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

JAN 21 PM 4:37
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 May 20, 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 as a demonstrative exhibit.

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.

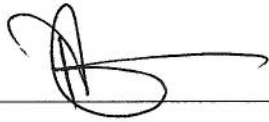
5. This document is not redundant because it is the only document that memorializes the Joint Committee on Administrative Rules' Statement of Objection to and Suspension of Peremptory Rule issued on May 20, 2008 and will be used for demonstrative purposes.

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 May 20, 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 that extends to the right and then loops back under the 'D'.

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: 129.328

Date Originally Published in the Illinois Register: 5/2/08
32 Ill. Reg. 7212

At its meeting on May 20, 2008, the Joint Committee on Administrative Rules objected to the Department of Healthcare and Family Services' use of preemptory rulemaking to adopt rules titled Medical Assistance Programs (89 Ill. Adm. Code 120; 32 Ill. Reg. 7212) and suspended the rule because that use of preemptory rulemaking violates Section 5-50 of the Illinois Administrative Procedure Act (IAPA). Section 5-50 of the IAPA allows preemptory 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 the exercise of agency discretion as to the content of the rule and that precludes adoption of rules through regular rulemaking. The analysis portion of the court's Memorandum Opinion and Order entered in *Caro vs Blagojevich* on 4/15/08, which HFS cites as the reason for this preemptory rulemaking, notes that not all TANF requirements are met by the expanded FamilyCare Program emergency rules, specifically the requirement that adults in the household be employed or engaged in a job search. However, the judge's specific order on 4/15/08 preliminarily enjoins HFS from "enforcing the Emergency Rules or expending any public funds related to the FamilyCare Program created by the Emergency Rule". The court order does not direct HFS to amend its rules in any way, including insertion of employment and job search requirements, nor does the court set any deadline for action that precludes the use of regular rulemaking procedures. Therefore, the standards under Section 5-50 of the IAPA for use of preemptory rulemaking are not met, and JCAR finds this violation of the IAPA presents a threat to the public interest.

The suspended preemptory 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 rules for at least 180 days following receipt of this certification and statement by the Secretary of State.