



1. The Governor's constitutional argument in this case is contrived. He asks this Court to find that the drafters of the 1970 Constitution either did not know the meaning of the word "changes," or intentionally misused that word when they prohibited mid-term "changes" in Article IV, Section 11, which provides that "changes in the salary of a member (of the General Assembly) shall not take effect during the term for which he has been elected." Specifically, he claims that when the drafters prohibited mid-term changes in legislative salaries, they did not mean "any change", they only meant to prohibit an "increase".

2. His second argument (and perhaps his principal one) is that the case is not "ripe" for review. This argument will be shown to be a transparent attempt to avoid an adverse ruling on his actions, which were in violation of the Constitution.

3. The Plaintiffs are reluctant to impose this appeal on this Court (in denying a stay, the trial court found it "totally meritless" (see Exhibit A to this Response, the circuit court's ruling denying Defendant's Motion to Stay, at p. 21)). But, regardless of its lack of merit, because it is a controversy between two branches of State government which has attracted some notoriety, we urge the Court to exercise Rule 302(b) jurisdiction over this appeal.

4. Upon assumption of jurisdiction, Plaintiffs will ask this Court to summarily affirm the well reasoned judgment of the circuit court. *See Obenland v. Economy Fire & Casualty Company*, 191 Ill. Dec. 158, 623 N.E.2d 748 ("no substantial question having been presented, the judgment of the appellate court is hereby affirmed pursuant to Supreme Court Rule 302(c)").<sup>1</sup>

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<sup>1</sup> Summary affirmance would also avoid the need to consider separate issues that will otherwise be raised in a cross-appeal from the circuit court's judgment on the alternative claim for relief under Count I of Plaintiffs' Complaint, contending that the language of the appropriations bill at issue that remained after the line item veto was sufficient to authorize payment of legislators' salaries.

5. The Circuit Court's Opinion and Order is included in Appellant's Supporting Record as Appendix A. The portion of the transcript that sets forth the circuit court's oral ruling denying Defendant's Motion for Stay is attached hereto as Exhibit A. The Appellate Court also denied a stay (Exhibit B).

Respectfully submitted,

By: /s/ Kevin M. Forde  
One of the Attorneys for Plaintiffs-Appellees

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No. 116704  
IN THE  
SUPREME COURT OF ILLINOIS

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and	)	In the Appellate Court of Illinois, First District, No. 1-13-3029.
MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives,	)	
	)	
Plaintiffs-Appellees,	)	
	)	
v.	)	
	)	
PAT QUINN, Governor of the State of Illinois, in his official capacity,	)	There on appeal from the Circuit Court of Cook County, County Department, Chancery Division, No. 13 CH 17921
Defendant-Appellant,	)	
	)	
and	)	
	)	
JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity,	)	Honorable Neil H. Cohen,
Defendant.	)	Judge Presiding.

**NOTICE OF FILING**

To: Justices of the Illinois Supreme Court and Counsel on the attached Certificate of Service

PLEASE TAKE NOTICE that on Friday, October 4, 2013, we electronically filed with the Clerk of the Illinois Supreme Court, PLAINTIFFS-APPELLEES' RESPONSE TO THE MOTION FOR DIRECT APPEAL, a copy of which has been served upon you.

/s/ Kevin M. Forde

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\*\*\*\*\* Electronically Filed \*\*\*\*\*

116704

10/04/2013

Supreme Court Clerk

\*\*\*\*\*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, states that the foregoing NOTICE OF FILING and PLAINTIFFS-APPELLEES' RESPONSE TO THE MOTION FOR DIRECT APPEAL were served on the 4th day of October, 2013, BY HAND DELIVERY, upon:

Honorable Anne M. Burke  
160 North LaSalle Street, 20th Floor  
Chicago, IL 60601

Honorable Charles E. Freeman  
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/s/Kevin M. Forde

# Exhibit A

**\*\*\*\*\* Electronically Filed \*\*\*\*\***

116704

10/04/2013

**Supreme Court Clerk**

\*\*\*\*\*

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives,

Plaintiffs,

v.

PAT QUINN, Governor of the State of Illinois, in his official capacity, and JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity,

Defendants.

Case No. 13 CH 17921

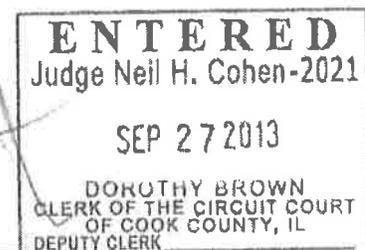
Hon. Neil H. Cohen

**ORDER ON MOTION BY GOVERNOR PAT QUINN FOR STAY PENDING APPEAL**

This matter coming before the Court on the Motion by Governor Pat Quinn for stay pending appeal, all parties being present through counsel, and the Court being duly advised of the premises, IT IS HEREBY ORDERED that:

1. The motion for stay is *denied.*
2. *The October 7<sup>th</sup> 2013 status is cricken*

Entered this 27<sup>th</sup> day of September, 2013.



Hon. Neil H. Cohen

Prepared by:  
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i»¿

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

JOHN J. CULLERTON, )  
individually and in his )  
official capacity as )  
President of the Illinois )  
Senate, and MICHAEL J. )  
MADIGAN, individually and )  
in his official capacity as )  
Speaker of the Illinois )  
House of Representatives, )  
Plaintiffs, )

-vs-

No. 13 CH 17921

PAT QUINN, Governor of the )  
State of Illinois, in his )  
official capacity, and JUDY )  
BAAR TOPINKA, Comptroller )  
of the State of Illinois, )  
in her official capacity, )  
Defendants. )

TRANSCRIPT OF PROCEEDINGS had in the  
above-entitled cause on September 27, 2013, before  
the Honorable NEIL H. COHEN, in Room 2308 Richard  
J. Daley Center, commencing at the hour of  
10:36 a.m. and ending at the hour of 11:03 a.m.

Before Carole Ann Bartkowicz, CSR, RPR  
Il. CSR License No. 084-000921

1 be needlessly prolonged during the pendency of the  
2 appeal; conduct that you determined to be  
3 unconstitutional.

4 The 7th Circuit in a case called Preston  
5 made it clear. The equities cannot favor delaying  
6 enforcement of this Court's order, which entails  
7 unconstitutional conduct.

8 That's -- that's our position. Thank you.

9 THE COURT: Okay. This petition -- the  
10 resolution of this petition is guided by Supreme  
11 Court Rule 305(b). 305 itself deals with stays of  
12 judgment pending appeal.

13 (b) deals with stays of enforcements of  
14 non-money judgments and other appealable orders,  
15 and it states in pertinent part that:

16 The court may also stay the  
17 enforcement of any judgment, and it  
18 shall be conditioned upon such terms as  
19 are just.

20 Now, what that means and what the case has  
21 explained is that, as the Governor's pointed out in  
22 his motion, that it's a discretionary act and I can  
23 or cannot, but I should have a good reason if I'm  
24 not going to.

1           And the record should reflect that I have  
2 reviewed the facts and circumstances that I deem to  
3 be important and that the Governor deems to be  
4 important, since he's the movant in this case,  
5 before I make my decision.

6           And so let the record reflect that I have  
7 reviewed everything the Governor has said.

8           I've reviewed the Governor's initial  
9 response to the initial complaint. I've reviewed  
10 the Governor's arguments about those issues; both  
11 Count I, which he won, and Count II, which he did  
12 not.

13           The case law also says that the movant --  
14 in this case, the Government -- Governor -- must  
15 present a substantial case on the merits, and he  
16 must show that the balance of equitable factors  
17 weigh in his favor.

18           Let the record reflect that there is no --  
19 there is no rote way of determining what the  
20 factors are I should consider. They are dependent  
21 upon the facts and circumstances, the totality of  
22 those circumstances that are attendant to each and  
23 every case.

24           So in this case I deem the following

1 factors pertinent, and this is what I have thought  
2 about them in resolving this issue.

3 First, I have reviewed whether the law in  
4 this case is concrete or not.

5 The Governor's position is this is a case  
6 of first impression. This Court respectfully  
7 differs.

8 The Jorgensen case dealt with a very  
9 similar case in which the Governor used his line  
10 item veto to get rid of the COLA for the Judiciary.

11 And Judge -- now Justice -- Jorgensen  
12 filed an action to prevent that. And the Supreme  
13 Court held without question that it was  
14 inappropriately done.

15 That the line item veto couldn't be used  
16 to take away that which the Constitution  
17 guarantees.

18 And the Supreme Court went against the  
19 Governor in this case.

20 A different Governor, but the principle  
21 was the same.

22 I find Jorgensen to be very persuasive  
23 with regard to this case, and I think it's going to  
24 be -- it, as well as the other cases I cite in my

1 opinion, are going to stand as a basis for an  
2 Appellate Court review and the Supreme Court to  
3 review my decision and the factors of this case.

4 So I find the law -- this is not  
5 necessarily the case of first impression that the  
6 Governor thinks of it as.

7 Unfortunately, other governors, perhaps  
8 less decent, less kind, who did not have  
9 necessarily the beneficial interest that this  
10 Governor does have as a motive, operated  
11 differently and had his actions reviewed.

12 And the Supreme Court reviewed that and  
13 said the Governor's line item veto just does not  
14 have that power that this Governor thinks it has.

15 Whether the Governor is doing things for  
16 reasons that are personal or, as in this case,  
17 because he thinks as a public servant it's going to  
18 be helping the people is irrelevant for purposes of  
19 the law.

20 We are, as I said before, a civilized  
21 society that relies upon the law. And if we don't  
22 rely on the law as it's given to us by the people  
23 and the Constitution, we end up in chaos.

24 That's not going to happen. At least not

1 out of the Illinois Courts. Not out of this Court.  
2 It's just not going to happen.

3 So I reviewed the Jorgensen case again and  
4 I find that it is very applicable. And I note that  
5 Jorgensen tells us that the Governor is subject to  
6 the constitutional mandates, like any other human  
7 being within the State of Illinois.

8 I'll also look at the basis of my -- my  
9 decision. I've reviewed it, and I note that  
10 contrary to the statements of others, this was not  
11 a balance of power. This was not -- my decision  
12 did not rest upon the separation of powers.

13 It rested specifically upon the terms of  
14 the Article IV, Section 11, of the Constitution.

15 And I'll state it again because folks are  
16 here. People should know what their law holds. It  
17 says:

18 "A member..."

19 Meaning a member of the General Assembly.

20 "...shall receive a salary and  
21 allowances as provided by law. But  
22 changes in the salary of a member shall  
23 not take effect during the term for  
24 which he has been elected."

1           In other words, during the midterm, which  
2 is what we're in right now.

3           My decision was narrowly tailored and said  
4 that the Governor did do that by using his line  
5 item veto and did violate Section 11.

6           Now, the issue of whether the Governor has  
7 presented a substantial case on the merits; again,  
8 I beg to differ.

9           The Governor says -- Mr. Pflaum argues  
10 that you have.

11           I find the Governor's position to be  
12 totally meritless. Let me tell you why.

13           I've read to you what Article IV,  
14 Section 11, says.

15           The Governor's position rests solely on a  
16 tortured interpretation of what, "change," means;  
17 i.e. change applies only to increases, not to  
18 decreases in salary.

19           But to find success, the Governor has to  
20 ask me, this Court and any future court, to go  
21 behind the pure ordinary meaning of the word,  
22 change, and go to the legislative history; the  
23 Constitutional Convention.

24           And I understand why the Governor argues

1 that. He has to, because on its face change means  
2 change. It means you shall not alter.

3 It doesn't say increase or decrease. It  
4 could have, but it did not.

5 The people who represented "the people" at  
6 the Constitutional Convention were not fools. They  
7 knew what they were doing.

8 They knew what language meant and they  
9 knew that language carries with it its own power.

10 And when they used the word, change, they  
11 did not use the word, increase, or, decrease.

12 They did in other parts of the  
13 Constitution. They could have easily said: This  
14 applies only to increases. But they did not.

15 That's telling.

16 More importantly, there are rules that  
17 this State, the Courts in this State rely upon.  
18 They're rules of construction.

19 I'm supposed to, as a Court of Equity or  
20 as a Court of Law -- I'm supposed to look at the  
21 common use of the word, the common understanding of  
22 the people who use that word, and the people who  
23 voted upon the word -- the people of the State of  
24 Illinois -- and determine whether it's vague or

1     ambiguous.

2             It's not vague or ambiguous. It's --  
3     change means change. And I pointed that out in my  
4     opinion. And I pointed out the support for that.

5             There is no reason for me to go behind the  
6     word, change, and look at the legislative history.

7             And for the Governor to prevail, I have to  
8     do that.

9             But that violates my oath of law to follow  
10    the law about the rules of construction, and I  
11    won't do that. And there's no reason to do that.

12            I'm not being stubborn about it. I've  
13    considered the Governor's position, as I should.

14            I find absolutely no basis in the law to  
15    support it.

16            I do understand why he wants it to be that  
17    way. I do understand where his heart is and where  
18    his intent is.

19            That's politics. That's not the law.

20            And the law is the way we define the way  
21    we deal with one another, not -- it shouldn't be  
22    used for political advantage in that way.

23            So my position is that with regard to the  
24    status quo aspect of this, I think it's cynical --

1 most of you know my background and where I have  
2 worked before and what I have experienced.

3 I think it's cynical for one to induce  
4 harm and say that people who have been harmed  
5 should stay in that position because that's the  
6 status quo.

7 The Governor violated the Constitution.  
8 He had no right to do that, despite his benevolent  
9 intent.

10 He can't induce harm and then rely upon  
11 the harm he induced to say: That's the status quo  
12 and we should stay in the darkness.

13 The whole idea is, in a civilized society,  
14 and especially in a Court of Equity, is to move  
15 towards the light away from harm.

16 The harm caused by the Governor is not the  
17 status quo. It's the opposite of the status quo.

18 I'm not going to let that -- there's no  
19 reason to let that go on.

20 That's why I said immediate. That's why I  
21 used that word, much like the Constitution.

22 When I said, immediate, I meant what I  
23 said and I say what I mean. Immediate means now.

24 With regard to the argument that it could

1 be stopped and there are still some legislators who  
2 have not received their check, I think it would be  
3 wrong to distinguish and discern between  
4 legislators who have received money through  
5 electronic transfer and those who have not.

6 There's no reason to distinguish between  
7 them. That might even be a violation -- another  
8 constitutional violation of some sort.

9 Mr. Stratton has told me and, of course,  
10 I've seen the comments of our Comptroller saying  
11 that these payments have gone out.

12 She has begun to follow this Court's  
13 order. And she deserves all of the commendation  
14 this Court can give her for doing so.

15 We -- after all, as I said -- and I  
16 repeat -- we are a system of laws and I commend her  
17 for following the law as this Court has said it.

18 So -- which is my job.

19 So the status quo is that the law should  
20 be upheld, and the law says, per the Constitution,  
21 that these folks should be paid and should have  
22 been paid and should be paid their prior checks and  
23 their check in October and forever thereafter  
24 within this term unless a different court finds

1 that I'm wrong.

2 So until that happens and unless that  
3 happens, with all respect to the Governor and to  
4 the folks who have represented him well, the  
5 emergency motion is denied.

6 MR. PFLAUM: Judge, if I may, we have --  
7 as Mr. Stratton has advised us, the electronic  
8 payments for October will be processed as of  
9 3:00 o'clock this afternoon.

10 THE COURT: They are to go forward.

11 MR. PFLAUM: Okay. I was just -- I was  
12 simply going to ask for a stay until the  
13 Appellate Court can rule on a motion to stay so  
14 that the additional proceedings, which will take  
15 place in this case, can occur in a more orderly  
16 fashion than would otherwise be necessary in the  
17 absence of any kind of stay.

18 THE COURT: The orderly fashion for this  
19 case to proceed is for the parties and  
20 Comptroller Topinka to follow this Court's order.

21 I will expect her to do so, meaning that  
22 the checks for October go out as of 3:00 o'clock  
23 today. Unless and until there is a stay imposed by  
24 a higher court, she's to do so.

1           Is that clear, Mr. Stratton?

2           MR. STRATTON: That's very clear.

3           THE COURT: Is that clear to you?

4           MR. PFLAUM: I understand your Honor's  
5 ruling and respect it. Thank you.

6           THE COURT: And I thank all of you. I  
7 don't know if I'll ever see you again but -- or any  
8 of you, but my compliments to the way you've all  
9 argued your position. Congratulations on that.

10          MR. PFLAUM: Thank you.

11          MR. PRENDERGAST: Thank you.

12          MR. KASPER: Thank you.

13          MR. FORDE: Thank you.

14                               (Whereupon, the hearing was  
15                               concluded at the hour of  
16                               11:03 a.m.)

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24

1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF C O O K )  
4

5 I, CAROLE ANN BARTKOWICZ, Certified  
6 Shorthand Reporter doing business in the City of  
7 Chicago, County of Cook, and State of Illinois,  
8 state that I reported in machine shorthand the  
9 evidence presented at the hearing in the  
10 above-captioned matter on September 27, 2013, and  
11 that the foregoing is a true and correct transcript  
12 of my shorthand notes so taken as aforesaid, and  
13 contains all the evidence presented at said hearing  
14 to the best of my knowledge and ability.

15  
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Carole Ann Bartkowicz  
CSR License No. 084-000921

# Exhibit B

**\*\*\*\*\* Electronically Filed \*\*\*\*\***

116704

10/04/2013

**Supreme Court Clerk**

\*\*\*\*\*

No. 13-3029

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives,

*Plaintiffs-Appellees,*

v.

PAT QUINN, Governor of the State of Illinois, in his official capacity,

*Defendant-Appellant,*

-and-

JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity,

*Defendant.*

Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 13 CH 17921

The Hon. Neil H. Cohen  
Judge Presiding

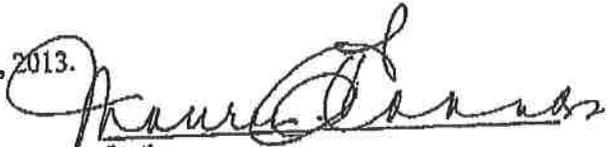
**ORDER ON EMERGENCY MOTION BY GOVERNOR PAT QUINN  
FOR STAY OF JUDGMENT PENDING APPEAL**

This matter coming before the Court on the Emergency Motion by Governor Pat Quinn for Stay of Judgment Pending Appeal, the Court being duly apprised of the premises, and good cause appearing therefor, *a response having been filed*

IT IS HEREBY ORDERED that:

1. The emergency motion for stay of judgment pending appeal is ~~allowed~~ / denied.

Entered this 27<sup>th</sup> day of September, 2013.

  
Justice

Prepared by:  
Steven F. Pflaum  
Neal, Gerber & Eisenberg LLP  
Two North LaSalle Street, Suite 1700  
Chicago, IL 60602-3801  
312-269-8000

**ORDER ENTERED**

SEP 27 2013

APPELLATE COURT, FIRST DISTRICT