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IN THE HONORABLE SENATE OF THE STATE OF ILLINOIS  
FOR THE NINETY-SIXTH GENERAL ASSEMBLY  
SITTING AS AN IMPEACHMENT TRIBUNAL

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SECRETARY  
OF THE  
SENATE

In re )  
Impeachment of )  
Governor ROD R. BLAGOJEVICH )

**HOUSE PROSECUTOR'S  
MOTION FOR ADDITIONAL DOCUMENTS OR MATERIALS**

House Prosecutor David W. Ellis, pursuant to Senate Impeachment Rule 15(b)(2), moves for the admission of additional documents into evidence and, in support thereof, states as follows:

1. The House Prosecutor seeks to admit the Joint Committee on Administrative Rules' Statement of Objection to and Suspension of Peremptory Rule issued on November 19, 2008 at the Impeachment Trial.

2. A copy of this document is attached to this Motion.

3. This document will be introduced during the live testimony of Vicki Thomas.

4. This document is relevant and material because it addresses the Governor's refusal to recognize the authority of the Joint Committee on Administrative Rules to suspend or prohibit rules and violation of the Illinois Administrative Procedure Act by unilaterally expanding a state program as provided in paragraph 9 of the Article of Impeachment.

5. This document is not redundant because it is the only document that memorializes the Joint Committee on Administrative Rules' Statement of Objection to and Suspension of Peremptory Rule issued on November 19, 2008 and will be used for demonstrative purposes.

6. Moreover, although some evidence related to this issue is contained in the House impeachment record, under Senate Impeachment Rule 15(g), the evidence is not deemed redundant simply because it relates to material already in the record.

7. WHEREFORE, the House Prosecutor respectfully moves for the admission of the Joint Committee on Administrative Rules' Statement of Objection to and Suspension of Peremptory Rule issued on November 19, 2008 at the Impeachment Trial.

Respectfully submitted,

**DAVID W. ELLIS,  
HOUSE PROSECUTOR**

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line and a flourish.

David W. Ellis  
House Prosecutor  
Illinois House of Representatives  
412 State House  
Springfield, IL 62706

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLYSTATEMENT OF OBJECTION TO  
AND SUSPENSION OF PEREMPTORY RULE

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

Heading of the Part: Medical Assistance Programs

Code Citation: 89 Ill. Adm. Code 120

Section Number: 120.329

Date Peremptory Rule Published in the Illinois Register: 12/5/08

At its meeting on November 19, 2008, the Joint Committee on Administrative Rules voted to object to and suspend the Department of Healthcare and Family Services peremptory rule titled Medical Assistance Programs (89 Ill. Adm. Code 120) and to notify the Secretary of State of the Suspension of the peremptory rulemaking. The reasons for the Objection and Suspension are as follows:

JCAR objected to the Department of Healthcare and Family Services' use of peremptory rulemaking to adopt rules titled Medical Assistance Programs (89 Ill. Adm. Code 120) because that use violates Sections 5-50 and 5-125 of the Illinois Administrative Procedure Act (IAPA). Additionally, because JCAR finds the Department's use of peremptory rule violates statute and, thus, presents a threat to the public interest, JCAR suspends this peremptory rule. Section 5-50 of the IAPA allows peremptory rulemaking to be used only "when rulemaking is required as a result of federal law, federal rules and regulations, an order of a court or a collective bargaining agreement...that precludes compliance with the general rulemaking requirements...and that precludes the exercise of discretion by the agency as to the content of the rule". In adopting this peremptory rule, HFS relied on the Opinion of the Appellate Court Fifth Division affirming the judgment of the trial court in *Caro v Blagojevich*. First, while the Appellate Court discussed the deficiencies in the emergency rule adopted by HFS and suspended by JCAR, it did not issue any order requiring HFS to adopt additional rule text without discretion, nor did the Appellate Court set any deadline for action that precluded the use of general rulemaking procedures. For this reason, the use of peremptory rulemaking does not meet the tests of IAPA Section 5-50. Second, on 5/20/08, JCAR suspended an earlier peremptory rule adopted by HFS in response to circuit court action in *Caro*. On 11/16/08, the 180 day period during which the General Assembly or JCAR could withdraw that suspension expired, making the suspension permanent. Portions of this current peremptory rule are identical to that suspended peremptory rule. Section 5-125 of the IAPA states that "the agency may not enforce, or invoke for any reason, a rule or portion of a

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION TO  
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DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

rule that has been suspended". Therefore, adoption of this peremptory rule also violates Section 5-125 of the IAPA.

The suspended peremptory rules may not be enforced by the Department of Healthcare and Family Services for any reason, nor may the Department file with the Secretary of State any rule having substantially the same purpose and effect as these suspended rule.