts of more than \$50,000 from contributing to political campaigns. See Ex. A, Cain Aff. at ¶¶ 14, 59-60, 67-68.

21. The federal complaint asserts that Mr. Blagojevich maintained a list of individuals and entities from whom he sought to solicit funds, and many of those individuals and entities have state contracts or have received public benefits from Mr. Blagojevich acting officially as Governor. Ex. A, Cain Aff. at ¶¶ 19-30, 44, 60.

22. The federal complaint further asserts that Mr. Blagojevich asked a highway contractor for a \$500,000 campaign contribution and stated his willingness to commit more funding to an Illinois State Toll Highway Authority project that would benefit the contractor depending on how much additional money the contractor raised for Mr. Blagojevich. Ex. A, Cain Aff. at ¶¶ 62-63, 67

23. Additionally, the federal complaint asserts that Mr. Blagojevich intended to seek a \$50,000 campaign contribution from the chief executive officer of Children's Memorial Hospital in exchange for \$8 million in state funds for the Hospital; if he did not receive the campaign contribution, the Children's Hospital would not receive the state funds. Ex. A, Cain Aff. at ¶¶ 65, 68.

24. The federal complaint also states that Mr. Blagojevich threatened, in November and December 2008, to withhold financial assistance from Wrigley Field unless the Tribune Company, which owns the ballpark, fired editorial staff members who called for Mr. Blagojevich's impeachment. Ex. A, Cain Aff. at ¶¶ 13b, 69-85.

25. These illustrations are representative of the charges in the federal complaint against Mr. Blagojevich, not exhaustive.

26. On December 7, 2008, a federal magistrate judge determined that the complaint and affidavit established probable cause to believe that Mr. Blagojevich committed the charged offenses, and issued an arrest warrant.

C. Ability to Govern Effectively.

27. As an exercise of his official duties, Mr. Blagojevich makes many important decisions affecting the State, including appointments, the enactment of new laws, the disbursement of state funds, and entering into contracts.

28. Some of these decisions relate directly to the substance of the criminal complaint, including the Senate appointment, whether to sign a bill that allocates casino revenue to the horse racing industry, and whether to approve state financial assistance for Wrigley Field.

29. Other important legislation either currently before or soon to be presented to Mr. Blagojevich includes House Bill 5151, appropriating \$40 million from the Tobacco Settlement Recovery Fund to the Illinois Department of Healthcare and Family Services for catastrophic relief payments to hospitals; Senate Bill 0934, amending insurance statutes to provide coverage for autism spectrum disorders; Senate Bill 1987, a clean coal technology/renewable energy bill; Senate Bill 2275, amending the Juvenile Court Act definition of "delinquent minor"; Senate Bill 2688, requiring schools to teach law enforcement skills to students to address incidents of crisis and emergency; and Senate Bill 2860, prohibiting the sale of children's toys containing certain amounts of lead and requiring certain product warnings.

30. On December 10, 2008, U.S. Senate Majority Leader Harry Reid sent Mr. Blagojevich a letter, Ex. B hereto, signed by all members of the Democratic Senate caucus, insisting that Mr. Blagojevich step down and refrain from exercising his authority to make an appointment to fill the vacant Senate seat.

31. U.S. Senator Reid also stated that any appointment by Mr. Blagojevich "would raise serious questions" and explained that if Mr. Blagojevich made the appointment, the Senate would use its constitutional power to determine whether even to seat the appointee. Ex. B.

32. President-Elect Obama has called for Mr. Blagojevich to resign his office.

33. Every elected statewide constitutional officer of this State has called for Mr. Blagojevich to resign his office.

34. Mr. Blagojevich admitted that his criteria for the Senate appointment were, in order of importance, "our legal situation, our personal situation, my political situation. This decision, like every other one, needs to be based upon on [sic] that. Legal. Personal. Political." Ex. A, Cain Aff. at ¶ 111.

35. In light of the federal complaint asserting repeated instances and a staggering breadth of corrupt decisionmaking, the General Assembly, state officials, state agencies, and citizens no longer have the trust and confidence in Mr. Blagojevich to act honestly and in the best interests of the People of the State.

36. In light of the federal complaint and the likelihood of a future criminal trial over the integrity and legality of his public decisionmaking, there is a significant likelihood that Mr. Blagojevich's future official decisions will be calculated to improve his public standing and his position with regard to the pending criminal charges, an impending criminal indictment and the criminal trial, instead of being made in the best interests of the People of the State.

37. In light of the federal complaint asserting corruption and improper influence in Mr. Blagojevich's official decisionmaking, the integrity and legality of his future decisions are subject to challenge, and his ability to govern is completely undermined.

38. In light of the federal complaint, Mr. Blagojevich's ability in his official capacity to borrow money on behalf of the State is severely curtailed. A \$1.4 billion short-term debt offering scheduled for December 11, 2008, appears to have been postponed because of the federal criminal charges, and Standard & Poor's Ratings Service has stated that it may downgrade the State's general bond rating in part because of the legal charges Mr. Blagojevich faces.

39. The assertions in the federal complaint demonstrate that Mr. Blagojevich is focused on his personal financial problems to the extent that those problems intrude upon and adversely affect his public decisionmaking.

40. In light of the pending criminal charges, Mr. Blagojevich will not be able to devote his full attention to his official duties and will be severely impaired in the conduct of his office.

41. In light of the pending criminal charges, the Illinois government is in a state of paralysis.

42. Mr. Blagojevich has refused to resign as Governor.

43. In bringing this case, the People are not seeking to usurp the powers or role of the General Assembly. The People recognize the need for immediate action. Meanwhile, it is unclear how long impeachment proceedings and, if necessary, a trial in the Senate would take. Because the People need an effective Governor immediately, this judicial process must be invoked.

44. United States Attorney Patrick Fitzgerald stated that the timing of the federal complaint was necessary because Mr. Blagojevich was "in the middle of a corruption crime spree" that had to be stopped, Mr. Blagojevich was personally involved in pay-to-play schemes "with the urgency of a salesman meeting his annual sales target", and Mr. Blagojevich was imminently prepared to commit many illegal acts.

Claim for Declaratory and Injunctive Relief

45. Article V, § 6(b) of the Illinois Constitution provides that "if the Governor is unable to serve because of death, conviction on impeachment, failure to qualify, resignation or other disability, the office of Governor shall be filled by the officer next in line of succession for the remainder of the term or until the disability is removed."

46. Mr. Blagojevich is unable to serve as Governor because he is under a disability to hold the office as a result of the charges in the federal complaint that relate directly to his ongoing conduct in office and strongly suggest his inability to make future decisions in the best interests of the People of the State.

47. Because of his disability, including his inability to distinguish the personal from the official or the legal from the illegal, it is reasonable to conclude that Mr. Blagojevich will not make official decisions with the best interests of the public in mind. The integrity and legality of Mr. Blagojevich's future decisionmaking will be questioned and his ability to govern completely undermined.

48. Mr. Blagojevich's continued service as Governor places numerous state resources at risk, including but not limited to the State's financial resources and the vacant Senate seat, and further jeopardizes state contracts and the public trust invested in the office.

49. The People have a certain and ascertainable right in need of protection.

50. The People will be irreparably harmed if Mr. Blagojevich is not restrained from exercising the powers of Governor while under a disability.

51. The People lack an adequate remedy at law.

52. The People likely will succeed on the merits of their claim.

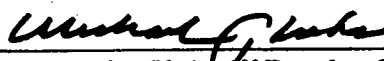
53. The balance of the hardships favors the grant of relief to the People.

54. Mr. Blagojevich has refused to resign from office and therefore should be declared unable to serve as Governor by this Court pursuant to article V, § 6(d) of the Illinois Constitution.

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

- a. A declaration that Mr. Blagojevich is currently unable to serve as Governor because of a disability; and/or
- b. A temporary and/or permanent 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 disability is removed; and/or
- c. A temporary and/or permanent 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
- d. 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
- e. Any additional relief that this Court deems reasonable and just.

Respectfully submitted,



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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 Complaint 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