Summary Of Constitutional and Statutory Violations Alleged In *Caro, et al. v. Blagojevich, et al.*, 07 CH 34353

I. **Unlawful Collection of Premiums.** Premiums -- like taxes, fees, and other imposts -- must be authorized by the General Assembly.

A. The Illinois Constitution expressly provides that the "General Assembly has the exclusive power to raise revenue . . ." Article IX, §1. This type of provision dates back to the *Magna Carta*, rejection of the Royal Prerogative and the Boston Tea Party.

B. There is no authority for charging premiums for this group anywhere in the Medicaid law, Article V of the Public Aid Code.

C. Mr. Blagojevich, despite the Constitution and in the absence of any statutory authority, has imposed and collected premiums for the FamilyCare Expansion.

D. The Governor has asserted that there is "inherent authority" to charge premiums. Sur-Reply at 4. There is no such authority. In fact, Illinois law is the exact opposite. Agencies only have the authority expressly delegated to them by the General Assembly.

II. **Expenditure Without Appropriations.** The Constitution prohibits the expenditure of public money without appropriation and there is no appropriation for the FamilyCare Expansion.

A. The Constitution requires, "The General Assembly by law shall make appropriations for all expenditures of public funds by the state." Article VIII, § 2 (b).

B. The Governor proposed the Expansion in his Budget Message and promised a separate line item for the Program. No such line item was ever enacted by the General Assembly. The budget materials submitted to the Appropriations Committees stated the amount proposed was for a maintenance budget.

III. **Expenditure Without Authorization**. The Circuit Court has found on two separate occasions that the FamilyCare Expansion is unlawful. To date, the Appellate Court has affirmed the first of these two injunctions.

A. There is no authorization in the Public Aid Code for the FamilyCare Expansion.

B. Expenditure of money without authorization by law is prohibited by the Constitution, Article VIII, §1(b).

IV. **Failure to Faithfully Execute The Law**. The Constitution at Article V, §8 charges the Governor with being "responsible for the faithful execution of the laws".

A. The Appellate Court has commented with regard to the Program:

> "...defendants admitted to the trial court that, even at this early point in the creation of their FamilyCare Program, they already cannot identify program participants, provide them with notice, or monitor payments; they do not even know (or at least have refused to reveal) where the premiums they have collected are kept and how much remains. This, in addition to the fact that both JCAR and the Illinois Secretary of State have already twice suspended and prohibited defendants' Emergency and Permanent Rules creating the FamilyCare Program, raises severe concerns—ones we find are more than sufficient to demonstrate, on a *prima facie* basis, that plaintiffs have raised a fair question concerning their rights as state taxpayers and the existence of an irreparable harm to their rights promulgated by defendants' continued operation of the FamilyCare Program." Opinion at 16-17.

B. DHFS continued to enroll participants and to collect premiums for the FamilyCare Expansion even after the rules implementing it were suspended and rendered ineffective under the Illinois Administrative Procedure Act. It is black letter law that "[a]dministrative agencies ... have no authority to declare a statute unconstitutional or even to question its validity." *Bryant v. Bd. of Election Commissioners*, 224 Ill. 2d 473, 476 (2007).