NO. ______

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

RICHARD P. CARO, a State of Illinois Taxpayer on Behalf of and for the Benefit of the State of Illinois, Plaintiff, RONALD GIDWITZ and GREGORY BAISE, Plaintiffs-Intervenors, v. HONORABLE ROD BLAGOJEVICH, Governor of the State of Illinois, THE ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES, and BARRY S. MARAM, Director of IDHFS, Defendants, THE ILLINOIS DEPARTMENT OF PUBLIC HEALTH, DAMON ARNOLD, Director of IDPH and DANIEL W. HYNES, Comptroller of the State of Illinois, Defendants, GREGORY JACAWAY, *et al.*, Individually and on Behalf of All Similarly Situated People, Defendants-Intervenors, THE STATE OF ILLINOIS, Intervenor.	)	Pending in the Circuit Court of Cook County, No. 07 CH 34353. The Honorable James R. Epstein, Judge Presiding.

**DEFENDANTS' OBJECTIONS TO
PLAINTIFFS' JOINT MOTION FOR A SUPERVISORY ORDER
CLARIFYING THIS COURT'S NOVEMBER 12, 2008 ORDER**

Defendants Honorable Rod Blagojevich, Governor of the State of Illinois; the Illinois Department of Healthcare and Family Services (IDHFS); and Barry S. Maram,

Director of IDHFS, by their attorneys, respectfully submit these objections to the Plaintiffs' Joint Motion for a Supervisory Order Clarifying This Court's November 12, 2008 Order.

INTRODUCTION

Plaintiffs' Joint Motion for a Supervisory Order Clarifying This Court's November 12, 2008 Order (the "Joint Motion") is nothing more than an attempt to have the last word before this Court announces its disposition of the Defendants' Petition for Leave to Appeal. Plaintiffs' Joint Motion offers nothing new. Plaintiffs identify no change in circumstances, no change in the law, and no error in this Court's Order of November 12, 2008. Plaintiffs simply repeat some of the arguments that they have already submitted to this Court. Because Plaintiffs identify no justification for the extraordinary relief they seek, their Joint Motion should be denied.

ARGUMENT

In truth, Plaintiffs do not seek clarification of this Court's Order. They instead seek reconsideration of that Order. Indeed, Plaintiffs request from this Court "a supervisory order clarifying *and modifying* its November 12, 2008 Order." (Explanatory Suggestions at 2 (emphasis added).) The "modification" they seek would apparently consist of a resumption of injunction-related proceedings in the circuit court, or the issuance of a permanent injunction by this Court. Plaintiffs also demand to know in advance whether this Court will reach constitutional issues that were never reached by the circuit court or the appellate court. Plaintiffs, in short, seek something other than "clarification." They do not even identify any language in the Court's Order that they contend is ambiguous or unclear.

Plaintiffs do not claim that the law or any of the relevant facts have changed since this Court issued its Order of November 12, 2008. They do not claim that this Court committed any error in that Order, nor could they. Plaintiffs, in short, offer nothing new to this Court. Their motion and statement of explanatory suggestions restate arguments that Plaintiffs have previously presented to the Court.

That alone defeats Plaintiffs' Joint Motion. "The purpose of a motion for reconsideration is to inform the trial court of (1) newly discovered evidence previously unavailable at the time of the original hearing, (2) changes that have occurred in the law since the original hearing, or (3) errors in the court's earlier application of the law." *Weidner v. Midcon Corp.*, 328 Ill. App. 3d 1056, 1061 (2002). Plaintiffs have not even attempted to meet that standard. Nor can they circumvent that standard by characterizing their Joint Motion as one for "clarification," when in effect their motion seeks partial or total reconsideration of the Court's Order.

Plaintiffs' Joint Motion is without merit for an additional reason. As Plaintiffs concede, the circuit court's orders and the appellate court's opinion each rest on "one narrow ground." (Explanatory Suggestions at 5.) That single "narrow ground" is an issue of statutory construction. Plaintiffs nevertheless argue that this Court or the circuit court should address other arguments, including constitutional arguments, while that "narrow" issue of statutory construction remains pending before this Court. (Explanatory Suggestions at 5-7.) Plaintiffs' Joint Motion therefore violates a settled principle of Illinois law: Courts "must avoid reaching constitutional issues when a case can be decided on other, nonconstitutional grounds." *People v. Hampton*, 225 Ill. 2d 238, 244 (2007). "Constitutional issues should be addressed only if necessary to decide a case."

Id. Plaintiffs seem to suggest that it would be more efficient to disregard this settled principle of Illinois law. "The interest in efficiency or judicial economy, however, does not justify reaching a constitutional issue unnecessarily." *Id.* at 244-45. *See also In re E.H.*, 224 Ill. 2d 172, 178 (2006) ("We have repeatedly stated that cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort") (citing cases).

Plaintiffs further overlook Illinois Supreme Court Rule 18(c)(4), which provides in relevant part that a "court shall not find unconstitutional a . . . regulation or other law, unless . . . such order or opinion clearly sets forth the specific ground(s) for the finding of unconstitutionality, including . . . that the finding of unconstitutionality is necessary to the decision or judgment rendered, and that such decision or judgment *cannot rest upon an alternative ground . . . .*" *See* Ill. Sup. Ct. R. 18(c)(4) (emphasis added). The relief demanded in Plaintiffs' Joint Motion would directly contradict Illinois Supreme Court Rule 18. Plaintiffs want this Court or the circuit court to hold certain regulations unconstitutional even though an alternative, nonconstitutional ground remains pending, and even though the decisions of the circuit court and the appellate court rest entirely on that alternative ground. For this additional reason, Plaintiffs' Joint Motion is improper and should be denied.

Plaintiffs also overlook two salient observations by Judge Epstein. (*See* Record of Proceedings before Judge James R. Epstein, Circuit Court of Cook County, November 25, 2008, attached to Plaintiffs' Motion as Exhibit F of Plaintiffs' Supporting Record.) Speaking of this Court's Order of November 12, 2008, Judge Epstein observed:

> And the Supreme Court is saying, before you begin to dismantle a program of this nature, in effect, they're saying,

> wait a minute. Let us look at it first if we're going to look at it. And they haven't said that they're going to, and they have to make that determination.
>
> And I think that that is a responsible and cautious view, and even if I didn't, I would be obeying what they told me to do.
>
> But I happen to agree with their view. If they're going to look at it, then I would rather not dismantle a program if they think it shouldn't be dismantled.

(*See id.* at 10.) As Judge Epstein correctly observed, "a responsible and cautious view" is in order. While Defendants' Petition for Leave to Appeal remains pending, it makes little sense to allow Plaintiffs to continue their efforts in the circuit court to have the program dismantled.

In the same hearing, with respect to Plaintiffs' request to continue discovery, Judge Epstein observed that although the parties have stipulated to certain facts, "the stipulation . . . was the stipulated set of facts to be considered by the Court for purposes of the preliminary injunction." (*Id.* at 15.) Accordingly, Judge Epstein found that those stipulations do not limit "further inquiry from either side . . . ." (*Id.*) Thus, Plaintiffs suggest that this Court should convert the circuit court's preliminary injunction into a permanent injunction (*see* Explanatory Suggestions at 9-10.), but for purposes other than the preliminary injunction, Plaintiffs contend (and Judge Epstein agreed) that the evidentiary record is not closed.

Finally, instead of offering any concrete explanation for their sudden sense of urgency, Plaintiffs complain that they are "in limbo" while the Defendants' Petition for Leave to Appeal remains pending. (Explanatory Suggestions at 6.) But Plaintiffs are in no different position from that of every other litigant who awaits this Court's resolution

of a petition for leave to appeal. Both Plaintiffs and Defendants are eager for a resolution of Defendants' Petition for Leave to Appeal, but that eagerness offers no basis for the extraordinary relief sought by Plaintiffs' Joint Motion.

CONCLUSION

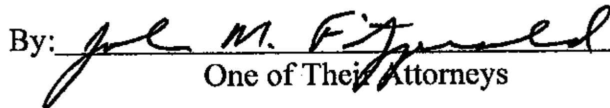
Plaintiffs cannot be faulted for wanting to have the last word before this Court's disposition of Defendants' Petition for Leave to Appeal. But that alone offers no basis for the relief requested by the Plaintiffs, and the Plaintiffs offer no other legally adequate basis for the relief they seek. Their Joint Motion should therefore be denied.

WHEREFORE, Defendants respectfully request that this Court deny Plaintiffs' Joint Motion for a Supervisory Order Clarifying This Court's November 12, 2008 Order, and award all further relief that is appropriate under the circumstances.

Dated: January 22, 2009

Respectfully submitted,

HONORABLE ROD BLAGOJEVICH, Governor of the State of Illinois, THE ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES, and BARRY S. MARAM, Director of IDHFS

By: 
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