



STATE OF ILLINOIS
95TH GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
SPECIAL INVESTIGATIVE COMMITTEE

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PROPOSED REPORT OF THE SPECIAL INVESTIGATIVE COMMITTEE

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I. Introduction

On December 15, 2008, the Illinois House of Representatives (the “House”) unanimously adopted House Resolution 1650, which created the Special Investigative Committee (the “Committee”) to investigate allegations of misfeasance, malfeasance, nonfeasance, and other misconduct of Governor Rod R. Blagojevich and to make a recommendation as to whether cause exists for the Governor’s impeachment pursuant to Article IV, Section 14 of the Illinois Constitution. House Resolution 1650 called on the Committee to issue a report before the end of the 95th General Assembly.

The Committee consists of twenty-one members of the House, including the Chair, Barbara Flynn Currie, and the Minority Spokesman, Jim Durkin. The Committee convened on Tuesday, December 16, 2008 and conducted hearings on December 17, 18, 22, 29, and on January 7 and 8, 2009. This Report summarizes the pertinent findings from those hearings and includes a recommendation to the full House.

II. The Committee’s Rules, Procedure, and Policy

A. The Rules and Procedure.

On December 17, 2008, the Committee adopted rules to govern its fact-finding hearings (the “Rules”).¹ The Rules permitted the Governor to be present at all hearings, personally and through counsel. The Rules required that the Committee provide 24-hour notice of all public hearings. The Rules further permitted the Governor’s counsel to ask questions of witnesses called by the Committee and to present any evidence of his own, be it witnesses or documentary material.

The Governor and his counsel were given the opportunity to attend every hearing, to ask questions of witnesses in response to their testimony, and to provide any relevant evidence they wished to submit for the Committee’s consideration. The Governor requested, and was granted, seven days to gather evidence and present testimony.

B. The Policy Regarding the Federal Criminal Investigation of the Governor.

Recognizing the federal criminal investigation of the Governor, the Committee unanimously determined, at the outset, that it would not call any witnesses, nor pursue any lines of inquiry, that interfered with that investigation in the opinion of the United States Attorney for the Northern District of

¹ The vote of the Committee to adopt the Rules was 12 members voting aye, 9 members voting nay. (Tr. 70.)

Illinois. Thus, the Committee sent a letter to the U.S. Attorney requesting certain information from his investigation and informing him of areas of inquiry the Committee intended to pursue and witnesses the Committee wished to call. (Ex. 10.) The U.S. Attorney, in a written response, notified the Committee that, with one exception, he could not provide any materials obtained in the course of his criminal investigation.² He also notified the Committee of his request that the Committee “refrain from conducting any inquiry into the subjects” related to his criminal investigation and from “seeking information or testimony from the individuals” relevant to that investigation. (Ex. 30.)

As new avenues of inquiry have come to the Committee’s attention, the Committee has continued to correspond with the U.S. Attorney to obtain his approval before calling witnesses or presenting information. The Committee has respected the U.S. Attorney’s requests to the letter.

III. Overview of the Impeachment Process

Article IV, Section 14 of the Illinois Constitution provides:

The House of Representatives has the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the vote of a majority of the members elected, to impeach Executive and Judicial officers. Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall be upon oath, or affirmation, to do justice according to law. If the Governor is tried, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of the Senators elected. Judgment shall not extend beyond removal from office and disqualification to hold any public office of this State. An impeached officer, whether convicted or acquitted, shall be liable to prosecution, trial, judgment and punishment according to law.

Ill. Const. 1970, Art. IV, § 14.

Pursuant to this exclusive grant of authority, the House of Representatives has the sole power to conduct legislative investigations to determine whether “cause” exists to impeach an Executive or Judicial officer. Our previous Constitution, adopted in 1870, provided for impeachment of an Executive or Judicial officer for “any misdemeanor in office.” Ill. Const. 1870, Art. V, § 15. The framers of the current, 1970 Constitution deleted this phrase, primarily because the term “misdemeanor,” in modern times, is understood as a petty criminal offense such as a parking violation, whereas in 1870 the phrase referred more generally to “misconduct.” 6 Record of Proceedings, Sixth Illinois Constitutional Convention, 1310-1311. It is notable, however, that the framers did not replace this phrase with a

² At the time this report has been filed, the U.S. Attorney has sought court approval to disclose the contents of four intercepted conversations described in the Cain Affidavit. (Ex. 3.) The court action is still pending.

different one. They considered inserting the phrase “official misconduct,” *id.*, but did not do so. The framers could have placed impeachment proceedings in the judiciary, together with its evidentiary rules and burdens of proof, but chose to keep these proceedings with legislators. Ultimately, they left determinations regarding impeachment in legislators’ “exercise of their discretion.” *Id.* at 1311.

Grounds for Impeachment. Thus, the framers made it clear that they did not consider minor and petty offenses to be grounds for impeachment, but neither did they wish to tie the hands of the Illinois House of Representatives in circumscribing what would, and would not, be grounds for impeachment. Instead, the framers simply left it to the discretion of the House members to determine whether “cause” exists for impeachment. The Committee, taking into account the change to the Impeachment Clause made by the framers in the 1970 Constitution, and recognizing that an impeachment, by definition, sets in motion the possible removal of a popularly-elected officer, does not take its task lightly. To the contrary, an impeachment inquiry is a time for grave and deep reflection. It should not be used to resolve policy disagreements. It should be reserved for serious abuses and misconduct. It should be, and in Illinois has been, rarely invoked.

It would be impossible to define the outer boundaries of what constitutes an impeachable offense. Then-Speaker of the U.S. House of Representatives, Gerald Ford, once famously said that an impeachable offense “is whatever a majority of the House of Representatives considers [it] to be at a given moment in history.”³ Supreme Court Justice Story remarked that impeachment applies to offenses of a “political character” and are “so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law.”⁴ Alexander Hamilton, in an essay known as Federalist No. 65, wrote that impeachable offenses “are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.”⁵ The Texas Supreme Court, in a comprehensive discussion of impeachment, wrote that impeachable offenses “cannot be defined, except in the most general way” and, therefore, “no attempt was usually made to define impeachable offenses, and the futility as well as the

³ 116 Cong. Rec. H3113-114 (1970) (statement of Rep. Gerald Ford). The comment was made during the debate over whether to initiate impeachment proceedings against Supreme Court Justice William O. Douglas.

⁴ J. Story, *Commentaries on the Constitution of the United States*, § 764, at 559 (5th ed. 1965), *quoted in* Report by the Staff of the Impeachment Inquiry, Committee on the Judiciary, House of Representatives, 93rd Congress, February, 1974, “Constitutional Grounds for Impeachment” (the “Watergate Report”), at p. 16.

⁵ *Federalist No. 65, The Federalist* 453-454 (1864) (capitalization in original), cited in Report of Special Counsel to the Select Committee of Inquiry on the Standards for Impeachment Under the Connecticut Constitution, March 5, 2004 (“Report of Conn. Spec. Counsel”), at p. 5.

unwisdom of attempting to do so has been commented upon.”⁶ Because the impeachment inquiry is a uniquely political exercise, courts have refrained from second-guessing the “sufficiency of charges”⁷ or the “delineation of the offense” by the House.⁸

There seems to be near universal agreement, however, that certain conduct comfortably falls *within* the boundaries of an impeachable offense. First and foremost, impeachable offenses are not limited to violations of criminal law: “The American experience with impeachment ... reflects the principle that impeachable conduct need not be criminal.”⁹ The respected Watergate Report noted that, historically, less than one-third of the articles of impeachment drawn up by the U.S. House of Representatives have explicitly charged the commission of a criminal statute.¹⁰ The Texas Supreme Court referred to impeachable offenses generally as “official wrongs” that “need not be statutory offenses or common-law offenses, or even offenses against any positive law.”¹¹

It would, in fact, be unreasonable to limit impeachable offenses to criminal conduct. An impeachment inquiry is not a criminal proceeding and its purpose is not punitive. Rather, impeachment is a remedial proceeding to *protect the public* from an officer who has abused his position of trust.¹² To limit the impeachment inquiry to criminal conduct would severely undermine its remedial purpose.

Under the English parliamentary experience, after which the U.S. Constitution’s impeachment provision was patterned, allegations of impeachable offenses generally fell into the categories of “abuse of official power; neglect of duty; encroachment on the legislature’s prerogatives; corruption; and betrayal of trust.”¹³ The Watergate Report’s summary of American federal impeachments, while noting the difficulty of fitting impeachment charges “neatly into categories,” essentially categorized impeachable offenses the same way: exceeding the constitutional bounds of office in derogation of another branch; behaving in a manner grossly incompatible with the powers of office; and employing the power of the office for an improper purpose or for personal gain.¹⁴

⁶ *Ferguson v. Maddox*, 263 S.W. 888, 892 (Tex. 1924).

⁷ *Kinsella v. Jaekle*, 475 A.2d 243, 253 (Conn. 1984) (quoting *People v. Hayes*, 143 N.Y.S. 325 (Sup. Ct. 1913)).

⁸ *Larsen v. Senate of the Commonwealth of Pennsylvania*, 152 F.3d 240, 251 (3rd Cir. 1998).

⁹ Watergate Report, p. 24.

¹⁰ *Id.* at p. 21.

¹¹ *Ferguson*, 263 S.W. at 96.

¹² *Id.* at 98; *Kinsella*, 475 A.2d at 252; Watergate Report, p. 24; Report of Conn. Spec. Counsel, p. 9.

¹³ Watergate Report, p. 7.

¹⁴ *Id.* at p. 18.

Pattern of Abuse as a Single Ground for Impeachment. Historically, many of the impeachment charges have explicitly rested on a “pattern” of abuse or “course of conduct” that combined disparate acts of abuse into a single article.¹⁵ Indeed, in the early American experience, articles of impeachment were drafted *after* the House had voted to impeach, thus making it “probable that the decision to impeach was made on the basis of all the allegations viewed as a whole, rather than each separate charge.”¹⁶ The Watergate Report noted that, historically, “the House appears to have considered the individual offense less significant than what they said together about the conduct of the official in the performance of his duties.”¹⁷

When one considers that the purpose of impeachment is to protect the public from official abuses, the notion of “pattern of abuse” as a ground for impeachment is very sensible. When an official commits a series of misdeeds, the injury to the public is not segregated into individual harms considered in isolation. It is the overall effect of the official’s misbehavior that a legislator must judge in protecting the interests of his or her constituents. Moreover, impeachment, by its very nature, tests the fitness of a person to continue in office, which is best measured by the overall pattern of that official’s conduct, not by segregating various acts of abuse and judging them without regard to the others.¹⁸

The Watergate Report noted that historically, some of the acts of misbehavior included in a charge of pattern of abuse would not, alone, constitute impeachable offenses.¹⁹ Indeed, the special counsel to a Connecticut impeachment inquiry regarding Judge James Kinsella, discussing the notion of a pattern of misconduct, concluded that “each element by itself need not justify impeachment.”²⁰ Moreover, in considering a pattern-of-abuse charge, it is not necessary that every single act of misconduct presented for consideration be established to the satisfaction of the House member; what is important is that each member be satisfied that *sufficient* acts of misconduct have been established to justify a pattern of abuse. If, for example, ten acts of abuse were presented for consideration, one House member might find that all ten acts have been established to his or her satisfaction; another might be satisfied that only eight have been established; another, two. Yet any of those members, if they believed that a sufficient number of acts were established to show a pattern of abuse, could vote for impeachment

¹⁵ *Id.* at 21.

¹⁶ *Id.*

¹⁷ Watergate Report, p. 21.

¹⁸ The Governor’s counsel, in a written submission, stated that he “agree[s] ... that this Committee should consider the totality of the evidence” in deciding whether to recommend impeachment and “advocate[s] a totality of the circumstances approach to the evidence presented.” (Ex. 35, January 2, 2009, at 2.)

¹⁹ Watergate Report, p. 21.

²⁰ Report of the Conn. Spec. Counsel at p. 9 (quoting Final Statement of Information, April 17, 1984, at p. 28).

in their discretion. The Constitution places no formulaic rule on the House members in making the determination as to “cause” for impeachment.²¹

Required Procedures. The Governor was given a fundamentally fair opportunity to present his position before the Committee. As previously noted, he was given notice of all hearings, the right to be present, copies of all documents, a copy of each day’s transcript, the right to question witnesses, the right to present relevant evidence, and the opportunity to testify on his own behalf. A recurring theme of the Governor’s counsel, however, was that he was denied “due process” before this Committee. The Committee believes that the Governor was given more than sufficient procedural safeguards.

The Committee afforded Governor all of the aforementioned rights, even though the Committee was not required to do so. The Arizona Supreme Court, during Governor Evan Mecham’s impeachment inquiry, held that the concept of “due process” “does not protect the right to hold office as Governor”²² and “the rights of a person [criminally] accused are not co-extensive” with the rights of a Governor facing impeachment.²³ The U.S. Supreme Court refused to “impose limitations on the Senate proceedings” considering an impeached judge because if it did so, “it is difficult to see how the Senate would be functioning ... independently and without assistance or interference.”²⁴ An impeachment proceeding “can never be tied down by ... strict rules”²⁵ because the courts “have no jurisdiction in impeachment proceedings, and no control over their conduct.”²⁶ The Connecticut Supreme Court, while refusing to even consider a claim that a judge standing impeachment was denied due process, nevertheless pointed favorably to a set of procedural safeguards in the House Select Committee that were virtually identical to those given the Governor before this Committee.²⁷

Thus, the Committee provided the Governor procedural rights and safeguards that far exceeded anything the Committee was required to give him. The Committee afforded the Governor these protections because of the gravity of the inquiry and because of the Committee’s desire to have a fair hearing of all relevant and available evidence.

²¹ Ill. Const. 1970, Art. IV, § 14; 6 Record of Proceedings, Sixth Constitutional Convention, 1311 (framers stated that they wished to leave the impeachment inquiry to the “exercise of [legislators’] discretion.”).

²² *Mecham v. Gordon*, 751 P.2d 957, 962 (Ariz. 1988).

²³ *Id.* at 963-64.

²⁴ *U.S. v. Nixon*, 506 U.S. 224, 231 (1993); *see also id.* at 239 (White, Blackmun, JJ., concurring) (“the Senate has very wide discretion in specifying impeachment trial procedures”).

²⁵ *Larsen*, 152 F.3d at 251.

²⁶ *Kinsella*, 475 A.2d at 722 (quoting *Dauphin County Grand Jury Investigation Proceedings (No. 2)*, 332 Pa. 342, 345 (1938)).

²⁷ *Kinsella*, 475 A.2d at 256 n.15.

Burden of Proof. As already explained, the Illinois Constitution places no constraints on a House member's determination of whether "cause" exists to justify impeachment. The question of the burden of proof a House member employs, not answered by the Constitution, is thus left to the individual judgment of the member. In fact, if anything is clear on this issue, it is that the "appropriate" standard for proof is left to an individual member's determination. Speaking of the burden of proof applicable to impeachment trials in the *Senate*, the Congressional Research Service summarized that:

an examination of the constitutional language, history, and the work of legal scholars provides no definitive answer to the question of what standard is to be applied. In the final analysis, the question is one which historically has been answered by individual Senators guided by their own consciences.²⁸

This point is undoubtedly true for the House as well; the Constitutions of both Illinois and the United States are equally silent as to the Senate's and House's evidentiary burden.²⁹

Although it is beyond debate that the appropriate evidentiary burden is up to a member's own judgment, a few comments are appropriate here. First, as stated earlier, impeachment is not a criminal proceeding. An impeached official in Illinois does not lose his life or liberty. He does not even lose his office; at the point an officer is impeached, that officer merely stands accused by the House, awaiting trial in the Senate for possible removal. The official remains in office (barring resignation or some disqualification) unless and until the Senate votes to remove him. However unfavorable it may be to be impeached, there is no official sanction attached to it; its only constitutional effect is to trigger a trial in the Senate on the accusations leveled by the House.

Moreover, just as an individual member is not limited by the Constitution in determining what is necessary to convince him or her that "cause" exists to impeach, likewise the member is not bound by any prior decisions of individual House members. The Governor's counsel makes much of the fact that a Special Investigative Committee conducting an impeachment inquiry into Illinois Supreme Court Justice Heiple, 11 years ago, collectively decided on a standard of proof of "clear and convincing evidence," which is something more than a "preponderance of the evidence" (more likely than not) but less than "beyond a reasonable doubt." It is important to note, first, that this was a decision made only by a ten-person committee. The full House never considered articles of impeachment against Justice

²⁸ Congressional Research Service, Library of Congress, "Standard of Proof in Senate Impeachment Proceedings," Summary.

²⁹ The Governor's counsel agrees that the Constitution imposes no required burden of proof (Tr. 61-62) and that "each and every one" of the Committee members must decide "what's the standard you have to look at." (Tr. 185-186.)

Heiple. Those ten members were justified in reaching their individual judgments, just as each member of this Committee (and potentially each member of the full House) may make theirs. There is no constitutional, statutory, or House rule that governs this individual determination by each member. A member's individual determination is not controlled by another member's decision 11 years ago.

Whatever level of proof is necessary to satisfy a member that "cause" exists to impeach is a personal determination. Each member may consider all of the evidence, attach whatever weight he or she deems appropriate to that evidence, and ultimately reach a conclusion according to the member's individual judgment and conscience.

IV. Evidence Considered By the Committee

As a preliminary note, some of the evidence gathered by the Committee concerned allegations of criminal conduct brought by the United States Attorney for the Northern District of Illinois against Governor Blagojevich and his Chief of Staff, John Harris. On December 9, 2008, Governor Blagojevich was arrested by federal agents at his home on federal corruption charges. The Affidavit of Special Agent Daniel W. Cain, in support of the application for the arrest warrant ("Cain Affidavit"), outlined a number of acts of the Governor that are discussed herein. Based on those allegations, a federal magistrate judge found probable cause to arrest the Governor.³⁰

The allegations in the Cain Affidavit include information from cooperating witnesses, including but not necessarily limited to an individual identified as "Individual A," as well as named individuals who have pleaded guilty to federal criminal charges such as Stuart Levine, Ali Ata, and Joseph Cari. Other information was obtained from the interception of oral and wire communications from October to December, 2008, after the U.S. Attorney received court approval to plant eavesdropping devices in a conference room and in the Governor's office at his campaign headquarters, Friends of Blagojevich, as well as receiving court approval to wiretap the Governor's home telephone. (Ex. 3, Affidavit of Daniel W. Cain ("Aff."), ¶¶ 14-15.) The U.S. Attorney then received a second 30-day authorization to continue its surveillance.³¹ (*Id.*)

³⁰ The Criminal Complaint and Cain Affidavit are found at Exhibit 3 in the Committee Record.

³¹ On December 22, 2008, the Committee heard testimony from John Scully, a former Assistant U.S. Attorney, regarding the rigorous requirements to intercept oral or wire communications. To obtain permission, an Assistant U.S. Attorney and FBI agents must put together an affidavit establishing probable cause that there is evidence that various felonies are being committed. (Tr. 564-567.) This affidavit, along with an application for intercepting oral or wire communications and proposed orders, is reviewed by local FBI attorneys to ensure statutory requirements are met and sufficient facts for probable cause are alleged. Then the same form of review is conducted by FBI headquarters, and then to the Office of Enforcement

A. Attempt to Obtain Benefits in Exchange for Appointment to U.S. Senate Seat.

Senator Barack Obama's election to the presidency left a vacancy in the office of U.S. Senator in the State of Illinois. Under state law, the Governor has the authority to make a temporary appointment to that office. 10 ILCS 5/25-8. The United States alleges that Governor Blagojevich misused this authority by attempting to trade an appointment to the U.S. Senate seat in exchange for personal benefits for himself and his wife, including an appointment to the President-Elect's cabinet or an ambassadorship; his wife's placement on corporate boards or a lucrative position in the private sector; his own placement at a private foundation for a significant salary; or thousands of dollars in campaign contributions. (Aff., ¶ 13(c).) The following information comes from the Cain Affidavit.

On November 3, 2008, the day before the presidential election, the Governor had a conversation regarding the possibility of a U.S. Senate seat vacancy. The Governor told an individual identified as "Deputy Governor A" that if he could not get anything of value for the open Senate seat, then the Governor might appoint himself: "if . . . they're not going to offer anything of any value, then I might just take it." (Aff., ¶ 89.) He later spoke by phone with "Advisor A" about "Senate Candidate 1," an individual who was believed to be supported by the President-Elect for the open seat. The Governor stated that "unless I get something real good for [Senate Candidate 1], s---, I'll just send myself, you know what I'm saying." (Aff., ¶ 90.) The Governor later stated, "I'm going to keep this Senate option for me a real possibility, you know, and therefore I can drive a hard bargain. You hear what I'm saying. And if I don't get what I want and I'm not satisfied with it, then I'll just take the Senate seat myself." Later, the Governor stated that the Senate seat "is a f---ing valuable thing, you just don't give it away for nothing." (*Id.*)

On the day of the election, November 4, 2008, the United States intercepted two conversations, in one of which the Governor agreed that he should start putting together a list of items the Governor would demand in exchange for the Senate appointment, including an ambassadorship, though the

Operation (OEO) of the Criminal Division of the Department of Justice. (Tr. 568-569.) Likewise, the affidavit, application, and proposed order move on a dual track for approval through Assistant U.S. Attorneys and then up to the head of the Criminal Division or even the U.S. Attorney. (Tr. 570.) Thereafter, similar to the FBI process, the documents are sent to the OEO of the Criminal Division of the Department of Justice. The head of OEO must approve the application. (*Id.*) After going through OEO, it is sent to the Deputy Assistant United States Attorney General for their approval. (Tr. 571.) Finally the approved application, affidavit, and proposed order are sent to the Chief Federal Judge of the District. The Chief Judge must enter an order approving the interception. (Tr. 572-573.) Every order grants permits the government to monitor communications for a 30-day period. To receive another 30-day approval, the process must, once again, start with the U.S. Attorney and FBI offices, then through OEO, then to the Deputy Assistant United States Attorney General, and finally back to the Chief Federal Judge for a ruling. (Tr. 577-579.)

Governor instructed Deputy Governor A that the list “can’t be in writing.” (Aff., ¶ 91.) In a conversation with John Harris later that day, the Governor stated that the “trick ... is how do you conduct indirectly ... a negotiation” for the Senate seat. (Aff., ¶ 92.) Thereafter, the Governor analogized his situation to that of a sports agent shopping a potential free agent to various teams, stating “how much are you offering, [President-Elect]? What are you offering, [Senate Candidate 2]? ... Can always go to ... [Senate Candidate 3].” Later, the Governor stated that he will make a decision on the Senate seat “in good faith . . . but it is not coming for free . . . It’s got to be good stuff for the people of Illinois and good for me.” The Governor stated that his position should be, “[President-Elect], you want it? Fine. But, it’s got to be good or I could always take [the Senate seat].” (*Id.*)

On November 5, 2008, in a series of intercepted conversations, the Governor discussed ambassadorships and an appointment as U.S. Secretary of Health and Human Services, as well as various other federal positions he could obtain in a trade for the Senate appointment. (Aff., ¶¶ 93-94.) The Governor also asked about “the private sector” and whether the President-Elect might be able to “put something together there ... something big.” (Aff., ¶ 94.) When John Harris suggested the Governor might be named the head of a private foundation under the influence or control of the President-Elect, the Governor directed Harris to do “homework” on private foundations “right away” and to “look into all of those.” (*Id.*) The Governor later told Advisor A that “I’ve got this thing and it’s f---ing golden, and, uh, uh, I’m just not giving it up for f---in’ nothing. I’m not gonna do it. And, and I can always use it. I can parachute me there.” (Aff., ¶ 96.)

On November 7, 2008, in two separate conversations, the Governor told various individuals that he was willing to trade the Senate seat to Senate Candidate 1 in exchange for the Health and Human Services cabinet post. (Aff., ¶¶ 98-99.) In a phone conversation with the Governor and “Advisor B,” John Harris explained that “we wanted our ask to be reasonable and rather than ... make it look like some sort of selfish grab for a quid pro quo.” (Aff., ¶ 99.) The Governor noted he was “financially” hurting and “want[ed] to make money.” The three individuals discussed the idea of working a three-way deal for the open Senate seat. Harris noted that the Governor was interested in taking a high-paying position with an organization called “Change to Win,” which was connected to Service Employees International Union (“SEIU”). Harris proposed the “three-way deal,” whereby “SEIU Official” would make the Governor the head of Change to Win, the President-Elect would support that organization’s agenda, and Senate Candidate 1 would be appointed to the open Senate seat. Harris stated that the benefit of this transaction was to create a “buffer so there is no obvious quid pro quo for [Senate

Candidate 1].” The Governor indicated he wanted a salary of \$250,000 to \$300,000. (Aff., ¶ 99.) The following day, the Governor spoke with Harris about getting his wife a position where she could use her “Series 7” securities license, or if SEIU Official could get his wife a position at Change to Win until the Governor’s term ended. (Aff., ¶ 100.)

Over subsequent days, the Governor was overheard discussing many different options for a trade for the U.S. Senate seat. Aside from the options discussed above, the Governor also considered appointing Senate Candidate 1 to the seat in exchange for starting up a new 501(c)(4) organization (a nonprofit organization that engages in political activity) that could be funded by friends of the President-Elect (Aff., ¶¶ 104-114), as well as simply trading the appointment for a sizeable campaign contribution. (Aff., ¶ 115.)

Throughout all of these allegations and intercepted phone conversations, several things are worth noting. First, the Governor repeatedly demonstrated that his decision to appoint a Senator would not be based on the merits of the candidate or on public policy, but rather on how that appointment could benefit him personally. Second, the Governor directed various individuals to conduct inquiries on his behalf to negotiate deals for the Senate appointment, affirmatively setting into action a plot to trade the Senate appointment for something of value to the Governor. Finally, the Governor is overheard making many statements that indicated he was aware that his plan to trade the Senate appointment in return for something of value to him was an illegal endeavor.

Refusal to Appoint an Individual to the Senate Seat Without Consideration in Return. In many intercepted conversations, the Governor is overheard refusing to appoint anyone to the position of Senator without receiving something of value in return. His comments also demonstrate that his decision would be based primarily on his personal benefit, not the interests of the people of this State:

- The Governor stated that his appointment to the Senate seat would be based on three criteria in this order of importance: “our legal situation, our personal situation, my political situation. This decision, like every other one, needs to be based upon on that. Legal. Personal. Political.” (Aff., ¶ 111, Nov. 12, 2008.)
- Referring to an appointment of Senate Candidate 1, believed to be supported by the President-Elect, the Governor said: “For nothing? F--- him [the President-Elect].” The Governor stated, later in that conversation, that absent getting something back, he would not pick Senate Candidate 1. (Aff., ¶ 101(c), Nov. 10, 2008.)
- The Governor said he would appoint “Senate Candidate 4” to the seat “before I just give f---ing [Senate Candidate 1] a f---ing Senate seat and I don’t get anything.” (*Id.*)

- The Governor stated that he would appoint “[Senate Candidate 1] . . . but if they feel like they can do this and not f---ing give me anything . . . then I’ll f---ing go [Senate Candidate 5].” (Aff., ¶ 102, Nov. 10, 2008.)
- The Governor stated he knew the President-Elect wanted “Senate Candidate 1” for the appointment but “they’re not willing to give me anything except appreciation. F--- them.” (Aff., ¶ 104, Nov. 11, 2008.)
- The Governor said of the Senate appointment, “if . . . they’re not going to offer anything of any value, then I might just take it” (Aff., ¶ 89, Nov. 3, 2008) and “unless I get something real good for [Senate Candidate 1], s---, I’ll just send myself.” (Aff., ¶ 90, Nov. 3, 2008.)
- The Governor said his decision on the Senate seat “is not coming for free . . . It’s got to be good stuff for the people of Illinois and good for me.” (Aff., ¶ 92, Nov. 4, 2008.)
- The Governor told “Advisor A” that “I’ve got this thing and it’s f---ing golden, and, uh, uh, I’m just not giving it up for f---in’ nothing. I’m not gonna do it. And, and I can always use it. I can parachute me there.” (Aff., ¶ 96, Nov. 5, 2008.)

Affirmative Direction to Subordinates or Advisors to Put the Plan in Motion. The Governor, at times, gave positive direction to individuals to move forward with a plan to trade the Senate appointment for something of value to the Governor:

- Stating that he might be able to make a deal to appoint “Senate Candidate 5” to the Senate in exchange for contributions to the Governor’s campaign fund, the Governor directed Fundraiser A to contact “Individual D” (whom the Governor believed to be close to Senate Candidate 5). The Governor told Fundraiser A to tell Individual D that before Senate Candidate 5 were chosen, “some of this stuff’s gotta start happening now . . . right now . . . and we gotta see it.” The Governor directed Fundraiser A to tell Individual D if there is “tangible political support (campaign contributions) like you’ve said, start showing us now.” The Governor told Fundraiser A to communicate the “urgency” of the situation to Individual D. (Aff., ¶ 115(b), Dec. 4, 2008.)
- In a phone conversation with SEIU Official—whom the Governor believed to be an emissary for Senate Candidate 1—the Governor and SEIU Official agreed that SEIU Official would talk to Senate Candidate 1 about the possibility of creating a 501(c)(4) organization as part of a deal to appoint Senate Candidate 1 to the vacant seat. SEIU Official agreed to “put that flag up and see where it goes.” (Aff., ¶ 109, Nov. 12, 2008.) Talking later that day with Advisor B, the Governor described the aforementioned conversation with SEIU Official thusly: “I said go back to [Senate Candidate 1], and, and say hey, look, if you still want to be a Senator don’t rule this out and then broach the idea of this 501(c)(4) with her.” (Aff., ¶ 110, Nov. 12, 2008.)
- The Governor directed Advisor A to call Individual A and have Individual A pitch the idea of the 501(c)(4) organization to “President-Elect Advisor.” Advisor A said, “While it’s not said, this is a play to put in play other things.” The Governor responded, “Correct.” (Aff., ¶ 114, Nov. 13, 2008.)
- The Governor and Advisor A agreed that Advisor A would find out who had a close relationship with “Senate Candidate 6” to discuss whether Senate Candidate 6 could help raise money for the

501(c)(4) nonprofit organization that the Governor might head in the future. (Aff., ¶ 105, Nov. 11, 2008.)

- The Governor directed Deputy Governor A to create a list of items the Governor might demand in exchange for a Senate appointment. (Aff., ¶ 91, Nov. 5, 2008.)

The Governor's Knowledge that his Conduct was Unethical and Illegal. Many statements on intercepted oral and wire communications indicate that the Governor was aware that the plans he was considering with regard to the Senate vacancy were illegal and improper:

- As previously detailed, on December 4, 2008, the Governor directed Fundraiser A to contact Individual D (believed to be a friend of Senate Candidate 5) about appointing Senate Candidate 5 in exchange for campaign contributions. When the Governor directed Fundraiser A to tell Individual D that he wanted to see the campaign contributions made immediately, the Governor instructed Fundraiser A that “you gotta be careful how you express that and assume everybody’s listening, the whole world is listening. You hear me?” When Fundraiser A said that he would contact Individual D by phone, the Governor replied, “I would do it in person. I would not do it on the phone.” (Aff., ¶ 115(b), Dec. 4, 2008.)
- The day after that conversation directing Fundraiser A to talk to Individual D about getting campaign contributions up front in exchange for appointing Senate Candidate 5, the *Chicago Tribune* reported that the Governor had been covertly recorded by federal agents in an ongoing criminal investigation. The Governor spoke that day with Fundraiser A about the *Chicago Tribune* story and directed Fundraiser A to “undo your [Individual D] thing.” Fundraiser A said he would do so. (Aff., ¶ 115(c), Dec. 5, 2008.)
- The Governor informed Advisor B that he would be giving Senate Candidate 5 greater consideration because if he ran for re-election, Senate Candidate 5 would help raise money. The Governor also said that he might “get some (money) up front, maybe” to insure that Senate Candidate 5 would keep his promise. In another conversation, Governor Blagojevich further detailed an approach by an associate of Senate Candidate 5 stating, “We were approached ‘pay to play.’ That, you know, he’d raise me 500 grand. An emissary came. Then the other guy would raise a million, if I made him (Senate Candidate 5) a Senator.” (Aff., ¶ 115(a), Oct. 31, 2008.)
- The Governor noted the delicacy of entering into negotiations to trade a benefit for the vacant Senate seat, stating the “trick ... is how do you conduct indirectly ... a negotiation” for the Senate seat. (Aff., ¶ 92, Nov. 4, 2008.)
- Early on in the timeline, when the Governor directed Deputy Governor A to create a list of items the Governor might demand in exchange for a Senate appointment, he cautioned that the list “can’t be in writing.” (Aff., ¶ 91, Nov. 5, 2008.)
- In discussing the proposed “three-way deal,” whereby SEIU Official would make the Governor the head of Change to Win, the President-Elect would support that organization’s agenda, and Senate Candidate 1 would be appointed to the open Senate seat, John Harris stated he liked this idea because it created a “buffer so there is no obvious quid pro quo for [Senate Candidate 1].” (Aff., ¶ 99, Nov. 7, 2008.)

- In a conversation with the Governor, Advisor B stated that he liked the idea of a new 501(c)(4) organization but preferred that the Governor take a position with Change to Win, because there would be fewer “fingerprints” on Change to Win, given that it already had an existing revenue stream and “you won’t have stories in four years that they bought you off.” (Aff., ¶ 107, Nov. 12, 2008.)
- In a phone conversation including the Governor and “Governor General Counsel,” Governor General Counsel asked, “can [the President-Elect] help in the private sector ... where it wouldn’t be tied to him? ... I mean, so it wouldn’t necessarily look like one for the other.” (Aff., ¶ 101(b), Nov. 10, 2008.)

Finally, it is worth noting that the Governor was overheard on four different occasions stating that he no longer wished to serve in office. He indicated in one conversation that he did not want to be Governor for the next two years. (Aff., ¶ 101(b), Nov. 10, 2008.) He later referred to remaining in office as Governor as having to “suck it up” for two years. (Aff., ¶ 101(c), Nov. 10, 2008.) In an undated conversation, the Governor was overheard expressing frustration at being “stuck” as Governor. (Aff., ¶ 116.) He stated that was also considering appointing himself Senator as a means of avoiding impeachment by the Illinois legislature.³² (Aff., ¶101(a), 116.)

The Committee finds the information contained in Special Agent Cain’s sworn Affidavit, detailed above, to be shocking. This information, largely taken from the Governor’s own words, reveals that the Governor was selling his appointment of a United States Senate seat to the highest bidder. His many statements over the numerous intercepted conversations show that his principal concern in making an appointment to the Senate seat was not the People of the State of Illinois, but rather his own personal agenda.

In response to these allegations, the Governor’s counsel put into evidence a report prepared by President-Elect Obama’s Transition Team. (Ex. 26.) In that report, the President-Elect’s counsel prepared a summary of interactions between members of the President-Elect’s staff and the Governor’s staff regarding the vacant Senate seat. The President-Elect’s counsel concluded that, in his opinion, there were no inappropriate conversations with the Governor or the Governor’s staff. In addition, the Governor’s counsel introduced a DVD and partial written excerpt of a press conference held by

³² Several newspapers had called for the Governor’s impeachment or supported efforts to amend the Constitution to permit recall of elected officials. *See* Tom Houlihan, “Lame Duck Blagojevich Keeps State Paralyzed”, *Southtown Star*, June 22, 2008; Editorial, “Indict or Impeach?”, *Chicago Tribune*, September 29, 2008; Editorial, “Impeach Blagojevich?”, *Chicago Tribune*, June 15, 2008; Editorial, “Impeachment and the Guv”, *Northwest Herald*, June 13, 2008; Editorial, “Removing a Governor”, *Chicago Tribune*, October 28, 2007.

Congressman Jesse Jackson, Jr., in which Congressman Jackson, Jr. indicated that he had not been a part of any attempts to trade an appointment to the U.S. Senate seat for campaign contributions. (Ex. 27.)

In the Committee's opinion, the unsworn information the Governor's counsel introduced does not refute the notion that the Governor was scheming to obtain a personal benefit for the Senate appointment or that he was dispatching individuals to negotiate on his behalf. Whether those subordinates succeeded in their endeavor, or whether they even carried out their directives, does not change the fact that the Governor asked them to negotiate on his behalf.

Moreover, the Governor's counsel does not deny that the Governor made the statements contained in the Cain Affidavit. Instead, counsel repeatedly stated that the contents of the intercepted communications were nothing but "talk" (Tr. 765), and that no action had been taken: "But the fact of the matter is with regard to all of these things and with regard to the Tribune specifically, there is nothing that was done. It's just people jabbering." (Tr. 183.) "That's what it is, unfortunate talk. Talk that was—shouldn't have been made perhaps, but not—not actions." (Tr. 765.) Attempting to characterize the Governor's words, however, is far different from denying that they were, in fact, the Governor's words. Neither the Governor nor his lawyer denied that the Governor said the words attributed to him in the Cain Affidavit.

In any event, these intercepted conversations reveal far more than mere idle "talk." The Governor, on many occasions, put his "words" into action—he directed many individuals to conduct inquiries and negotiations with interested parties, setting in motion (or at least attempting to set in motion) his plan to sell the U.S. Senate seat. When a governor issues a directive to others to act, his words translate into actions. The Committee refuses to write off a myriad of conversations and directives as nothing more than harmless chatter.

Finally, the recorded words of both the Governor and other parties to these conversations reveal that the Governor and others were aware that the plans they were discussing were, at the very least, clearly improper, and quite probably illegal. When the Governor told a fundraiser to contact an individual about getting contributions up front in exchange for a Senate appointment, only to reverse that directive the next day after learning that federal agents were eavesdropping on his conversations, it is hard to reach any conclusion other than the Governor knew his directive was illegal and he was trying to avoid being caught. When the Governor directed that certain action be taken, but that nothing be put

in writing or discussed over the telephone because of who might be listening, the only logical conclusion is that the Governor was aware of the illegality (or at least gross impropriety) of his conduct.

The Governor's counsel repeatedly complained that the Committee should not attach much weight to a criminal complaint and accompanying affidavit. But it is fair to say that the Cain Affidavit is no ordinary affidavit. This is not an affidavit where an FBI agent observed someone engaged in suspicious activity and made an arrest, leaving one to wonder whether there might be an innocent explanation for the alleged wrongdoing. This is not an affidavit where the Committee is asked to take an agent's observations or findings and wonder whether he reached the correct conclusions.

This is an affidavit implicating the Governor almost exclusively on his *own recorded words*. The Governor's own words—without any accompanying observation or comment—told a story all their own. An agent of the FBI, Special Agent Daniel Cain, swore under oath that he reviewed all of these intercepted conversations and that they were accurately recited in his Affidavit. (Aff., ¶ 2 and Oath.) To reject the veracity of these intercepted conversations—to doubt that they actually occurred—would be to assume that a sworn federal officer simply fabricated testimony. The Committee rejects the notion that a sworn federal officer would knowingly lie about the existence and content of these tapes, especially given that these recorded conversations will be turned over to defense counsel in the criminal case and possibly played in public. It bears repeating that the Governor's counsel never denied that the Governor was accurately quoted in the Cain Affidavit. (Tr. 183, 765.)

Moreover, as discussed more fully in Part V of this Report, if the Governor never said the words attributed to him in the Cain Affidavit, or if there was an innocent explanation for his words, the Governor had every opportunity to testify before the Committee and say so. The Governor did not testify or even appear before the Committee, despite repeated invitations. The Committee is entitled to balance his complete silence against sworn testimony from a federal agent.

A special agent of the FBI swore that these conversations took place. (Aff., ¶ 2 and Oath.) A magistrate judge, based on this information, found probable cause to arrest the Governor. The Committee believes that this information is sufficiently credible to demonstrate an abuse of office of the highest magnitude and conduct that is entirely inconsistent with the Governor's constitutional oath.

B. Attempts to Condition State Financial Assistance to the Tribune Company Upon the Firing of *Chicago Tribune* Editorial Board Members Critical of the Governor.

Recently, the Tribune Company has been contemplating the sale of the Chicago Cubs baseball team and Wrigley Field to pay debt associated with the recent purchase of the Tribune Company by a new owner. (Aff., ¶ 70.) In connection with these efforts, the Tribune Company had explored the possibility of obtaining financial assistance from the State of Illinois through the Illinois Finance Authority (“IFA”), assistance which was estimated to be worth \$100-150 million. (Aff., ¶ 78.)

The United States intercepted a number of conversations between the Governor, his Chief of Staff John Harris, and Deputy Governor A regarding the possibility of IFA assistance to the Tribune Company. In these phone conversations, the Governor directed his subordinates to inform “Tribune Owner” and “Tribune Financial Advisor” that a condition of IFA assistance to the Tribune Company would be that certain editorial board members of the *Chicago Tribune* newspaper (owned by the Tribune Company) be fired from their jobs.³³

On November 3, 2008, the Governor and Deputy Governor A discussed a recent *Chicago Tribune* editorial calling for an inquiry into the Governor’s impeachment. Deputy Governor A stated that Tribune Owner would say he does not control the editorial page, but that Deputy Governor A “would tell him, look, if you want to get your Cubs thing done, get rid of this *Tribune*.” (Aff., ¶ 73.) The Governor directed Deputy Governor A to gather together *Chicago Tribune* editorials critical of the Governor and then have someone like John Harris show them to Tribune Owner and say, “We’ve got some decisions to make now... someone should say, ‘get rid of those people.’” Deputy Governor A said that Harris would need to be “sensitive” about the conversation, to which the Governor replied that it was “straightforward.” The Governor said that Tribune Owner should be told, “[M]aybe we can’t do this now. Fire those f---ers.” (*Id.*) Deputy Governor A noted that bypassing legislation regarding the Wrigley Field transaction and using the IFA for financial assistance was “going around the legislature,” which had been a bedrock criticism of the *Chicago Tribune* editorial page with regard to the Governor. Deputy Governor A suggested turning that criticism back on the Tribune Company, telling Tribune

³³ The *Chicago Tribune* had been very critical of the Governor, endorsing a proposed constitutional amendment in the General Assembly to allow for the recall of State officers and identifying the Governor as someone who should be recalled, as well as calling for an inquiry into the Governor’s impeachment. (Aff., ¶ 72, footnote 20.)

Owner, “I’m not sure we can do this anymore because we’ve been getting a ton of editorials that say, look, we’re going around the legislature, we gotta stop and this is something the legislature hasn’t approved. We don’t want to go around the legislature anymore.” (*Id.*) The Governor agreed and said that Harris should state that position to the Tribune Company, “not me.” Later that evening, the Governor told Advisor A that he was going to approach Tribune Owner and tell him that he could not help him because his own newspaper would argue to impeach the Governor over his actions. The Governor said that this conversation would take place “before we pull the trigger on this deal.” (Aff., ¶ 74.)

Similar conversations followed over the next several days. The Governor told Harris that they needed to have a conversation with Tribune Financial Advisor to say that, because of the *Chicago Tribune’s* impeachment articles, “we don’t know if we can take a chance and do this IFA deal now.” The Governor continued, “[O]ur recommendation is fire all those f---ing people, get ’em the f--- out of there and get us some editorial support.” (Aff., ¶ 76, Nov. 4, 2008.) The Governor directed Harris to tell Tribune Financial Advisor that “everything is lined up, but before we go to the next level we need to have a discussion about what you guys are going to do about that newspaper.” Harris replied that he “won’t be so direct.” The Governor said, “[Y]eah, you know what you got to say.” (Aff., ¶ 77, Nov. 5, 2008.)

The next day, Harris reported back to the Governor on his conversation with Tribune Financial Advisor the previous day. Harris said he told Tribune Financial Advisor that things “look like they could move ahead fine but, you know, there is a risk that all of this is going to get derailed by your own editorial page.” Harris said that in an upcoming meeting with the Tribune Company on November 10, he will say that they cannot “tread lightly” and must “make wholesale changes,” that he would “throw it out there and let them figure out how to do it.” The Governor said Harris should say, “[G]et rid of these people” and “we sure would like to get some editorial support from your paper.” Later, the Governor told Harris this was a “priority” and that he should “[s]tay on it.” The Governor said, “I mean, he, he gets the message, doesn’t he?” Harris responded, “Oh yeah. He got it loud and clear.” (Aff., ¶ 78, Nov. 6, 2008.)

On November 11, 2008, Harris reported to the Governor that he had met with Tribune Owner and Tribune Owner “got the message and is very sensitive to the issue.” The Governor asked whether Tribune Financial Advisor understood the timing of the IFA deal and “our ability to do this without the

legislature.” Harris said, “[C]orrect ... November, December.” The Governor said, “[R]ight.” Harris said that he was told that the *Chicago Tribune* would undergo job cuts, to which the Governor replied, “Wow. Okay, keep our fingers crossed. You’re the man. Good job, John.” On November 20, 2008, the Governor asked Harris if he was “making any progress on that *Tribune* editorial board with” Tribune Financial Advisor and said Harris should tell him, “We’ve got this IFA thing. We want to do all this. How’s that going?” (Aff., ¶¶ 79-80.)

On November 21, 2008, the Governor confirmed that Harris had made the point to Tribune Financial Advisor that the IFA transaction was exactly the kind of maneuver that the *Chicago Tribune* criticized—bypassing the legislature. Harris said he conveyed the message that the critical editorials could jeopardize the IFA deal. The Governor asked, “He got the message?” Harris replied, “[Y]eah.” The Governor said, “Good.” The two spoke again minutes later. Harris said that the dialogue with the Tribune Company was “delicate, very delicate.” The Governor said, “I know, I know. Use your judgment, don’t push too hard. But you know what you got to do, right?” Harris said, “Alright, sir.” (Aff., ¶¶ 81-82.)

The Committee finds that the evidence outlined above, taken almost exclusively from the Governor’s words or those of his top aides, reveal a clear intent to condition the provision of State financial assistance on the Tribune Company’s firing of members of the editorial board of the *Chicago Tribune*. The conversations were far from casual talk. The Governor repeatedly directed his subordinates to represent the Governor’s demands in conversations with the Tribune Company. The aides, according to their own words, complied and reported back to the Governor. Moreover, the comments of both the Governor and his aides reveal that they were well aware of the impropriety of their actions. The Committee believes that the Governor’s attempt to condition taxpayer-supported financial assistance to the Tribune Company on the firing of editorial board members constituted a clear abuse of the Governor’s power.

C. Attempts to Trade Official Acts for Campaign Contributions.

The Committee has reviewed testimony and documents from various sources that demonstrate the Governor and his closest advisors have attempted, repeatedly, to trade official acts for contributions to the Governor’s campaign fund.

Subsections C-1 through C-3, below, discuss evidence from intercepted oral and wire communications. The United States initially sought permission to intercept wire communications at the

Governor's home and oral communications at Friends of Blagojevich after receiving information that the Governor was escalating his fundraising efforts toward state contractors before a new law went into effect on January 1, 2009, that would prohibit the Governor from soliciting contributions from individuals who had large contracts with the Governor's agencies.³⁴ According to Individual A, the Governor set a fundraising target of \$2.5 million in campaign contributions before January 1, 2009. (Aff., ¶ 60.) These government intercepts uncovered a number of instances where the Governor sought contributions from individuals or entities who wanted either a State contract or some benefit from the Governor's office.

Subsections C-4 through C-6, below, discuss sworn testimony subject to cross examination, provided in *United States v. Antoin Rezko* (the "Rezko Trial") and plea agreements signed by individuals who had conversations with Governor Blagojevich and his most trusted advisors about contributions that resulted in official acts. During the Rezko Trial, several of Governor Blagojevich's appointees and people assisting with fundraising testified under oath as to the existence of an elaborate scheme to award State contracts in exchange for campaign contributions to the Governor.³⁵ Testimony provided during the Rezko Trial appears to show that the Blagojevich administration, including the Governor and his most trusted advisors, formulated a plan to award legal, consulting, and other State contracts in exchange for contributions to Governor Blagojevich's campaign fund. This report merely touches on the numerous allegations of wrongdoing brought to light during the Rezko Trial.

1. Horse Racing Impact Fee Legislation.

On November 20, 2008, the General Assembly passed House Bill 4758, a bill that re-instituted the directing of a percentage of casino gambling revenues to the horse racing industry. The bill was presented to the Governor on November 24, 2008.³⁶ Under the Illinois Constitution, the Governor had 60 days from the date of presentment to act on the bill. Ill. Const. 1970, Art. IV, § 9(b). Sixty days from the date of November 24, 2008 put the final date for gubernatorial action beyond January 1, 2009, the Governor's fundraising target date.

³⁴ See P.A. 95-971.

³⁵ Antoin Rezko's trial focused on allegations that Rezko and Stuart Levine, a member of the Teachers Retirement System Board of Trustees, conspired to defraud the people of Levine's honest services by demanding kickbacks and contributions to Governor Blagojevich in exchange for Levine's influence over investment decisions made by TRS.

³⁶ See Bill Status of House Bill 4758 from the 95th General Assembly, located at <http://www.ilga.gov/legislation/billstatus.asp?DocNum=4758&GAID=9&GA=95&DocTypeID=HB&LegID=35505&SessionID=51>.

On a Friends of Blagojevich spreadsheet that documented fundraising solicitations and goals, “Contributor 1” was listed as an individual from whom a contribution of \$100,000 was sought. (Aff., ¶ 68(e), footnote 18.) On November 13, 2008—before the passage of House Bill 4758—the Governor spoke with Fundraiser A about Contributor 1. The Governor stated that he knew Contributor 1 was “pushing a bill” at that time, meaning he was advocating the passage of House Bill 4758. With respect to the fundraising goal from Contributor 1 of \$100,000, Fundraiser A said that he had spoken with Lobbyist 1, who said that Contributor 1 was “good for it” but that Lobbyist 1 “was going to talk to you [the Governor] about some sensitivities legislatively, tonight when he sees you, with regard to the timing of all this.” The Governor responded, “Right, before the end of the year though, right?” (Aff., ¶ 68(e).)

On December 3, 2008—after the passage of House Bill 4758—Lobbyist 1 told the Governor that he had spoken with Contributor 1 about his fundraising commitment, which had not yet been made. Lobbyist 1 said he told Contributor 1, “[L]ook, there is a concern that there is going to be some skittishness if your bill gets signed because of the timeliness of the commitment.” Lobbyist 1 said he told Contributor 1 that the campaign contribution “got to be in now.” The Governor responded, “Good” and “good job.” (Aff., ¶ 68(e).)

The next day, Lobbyist 1 asked the Governor to call Contributor 1 “just to say hello, I’m working on the timing of this thing, but it’s gonna get done.” Lobbyist 1 said it was preferable for the Governor to make the call personally “from a pressure point of view.” The Governor said he would call Contributor 1 to say that the Governor wanted to have a fundraiser “so we can get together and start picking some dates for a bill signing.” Lobbyist 1 said that Contributor 1 would be good for the contribution because Lobbyist 1 “got in his face.” (Aff., ¶ 68(e).) Governor Blagojevich signed House Bill 4758 into law on December 15, 2008.

2. Grant of a Tollway Expansion Contract.

In October, 2008, the Governor told Lobbyist 1 that he was going to announce a \$1.8 billion project involving the building of new express lanes on the Illinois Tollway. The Governor said he intended to seek \$500,000 in campaign contributions from “Highway Contractor 1,” an officer with a large concrete supplier and a prominent member of the American Concrete Pavement Association. The Governor said he would be willing to commit additional State money to the project but that he wanted to wait to gauge the fundraising performance of Highway Contractor 1: “I could have made a larger

announcement but wanted to see how they perform by the end of the year. If they don't perform, f--- them.” (Aff., ¶ 63, Oct. 6, 2008.)

The Governor announced the Tollway project on October 15, 2008. (Aff., ¶ 64.) On October 22, 2008, the Governor contacted Highway Contractor 1, saying he was “excited” about the project and discussed raising campaign funds for Friends of Blagojevich. Specifically, the Governor mentioned the changes in fundraising rules regarding State contractors that would go into effect on January 1, 2009. (Aff., ¶ 67.) On November 13, 2008, the Governor followed up with Fundraiser A about the status of Highway Contractor 1’s fundraising efforts. (Aff., ¶ 68(d).)

3. Reimbursements for Specialty Care Pediatricians.

In or around October, 2008, the Governor had made a commitment to obtain \$8 million in pediatric care reimbursements for specialty care pediatricians in Illinois. Children’s Memorial Hospital (“Children’s”) in Chicago was a leading advocate for these funds on behalf of all Illinois children’s hospitals and special care physicians. In a non-recorded conversation with Individual A, believed to be a cooperating government witness, Individual A said that the Governor told him words to the effect of, “I’m going to do \$8 million for them. I want to get [“Hospital Executive 1”] for 50.” Individual A understood this to mean that the Governor wanted a \$50,000 campaign contribution from Hospital Executive 1, who was the CEO of Children’s. (Aff., ¶ 65.)

The United States intercepted communications in which the Governor contemplated rescinding the commitment of State funds because Hospital Executive 1 had not made the desired campaign contribution. The Governor spoke with Fundraiser A, who reported that he had left three messages with Hospital Executive 1 without a return call. The Governor said that he would make the call as a “last resort.” (Aff., ¶ 68(a), Nov. 12, 2008.) Later that day, the Governor asked Deputy Governor A whether the pediatric care reimbursements could be rescinded during this recorded conversation:

GOVERNOR: The pediatric doctors—the reimbursement. Has that gone out yet, or is that still on hold?

DEPUTY GOVERNOR A: The rate increase?

GOVERNOR: Yeah.

DEPUTY GOVERNOR A: It’s January 1.

GOVERNOR: And we have total discretion over it?

DEPUTY GOVERNOR A: Yep.

GOVERNOR: We could pull it back if we needed to—budgetary concerns—right?

DEPUTY GOVERNOR A: We sure could. Yep.

GOVERNOR: Ok. That's good to know.

(Aff., ¶ 68(b), Nov. 12, 2008.) The Governor continued to follow up on this issue with Fundraiser A, directing him to call Lobbyist 1 and find out why Hospital Executive 1 had not returned Fundraiser A's calls. The Governor asked, "What do we do with this guy, [Hospital Executive 1]?" (Aff., ¶ 68(c).) On November 14, 2008, Fundraiser A told the Governor that he had spoken with Individual A, and that the Governor needed to call Hospital Executive 1. The Governor said he would call him. (Aff., ¶ 68(g).)

4. Ali Ata's Plea Agreement and Testimony in the Rezko Trial.

In 2002, prior to Rod Blagojevich's election as governor, Ali Ata, a supporter and fundraiser of the Governor, expressed an interest in securing a position with the State of Illinois should Blagojevich be elected. (Ata Plea Agreement, Ex. 4 at 3.) Ata spoke with Antoin Rezko, a trusted advisor and major fundraiser for Blagojevich, and Rezko instructed Ata to identify jobs of interest. (*Id.*) In July, 2002, Ata informed Rezko he would consider a position with the Capital Development Board, the Department of Transportation, or the Department of Human Services. (Testimony of Ali Ata, Ex. 7 at 19.) Ata promised Rezko that he would assist with raising funds for then-Congressman Blagojevich's gubernatorial committee, and in fact, he raised \$25,000 during an August 2002 fundraiser. (Ex. 4 at 3-4.) After the fundraiser Rezko asked Ata to make a personal contribution. (*Id.* at 4.)

Around August 30, 2002, Ata honored Rezko's request by making a \$25,000 contribution to Blagojevich's campaign fund. (Ex. 7 at 10.) During the Rezko Trial, Ata testified that he brought the contribution to Rezko's office and handed it to Rezko. He then followed Rezko to a back conference room for a meeting with Blagojevich. (*Id.*) Ata, Rezko and Blagojevich sat at the conference room table and Rezko placed the check in front of Ata; Rezko sat to Ata's right and Ata sat across from Blagojevich. (*Id.* at 14.) Blagojevich thanked Ata for his support in the past and thanked him for being a team player. (*Id.*) Rezko told Blagojevich that Ata had expressed an interest in serving in the administration. (Ex. 4 at 4; Ex. 7 at 15-16.) Blagojevich, once again, acknowledged that Ata had been a good supporter and good friend and asked Rezko if he had spoken with Ata about positions in the administration. Rezko indicated that they had discussed positions. (*Id.*)

In December 2002, after Blagojevich had been elected Governor, Rezko informed Ata that he would be appointed Executive Director of the Capital Development Board. (Ex. 7 at 20.) At Rezko's direction, Ata completed an employment application and submitted it to the Governor's office in early

2003. (*Id.* at 20-21.) In March, 2003, Rezko informed Ata that he would not be getting the position with the Capital Development Board and that the position was going to someone else. (*Id.* at 21.) In July, 2003, Rezko informed Ata that the State was consolidating several state agencies into a new agency, the IFA, and asked Ata if he had an interest in serving as Executive Director. (*Id.* at 36.) Ata told Rezko he would be interested in the position. (*Id.* at 38.)

Later the same month, Rezko asked Ata to make an additional \$50,000 contribution to Governor Blagojevich. (Ex. 4 at 5; Ex. 7 at 38-39.) Ata stated he could only give \$25,000, and gave the contribution to Rezko during a fundraiser for the Governor at Navy Pier. (Ex. 7 at 39-40.) Ata testified about a conversation he had with Governor Blagojevich during the fundraiser. Governor Blagojevich thanked Ata for his continuing support, indicated he was aware Ata had made another contribution, and stated he understood that Ata was considering a position with the new administration. (Ex. 7 at 41.) Blagojevich then said that it better be a job where Ata could make some money. (*Id.*) During a subsequent meeting at Rezko's office, Ata told Rezko he was surprised Blagojevich would make such a comment, and Rezko responded that he was not surprised. (*Id.* at 41-42.)

In October, 2003, Rezko informed Ata that he would receive a call to arrange a meeting with John Filan, director of the Governor's Office of Management and Budget ("GOMB"). (*Id.* at 44.) After Ata met with Filan, Rezko offered Ata the position of Executive Director of the IFA. (*Id.* at 47.) His annual salary was approximately \$127,000. (Ex. 4 at 3.) The IFA was not officially created until January 1, 2004, but Ata started working for the IFA in a consulting capacity beginning in November 2003. (Ex. 7 at 48-49.) Ata testified that in 2004, the IFA paid him, retroactively, for work completed in 2003. (*Id.* at 251.)

Ata resigned from the IFA in March 2005. (*Id.* at 95.) Ata testified that he wanted to leave the IFA because he felt that he had completed the job he was hired to do—get the IFA up and running—and that now it was time to move on. (*Id.* at 92.) The transcript from the Rezko Trial reveals that Rezko and William Cellini arranged for Ata to obtain a position with IPAM, a consulting firm that CMS had contracted to assist with analyzing State leases.³⁷ (Ex. 7 at 97.) However, Rezko informed Ata he could not accept the position because Ata was a shareholder in a company with State leases. (*Id.* at 98.)

³⁷ In May, 2003, Rezko asked Ata to analyze a report and make recommendations on the number of State leases and opportunities for cost savings and consolidation. (Ex. 7 at 26.) Rezko informed Ata he was working with William Cellini on the project. It appears this was the beginning of the project that eventually became one of the Governor's efficiency

In May, 2008, Ali Ata pleaded guilty to making false statements to federal law enforcement authorities when questioned whether he was aware of any role Antoin Rezko played in regard to his appointment to his position as Executive Director of the IFA, and whether he was promised anything in connection with any of his campaign contributions. (Ex. 4 at 2-3.) He also pleaded guilty to making false statements on his individual income tax forms. (*Id.* at 10.) In a plea agreement, Ata admitted that he had lied, that Rezko had assisted him with obtaining the position, and that his appointment was a direct result of his large campaign contributions to Governor Blagojevich. (*Id.* at 2-3.)

5. Joseph Cari's Plea Agreement and Testimony in the Rezko Trial.

During 2003 and 2004, several of Governor Blagojevich's trusted advisors approached Joseph Cari in the hopes he would assist with fundraising efforts for Governor Blagojevich.³⁸ Cari had declined to assist on numerous occasions, but at the request of a close friend, Cari agreed to help organize a fundraiser for Governor Blagojevich in New York on October 29, 2003. (Testimony of Joseph Cari, Ex. 8 at 24.)

Cari testified that Stuart Levine, a member of the Board of Trustees of the Teachers Retirement System ("TRS"), invited him to fly with Governor Blagojevich and the Governor's staff to New York for the October 29, 2003 fundraiser. (*Id.* at 27.) During the flight, Cari and Governor Blagojevich spoke for approximately 20-30 minutes. (*Id.* at 29.) The conversation revolved around national politics, the Governor's hopes for his term as Governor, and ultimately turned to the Governor's aspirations beyond the governorship. (*Id.* at 30.) Cari testified that Governor Blagojevich stated he believed that President Clinton, when he was a governor, was able to raise money because it was easier to run for President as a sitting governor rather than senator. (*Id.* at 30-31.) He explained that, unlike a U.S. senator, a governor has the ability to give contracts, legal work, advisory work, consulting work, and investment banking work to a variety of individuals and companies. (Ex. 8 at 31.) He stated that because the governor has the ability to award contracts, it is much easier to solicit people for contributions. (*Id.*)

initiatives. IPAM was the subject of controversy and several findings in an Illinois Auditor General report. See Part IV-G, *infra*.

³⁸ Joseph Cari was a significant fundraiser for Democratic causes and was previously the national finance chair for Vice-President Al Gore's 2000 presidential campaign. He was also a fundraiser for the Republican candidate that ran against Blagojevich for Governor in 2002. He testified he was asked on multiple occasions to assist with national fundraising efforts for Governor Blagojevich. These requests were primarily made by Stuart Levine, Chris Kelly, Antoin Rezko, and Governor Blagojevich himself.

Further, Cari testified that Governor Blagojevich told him that there were contracts, legal work, investment banking work, and consulting work for the people that helped “them.” (*Id.* at 32.) Cari explained that he believed “them” referred to Governor Blagojevich and those around him, including Rezko and Chris Kelly, another fundraiser and close advisor of Governor Blagojevich.³⁹ (*Id.*) Blagojevich told Cari that Rezko and Kelly were the two people he trusted most and that they would be the key people in his public service career. (*Id.* at 31.) Blagojevich explained to Cari that Rezko and Kelly were responsible for raising the money, and that Blagojevich hoped Cari would help fundraising efforts. (Ex. 8 at 31-32.) When the conversation came to a close, Blagojevich asked Cari to keep in touch with Rezko and Kelly, and stated that Rezko and Kelly would follow up with Cari in the future. (*Id.* at 33.)

At the fundraiser that evening, Stuart Levine informed Cari that there was a fundraising plan in place, and that Rezko and Kelly would select consultants, lawyers, and investment bankers for various State work, who in turn would be solicited for political contributions. (*Id.* at 39.) Cari testified that Levine stated the people around the Governor would pick consultants that want to do business with various State boards, and eventually, the Blagojevich administration would have control of all the State boards. (*Id.*) Levine and Cari met again on January 23, 2004, at which time Levine informed Cari that Rezko and Kelly were intimately involved in the fundraising operation for the Governor, and that Levine had a close relationship with Rezko. (*Id.* at 42.) Levine again asked Cari to help, but he declined. (Ex. 8 at 42.)

During the Rezko trial, Cari also testified about a conversation he had with Rezko and Levine some time in February or March of 2004. Rezko, attempting to convince Cari to assist with national fundraising, informed Cari that he had a close relationship with Governor Blagojevich and that he believed the Governor had a great future. (*Id.* at 45.) Rezko explained that he would pick different law firms or consultants, provide the name to the Governor’s Chief of Staff, Lon Monk, and then Monk would take direction from Rezko. (*Id.* at 45-46.) Rezko stated that if Cari would assist with raising money for the governor nationally, the Blagojevich administration would be financially helpful to Cari’s business interests. (*Id.* at 46.)

³⁹ Chris Kelly has been charged with one count of obstructing and impeding the IRS, five counts of filing false individual federal income tax returns, five counts of filing false corporate tax returns, and one count of illegally structuring monetary transactions. Kelly allegedly understated his true personal and business income by more than \$1.3 million over five years, in part by concealing the use of corporate funds for personal expenses including gambling debts to sports bookmakers. It is believed that Kelly recently pleaded guilty to some or all of the tax fraud charges.

On March 5, 2004, Chris Kelly met with Cari to follow up on the conversations Cari had had with Governor Blagojevich, Rezko, and Levine. Kelly once again asked Cari to help raise money for Governor Blagojevich on a national level, but as he had in the past, Cari indicated he was not inclined to assist the Governor. (*Id.* at 51.) In response, Kelly informed Cari that helping the Governor would be good for Cari's business interests and that Cari could have whatever he wanted. (Ex. 8 at 51.) Cari testified that he understood Kelly's comment to be a reference to helping Cari's business interests obtain whatever State of Illinois work Cari wanted if Cari helped raise money on a national level for the Governor. (*Id.*)

In April, 2004, Levine approached Cari and stated that one of Cari's partners had reached out to Levine seeking assistance for JER, an investment company interested in obtaining an investment opportunity with the TRS. (*Id.* at 59.) Levine informed Cari that he would recommend a consultant. (*Id.*) Later on, Levine asked Cari to inform JER that they needed to hire a specific consultant prior to receiving State business. (Ex. 5 at 3.)

Based on his conversations with Governor Blagojevich, Rezko, Kelly, and Levine, during which he was informed that consultants would be inserted into State of Illinois transactions and then solicited for campaign contributions, Cari believed that JER needed to hire a consultant. (*Id.* at 3-4.) On May 20, 2004, Cari told JER employees that the firm needed to hire the consultant identified by Levine, and unless they complied, the contract for JER would be removed from the May, 2004 TRS Board meeting agenda. (*Id.* at 5.) Cari told an attorney for JER that if the contract was not signed, JER would not receive the State funds. (*Id.*) Cari testified at the Rezko Trial that he told the employees of JER that in Illinois the "Governor and the people around the Governor" pick the consultants to be used on particular deals. (Ex. 8 at 80.)

In September, 2005, Joseph Cari pleaded guilty to the attempted extortion of JER. (*Id.* at 3-4.) In his plea agreement, Cari admitted he told representatives of JER that they had to sign a contract with a consultant in order to receive funds from the State of Illinois. (Ex. 5 at 5.) At the Rezko Trial, Cari testified that the plan to extort JER was part of a larger plan to require those individuals who receive state contracts to make campaign contributions as directed by associates of Governor Blagojevich. (Ex. 8 at 39.)

6. Illinois Health Facilities Planning Board.

The Health Facilities Planning Board (“Planning Board”) is a statutorily established commission of the State responsible for reducing the construction of unnecessary health care facilities. 20 ILCS 3960/2. The Governor’s authority with respect to the Planning Board is limited by statute to the appointment of Planning Board members; the Governor has no statutory authority to supervise or otherwise direct the Board’s activities. 20 ILCS 3960/4. An entity seeking to build a health facility in Illinois must obtain a permit, known as a Certificate of Need (“CON”), from the Planning Board prior to construction. 20 ILCS 3960/5. During the Rezko Trial, Ali Ata and several members of the Planning Board, including Stuart Levine, testified that Rezko directly influenced decisions of the Planning Board to award a CON in exchange for political contributions.

Ali Ata testified that, in early 2003, Antoin Rezko told Ata that he (Rezko) had in mind some people whom he would soon appoint to the Planning Board, including Imad Almanaseer. (Ex. 7 at 66.) Planning Board member Stuart Levine testified that during an October 2003 conversation with Governor Blagojevich, he thanked Blagojevich for reappointing him to the Planning Board. Blagojevich responded that Levine should only talk with Rezko or Chris Kelly about the Planning Board, and commented, “but you stick with us and you will do very well for yourself.” (Aff., ¶ 34.)

Thomas Beck and Imad Almanaseer, two members of the Planning Board that testified pursuant to immunity orders, stated they took direction from Rezko when voting on the approval of CON applications. One stated that it was his job to communicate Rezko’s directions to other members of the Planning Board and that he believed that Rezko spoke for the Blagojevich administration regarding particular CONs. (Aff., ¶ 37.)

Testimony in the Rezko Trial revealed a scheme to manipulate the activities of the Planning Board regarding a CON application submitted by Mercy Hospital for a proposed hospital in Crystal Lake, Illinois. Initially, Almanaseer, Beck and Levine were directed by Rezko to vote against approving the application. (Aff., ¶¶ 38-40.) Later on, Rezko switched his directions and instructed them to approve the CON after Levine brokered a deal to have Mercy make a political contribution to Governor Blagojevich’s campaign committee. (Aff., ¶¶ 39-40, footnote 10.) Steven Loren corroborated Levine’s testimony that Rezko ordered the approval of Mercy’s CON application because Mercy had agreed to make a political contribution to Blagojevich. (Aff., ¶ 39.)

During the April 21, 2004, vote of the Planning Board on Mercy's CON application, Levine got up from his seat and went to speak to Beck and Almanaseer. After Levine had spoken with them, both Almanaseer and Beck voted to support Mercy's CON. (Aff., ¶ 41, footnote 12.) The Planning Board approved Mercy's application by a 5-4 vote. Shortly after the vote, Almanaseer asked Rezko why Rezko had changed his directions with respect to the vote on Mercy's CON application. Rezko simply stated: "The Governor wanted it to pass." (Aff., ¶ 41.) Rezko admitted to the U.S. Attorney that he manipulated the vote based on Mercy's agreement to contribute to Governor Blagojevich, and further stated that Blagojevich was aware of that agreement. (Aff., ¶¶ 39-40, footnote 10.)

The evidence outlined above in this Part C, consisting of intercepted oral and wire communications and the sworn testimony of Messrs Ata, Cari, and Levine, reveal a disturbing and long-running pattern of trading campaign contributions for official acts of the Governor. The Governor is heard on tape seeking to barter official actions, such as signing legislation, following through on a promise for specialty pediatric care reimbursements, and the further expansion of a tollway project, in exchange for campaign contributions. The sworn testimony of the named individuals shows that the Governor was overseeing elaborate schemes to link State contracts or appointments to State positions with campaign contributions to the Governor. These actions constitute a clear abuse of power.⁴⁰

D. The Governor's Expansion of the FamilyCare Program.

The evidence showed that the Governor proceeded with the expansion of a program known as "FamilyCare" over the objection of the Joint Committee on Administrative Rules ("JCAR"), despite the fact that, under state law, JCAR's objection barred the Governor from doing so. The issue presented herein is not the merit of expanded health care coverage, but rather the authority of the Governor to ignore state law and the legislature, and impose an expansion of a program on the citizens of this State unilaterally, without legislative approval and without money appropriated for that purpose.

⁴⁰ In light of all of these allegations, it is hard to find coincidental the findings of a *Chicago Tribune* article, as well as studies conducted by the Illinois Campaign for Political Reform, revealing that 235 donations of exactly \$25,000 have been made to the Governor, and that 75 percent of those donors received direct benefits from the administration, including state contracts, state board appointments, and favorable policy and regulatory actions. (Tr. 664.) Many of these donations were made shortly before or after the receipt of direct benefits by the donor or the donor's employer. (Tr. 665-667.) In all, the Governor has reported 440 donations of \$25,000 or more totaling more than \$21 million and making up 35.3% of total donations. (Tr. 664, 669.) Comparatively, Governor Edgar received only 8 donations of \$25,000 or more (totaling \$422,000 and 3.6%) and Governor Ryan had only 35 (\$1.6 million and 8.2%). (Tr. 668.) Moreover, there is significant data showing that benefits were given to donors who made the highest contributions, rather than to individuals or companies who were more deserving.

Background. Under the Children’s Health Insurance Program Act (“CHIPA”), the State of Illinois participates in a federal program to provide health insurance to children whose families could not afford private health insurance but also did not qualify for Medicaid. 215 ILCS 106; *see Caro v. Blagojevich*, 895 N.E. 2d 1091, 1094 (Ill. App. 1st Dist. 2008). Under a program known as FamilyCare, the State extends these benefits to the parents or caretakers of eligible children. (Tr. 253.) For every dollar expended on a CHIPA or FamilyCare enrollee, Illinois receives a 65-cent match from the federal government via the State’s Children’s Health Insurance Program (“SCHIP”). CHIPA and FamilyCare are administered by one of the Governor’s agencies, the Illinois Department of Healthcare and Family Services (“DHFS”). Currently, the income threshold for eligibility under FamilyCare is 185% of the Federal Poverty Level (“FPL”). (Tr. 255.) The current eligibility requirements of the FamilyCare program were put into effect legally through action taken by the legislature.

The Governor Proposes a Health Care Plan and a Tax on Illinois Businesses to Fund It. In March, 2007, Governor Blagojevich announced a new health-care package, known as “Illinois Covered,” as well as a plan to raise taxes on businesses in Illinois to fund this plan. The tax was called the “Gross Receipts Tax” (“GRT”).⁴¹ Among many other items in the Governor’s health-care package was an expansion of eligibility for FamilyCare from 185% of the FPL to 400%.

The General Assembly Rejects the Governor’s Proposed Tax on Illinois Businesses. The House of Representatives debated the GRT over a two-day period, May 9 and 10, 2007, including a rare Committee of the Whole in which the House devoted an entire day of debate to the subject. While the members applauded the notion of expanded health care coverage, the members were troubled by its funding source, the GRT, a tax that most members believed would injure small businesses in this State and the citizens to whom the costs would be funneled, as well as creating a disincentive to new business development. On May 10, 2007, the House voted on House Resolution 402, where 107 members rejected the GRT and zero supported it.⁴² Meanwhile, legislation enacting Illinois Covered and the GRT reached an impasse in the Senate.⁴³

⁴¹ See Transcript of Proceedings, March 7, 2007, House of Rep., 95th Gen. Assembly at 21, located at <http://www.ilga.gov/house/transcripts/htrans95/09500023.pdf>.

⁴² See House Resolution 402 of the 95th General Assembly, located at <http://www.ilga.gov/legislation/billstatus.asp?DocNum=402&GAID=9&GA=95&DocTypeID=HR&LegID=33513&SessionID=51>. The debates for May 9 and 10, 2007, are located at <http://www.ilga.gov/house/transcripts/htrans95/09500050C.pdf> and <http://www.ilga.gov/house/transcripts/htrans95/09500051.pdf>, respectively.

⁴³ See Bill Status of Senate Bills 1 and 5 of the 95th General Assembly, located at <http://www.ilga.gov/legislation/billstatus.asp?DocNum=1&GAID=9&GA=95&DocTypeID=SB&LegID=26955&SessionID>

The General Assembly ultimately passed a budget for Fiscal Year 2008 that did not include funding for the Governor's Illinois Covered FamilyCare programs. *See* Public Act 95-348.

Expansion of FamilyCare by Administrative Rule. On November 7, 2007, DHFS, an agency under the jurisdiction of the Governor, adopted an emergency rule ("Emergency Rule") and filed an identical Permanent Rule, which immediately implemented a component of the \$2.1 billion Illinois Covered proposal that failed in the legislature.⁴⁴ Specifically, the Emergency Rule attempted to accomplish two things: (1) preserve healthcare benefits for parents/caretakers with annual incomes between 133% and 185% of the FPL in jeopardy of losing coverage due to a dispute between President Bush and Congress over SCHIP coverage; and (2) provide healthcare benefits for never-previously-covered parents/caretakers with annual incomes between 185% and 400% of the FPL (an income of approximately \$83,000 per year for a family of four). A decision was made to expand the program despite the fact that no funding source existed for this expansion, and despite the fact that legislation on this topic had never advanced out of the Senate, much less reached the House.

JCAR Objects to the Rules. In accordance with the Illinois Administrative Procedure Act ("IAPA"), DHFS submitted the Emergency Rule and Permanent Rule to JCAR, a bi-partisan legislative support agency that reviews administrative rules before they go into effect or, in the case of an emergency rule, as soon as it next meets after the adoption of that emergency rule. JCAR consists of 12 legislators, three each appointed by the respective leaders of the majority and minority caucuses of the General Assembly. 25 ILCS 130/1-5.

If JCAR objects to an emergency rule, the effectiveness of the rule is *suspended* immediately. The agency may not enforce, or invoke for any reason, a rule that has been suspended. 5 ILCS 100/5-125. Likewise, if JCAR objects to any other proposed rule, the agency may not enforce that rule, either. 5 ILCS 100/5-110, 5-115.⁴⁵

On November 13, 2007, JCAR objected to and suspended the Emergency Rule by a vote of 9-2, finding that no emergency warranted the adoption of the Emergency Rule. (Objection,

=51, and

<http://www.ilga.gov/legislation/billstatus.asp?DocNum=5&GAID=9&GA=95&DocTypeID=SB&LegID=27215&SessionID>

=51, respectively.

⁴⁴ *See* 89 Ill. Admin. Code 120, emergency rules at 31 Ill. Reg. 15854, proposed rules at 31 Ill. Reg. 15424.

⁴⁵ In its 31-year history, JCAR has issued a filing prohibition or suspension 69 times, with 31 of the 69 instances occurring during the six years of the Blagojevich administration. The IAPA allows an agency 180 days to amend or repeal a rule following its suspension or prohibition. In only nine instances has an issue remained unresolved after the 180-day period. All but two of those unresolved matters have occurred during the Blagojevich administration. (Ex. 53.)

Recommendation, and Suspension of Emergency Rules, 31 Ill. Reg. 16060.)⁴⁶ JCAR members acknowledged that the dispute between the President and Congress over SCHIP coverage warranted the immediate adoption of the portion of the Emergency Rule preserving healthcare benefits for those in jeopardy of losing coverage. However, the portion expanding healthcare was a separate and distinct proposal that JCAR members considered to be an attempt to piggy-back a portion of the Governor's failed legislative proposal onto a rule addressing a legitimate and recognizable emergency. The combination of the two proposals (preserving coverage and expanding coverage) into one emergency rule was much broader in scope than the emergency warranted. JCAR members urged the DHFS to return with a rule dealing specifically with the emergency situation affecting SCHIP recipients. A member of the Committee who also sits on JCAR commented, "You could have brought a rule just to bring coverage for the people kicked off the SCHIP federal program before JCAR. And, in fact, not only could you have brought those rules, you were urged, almost implored by JCAR to...modify what you're doing. Instead of trying to bootstrap the Governor's healthcare plan onto the back(s) of these people that are going to lose insurance, let's just focus on these SCHIP people." (Tr. 257.)

The Agency's Willful and Knowing Defiance of JCAR. Notwithstanding JCAR's objection to the Emergency Rule, which under Illinois law resulted in the immediate suspension of that Rule, the DHFS continued to implement and enroll applicants and charge premiums for services under its expanded FamilyCare program. That is, despite the provision in the IAPA providing that an emergency rule "shall be suspended immediately" upon the filing of JCAR's objection the DHFS simply carried on with the Emergency Rule as if it were valid and continued signing up participants in the expanded FamilyCare program. 5 ILCS 100/5-125(b). It is worth noting here that, in light of the suspension of its Emergency Rule, the DHFS was providing a false sense of security to an entire class of individuals as to their health care coverage, and incurring several millions of dollars in medical bills for which health care providers might find themselves unable to obtain reimbursement from the State.

The Governor's Knowledge of, and Participation in, the Decision to Implement the Illegal Emergency Rule. The record of the Committee reveals that the Governor was aware of, and approved, the DHFS's decision to implement the Emergency Rule despite the JCAR objection. First, the statute on which DHFS relied to implement this Emergency Rule, Section 5-2 of the Public Aid Code, provides

⁴⁶ Later, JCAR would object to and prohibit the filing of the Permanent Rule by a vote of 8-2, finding that its adoption would constitute a serious threat to the public interest. (Statement of Objection to and Filing Prohibition of Proposed Rulemaking, 32 Ill. Reg. 4110.)

that medical assistance may be provided to individuals “to whom a plan for coverage *has been submitted to the Governor* by [DHFS] *and approved by him.*” 305 ILCS 5/5-2 (emphasis added). The Governor, therefore, was required by law to approve the actions of DHFS.

Second, evidence from the hearings established that DHFS attended meetings regarding the expansion of FamilyCare at which the Governor was present (Tr. 293) and consulted with legal counsel for the Governor before implementing the Emergency Rule (Tr. 261), and that the Governor signed off on the Emergency Rule. (Tr. 272.) Finally, the Governor took personal credit for the decision to implement the FamilyCare expansion despite JCAR’s objections: “I’m going to continue to do what I think is right, and that’s one of the good things about being governor...(I) can do things like this.” (Ex. 32, Ryan Keith, “Ignoring Legislative Rejections, Blagojevich Pushes Health Plan,” *Chicago Sun-Times*, Nov. 19, 2007; Tr. 293.) The Governor said to another reporter, “Where is it written that a handful of legislators—12 of them—can tell the executive branch what it’s going to do when it comes to administering the executive branch?” (Ex. 32, Mike Ramsey, “Special Session Ordered,” *Springfield Journal-Register*, November 20, 2007.) The Governor’s spokesperson wrote that “[w]e’re proceeding under the emergency rule” and elaborated that JCAR “does not have the authority to suspend the emergency rule expanding FamilyCare. JCAR’s role is merely advisory—it does not have the constitutional authority to suspend the regulation.” (Ex. 32, Aaron Chambers, “Obscure Panel Now in Spotlight,” *Register Star*, Nov. 17, 2007.)

Thus, the Committee does not accept the suggestions from the Governor’s counsel that the actions of an agency should not be attributed to the Governor. Rather, it is clear that the Governor was aware of JCAR’s suspension of the Emergency Rule and endorsed the decision to implement the illegal Emergency Rule despite the JCAR objection. There is no doubt that the Governor knew exactly what DHFS was doing and blessed its actions.⁴⁷

Nor is there any doubt that the Governor was violating state law in implementing and enforcing the Emergency Rule over JCAR’s objection. The IAPA clearly provides that, should JCAR object to an emergency rule, the operation of that rule is immediately suspended. The Governor himself signed this

⁴⁷ Professor Andrew Morriss, a professor at the University of Illinois specializing in administrative law, testified that he believed the Governor would be guilty of a “dereliction of duty” if the decision to defy JCAR was made without his input. (Tr. 368.) The Committee concurs but believes that the evidence overwhelmingly shows that the Governor was aware of, and fully endorsed, his agency’s actions.

provision of IAPA into law. *See* Public Act 93-1035 (amending Section 5-125 of the IAPA to provide that a JCAR objection to an emergency rule will result in a permanent suspension of that rule).

If the Governor believed that JCAR's suspension of the Emergency Rule was unconstitutional (and therefore only "advisory" as opposed to mandatory), he would have been within his rights to file a lawsuit before implementing the Emergency Rule. But until then, state law and the principle of separation of powers required him to act in accordance with the JCAR objection. Instead, the Governor simply ignored the suspension and began to sign up participants for the expanded FamilyCare program. Had it not been for a subsequent lawsuit filed by private parties, styled *Caro v. Blagojevich*, No. 07-CH-34353 (Cook County, Illinois), the Governor's illegal Emergency Rule would have gone into effect without any challenge whatsoever.

A law is presumptively valid unless and until a *court* of competent jurisdiction declares it unconstitutional. *Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill. 2d 64, 85 (2002). The Governor, no different than any other citizen, must comply with a duly-enacted Illinois statute. He cannot selectively follow only those laws that suit his purpose or that he personally believes to be "valid" laws.

The Governor's counsel before the Committee has made much of the fact that the Governor raised a constitutional objection to JCAR's suspension power in the *Caro* litigation. But that misses the point. The Governor should never have allowed the Emergency Rule to go into effect in the first place. He should have raised a constitutional challenge to this JCAR power before implementing the Emergency Rule, not in response to a lawsuit filed by private parties afterward challenging that Emergency Rule.⁴⁸

As stated earlier, the issue concerning this Committee is not the desirability of expanded health care coverage for the needy. But the Governor's Illinois Covered program, which included the FamilyCare expansion, did not have a funding source and did not become law. When JCAR objected to the Emergency Rule, the clear letter of the law prohibited the Governor from moving forward with his

⁴⁸ Though the Governor raised the constitutional issue in the *Caro* litigation, both the Circuit and Appellate Courts declared the Emergency Rule invalid, and enjoined its enforcement, for an unrelated reason—because the Emergency Rule exceeded the scope of the authority delegated for rulemaking under the Public Aid Code. Neither court ruled on the constitutionality of JCAR's powers. Thus, though the Governor's counsel emphasizes that the Illinois Supreme Court has stayed the proceeding until it decides whether to accept an appeal, that lawsuit has nothing to do with the issue before the Committee, namely the Governor's willful defiance of JCAR. Moreover, even if some court ultimately declared these JCAR powers unconstitutional, none of that changes the fact that the Governor should have sought that declaration of invalidity *before* implementing the Emergency Rule, not as a defensive gesture after-the-fact. The IAPA provision granting JCAR's suspension powers is an existing, binding provision of State law and was so at the time of the Emergency Rule's adoption. Whether it might later be declared invalid is simply beside the point.

plan. Yet he did so anyway. Notably, by insisting on moving forward over JCAR's objection, the Governor put providers of medical services at risk for recovering their costs.

In sum, it is beyond dispute that the implementation of the Emergency Rule, over JCAR's objection, was in direct violation of the Illinois Administrative Procedure Act. By operation of law, that Emergency Rule was suspended the moment that JCAR filed its objection to that Rule. It is equally clear that the Governor was fully aware of the JCAR objection and the legal effect of that objection. There is, therefore, clear evidence that the Governor abused his power, exceeded his constitutional authority, and obstructed legislative oversight of his actions.

E. The Governor's Purchase of Flu Vaccines.

In October, 2004, the United States Food and Drug Administration ("FDA") announced that half of the nation's supply of flu vaccine was unsafe for use. Within four days of this announcement, State officials, primarily from the Governor's office and the Special Advocate for Prescription Drugs (the "Special Advocate"), were trying to find additional doses of the flu vaccine for Illinois residents. (Ex. 6, "Management Audit of the Flu Vaccine Procurement and the I-SaveRx Program" ("Vaccine/Rx Audit") at 3.)⁴⁹

The Special Advocate began negotiating with Ecosse Hospital Products, Ltd. ("Ecosse"), a European pharmaceutical supplier, in order to obtain the flu vaccines. (Vaccine/Rx Audit at 24.) Seven days after the FDA's announcement, the Special Advocate and Ecosse had a tentative agreement for the delivery of 35,000 doses of the vaccine, subject to FDA approval. (*Id.*) Without approval from the FDA, the importation of the vaccine was illegal. (*Id.* at iii.) The day after the Special Advocate agreed to purchase 35,000 doses, the Deputy Governor, Bradley Tusk, contacted Ecosse via e-mail to authorize the purchase of 200,000 doses of the vaccine. (*Id.* at 24.) On November 1, an additional order for 300,000 doses was authorized again by the Deputy Governor. (*Id.*)

State officials were trying to purchase flu vaccine in order to ensure vaccine availability for Illinois' priority population, which would be residents who are over the age of 65, chronically ill, pregnant women, etc. (Vaccine/Rx Audit at 29; Tr. 478, 507.) The State needed between 160,000 and 200,000 doses of vaccine to properly cover its priority population. (Vaccine/Rx Audit at 32.) By

⁴⁹ The office of the Special Advocate within the Department of Central Management Services was created pursuant to Executive Order 2003-15 to coordinate prescription drug contracts and programs in order to facilitate cost efficiencies and maximize the State's purchasing power. The Special Advocate at the time was Scott McKibbin. (Tr. 489.)

December 2004, based on documentation from the Department of Public Health (the “DPH”), it appeared that the Center for Disease Control & Prevention (the “CDC”) had located enough flu vaccine for Illinois’ priority population. (*Id.* at 33.) Moreover, documentation showed that the CDC would be making available an additional 200,000 doses in its December, 2004 – January, 2005 allotment of vaccine to Illinois. (*Id.*) Despite the fact the State was going to receive all the vaccine it needed from the CDC, the Governor’s office not only went ahead with the purchase, but actually *increased* the amount of vaccine it sought to acquire by 74,000 doses of vaccine in a matter of two weeks. (*Id.*) This increase resulted in a total of 254,250 doses of vaccine for Illinois alone, which exceeded what was needed to cover the State’s priority population.

The FDA never gave State officials approval to import the flu vaccine; on the contrary, the FDA indicated it would not approve importation of the vaccine. (*Id.* at 41.) In fact, the administration knew that it was unlikely the FDA would ever approve the importation, given that by late December the FDA had purchased additional flu vaccine and there appeared to be an oversupply of the vaccine. (Vaccine/Rx Audit at 41.) Auditor General Holland also testified not only did the Governor’s office know that the importation of the flu vaccine was against federal law; the Governor’s office also knew that the vaccine would never even be delivered to the State. (Tr. 490, 468.) In an e-mail dated December 21, 2004, the Special Advocate wrote the following to the Deputy Governor; John Filan, Director of GOMB; and Tom Londrigan, Counsel to the Governor:

We probably will never take delivery of these doses so [we] will need to find a way to pay for the “service” they performed.

(Ex. 14 at 2.)

The “service” referenced by the Special Advocate was Ecosse’s commitment to locate and secure the vaccine. The Special Advocate suggested that even though the actual product (the vaccines themselves) would never be delivered, the State should still find a way to pay Ecosse. Michael Lurie, legal counsel for GOMB, replied that the State should pay Ecosse for its “services” instead of paying for the actual product because it would “make our lives and dealing with the Comptroller a heckuva lot easier in terms of getting these guys paid promptly in the absence of FDA approval.” (*Id.*) This e-mail was sent before a contract was executed between the parties. The Governor’s office, knowing the State would never receive the vaccine, proceeded to obligate the State to pay for a product that could not be delivered to the State without violating federal law.

Not only did the Governor's office lead the charge to procure unnecessary vaccine for Illinois residents, it also sought to procure flu vaccine for other states and cities. The Governor's office ordered the following amounts of vaccine for other governments:

- New York, New York: 200,000 doses;
- Tennessee: 150,000 doses;
- New Mexico: 150,000 doses;
- Kansas: 15,000 doses; and
- Cleveland, Ohio: 4,000 doses.

(Vaccine/Rx Audit at 31; Tr. 477.)

The Auditor General found that the State of New Mexico and New York City were approached by an official in the Governor's office asking if they wanted Illinois to procure vaccines for them. (Vaccine/Rx Audit at 31.) The other governments contacted State officials after hearing about procurement through media reports. (*Id.*) Not a single dose of flu vaccine was ever delivered to any of these governments and, in fact, they all were able to find vaccines through other sources, mainly the federal government. (*Id.* at 32.) The State did not have any written agreements or contracts in place with the other governments, which left the State liable for \$8.2 million in flu vaccine for other states and cities. (Vaccine/Rx Audit at 31; Tr. 468.)

The very officials responsible for obtaining the flu vaccine also demonstrated a lack of understanding of the procurement process. In a November 10, 2004, e-mail to an official within the Department of Public Aid, the Special Advocate wrote, "... I have been talking to the Budget Office, the Dep[uty] Governor, etc. and nobody has said word one about a contract. We have been told several times, the payment would be processed COD (cash on delivery). If someone needs a contract, then you or someone else needs to get it done without delay..." (*Id.* at 30-31.) The Auditor General testified he knew of no contract ever paid COD for any product, service, or contract for the State of Illinois. (Tr. 467.) Staff at the Special Advocate's office inquired about the possibility of paying Ecosse prior to the filing of paperwork. (Vaccine/Rx Audit at 31.) State law prohibits payment to a vendor prior to filing a written contract with the Comptroller. (*Id.*; see 30 ILCS 500/20-80(d).) At best, the Governor's office or Special Advocate's Office did not understand the very basics of State procurement law and required oversight in their endeavor. At worst, they did understand it and, because of their utter disregard for procurement laws and policies, deliberately attempted to circumvent those laws.

A contract for the flu vaccine was eventually signed by Louanner Peters, then Deputy Chief of Staff for Social Services, on January 13, 2005. (Tr. 467, 489.) This was more than 3 months after the Governor's office began negotiations with Ecosse and 2 days after Ecosse submitted a bill for \$2.6 million. Ecosse officials did not sign the contract until January 19, 2005, despite having billed the State on January 11, 2005. (Vaccine/Rx Audit at 26.) The contract between the Governor's office and Ecosse was filed by DPH on January 24, 2005. (*Id.* at 25.) With several opportunities to withdraw from negotiations, high-ranking members of the Governor's office forged ahead and signed a contract for a product that they knew would never and could never be delivered.

DPH, the agency that submitted the contract to the Comptroller, had requested that payment for the \$2.6 million come from the Public Aid Recoveries Trust Fund. (*Id.*; Tr. 491.) The Comptroller refused to make payments out of this trust fund because he believed that the fund could not be used to make such payment. (Vaccine/Rx Audit at 25; Tr. 492.) The Comptroller also rejected the contract because the FDA had not given the green light to the State to import the flu vaccine. (Vaccine/Rx Audit at 25.) Additionally, the Comptroller stated the Governor could not obligate DPH, the agency submitting the contract, to pay for contractual obligations of the Governor. (Vaccine/Rx Audit at 25; Tr. 492.)

The executed contract was only for the State's vaccine and not for the entire amount of \$8.2 million. The Auditor General found that there were neither documents demonstrating how much vaccine the State sought to acquire nor documents available to demonstrate exactly how much flu vaccine was actually ordered by the State. (Vaccine/Rx Audit at 24.)

In a payment demand letter to the Governor dated February 8, 2005, Ecosse's director wrote, "[Y]our State's commitment to us has been fully documented between us with full disclosure throughout and backed up by personal representations and commitment to me by your Deputy Governor on Friday, December 17, 2004." (*Id.* at 32.) While Ecosse did initially attempt to get Illinois to pay for the entire \$8.2 million owed, Ecosse filed suit in the Court of Claims for \$2.6 million, which was the amount that was ultimately written into the contract. (*Id.* at 34.) It is believed that the State, a year after the contract was signed, donated the vaccine to Pakistan where it was later destroyed because the vaccine had expired. (Vaccine/Rx Audit at 27; Tr. 476.)

The Committee finds that the evidence detailed above demonstrates a deliberate disregard of State and federal laws. The State did not need the flu vaccines because the CDC was going to provide them, and the State could not get the vaccines without violating federal law. Yet, even after realizing

that the importation of these vaccines was unnecessary and illegal, the Governor's office proceeded to enter into a contract with the knowledge that the State would never receive the product, leaving the State with a \$2.6 million bill with nothing to show for it.

This audit implicates the highest-ranking officials in the Governor's office, including the Deputy Governor, the Deputy Chief of Staff, the Director of the GOMB, and the Special Advocate. Additionally, there can be no doubt that the Governor himself knew about the illegality of the purchase of flu vaccine. Governor Blagojevich himself stated, "I am calling on the FDA to work with us immediately to allow us to purchase the flu shots we need. The sooner they give their approval, the sooner we can get flu vaccines to the senior citizens who need them the most." (Ex. 60, Office of the Governor Press Release, Oct. 25, 2004.) Even in December, 2004, the Governor stated that "while (the FDA) has given their counterparts in the federal Centers for Disease Control and Prevention the green light to import vaccine from Germany, they've dragged their feet on the Illinois request. The risk is far too great for them to continue this waiting game." (Ex 60, Office of the Governor Press Release, Dec. 29, 2004.) Even while still calling on the federal government to approve the importation of the flu vaccine, the December 29 press release came a week after the Special Advocate had communicated to the State Purchasing Officer at the Department of Public Aid that it was not likely that the FDA would allow the purchase. (Vaccine/Rx Audit at 33.) The press release also came after the e-mail from the Special Advocate to the Deputy Governor, stating that the flu vaccine would never be delivered to the State. The actions taken by the Governor and the officials of his administration constituted a disregard for the laws of this State and nation and a clear abuse of power.

F. The Governor's I-SaveRx Program.

The Governor's office and the Special Advocate also took the lead on another drug initiative, the I-SaveRx Program. In 2003, the Special Advocate was directed by the Governor's office to explore the feasibility of a program that would allow State employees and retirees to get prescription refills from foreign pharmacies. (Vaccine/Rx Audit at 52.)

Under federal law, the importation of prescription drugs is a federal offense, and the FDA can bring civil or criminal charges against individuals who violate the law. (*Id.* at 45.) Specifically, the Federal Food, Drug & Cosmetic Act (the "FFDCA") prohibits the selling of drugs that are not approved by the FDA. 21 U.S.C. §355. The FFDCA also prohibits mislabeling of prescription drugs and the dispensing of prescription drugs without a valid prescription. 21 U.S.C. §331 and §353(b)(1). The FDA

has taken the position that almost all imported drugs are illegal because they violate at least one of the provisions of the FFDCA. (Vaccine/Rx Audit at 45.) In November 2003, the FDA warned the Special Advocate that a drug importation program, “if implemented, would be in direct conflict with Federal and state law.” (*Id.* at 50.) The Governor then contacted the FDA to see if the FDA would allow the State a waiver from federal law in order to allow the State to create a pilot program that would allow the importation of prescription drugs from Canada. (*Id.* at 52.) In June, 2004, the FDA wrote a letter to the Governor rejecting his request for a waiver as well. (*Id.*)

Notwithstanding the fact that a drug importation program was illegal under federal law, and notwithstanding multiple communications with the FDA advising the Governor accordingly, in October, 2004, the Governor’s office officially launched the I-SaveRx Program to allow residents to purchase prescription refills from pharmacies in Canada and the United Kingdom. (*Id.* at 48.) The program was expanded in June of 2005 to allow participation of pharmacies in Australia and New Zealand. (Vaccine/Rx Audit at 48.) While a list of 74 pharmacies are approved for the program, only 2 or 3 pharmacies have been filling prescriptions since the inception of the program. (*Id.* at 60.)

The Auditor General testified that several audit findings were troubling in explaining how the State investigated and oversaw the foreign pharmacies. One audit finding concerned how the foreign pharmacies were inspected. State officials from the Department of Financial and Professional Regulation inspected foreign pharmacies, but the inspections were not done by drug compliance investigators as required by State law. (*Id.* at 55.) Instead, the Director of Drug Compliance, along with three other individuals who were not drug compliance investigators, conducted the inspections. (*Id.*) The inspection report, which is used for Illinois pharmacies, was used for approving foreign pharmacies as well. (*Id.* at 57.) The Auditor General’s report found that 40% of the inspection forms were not completely filled out. (Vaccine/Rx Audit at xiii.) The inspections of foreign pharmacies were conducted by people who were not qualified to inspect an Illinois pharmacy and were not thorough inspections, thus raising questions about the overall safety of the imported drugs. (*Id.* at 55.)

It is important to understand that many of the problems identified by the Auditor General were violations of State law. Under the Pharmacy Practice Act, it is illegal for anyone to engage in the practice of pharmacy unless he or she is authorized to do so under the Act. 225 ILCS 85/5. The Act does allow for out-of-state pharmacies to be licensed, but only if the applicant is licensed under the laws of another U.S. jurisdiction, or of another country if the requirements are deemed to be substantially

equivalent. 225 ILCS 85/8. None of the I-SaveRx pharmacies were licensed under Illinois law or otherwise qualified and, therefore, they were illegally dispensing drugs. (Vaccine/Rx Audit at 54.) State law also permits an annual nonresident special pharmacy registration for all out-of-state pharmacies. 225 ILCS 85/16a. I-SaveRx pharmacies could not be licensed under this provision, either, since they are located out of the country.

The Governor's implementation of the drug importation program violated other provisions of the Pharmacy Practice Act, as well. Pharmacy investigators are charged with inspecting and investigating pharmacies. 225 ILCS 85/11, 85/35.2. In fact, at that time (though not currently), state law provided that "[t]he pharmacy investigators shall be the only Department investigators authorized to inspect, investigate, and monitor probation compliance of pharmacists, pharmacies, and pharmacy technicians." 225 ILCS 85/10 (2007). No pharmacy investigators took part in inspections of foreign pharmacies. (Vaccine/Rx Audit at 55.) Instead, the Director of Drug Compliance conducted the inspections along with three other individuals who were not the regular investigators. (*Id.*)

Another area of concern was the refilling of prescriptions by foreign pharmacies and how they were monitored by the State. The Special Advocate, who was responsible for day-to-day monitoring of the program, did not monitor whether prescriptions were being filled only by approved pharmacies, which called into question the overall safety of the program. (*Id.* at 60.) Furthermore, residents of the State did not know if the pharmacy that filled a prescription is one of the approved pharmacies because the State does not publish a list of those pharmacies. (*Id.*) The I-SaveRx Program was a double-blind experiment leaving residents and State officials hoping they got what they asked for.

Lastly, the Auditor General's report revealed the lack of drug testing performed by State officials. Proper drug testing would have allowed the State to determine the quality, safety and fitness of the imported drugs. One of the reasons the Governor's office started the I-SaveRx Program was to allow residents to obtain prescriptions at a lower price without compromising their safety. (*Id.* at 48.) The State even touted that it was going to collaborate with the University of Illinois College of Pharmacy to implement a monitoring program to ensure the safety of drugs received through the program. (Vaccine/Rx Audit at 63.) However, the State never tested prescriptions received under the program. (*Id.* at 62.)

The Committee finds that, while attempting to help individuals save on the costs of prescription drugs is laudable, it is absolutely essential that the safety of those drugs be ensured and that state and

federal laws be followed. The Governor's program failed on all of these counts. The Governor violated federal law and, in fact, exposed possibly unknowing participants of the program to federal criminal sanctions. The Governor, his staff, and the Special Advocate did not adequately inspect foreign pharmacies; did not ensure that only approved foreign pharmacies were filling the prescriptions; and never tested the drugs for safety. In sum, the Governor knew the program was illegal but allowed it to go forward; and then the program, once implemented, violated numerous State laws relating to safety and quality control of prescription drugs. The Committee finds that the Governor abused the power of his office.

G. The Governor's Agency Efficiency Initiatives.

As part of the Fiscal Year 2004 Budget Implementation Act, the Department of Central Management Services ("CMS"), an agency under the Governor, was given authority to make and implement recommendations for a more efficient government. These recommendations, termed "efficiency initiatives," would reorganize, restructure, and reengineer the business processes of the State. 20 ILCS 405/405-292. The goal of efficiency initiatives was to reduce costs associated with routine agency operations by allowing CMS to consolidate resources for State agencies under the control of the Governor. For example, rather than have multiple agencies each have their own fleet of vehicles, it might be more efficient to have CMS purchase vehicles in bulk for all executive agencies. The result, at least in theory, should be lower costs and less waste of resources. Ultimately, CMS developed efficiency initiatives by consolidating the following functions performed by various state agencies: (i) procurement, (ii) information technology, (iii) facilities management, (iv) vehicle fleet management, (v) internal audit, and (vi) legal research.

Under these initiatives, each agency would still pay its pro rata cost for the service or item, but presumably it would be a lesser amount in light of the consolidation of functions within CMS—that is, presumably there would be some savings. Thus, it would be the responsibility of CMS to inform each agency of two things: (i) how much money it owed CMS for the particular function; and (ii) how much savings was achieved because of the consolidation of functions. To continue with the previous example, CMS would tell a particular agency that it owed CMS \$200,000 for its share of vehicle fleet management, but that its consolidation of that function saved the agency \$30,000. To the extent any savings were identified, the agency would be required to pay that amount into the Efficiency Initiatives Revolving Fund, which CMS would tap to cover administrative expenses and other costs (e.g.

consulting contracts) to implement the efficiency initiative. *Id.* Any excess balance in that Revolving Fund was to be transferred to the General Revenue Fund (the “GRF”) by August 31 of each year. 30 ILCS 105/6p-5.

State Law Required the Governor to Respect the Appropriations Process. It is critical to note here that, when the agency paid the money that had been saved by the efficiency initiative into the Revolving Fund, state law clearly mandated that the money be paid “from the line-item appropriation where the costs savings are anticipated to occur.” 30 ILCS 105/6p-5. In other words, if the savings came from the consolidation of vehicle fleet management, then whatever “savings” was identified by CMS would have to be paid by the relevant agency out of the line-item appropriation for vehicle fleet management. This was simply common sense; if the agency saved money on vehicle fleet management, it should pay that savings from that line-item, not from a line-item for sanitation supplies or medical assistance to veterans.

But it was more than just common sense. It was a constitutional mandate. The power to appropriate money—that is, to decide how much money may be spent for what purpose—is a power reserved exclusively to the General Assembly. Ill. Const. 1970, Art. VIII, § 2(b) (“The General Assembly by law shall make appropriations for all expenditures of public funds by the State.”). If the General Assembly, by law, appropriates money for a particular purpose, the money can only be spent for that purpose. *Bridges v. State Board of Elections*, 222 Ill. 2d 482, 491 (2006); *West Side Organization Health Services Corp. v. Thompson*, 73 Ill. App. 3d 179, 191 (1st Dist. 1979), *rev’d on other grounds*, 79 Ill. 2d 503 (1980). Accordingly, both the Illinois Constitution and Section 6p-5 of the State Finance Act make it clear that the executive agencies had no authority to pay for the efficiency initiative out of any line-item other than the one where the savings were produced.

The Auditor General released two reports on the Governor’s efficiency initiative. The first report, released in April, 2005, was the “Department of Central Management Services Compliance Examination” for the two years ending June 30, 2004. (Ex. 6, “Department of Central Management Services Compliance Examination” (“Compliance Audit”).) The second, released in June, 2005, was the “Summary Report on Agency Efficiency Initiative Payments,” which provided information gathered during routine financial audits and/or compliance examinations of 25 State agencies that made efficiency payments to CMS. (Ex. 6, “Summary Report on Agency Efficiency Initiative Payments” (“Summary Report”).) Each of these reports raised alarming questions about (i) the Governor’s

usurpation of the General Assembly's appropriation authority; (ii) the overall efficacy of the program; and (iii) consulting contracts handed out in relation to the efficiency initiative.⁵⁰

The Governor's Office's Involvement in the Efficiency Initiative. It is clear that the Office of the Governor was directly involved in all aspects of the efficiency initiative. First, by law, the Governor was required to sign off on any determination by CMS of "savings" generated by the consolidation of functions. 30 ILCS 105/6p-5 (referring to "[a]mounts designated by [CMS] and approved by the Governor as savings from the efficiency initiatives"). Second, the evidence shows that GOMB, which is statutorily placed under the Governor's direct control, essentially controlled these efficiency initiatives. The two reports show that GOMB controlled the billings and procurement related to efficiency initiatives. Moreover, while state law required CMS to develop methods to determine savings and billings as required by law, it was GOMB that established amounts that were billed to all agencies. (Compliance Audit at 15.) CMS accounting staff printed the amounts received from GOMB onto CMS invoices, then returned the invoices to GOMB, which then decided which invoices would be sent to agencies for payment. (Summary Report at 3.) CMS officials claim that, "GOMB was very involved in the billing process, and GOMB made decisions as to what agencies were billed and what agencies were not billed." (*Id.* at 4.)

Problems with the Efficiency Initiative. As the efficiency initiatives began, several agencies requested assistance from CMS or GOMB with determining the savings and even went so far as to question the billings, but both routinely ignored requests for information. An audit of the Department of Public Aid (which is now located within DHFS), for example, included a finding that the Department had never received savings reconciliations from CMS or GOMB despite several attempts to gain information, and therefore could not determine whether savings had actually been realized. (*Id.* at 7.)

The only guidance the Department of Commerce and Economic Opportunity ("DCEO") received was related to the amount of payments that should be taken from GRF versus other funds for the September 2003 billings. The DCEO viewed this as a funding cut with no actual basis, and when GOMB was questioned, it responded with a rather stunning piece of advice that ran contrary to state law and the Illinois Constitution: "*you have the ability to pay the invoice from any line and any fund.*" (*Id.* at 8.) (emphasis added.) Of course, the complete opposite was true. The DCEO could only take money from the line-item related to the relevant efficiency initiative—but since neither GOMB nor CMS would

⁵⁰ Both the Compliance Audit and the Summary Report are contained in Exhibit 6 in the Committee Record.

tell the DCEO which efficiency initiative was the subject of the invoice, the DCEO did not know from which line-item to pay the invoice. GOMB's response not only directed the DCEO to violate the Constitution and state law but also completely left the DCEO in the dark as to what it was paying.

Staff from the Department of State Police stated that GOMB provided an e-mail to the Department relative to the savings, but the correspondence was sent two months *prior* to the effective date of Public Act 93-25 (which created the initiative) and the total savings did not match the total billed. (*Id.*) Further, the correspondence from GOMB once again gave advice contrary to the Constitution and State law: "the goal is the total number, *so the amounts can be distributed amongst the lines as you see fit.*" (*Id.*) This demonstrates GOMB intended to implement the initiative prior to the effective date of the Act creating the efficiency initiative programs and that GOMB purposely ignored the letter of the law once the Act became effective.

Consistent with the Advice from the Governor's Office, Agencies Took Money from Line-Item Appropriations Unrelated to the Efficiency Initiative. Data from the Comptroller shows that State agencies made payments for efficiency billings from 111 different funds during Fiscal Year 2004. (*Id.* at 4, 13.) Agencies used various line-items to make payments, including State funds appropriated by the General Assembly for a specific purpose *unrelated* to efficiency initiatives. By making payments from incorrect line-items or using lump sum and grant amounts, the administration ignored the General Assembly's power of the purse and negated the fundamental checks and balances of the appropriations process. Some examples include:

- The Department of Veterans' Affairs paid a Procurement Efficiency billing by using \$433,448 that was appropriated for *38 additional beds at the Illinois Veterans' Home in Manteno.* (Summary Report at 6; Department of Veterans' Affairs Report, April 13, 2005.)
- The Department of Human Services used \$1.2 million from an appropriation to the Early Intervention Services Revolving Fund for a Procurement Efficiency Initiative billing. The specific appropriation was to be used for "grants associated with the Early Intervention Services Program." (Summary Report at 5; Auditor General Department of Human Services Report, April 13, 2005.) Thus, *money that the General Assembly had appropriated for grants to assist young children with developmental disabilities, including physical therapy, speech therapy, psychological services, and the like was instead paid for an efficiency initiative billing.*
- The Department of Public Aid used \$4,079,624 from a specific appropriation within the Medical Assistance Division under the Illinois Public Aid Code and the Children's Health Insurance Program Act for "other related medical services and for development, implementation, and operation of managed care and children's health programs including operating and

administrative costs and related distributive purposes.” The funds were used for a payment to the Information Technology Initiative. (Summary Report at 6; Department of Public Aid Report, March 10, 2005.)

- The General Assembly appropriated a lump sum to the Special State Projects Trust Fund for use by the Environmental Protection Agency for “all costs associated with environmental studies and activities.” The EPA used \$223,000 for a Procurement Efficiency billing, which accounted for 30 percent of the total amount appropriated for the EPA program. (Summary Report at 6; EPA Report, March 10, 2005.)
- The Illinois Department of Transportation (“IDOT”) used \$8.7 million from appropriations in the Road Fund for part of a billing related to the Procurement Efficiency Initiative, funds that had been specifically appropriated for engineering and construction, land acquisition, bikeways, and capital improvements. (Summary Report at 6; IDOT Report, March 10, 2005.)
- DCEO used \$50,000 from an appropriation to DCEO “[f]or expenses relating to compliance with Belgium Social Security System” to make payments for the Procurement Efficiency Initiative. (Summary Report at 6; DCEO Report, April 6, 2005.)

Lack of “Efficiency” in the Efficiency Initiative. It is also important to recognize that, while agencies were making payments as directed by GOMB, they did not see any actual savings, and in some cases, they did not even know for what it was they were paying. In a report released by the Auditor General on March 8, 2005, Prison Review Board staff stated they “were not sure what we were buying.” (Summary Report at 9.) During his testimony, the Auditor General addressed CMS’s response to this criticism:

In some cases the efficiency contracts were awarded based on the vendor’s ability to show that they could meet savings goals stated in the RFP, the submitted proposal, or the contract. However, we found that *CMS lacked the process to track and document savings achieved through these contracts.*

In response to our audit, CMS entered into a million-dollar contract with a firm to provide assistance in calculating savings related to these initiative—efficiency initiatives. And in October 2005, CMS issued a report which purported to estimate the efficiency savings. We did not verify CMS’ report as a part of our audit process. However, in a casual review, we noted that the savings estimate was a gross number and failed to recognize documented costs in excess of \$72 million incurred by CMS in conjunction with their initiatives.

(Tr. 422 (emphasis added).)

Irregularities in the Procurement Process. CMS selected several outside vendors to assist with implementation of the initiatives. A representative from the Governor’s office assisted in the development of the requests for proposals (“RFPs”) or sat on the proposal evaluation committee for the

selection of the contractors. (Ex. 14 at 3; Tr. 420.) Ultimately, CMS chose vendors such as McKinsey & Co., IPAM, Accenture, BearingPoint, and EKI.

The Auditor General found that CMS entered into contracts for services related to efficiency initiatives that were either procured incorrectly or included questionable expenses. This is particularly alarming given that CMS is the agency responsible for ensuring that all State agencies follow procurement laws and policies. The Auditor General found that CMS failed to maintain “[d]ocumentation of the process used and decisions made in the evaluation and scoring of proposals—a critical control component to ensure a fair and open procurement process.” (Compliance Audit at 16.) Contract files were missing evaluation materials for the award of the contract (scores used to determine which vendor should receive the contract), award recommendation documentation (a letter to the Director identifying the vendor the procurement officer suggests for the contract), and even the total price of the contract. (*Id.* at 16, 17.)

Some of the vendors CMS used to assist with developing RFPs ultimately received procurement opportunities. It is important to note that procurement rules prohibit the person who prepared specifications for RFPs from bidding on the contract unless the Director waives this prohibition. 44 Ill. Adm. Code 1.2050(i). Even if the Director waived the rule, the extent of participation in the RFPs development and frequency of awarding waivers, at a minimum, gives the appearance that the vendors had an unfair advantage in securing the procurement. (*Id.* at 19.)

One of the more troubling set of facts relates to a contract awarded to Illinois Property Asset Management (“IPAM”) for facility management services. Most alarming is the fact that the company *did not officially exist* prior to winning the contract award. (Tr. 420.) The company also submitted hundreds of thousands of dollars in questionable expenses. For example, State funds were used to pay for Chicago Bulls tickets, private limousines, and even a victory dinner for everyone who was involved in assisting IPAM with obtaining the contract. (Tr. 437.)

During the Auditor General’s testimony, a member of the Committee characterized the efficiency initiatives as “an elaborate money laundering scheme where the Governor would take State money from agencies, claim efficiencies that couldn’t be proven, not using line-items so the money was untraceable, and then transfer those funds to a line-item that the Governor controlled.” (Tr. 424.) The Auditor General agreed with this statement. (Tr. 424-425.)

In the Committee's view, it is abundantly clear that the Governor's efficiency initiative was seriously bungled at best. A program that fails to accomplish its goals, by itself, is not a basis for consideration of impeachment. The evidence shows far more than ineptitude, however. The Governor's office moved money around the executive branch without any regard for the General Assembly's exclusive authority to appropriate money. The Governor's office routinely advised agencies that they could pay for an efficiency initiative billing out of any line-item or agency fund. As a result, money targeted for worthy causes—beds for veterans, services for disabled children, capital improvements—were diverted without any constitutional or legislative authority to pay for an efficiency initiative and without the knowledge or approval of the General Assembly. Further, agencies were placed in the position of determining whether to provide services or blindly pay efficiency billings. The Governor's office kept its agencies in the dark as to the amount of any "savings" realized and the basis for some of its invoices—and skirted constitutional and statutory law regarding the appropriations process to do it.

It is no answer for the Governor's counsel to simply deflect the criticism onto another agency. The efficiency initiative was the Governor's idea; he was statutorily responsible for identifying the resulting "savings;" and he used GOMB, an office created directly within the executive office of the Governor, 20 ILCS 3005/2, to essentially run the program. Aside from the incompetence with which it was carried out, the questionable methods of awarding contracts to implement the initiative, and the charges submitted by those contractors—all of which the Committee finds troubling—the Governor's office usurped the legislative function of the appropriations process, moving money around in darkness, such that even the Governor's agencies often did not know what they were paying for and often could not identify any savings whatsoever. The evidence amply demonstrates that the Governor's office exceeded its constitutional authority and abused its power in its implementation of the efficiency initiatives.

H. The Procurement Policy Board.

The Illinois Procurement Policy Board (the "PPB") was created in 1998 and consists of five members, one appointed by the Governor and one each by the four legislative leaders. The PPB is authorized to review and make recommendations on rules and practices governing lease renewals and proposed contracts procured by the State consistent with the Illinois Procurement Code. (Tr. 599-600.) On December 22, 2008, Matt Brown, Executive Director of the PPB, and Ed Bedore, a member of the Board, appeared before the Committee and provided testimony on several areas of concern to the PPB.

Holdover Leases. Holdover leases occur when all contracts and options related to the lease are fully executed, satisfied or expired, resulting in a month-to-month tenancy, with only basic rights afforded to the occupant. (Tr. 602.) The PPB testimony before the Committee outlined the negative effects of holdover leases as follows: lessors not making necessary repairs, agencies not being allowed to modify occupancy to maintain a program's function and losing leverage to negotiate staying in that facility; and creating short notice evictions. (*Id.*) The fact that the State frequently receives eviction notices puts additional pressure on leased facilities and makes it difficult to establish terms that are in the best interest of the State. (*Id.*)

Bedore testified that under previous gubernatorial administrations, holdover leases were not a concern because most of holdover leases were only for a period of six months to a year, during which time a new lease would usually be finalized. (Tr. 637.) However, the PPB has noticed an increase in the number of holdover leases under the Blagojevich administration. At the end of 2003, 93 holdover leases had been identified. As of November, 2005, the number increased to 172, and as of August 2008, the number of holdover leases was 164. Of the 164 leases still in holdover status as of August 2008, 50 leases had been in holdover status for five years or more. (Tr. 603.)

The holdover lease problem has not been resolved by the administration. As late as this past July, the Comptroller's office identified three holdover leases for which it could no longer pay rent because the leases exceeded the maximum 10-year duration allowed for any state contract issued under the Procurement Code. (*Id.*) Furthermore, CMS continues to allow controversial leases, such as the Harvey lease and Fulton lease (discussed below) to go into holdover status. (Tr. 637.)

Anomalies with Individual Leases. The Committee heard testimony that indicates the PPB has prevented CMS from entering into leases that violated existing procurement rules resulting in negative fiscal impacts to Illinois taxpayers. PPB has the authority to object to incumbent leases—those which are scheduled for renewal of a specific size and dollar amount. Usually the PPB would “protest” objectionable lease terms and ask CMS to renegotiate with the owner. (Tr. 644.) Mr. Bedore testified that the only reason that CMS took any action at all to renegotiate provisions protested by the PPB was to avoid having the PPB vote against approving a lease. (Tr. 650.)

Harvey Lease. In 2008, a DCFS lease of a building in Harvey, Illinois, was proposed with remodeling costs that added \$7.76 per square foot. This increased the amount paid by the State per square foot from \$11.72 to \$19.48. (Tr. 611.) The increased rate of \$19.48 was to last two years and

then be reduced to \$11.72 per square foot. CMS, however, submitted the lease agreement to the PPB for review at the increased rate for the *entire 10-year term* of the lease. (*Id.*) Had the PPB approved the lease, the State would have paid an additional \$2,672,544 over the duration of the lease. (*Id.*) The PPB did not approve the lease and as of today, CMS has not come back to the PPB with a renegotiated lease proposal for this building. (Tr. 611, 624.)

Fulton Lease. In February 2007, CMS advised the PPB that it recommended an average of 300 square feet per employee should be the standard for state office space.⁵¹ (Tr. 604.) The Fulton lease renewal submitted to the PPB for review would have resulted in a rate of 527 square feet per employee due to the owners' demand that the State occupy the entire building. (Tr. 610.) The PPB would not accept these conditions, and realizing that the PPB would not approve the lease, CMS indicated it would attempt to work something out. (*Id.*)

Western Ave. Lease. The PPB cited a Department of Corrections lease at Western Avenue in Chicago as an instance where the administration failed to work toward the lowest possible cost to the state until pressed to do so by the PPB. (Tr. 609.) The administration recommended that the state amortize improvements at the facility at a rate of 10%. The procurement PPB members questioned this rate as being high, and the administration subsequently contacted the owner to negotiate a reduced rate of 7.5%. (*Id.*)

Updating of Applicable Procurement Rules. PPB testified to a continuing failure by CMS to submit operational rules and policies regarding the consolidation of leasing functions pursuant to Executive Order 2003-10, rules regarding temporary vs. permanent improvements in leased facilities, space standards for leases and the prequalification of information technology vendors.

The PPB was told by CMS that implementation of Executive Order 2003-10, which essentially consolidated all real estate leasing and management functions, would require updating of the existing procurement rules to include operational rules regarding decision making and administration. (Tr. 604.) Since October, 2003, the PPB has repeatedly requested that rules be proposed for PPB's review. No such rules have been presented to the PPB. (*Id.*)

The PPB has requested rules regarding improvements to lease facilities that are temporary versus permanent. The PPB's concern is that such rules are necessary to prevent lessors from creating

⁵¹ Most leases proposed since then show the ratio to be at least 30% and as high as 70% above that target and there is still no formal methodology to account for space utilization. (Tr. 605.)

permanent improvements to their facilities with state dollars that are established for occupancy requirements met through temporary improvements. No such rules have been presented to the PPB for review. (*Id.*)

In February 2007, CMS established an average of 300 square feet per person as the metric for leasing. (*Id.*) Most leases proposed since then show the ratio to be at least 30 percent and as high as 70 percent above that target and there is still no formal methodology to account for space utilization. (Tr. 604-605.)

In 2005, CMS proposed emergency rules to pre-qualify information technology vendors at an established bench rate and select from a pool of prequalified contractors (“rate card”). (Tr. 605.) PPB objected, on the grounds that the rate comparison was not competitively derived, that contractors were evaluated after procurement process with little objectivity, and that it was proposed under emergency conditions which did not exist. (*Id.*) Ultimately, a permanent rule that was negotiated by and between CMS, the PPB, and JCAR was adopted but never used to procure the service. (*Id.*)

Comparison of Procurement Behavior between the Blagojevich and Prior Administrations. In 2004, the Illinois General Assembly expanded the PPB’s statutory authority to include a provision for a 30-day review period by the PPB before any contract award became effective. (Tr. 601.) PPB’s Executive Director specifically stated that the legislation was prompted by a lack of transparency in State contracting and cooperation offered by state agencies. (*Id.*)

The PPB began reviewing awards on January 1, 2005 and soon realized that sole source procurements were occurring at a higher-than-expected frequency. The PPB determined that a higher standard of accountability was necessary and passed a resolution instituting sole source justification requirements for all agencies submitting contract awards. (*Id.*) PPB requests additional information or justification for hundreds of awards every year, and cancels awards as a result of their review. (*Id.*)

I. The Governor’s Refusal to Comply With the Freedom of Information Act.

The Illinois Freedom of Information Act (“FOIA”) is intended to provide all persons with information regarding the affairs of the government by guaranteeing access to governmental records while protecting legitimate governmental interests and the privacy rights of individual citizens. 5 ILCS 140/1. The Committee heard testimony and reviewed documents regarding the Governor and his administration’s repeated refusals to comply with requests for public documents under the provisions of

the FOIA. The evidence presented demonstrates that the agencies under the Governor routinely ignored FOIA requests and have shown a pattern of keeping basic government information from the public.

Better Government Association and Judicial Watch Request Federal Grand Jury Subpoenas. The Better Government Association (“BGA”) and Judicial Watch each submitted FOIA requests to the Governor’s office asking for copies of federal grand jury subpoenas the Governor or his office had received. (Tr. 517.) The Governor’s office denied the requests, stating that it could not “confirm or deny the existence of the documents requested.” (Tr. 518.) The denial letter claimed that if such subpoenas existed, they were exempt from disclosure. (*Id.*) Both organizations appealed the denials, and both appeals were denied by the Governor. (*Id.*)

Attorney General Lisa Madigan’s office wrote a letter to William Quinlan, the Governor’s counsel, advising the Governor’s office that, “Without legal support, the Office of the Governor and the agencies under his control cannot withhold federal grand jury subpoenas in their possession and must release these documents pursuant to a FOIA request.” Despite the Attorney General’s clear advice that failure to provide the subpoenas was a violation of FOIA, the Governor continued to insist that the subpoenas would remain secret. (Ex. 34, Bruce Rushton, “Madigan: Release Subpoenas; Governor’s Spokeswoman Says They’ll Stay Secret,” *The State Journal-Register*, Oct. 27, 2006.)

Eventually, the BGA and Judicial Watch filed lawsuits to obtain the subpoenas and associated correspondence. (Tr. 520.) In the BGA case, the trial court found that the Governor was required under FOIA to disclose the subpoenas. (Tr. 522.) During the hearing, the Governor’s counsel even acknowledged that the law and rule the Governor relied on did not prevent disclosure of the subpoenas. (Tr. 521.)

The Governor subsequently appealed, and on November 19, 2008, the Appellate Court held that FOIA required the Governor to disclose the federal grand jury subpoenas. *Better Government Association v. Blagojevich*, 2008 WL 4958159 (Ill. App. 4th Dist.). The court noted that although a private citizen has the discretion to choose to disclose or not disclose a federal grand jury subpoena, that “FOIA eliminates any discretion the Governor, acting in his official capacity as Governor for the State of Illinois, has in keeping the subpoenas secret.” *Id.* at 8 (emphasis added). The Judicial Watch lawsuit is still pending.

On December 29, 2008, after the Committee heard testimony regarding the Governor’s refusal to release the subpoenas, the Governor’s office released the federal grand jury subpoenas requested by the

BGA. (Ex. 34, John Chase and Ray Long, “Probe of Rod Blagojevich Targeted State Hiring Going Back to January 2003,” *Chicago Tribune*, Dec. 30, 2008.)

Request for Records Relating to FamilyCare Program. In 2008, the Associated Press requested records relating to the Governor’s FamilyCare Program, including documents showing the number of those signed up to participate in the program, the total amount of income-based premiums paid by participants, the state account being used to keep funds for the program, and the total amount of taxpayer dollars expended on the program. (Ex. 34, John O’Connor, “Gov. Defies Taxpayers on Health Program,” *The State Journal-Register*, Oct. 23, 2008.) The Governor’s DHFS rejected the Associated Press’s request for basic public information.

Request for Efficiency Initiative Study on State Motor Vehicle Fleet. In June 2006, the Governor refused reporters’ FOIA requests to release a \$25,000 study commissioned on changes to the state motor-vehicle fleet that allegedly saved taxpayers more than \$8 million. (Ex. 34, Bruce Rushton, “Certain FOIA Requests to Governor Fruitless,” *The State Journal-Register*, April 26, 2007.) The study was part of the Governor’s efficiency initiatives, and although the Governor touted the study, he claimed it was a work in progress and thus exempt from disclosure. The study was done by Maximus Inc., a Virginia-based firm that contributed at least \$25,500 to the Governor’s campaign fund. (Ex. 34, “Proof of 5.3 Million Savings Isn’t Being Released,” *The Pantagraph*, July 1, 2006.)

Request for Records Relating to Pardons and Commutations. Historically, the Illinois Prisoner Review Board had provided access to public records relating to pardons and commutations, however, they started denying access to such records after the Governor was criticized for some of his pardons. (Ex. 34, Dave McKinney, “Gov Refuses Access to Records on Pardons He Granted,” *Chicago Sun-Times*, April 14, 2008.) The *Chicago Sun-Times* submitted a FOIA request seeking files on 69 pardons and commutations made by the Governor. (*Id.*) The Prison Review Board denied the request, relying only on a North Carolina court decision which has no relation to Illinois law. (Tr. 532.)

J. The Executive Ethics Commission Report.

On September 9, 2004, the Office of the Executive Inspector General (“OEIG”) released a report that investigated complaints of hiring improprieties within the Illinois Department of Employment Security’s (“IDES”) Department of Human Resources. (Ex. 43 at 1.) The report concluded that at the direction of the Governor’s Office of Intergovernmental Affairs (“GOIA”), IDES bypassed State hiring

protocol and intentionally and illegally ignored the *Rutan*⁵² hiring mandate as well as the veteran preference.⁵³ (Ex. 43 at 1.) The report details eight instances of improper hiring. However, it is important to note that the OEIG did not investigate all of the hiring conducted by IDES. (*Id.*) In one situation, IDES hired someone for an exempt position, Public Administration Intern, and then promoted her approximately eight months later to a certified coded position, Public Service Administrator. (*Id.* at 3.) The coded position was the position that the individual originally intended to obtain. (*Id.*) By hiring the person at the exempt position, then promoting her to the coded position, IDES circumvented the 17 Grade A veterans who would have received the veteran preference for the coded position. (*Id.*)

IDES repeatedly bypassed the legally required veteran preference by hiring employees for coded civil service positions in counties where no veterans were listed but having them work in Cook County, where veterans were on the approved list. (Ex. 43 at 6, 16.) In another instance, IDES hired someone for an exempt position but had him work in a different department until a *Rutan*-exempt position became available or the originally desired job could be changed to make it exempt. (*Id.* at 17-18.) By doing so, IDES circumvented the veteran hiring preference and *Rutan*. The Department even hired an individual for a Council that has been inactive for over 12 years, because the position was exempt. (*Id.* at 12.)

Displaying its “complete and utter contempt for the law,” IDES manipulated job descriptions to avoid the veteran preference, such as by unnecessarily requiring sign language skills; pre-selecting candidates before posting vacancies for coded positions or interviewing for them; hiring people regardless of the results of their *Rutan* interview; and providing a *Rutan* interview after an employee had been hired. (*Id.* at 9, 12-13, 20.) Employees were hired for positions for which they were unqualified. (Ex. 43 at 13-15.) Some employees were overpaid for their positions. (*Id.* at 6, 15.) One employee was paid for skills that she did not possess, namely an additional \$211 per month for sign language skills. (*Id.* at 12-13.) According to the report, there were employees who performed none of the tasks listed in

⁵² *Rutan* prohibits the hiring, firing, promotion, transfer, or recall after layoff of a lower-level public employee on the basis of his or her party affiliation or support. *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 75 (1990). Responding to the *Rutan* decision, Illinois developed a new hiring process that applies consistent and objective criteria to all State job applicants. The process entails the *Rutan* interview, in which a State official asks each applicant for a given job position the same questions regarding educational background, experience, and other relevant factors. The answers are then scored on a scale of one to four.

⁵³ Under Illinois law, a hiring preference is given to veterans who apply for State employment with some exemptions (elected officials, judges, etc.). 20 ILCS 415/4, /4c, /8b.7. When entrance examinations are administered, veterans may have an additional ten, five, or three points added to their final grade, depending upon their service. 20 ILCS 415/8b.7. However, if category ratings (superior, excellent, etc.) are utilized, instead of numerical ratings, then a veteran must receive an absolute hiring preference over nonveterans within the same grade category. *Denton v. Civil Serv. Comm’n of the State of Ill.*, 176 Ill.2d 144, 153 (Ill. 1997).

their job description but instead performed tasks and had responsibilities that were not listed. (*Id.* at 4, 7.)

Not only did IDES manipulate the system, such as by backdating start dates, so certain employees could accrue more vacation time, but it also told employees to make similar falsifications. (*Id.* at 4.) The Department directed employees to falsify employment forms to make them eligible for specific positions. (Ex. 43 at 14-15.) Two employees were told to designate themselves as students, so they could qualify as student workers. (*Id.*) Overall, IDES failed to comply with its own policies and State laws. (*Id.* at 20.)

The report concluded that the main force behind the hiring decisions in IDES was GOIA. (*Id.* at 20.) Joe Cini, then director of GOIA, told IDES's Human Resources Director that the Governor's office determined the hiring process, not IDES. (*Id.* at 9.) Moreover, he said that GOIA needed a place to put people in positions for which they had no experience, so they "can be dealt with later." (Ex. 43 at 9.) In the end, the Human Resources Director was fired for trying to hire qualified candidates, rather than the candidates put forward by GOIA. (Ex. 43 at 9-10.) GOIA provided IDES with resumes for people who had to be hired, followed up on the hiring process, and then were informed when the people were hired. (*Id.* at 18.) The report states, "There can be little dispute that the Governor's office improperly exercised a great deal, if not all, control over the hiring at IDES." (*Id.* at 20.)

K. Summary of the Evidence.

In sum, the Committee heard a great volume of evidence relating to the Governor's abuse of power. The Committee received a criminal complaint and affidavit whose weight comes primarily from the Governor's own words, when he was unaware that the government was listening. Those recordings captured the Governor overseeing and directing plans to negotiate a personal benefit for his appointment of a U.S. Senator; conditioning the provision of State financial assistance to the Tribune Company on the firing of members of the *Chicago Tribune* editorial board; and engaging in a number of instances of tying official actions to campaign contributions. The Committee saw further evidence of the Governor linking campaign contributions to official actions with the sworn federal court testimony of Ali Ata and Joseph Cari, testimony which helped lead to the conviction of one of the Governor's top fundraisers, Antoin Rezko. The Committee heard evidence that the Governor defied JCAR and expanded a health care plan without legal authority or a funding source. And the Committee heard a number of abuses

exposed by Auditor General Holland in his audits of the flu vaccine program, the I-SaveRx program, and the efficiency initiative.

In response to all of this evidence, the Governor chose to remain silent and absent from the proceedings. His counsel offered a Transition Report from the President-Elect's attorney on the subject of the Senate seat and a videotape of a press conference by Congressman Jesse Jackson, Jr. Beyond that, the Governor's counsel named four individuals that, he predicted, would testify that they were not approached by anyone from the Governor's staff for any wrongful purpose related to the Senate seat and, in one case, related to the Tribune Company issue. It is fair to note, however, that at the time the Governor's counsel made the proffer of the four witnesses (December 23, 2008), the U.S. Attorney had already requested that the Committee refrain from inquiring into the subject matters of the Senate seat and the Tribune Company (December 22, 2008). The Governor's counsel knew, at the time he made the request, that it would not be granted.

In sum, the Committee has heard a great deal of evidence relating to various instances where the Governor's inappropriate actions constitute abuse of power. The Governor's counsel, in response, has provided the Committee only a small amount of information that does not even address the majority of the claims raised in this proceeding.

V. The Governor's Refusal to Testify Before the Committee

It is notable that the Governor never testified to rebut any of the allegations concerning his conduct, whether they related to the criminal complaint filed against him or whether they related to other issues such as his defiance of JCAR or the Auditor General's audits of the flu vaccine importation, the I-SaveRx program, and the efficiency initiatives. Of course, the Governor, like any other citizen, can exercise his right against self-incrimination before any governmental tribunal.⁵⁴

The difference, however, is that while the Governor's silence could not be held against him in a *criminal* case, the opposite is true in a non-criminal proceeding, such as this impeachment inquiry.⁵⁵ The refusal to testify in a non-criminal proceeding justifies an adverse inference against the witness—meaning a House member may consider, in his or her balancing of the evidence, the fact that the

⁵⁴ The privilege against self-incrimination is embodied in the Fifth Amendment to the U.S. Constitution. U.S. Const., Amend. V (“[n]o person ... shall be compelled in any criminal case to be a witness against himself.”). Similarly, our state constitution provides that “[n]o person shall be compelled in a criminal case to give evidence against himself” Ill. Const.1970, Art. I, § 10.

⁵⁵ *Mecham v. Gordon*, 751 P.2d 957, 961 (Ariz. 1988) (impeachment inquiry is not a criminal proceeding).

Governor had the opportunity to appear before the Committee to refute the allegations but failed to do so. The House member may draw any inference or conclusion he or she wishes with regard to the Governor's silence in the face of these allegations. This proposition is true even if the subject matter of the impeachment inquiry overlaps with the criminal allegations against the Governor:

While a President, like any other citizen, would be free to assert his Fifth Amendment privilege against self-incrimination in an impeachment inquiry due to a well-founded fear of prosecution in the criminal courts, an impeachment is not itself a "criminal case" for Fifth Amendment purposes and thus Congress may draw adverse inferences from a refusal to answer.⁵⁶

Illinois law is clear that a finder of fact may take into account the defendant's refusal to testify in a non-criminal proceeding, even if criminal charges are still pending over the same subject matter and the defendant fears that his answers in the non-criminal proceeding could jeopardize his criminal case.⁵⁷ In this impeachment inquiry, the House, just like "Congress[,] is free to consider any refusal [to testify] in making its impeachment decision"⁵⁸ because "the impeachment power necessarily implies a [legislative] power to inquire about [Executive] wrongdoing, as well as a corresponding obligation on the part of the [Executive] to respond to such inquiries."⁵⁹ The Governor, like "the President, is not above the ... law, [and] there is no sound reason for exempting him from accountability, especially in the impeachment process."⁶⁰

If a House member may draw an adverse inference from the Governor's refusal to answer allegations of *criminal* conduct, then obviously the member has equal justification in drawing an adverse inference from the Governor's silence in the face of non-criminal allegations. The Committee has considered evidence of abuse of power relating to JCAR, the flu vaccine program, the I-SaveRx program, and the efficiency initiative. None of these allegations are related to the criminal complaint. It

⁵⁶ F. Bowman III & S. Sepinuck, "High Crimes & Misdemeanors: Defining the Constitutional Limits on Presidential Impeachment," 72 S. Cal. L. Rev. 1517, 1539 n.111 (1999).

⁵⁷ See *People v. Hauer*, 365 Ill.App.3d 682, 687-690 (2nd Dist. 2006) (adverse inference could be drawn from defendant's refusal to testify at a civil proceeding, even though criminal charges were pending regarding the same conduct); *Jacksonville Savings Bank v. Kovack*, 326 Ill. App. 3d 1131, 1135 (4th Dist. 2002) ("Not only is it permissible to conduct a civil proceeding at the same time as a related criminal proceeding, even if that necessitates invocation of the Fifth Amendment privilege, but it is even permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth Amendment in a civil proceeding") (quoting *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 326 (9th Cir.1995)); *Giampa v. Civil Serv. Comm'n*, 89 Ill. App. 3d 606, 613 (1st Dist. 1980) (adverse inference may be drawn despite existence of pending criminal charges and despite fact that defendant would lose his State employment; "there is nothing inherently repugnant to due process in requiring plaintiff to choose between giving testimony at the [civil proceeding] and keeping silent, even though testimony at the hearing may damage his criminal case").

⁵⁸ Bowman III & Sepinuck, 72 S. Cal. L. Rev. at 1530.

⁵⁹ *Office of the Governor v. Select Committee of Inquiry*, 858 A.2d 709, 738 (Conn. 2004).

⁶⁰ M. Gerhardt, "The Constitutional Limits to Impeachment and its Alternatives," 68 Tex. L. Rev. 1, 93 (1989).

would not appear that the Governor could incriminate himself—expose himself to criminal prosecution—if he testified on these subjects.⁶¹ Thus, it is clear that a House member may also consider the Governor’s refusal to testify about these non-criminal allegations. Each member of the House may take the Governor’s silence into account as that member sees fit.

VI. The Injury to the People of the State of Illinois

As discussed in Section III of this Report, the purpose of impeachment is not to punish the officeholder. The purpose is to protect the citizens from the abuses of an official. The Constitution rests the impeachment power in the people’s representatives, the members of the General Assembly, who are best suited to protect the interests of their constituents. Among other things, the members of the House must ensure that their constituents have not lost confidence in the Governor’s ability to perform his duties. The effect of this Governor’s abuse of power, therefore, is relevant to the impeachment inquiry.

Thus, the Committee would be remiss if it did not comment on some of the events that have transpired since the Governor was arrested on December 9, 2008. In an extremely rare move, the United States Senate refused to seat the man appointed by the Governor to fill Illinois’ vacant U.S. Senate seat, having previously announced that it would not seat *anyone* appointed by this Governor following the revelations accompanying his arrest. (Group Ex. 37.) Every single Constitutional Officer in this State, our only current U.S. Senator, and the incoming President of the United States have called on the Governor to resign. (*Id.*) The U.S. Department of Homeland Security has revoked the Governor’s access to classified federal security information. (*Id.*)

The Governor’s arrest has had a financial impact, as well. In the midst of a “financial crisis,” short-term borrowing of \$1.4 billion to pay critical State vendors, including health care and social services providers and the State Police, was delayed by three days because the closing documents had to be modified to detail the Governor’s legal troubles. The State lost the chance to sell short-term bonds at reduced interest rates because of the December 9 arrest. (Ex. 31.) Moreover, the Governor’s arrest led to a rating downgrade that drove up interest rates by several percentage points on the bonds sold. As a result, the State will pay approximately \$26.6 million in interest to borrow \$1.4 billion; had the sale taken place the previous week as scheduled, the State would have paid approximately \$5.8 million. The Governor’s arrest, then, has already cost the State almost \$21 million. (*Id.*) Following the Governor’s

⁶¹ See, e.g., *Quinn v. United States*, 349 U.S. 155 (1955) (Fifth Amendment available to witnesses testifying before a Congressional committee, to be claimed only when they have a reasonable apprehension the answer will lead to a criminal conviction).

arrest, Illinois became one of only two states to be placed on Standard & Poor's "negative CreditWatch," because "the legal charges now facing the governor ... may challenge the state to respond to [its] fiscal situation on a timely basis." (Group Ex. 37.) This will likely lead to a finding that our bonds are a higher risk, forcing the State to pay higher interest rates in the future. (Ex. 31.)

The State is at a critical juncture. The Governor faces an array of criminal charges related to his official conduct as Governor. The Governor's appointment of a U.S. Senator, pursuant to a valid State law, has been questioned because of a lack of trust in the Governor. The federal government no longer trusts the Governor with vital security information to which other governors routinely have access. Our State's and nation's highest elected officers have asked the Governor to resign. The drop in bond ratings will cost the State millions of dollars because of the Governor's arrest. Whether the people of this State retain confidence in the Governor is a question that each member of this Committee, and perhaps the full House, must answer.

In the face of all of this, the Governor has essentially remained silent on the subject of his legal problems. He has given no detailed explanation for any of the allegations, only generally proclaiming his innocence. Like any citizen, the Governor is entitled to his day in criminal court. But he is no ordinary citizen. He is the supreme executive officer of this State. The citizens of this State must have confidence that their Governor will faithfully serve the people and put their interests before his own. It is with profound regret that the Committee finds that our current Governor has not done so.

VII. Recommendation of the Committee

For all of the reasons stated in this Report and the evidence contained in the Record before the Committee, the Special Investigative Committee for the Illinois House of Representatives, 95th General Assembly finds that the totality of the evidence warrants the impeachment of the Governor for cause.

The Committee, therefore, recommends that the House consider an Article of Impeachment against the Governor.

TABLE OF EXHIBITS

Documents are available at www.ilga.gov unless noted below

- 1) **Group Exhibit: Correspondence on creation of Committee**
 - Dec. 15, 2008 letter from David Ellis to Sheldon Sorosky providing notice that the Committee may be formed.
 - Dec. 15, 2008 letter from Chair Currie to Gov. Blagojevich providing notice that the Committee has been formed and will meet.
 - Dec. 15, 2008 letter from Sheldon Sorosky to David Ellis.
- 2) **Group Exhibit: Gov. Blagojevich's motions**
 - Motion by Gov. Blagojevich for appointment of counsel.
 - Motion by Gov. Blagojevich for adjournment.
 - Motion by Gov. Blagojevich to recuse Committee members Black, Franks, and Tracy.
 - Motion by Gov. Blagojevich to preclude introduction of wiretap evidence.
- 3) **Criminal complaint in U.S. v. Rod Blagojevich and John Harris**
 - Complaint containing two criminal counts against Gov. Blagojevich and his Chief of Staff, John Harris.
 - Affidavit of F.B.I. Special Agent Daniel Cain in support of complaint.
- 4) **Plea agreement in U.S. v. Ali Ata**
 - Pleaded guilty to making false statements to federal law enforcement and on income tax returns. Includes details of pay-to play-activities and the exchange of campaign contributions for an appointed State position.
- 5) **Plea agreement in U.S. v. Joseph Cari**
 - Pleaded guilty to attempting to commit extortion. Includes details of various fundraising activities.
- 6) **Group Exhibit: Auditor General documents**
 - Dec. 16, 2008 letter to Auditor General William Holland from Chair Currie.
 - Dec. 17, 2008 letter from Auditor General William Holland to Committee.
 - Copy of Management Audit of the Flu Vaccine Procurement and the I-SaveRx Program, September, 2006.
- 7) **Testimony provided by Ali Ata in U.S. v. Rezko trial**
 - Ata's testimony regarding his dealings with Gov. Blagojevich, the Governor's administration, and the Governor's fundraisers.
- 8) **Testimony provided by Joseph Cari in U.S. v. Rezko trial**
 - Cari's testimony regarding the connection between Cari's criminal activities and Gov. Blagojevich, the Governor's administration, and the Governor's fundraisers.
- 9) **Letter from Ann Spillane, Chief of Staff, Office of the Illinois Attorney General, to David Ellis**
 - Dec. 17, 2008 letter regarding Gov. Blagojevich's Motion for appointment of counsel.
- 10) **Letter from Committee to U.S. Attorney Patrick Fitzgerald**
 - Dec. 18, 2008 letter requesting information pertaining to U.S. v. Blagojevich and Harris.
- 11) **Additional information provided by the Department of Healthcare and Family Services**
 - Dec. 18, 2008 letter with additional information requested by Committee.

12) Letter from Committee to Barry Maram and Tamara Hoffman of DHFS

- Dec. 19, 2008 letter requesting the attendance of Barry Maram and Tamara Hoffman at the Committee's hearing on Dec. 22, 2008 and information not yet provided.

13) Letter from Committee to Edward M. Genson and Sam Adam, Jr.

- Dec. 19, 2008 letter advising the Governor's counsel of the Dec. 22, 2008 agenda for the Committee's Hearing.

14) Additional information provided by Auditor General William Holland

- Dec. 19, 2008 letter from Auditor General William Holland to David Ellis with follow up information.
- Copy of the State's Comprehensive Annual Financial Report for the year ended June 30, 2007 and a digest comparing Illinois's CAFR results to other states.
- E-mail from Special Advocate Scott McKibbin regarding procurement of flu vaccines.
- Chart naming individuals from the Governor's office and the Office of Management and Budget who sat on contract award evaluation committees or assisted in preparing specifications for the efficiency initiative contracts.
- Chart detailing the number of material audit findings for the previous 10 years.
- Written copy of Auditor General William Holland's testimony.

15) Letter from the Committee to Gov. Blagojevich

- Dec. 20, 2008 letter re-inviting Gov. Blagojevich to appear at the Committee's hearings.

16) Letter from Barry Maram and Tamara Hoffman to the Committee

- Dec. 21, 2008 letter responding to the Committee's request to attend the hearing on Dec. 22, 2008.

17) Information provided by the Policy Procurement Board

- Written testimony of Matt Brown, Executive Director, Procurement Policy Board.
- Written testimony of Ed Bedore, Member, Procurement Policy Board.
- Memo to Matt Brown, attaching the holdover lease reports requested at Nov. 3, 2005 Procurement Policy Board meeting.
- Provisions of the Illinois Administrative Code.
- Minutes of Procurement Policy Board meetings regarding space utilization and leases.
- CMS Emergency Amendment.
- Minutes of Procurement Policy Board meeting on June 1, 2007.
- May 3, 2004 letter from Comptroller Daniel Hynes to the Procurement Policy Board.
- Jan. 20, 2005 letter from the Procurement Policy Board's legal counsel to the Policy Procurement Board.
- Copy of a Statement of Economic Interests form.
- May 12, 2004 letter from the Communications Workers of America to the Procurement Policy Board.
- May 18, 2004 letter from the University Professionals of Illinois to the Procurement Policy Board.
- May 12, 2004 letter from CMS to the Comptroller's office.
- Reports regarding parking leases.
- Memo from CMS to the Procurement Policy Board dated October 30, 2007 and a proposed lease for the DOC at 100 N. Western Avenue, Chicago, Illinois.
- Dec. 8, 2008 letter from the Procurement Policy Board to CMS, requesting documents for review.
- Memo from CMS to the Procurement Policy Board dated Nov. 12, 2008 and a proposed lease for DHS at 2650 W. Fulton St., Chicago, Illinois.
- Memo from CMS to the Procurement Policy Board dated April 28, 2008 and a proposed lease for DCFS at 15115 S. Dixie Highway, Harvey, Illinois.

18) Information from Edward M. Genson

19) Additional information from the Department of Healthcare and Family Services

- Dec. 22, 2008 responses to questions and requests in the letter dated Dec. 19, 2008.

20) Letter from Edward M. Genson to the Committee

- Dec. 23, 2008 letter regarding witnesses for Dec. 29, 2008.

21) Letter from the Committee to Edward M. Genson

- Dec. 23, 2008 letter responding to Edward M. Genson's letter dated Dec. 23, 2008.

22) Letter from the Committee to Tamara Hoffman

- Dec. 23, 2008 letter requesting a copy of meeting notes Tamara Hoffman (follow-up on previous request).

23) Letter from the Committee to Chad Fornoff, Executive Director, Illinois Executive Ethics Commission

- Dec. 23, 2008 letter requesting a copy of a report dated September 9, 2004, prepared by former Executive Inspector General Zaldwaynaka "Z" Scott.

24) Letter from David Glockner, Chief, Criminal Division, U.S. Attorney's Office, Northern District of Illinois to the Committee

- Dec. 26, 2008 letter to Committee requesting the Committee not issue subpoenas to Valerie Jarrett, Jesse Jackson, Jr., Rahm Emanuel, Nils Larsen, and others whose appearance might compromise the ongoing criminal investigation.

25) Letter from Edward M. Genson to the Committee

- Dec. 27, 2008 letter informing the Committee of Gov. Blagojevich's proposed exhibits for Dec. 29, 2008, including President-Elect Obama's transition team memo regarding staff contacts with Gov. Blagojevich and a DVD excerpt of Jesse Jackson Jr. Dec. 10, 2008 press conference.

26) Gov. Blagojevich Evidentiary Exhibit #1

- Dec. 23, 2008 report to President-Elect Obama from Greg Craig, regarding transition staff contacts with Gov. Blagojevich.

27) Gov. Blagojevich Evidentiary Exhibit #2

- Statement from Congressman Jesse Jackson Jr.'s press conference on Dec. 10, 2008 and a DVD of the press conference.

28) Letter from Chad Fornoff, Executive Director, EEC to the Committee

- Dec. 29, 2008 letter informing the Committee that the Office of the Executive Inspector General regarding the requested report.

29) Additional information provided by the Policy Procurement Board

- Dec. 26, 2008 letter from the Procurement Policy Board with the following additional materials: ownership of the facilities leased by the State, campaign contributions by vendors and lessors receiving State contracts and leases, operation of the facilities revolving fund and facility charge-backs, how the Procurement Policy Board requests have been ignored and rejected, how the Procurement Policy Board requested revisions on rules by CMS, and the names of decision-makers at CMS who responded to the Procurement Policy Board's requests.

30) Letter from David Glockner, Chief, Criminal Division, U.S. Attorney's Office, Northern District of Illinois to the Committee

- Dec. 22, 2008 letter in response to Committee's Dec. 18, 2008 letter (Ex. 10) requesting the use of evidence obtained by intercepted communications, unspecified documents, and the appearance of unnamed witnesses.

31) Letter from Treasurer Alexi Giannoulias to all members of the General Assembly

- Dec. 23, 2008 letter detailing the effect of the Governor's arrest on the State's bond rating and estimated losses to the State as a result.

32) Group Exhibit: Articles on the Joint Committee on Administrative Rules

- Editorial, "Who needs a legislature?" *Chicago Tribune*, Nov. 20, 2007.
- Aaron Chambers, "Obscure panel now in spotlight," *Register Star*, Nov. 17, 2007.
- Mike Ramsey, "Special session ordered," *Springfield Journal-Register*, Nov. 20, 2007.
- Ray Long, David Mendell, and Tribune Staff Reporters, "'No' now 'yes' for health program: Governor defies legislative panel," *Chicago Tribune*, Nov. 28, 2007.
- Ryan Keith, "Ignoring Legislative Rejections, Blagojevich Pushes Health Plan," *Chicago Sun-Times*, Nov. 19, 2007.

33) U.S. Attorney Pat Fitzgerald's Motion to disclose intercepted communications

- Dec. 29, 2008 Motion requesting the District Court of the Northern District of Illinois to allow disclosure to the Committee of a limited number of intercepted communications.

34) Group Exhibit: Articles on the Freedom of Information Act

- Bruce Rushton "Madigan: Release Subpoenas; Governor's Spokeswoman Says They'll Stay Secret," *The State Journal-Register*, Oct. 27, 2006.
- John Chase and Ray Long, "Probe of Rod Blagojevich Targeted State Hiring Going Back to January 2003," *Chicago Tribune*, Dec. 30, 2008.
- Press Release, Judicial Watch, Inc., Judicial Watch Files Lawsuit to Obtain Documents Related to Federal Investigations Involving Illinois Governor Rod Blagojevich (Jan. 19, 2007).
- Ray Long, "Mail-Order Pharmacy Takes State Fight to Court," *Chicago Tribune*, Jan. 21, 2005.
- Mary Massingale, "Judge Rules Caremark Contract Should Be Public," Copley News Service, Feb. 4, 2005.
- John O'Connor, "Governor Increasingly Closing Doors on Public-Records Access," The Associated Press, Mar. 12, 2007.
- Adriana Colindres, "Blagojevich, Jones Face FOIA Suits," *The State Journal-Register*, Aug. 1, 2008.
- John O'Connor, "Job Lists Were Secret, Now Released By Blagojevich," *The State Journal-Register*, July 10, 2008.
- John O'Connor, "Gov. Defies Taxpayers on Health Program," *The State Journal-Register*, Oct. 23, 2008.
- Dave McKinney, "Gov Refuses Access to Records on Pardons He Granted," *Chicago Sun-Times*, Apr. 14, 2008.
- John O'Connor, "Gov Won't Back Up Claims His Budget-Support Search Succeeded," The Associated Press, June 3, 2008.
- Bruce Rushton, "Certain FOIA Requests to Governor Fruitless," *The State Journal-Register*, Apr. 26, 2007.
- Opinion, "Proof of \$5.3 Million Savings Isn't Being Released," *The Pantagraph*, July 1, 2006.
- Jim Butts, "State Denies Records Requests on Prison Attack," *Sauk Valley Newspapers*, Dec. 31, 2006.
- David Porter, "IPA Honors Top Access Offenders with 'Worst Awards,'" Illinois Press Association, Sept. 21, 2006.
- Dave McKinney, "GOP Leaders: Show Use the Lottery Math: Gov Won't Release Study that Lease or Sale Could Yield \$10 Billion," *Chicago Sun-Times*, May 28, 2006.

35) Memorandum from Edward M. Genson to Committee

- Jan. 2, 2009 memo in response to inquiry during the Committee's Dec. 29, 2008 hearing regarding the use of "totality of the circumstances" to evaluate evidence cumulatively.

36) Letter from David Ellis to Edward M. Genson

- Jan. 2, 2009 letter with the proposed agenda: status of motion by U.S. Attorney to disclose intercepted communications to the Committee, inquiry into Gov. Blagojevich's possible pattern of illegal hiring and firing of State employees, and the possible appearance of Roland Burris.

37) Group Exhibit: articles, statements, and press releases on Gov. Blagojevich's situation

- Articles:
 - i. John Kenward and Robin Prunty, "Illinois' GO Rating Placed on CreditWatch Negative," Standard and Poor's, Dec. 10, 2008.
 - ii. "Lt. Gov. Quinn urges Blagojevich to 'step aside,'" Chicago Breaking News, Dec. 9, 2008.
 - iii. Adriana Colindres, "Arrest cripples governor's ability to get job done, observers say," *State Journal-Register*, Dec. 10, 2008.
 - iv. Rick Pearson and Monique Garcia, "The heat is on," *Chicago Tribune*, Dec. 11, 2008.
 - v. Justin Kmitch, "Treasurer: Scandal could put state in financial trouble," *Daily Herald*, Dec. 12, 2008.
 - vi. Kurt Erickson, "Governor's woes beginning to take toll on state government," *Pantagraph*, Dec. 12, 2008.
 - vii. Kevin McDermott, "Scandal turns Illinois into a ... state of turmoil," *St. Louis Post-Dispatch*, Dec. 14, 2008.
 - viii. Lorene Yue, "Guv's arrest costs state \$20M in bond sale," *Chicago Business*, Dec. 16, 2008.
 - ix. Staff, "Blagojevich's selfishness is costing state," *Herald & Review*, Dec. 18, 2008.
 - x. Lisa Donovan, "Tollway chief quits after less than a month," *Chicago Sun-Times*, Dec. 18, 2008.
 - xi. Staff, "William Quinlan, Gov. Blagojevich's general counsel, resigns Tuesday," *Chicago Tribune*, Dec. 31, 2008.
 - xii. Caryn Rousseau, "US Department of Homeland Security revokes Ill. Gov. Blagojevich's federal security clearance," Associated Press, Jan. 3, 2009.
 - xiii. Mike Dorning and Mark Silva, "Roland Burris is turned away at Senate," *Chicago Tribune*, Jan. 6, 2009.
- Statements:
 - i. "Hynes Calls on Blagojevich to Resign," Dec. 9, 2008.
 - ii. "Statement from Illinois State Treasurer Alexi Giannoulias," Dec. 9, 2008.
 - iii. "Statement Calling for Resignation of Governor Blagojevich," Dec. 9, 2008.
 - iv. "Statement from Illinois Secretary of State Jesse White Urging Governor to Resign Immediately," Dec. 15, 2008.
 - v. Secretary of State Jesse White explains his refusal to sign the Governor's appointment proclamation of Roland Burris.
- Press Releases:
 - i. Press Release, U.S. Senator Dick Durbin, Durbin Releases a Letter Calling for Blagojevich to Resign (Dec. 10, 2008).
 - ii. Press Release, Illinois State Treasurer Alexi Giannoulias, State Loses Over \$20 Million in Bond Sale (Dec. 16, 2008).

38) Subpoena – Roland Burris

- Request for Roland Burris to appear before the Committee on Jan. 7, 2009.

39) Subpoena duces tecum – Executive Ethics Commission

- Subpoena duces tecum for the report created by the Office of the Executive Inspector General related to case number 04-00034 and/or dated Sept. 9, 2004.

40) Group Exhibit: correspondence with Roland Burris

- Jan. 5, 2009 letter from Roland Burris's counsel, Tim Wright, to Chair Currie.
- Jan. 5, 2009 letter from Roland Burris's counsel, Emmitt House, to Chair Currie.
- Jan. 5, 2009 affidavit sworn to by Roland Burris.

41) Letter from William Hubbard, Food and Drug Administration, to Scott McKibbin, Governor's Special Advocate

- Nov. 6, 2003 correspondence from FDA Associate Commissioner William Hubbard to Special Advocates Scott McKibbin & Ram Kamath regarding drug importation programs.

42) January 1, 2009 letter from Chair Currie to Executive Ethics Commission

- Jan. 1, 2009 letter to the Executive Ethics Commission acknowledging its compliance with the subpoena duces tecum.

43) Executive Ethics Commission letter and report

- Jan. 4, 2009 letter in response to the subpoena duces tecum issued by the Committee.
- Final report issued by the Office of the Executive Inspector General, investigating complaints of hiring improprieties at the Illinois Department of Employment Security.

44) Transcript from hearing on Motion to disclose intercepted communications

- Transcript from Jan. 5, 2009 hearing before Chief Judge James Holderman on U.S. Attorney Patrick Fitzgerald's Motion to disclose the intercepted communications to the Committee.

45) Letter from Bob Arya to Committee

- Letter from Bob Arya, Former Senior Advisor to Gov. Blagojevich, to the Committee containing observations from his time in the Governor's office.

*** This document is not available online. To obtain copies, please contact the Clerk of the Illinois House of Representatives, 402 State House, Springfield, IL 62706.*

46) Letter from Abasse Tall to Committee

- Jan. 5, 2009 letter from Abasse Tall to the Committee regarding the Committee.

*** This document is not available online. To obtain copies, please contact the Clerk of the Illinois House of Representatives, 402 State House, Springfield, IL 62706.*

47) Information in response to member questions on the Freedom of Information Act

- Spreadsheets prepared by the Comptroller's office detailing legal expenses for the work of Londrigan, Potter, and Randle PC and Bell, Boyd & Lloyd LLP on litigation regarding FOIA requests for federal grand jury subpoenas by the Better Government Association and Judicial Watch, Inc.

48) Written testimony provided by Don Craven on FOIA and Gov. Blagojevich's administration

- Testimony regarding various refusals by Gov. Blagojevich and his administration to comply with FOIA requests from the media and state lawmakers.

49) Written testimony provided by Jay Stewart, Better Government Association, on FOIA and the Blagojevich administration

- Written testimony of Jay Stewart.
- Dave McKinney, Eric Herman, and Chris Fusco, “New Fed Subpoenas Concealed: State Agency Heads were Told to List Workers but weren’t told Why,” *Chicago Sun-Times*, July 21, 2006.
- July 24, 2006, letter from the Better Government Association to the Governor’s office requesting federal grand jury subpoenas and related correspondence under FOIA.
- Aug. 7, 2006 letter from the Governor’s office to the BGA, denying the BGA’s FOIA request.
- Aug. 31, 2006 letter from the BGA to the Governor’s office, appealing the Governor’s denial.
- Sept. 15, 2006 letter from the Governor’s office to the BGA, denying BGA’s appeal.
- Oct. 26, 2006 letter from Attorney General Lisa Madigan’s office to the Governor’s counsel, advising that the Governor release the requested documents.
- Nov. 7, 2006 letter from the BGA to Gary Shapiro, First Assistant U.S. Attorney, inquiring about possible interference with a potential lawsuit against the Governor.
- June 20, 2006 letter from the U.S. Attorney’s Office of Northern District of Illinois to Attorney General Madigan, memorializing conversations about investigations into hiring practices.
- Nov. 13, 2006 letter from Gary Shapiro to the BGA, responding to the BGA inquiry about interference with a potential lawsuit.
- Complaint filed by the BGA against Gov. Blagojevich in circuit court.
- Jan. 4, 2007 letter from the BGA to Gary Shapiro, providing a copy of BGA’s lawsuit against the Governor.
- Amended Complaint filed by the BGA against the Gov. Blagojevich in circuit court.
- Transcript of Motion of summary judgment hearing in the circuit court.
- Order of the circuit court denying Motion to reconsider and extending stay.
- Opinion of the Fourth District Appellate Court of Illinois.
- Gatehouse News Service, “Judge Rules Governor Must Disclose Subpoenas,” *Sauk Valley Newspapers*, Jan. 10, 2008.

50) Written testimony provided by (i) Robert Rich, Director, University of Illinois’s Institute of Government and Public Affairs, and (ii) Andrew Morris, Professor, University of Illinois’s College of Law

51) Written testimony provided by Claudette P. Miller and F. Thomas Hecht, Ungaretti & Harris LLP, on JCAR lawsuit

- Materials provided by F. Thomas Hecht and Claudette P. Miller, partners at Ungaretti & Harris LLP and attorneys for certain plaintiffs in *Caro v. Blagojevich*.

52) Written testimony provided by Ronald Gidwitz, Plaintiff in *Gidwitz v. Maram*

- Information relevant to *Caro v. Blagojevich*; *Gidwitz v. Maram*; *Maram v. Jesse White*.
- 5 boxes of relevant materials.

53) Written testimony provided by Vicki Thomas, Executive Director, JCAR

- Vicki Thomas’s testimony, providing an overview of JCAR, its functions as a legislative agency, and its relationship with the Blagojevich administration compared to the previous two administrations.

54) *Caro v. Blagojevich* pleadings

55) Letter to Committee from Roy Arnold, President, Arlington Park Racecourse

- Dec. 17, 2008 letter in response to informal request to appear before the Committee to provide information concerning Arlington Park and Churchill Downs communications with the Office of the Governor regarding House Bill 4758.

- 56) Written testimony provided by Cynthia Canary, Illinois Campaign for Political Reform**
- Cynthia Canary, Executive Director of Illinois Campaign for Political Reform (ICPR) providing information regarding the correlation of large campaign contributions to the Blagojevich campaign and the benefits received by the contributors of those donations.
- 57) Resume of John J. Scully**
- Former Assistant U.S. Attorney testified on Dec. 22, 2008 regarding the authorization required for a wiretap.
- 58) Group Exhibit: letters from Committee to persons invited to present testimony**
- 59) Letter From Doug Quivey to David Ellis**
- Dec. 19, 2008 letter from Doug Quivey, attorney for Matt Magalis.
- 60) Group Exhibit: flu vaccine articles**
- Press Release, U.S. Department of Health and Human Services, Interim Influenza Vaccination Recommendations: 2004-05 (Oct. 5, 2004).
 - Annie Schleicher, "US Faces Flu Vaccine Shortage," PBS News Hour, Oct. 11, 2004.
 - Editorial, "An Influenza Vaccine Debacle," *New York Times*, Oct. 20, 2004.
 - CNN Money, "Flu Shot Shortage Looms," Oct. 6, 2004.
 - Press Release, Office of the Governor, Gov. Blagojevich Locates 62,000 to 87,000 Doses of Flu Vaccine, Negotiates Deal to Quickly Provide Flu Shots from Europe for Illinois' Most Vulnerable Residents (Oct. 25, 2004).
 - Press Release, Office of the Governor, Gov. Blagojevich Expands Access to Flu Vaccine to Reduce Risk of Dangerous Outbreak (Dec. 29, 2004).
- 61) Auditor General's Report Digest**
- 62) Subpoena duces tecum – Friends of Blagojevich**
- Subpoena requesting the submission by Friends of Blagojevich of the names of any and all contributors, including the amount and dates of contributions, from July 1, 2008 - Dec. 31, 2008.
- 63) Letter from Edward M. Genson to the Committee**
- Jan. 6, 2009 letter from Edward M. Genson to Chair Currie stating that he will not be present at the Committee on Jan. 7, 2009. He also states that he has only received one packet of information relating to the Executive Ethics Commission subpoena.
- 64) Letter from Chair Currie to Clayton Harris and Andrew Velasquez III**
- Jan. 6, 2009 letter from Chair Currie to Clayton Harris of the Office of the Governor and Andrew Velasquez III of the Illinois Emergency Management Agency, requesting information related to the revocation of Gov. Blagojevich's access to classified federal security information.
- 65) Letter from U.S. Dept. of Homeland Security to Tamara Hutchinson**
- Dec. 9, 2008 letter from Kenneth Zawodny Jr., Personnel Security Division Chief of Homeland Security, to Tamara Hutchinson, Director of Security, Intelligence, and Analysis for Homeland Security, revoking Governor Blagojevich's access to classified information with the Department of Homeland Security.
- 66) Additional information provided by attorneys for Caro v. Blagojevich**
- Document titled, "Summary of Constitutional and Statutory Violations Alleged in Caro, et al v. Blagojevich, 07 CH 34353"