

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT  
SANGAMON COUNTY, ILLINOIS

ROD R. BLAGOJEVICH, in his official )  
capacity as the Governor of the State of Illinois )

Plaintiff, )

v. )

MARK MAHONEY, in his in his official )  
capacity as the Clerk of the Illinois House of )  
Representatives for the 95th General Assembly, )

Defendant. )

2007MR000501  
No.

FILED

SEP 11 2007 CIV.-3

*Anthony P. Labadie*  
Clerk of the  
Circuit Court

**COMPLAINT FOR MANDAMUS**

Plaintiff, Governor Rod R. Blagojevich (“the Governor”), brings this action for a writ of *mandamus* against Mark Mahoney, the Clerk of the Illinois House of Representatives for the 95th General Assembly (the “Clerk”), alleging as follows:

**INTRODUCTION**

1. This action arises out of the Clerk’s failure to enter the Governor’s objections to House Bill 3866 upon the Journal of the House of Representatives in accordance with Article IV, Section 9(c) of the Illinois Constitution (Ill. Const. 1970, art. IV, §9(c)). Article IV, Section 9(c) of the Illinois Constitution provides in pertinent part that “[t]he house to which a bill is returned shall immediately enter the Governor’s objections upon its journal. If within 15 calendar days after such entry that house by a record vote of three-fifths of the members passes the bill, it shall be delivered immediately to the second house.” Ill. Const. 1970, art. IV, §9(c).

2. The strict time limits in Article IV, Section 9 of the Illinois Constitution were meant to serve the public interest, as well as the needs of the legislators and Governor for finality and are based on a recognition that tampering with those time limits “by the present behind-the-

scenes negotiations violates the spirit of the Constitution.” 6 Record of Proceedings, Sixth Illinois Constitutional Convention 395. The purpose also was to avoid “the undesirability of a bill remaining indefinitely in limbo after the Governor has vetoed it.” 6 Record of Proceedings, Sixth Illinois Constitutional Convention 399.

3. The Governor’s fundamental constitutional authority to veto a bill and have the legislature act upon that veto in a timely manner is being called into question by the Clerk’s failure to enter the Governor’s objections to House Bill 3866 upon the Journal of the House of Representatives.

4. Moreover, the Governor’s ability to manage the affairs of the State as its chief executive officer is being aggrieved by the delay in finality to House Bill 3866 caused by the Clerk’s failure to enter the Governor’s objections upon the Journal of the House of Representatives.

5. The Clerk’s actions are in violation of the Illinois Constitution and the House’s own Rules. This action seeks a writ of *mandamus* ordering the Clerk to perform his non-discretionary duty of entering the Governor’s objections to House Bill 3866 upon the Journal of the House of Representatives *nunc pro tunc* to September 4, 2007, in accordance with Article IV, Section 9(c) of the Illinois Constitution.

#### **PARTIES**

6. Plaintiff, Rod R. Blagojevich, is the Governor of the State of Illinois. The Governor is a constitutional officer conferred with supreme executive power and the responsibility for the faithful execution of the laws of the State of Illinois. Ill. Const. 1970, art. V, §§1, 8.

7. Defendant, Mark Mahoney, is a resident of the State of Illinois, and the Clerk of the Illinois House of Representatives for the 95th General Assembly. Mahoney was elected by the Illinois House of Representatives for the 95th General Assembly.

**JURISDICTION AND VENUE**

8. Jurisdiction is vested in this Court pursuant to Article VI, Section 9 of the Illinois Constitution (Ill. Const. 1970, Art. VI, §9), and sections 209(b)(2) and 209(c) of the Code of Civil Procedure (735 ILCS 5/2-209(b)(2) and (c) (West 2007)) because defendant is and was a resident of the State of Illinois when the cause of action arose.

9. Venue is proper in this Court pursuant to section 101 of the Code of Civil Procedure (735 ILCS 5/2-101 (West 2007)) because the transaction out of which this matter arose, or a substantial part thereof, occurred in Sangamon County, Illinois.

**COUNT I**  
**WRIT OF MANDAMUS**

10. The Governor incorporates by reference paragraphs 1-9 and re-alleges the same as if fully restated herein.

11. Article IV, Section 9(b) of the Illinois Constitution provides:

If the Governor does not approve the bill, he shall veto it by returning it with objection to the house in which it originated. ... If recess or adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered.

Ill. Const. 1970, art. IV, §9(b)

12. Article IV, Section 9(c) of the Illinois Constitution provides:

The house to which a bill is returned shall immediately enter the Governor's objections upon its journal. If within 15 calendar days after such entry that house by a record vote of three-fifths of the members passes the bill, it shall be delivered

immediately to the second house. If within 15 calendar days after such delivery the second house by a record vote of three-fifths of the members elected passes the bill, it shall become law.

Ill. Const. 1970, art. IV, §9(c)

13. The Illinois Constitution of 1870 provided:

Every bill passed by the General Assembly shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it and thereupon it shall become a law; but if he do not approve, he shall return it with his objections, to the House in which it shall have originated, which house shall enter the objections at large upon its journals and proceed to reconsider the bill.

Ill. Const. 1870, art. V, §16

14. During the 1970 Constitutional Convention, Section 16 of the 1870 Constitution was amended to, among other things, require that the Governor's objections "shall immediately" be entered upon the Journal and commence the 15-day time limit for that chamber to consider an override upon that entry.

15. The purpose of the amendment adding the time limits was to avoid "the undesirability of a bill remaining indefinitely in limbo after the Governor has vetoed it." 6 Record of Proceedings, Sixth Illinois Constitutional Convention 399.

16. The time limits were "so written as to measure duration from a day on which the legislature has been in session to receive the veto from the Governor, directly or via the Secretary of State." 6 Record of Proceedings, Sixth Illinois Constitutional Convention 399.

17. The strict time limits in Article IV, Section 9 of the Illinois Constitution were meant to avoid political "arrangements" to delay finality and "the long continued uncertainty as to the final outcome of legislation whose processing was supposedly virtually complete." 6 Record of Proceedings, Sixth Illinois Constitutional Convention 395.

18. The strict time limits in Article IV, Section 9 of the Illinois Constitution also were meant to serve the public interest, as well as the needs of the legislators and Governor and are based on a recognition that tampering with those time limits “by the present behind-the-scenes negotiations violates the spirit of the Constitution.” 6 Record of Proceedings, Sixth Illinois Constitutional Convention 395.

19. On August 10, 2007, the regular session of the House of Representatives was adjourned.

20. On August 23, 2007, the Governor submitted an item and reduction veto of House Bill 3866 to the Secretary of State in accordance with Article IV, Sections 9(b) and 9(d) of the Illinois Constitution.

21. On August 24, 2007, the Secretary of State delivered the veto to the Illinois House of Representatives in accordance with Article IV, Section 9(c) of the Illinois Constitution. A copy of the letter dated August 24, 2007, confirming delivery by the Secretary of State and acceptance by Darlene Trapani, an employee of the Clerk of the Illinois House of Representatives, is incorporated herein and attached hereto as Exhibit A.

22. House Rule 77 provides that “upon the receipt by the House of any bill returned by the Governor under any of the provisions of Article IV, Section 9 of the Constitution, the Clerk shall enter the objections of the Governor on the Journal, and shall distribute copies of all veto messages to each member’s desk together with copies of the vetoed bill or item, as soon as practicable, in the same manner as for bills under Rule 39.” H.R. 77, 95<sup>th</sup> General Assembly, Illinois House of Representatives.

23. On September 4, 2007, the House of Representatives convened in regular session.

24. On September 4, 2007, the Clerk failed to place the Governor's objections to House Bill 3866 on its Journal in accordance with Article IV, Section 9(c) of the Illinois Constitution and House Rule 77.

25. The House had a constitutional duty to place the Governor's objections to House Bill 3866 on the Journal.

26. Under the rules adopted by the Illinois House of Representatives, the Clerk had the ministerial duty to enter the objections of the Governor on the Journal and inform the members of the House of Representatives of the Governor's veto on September 4, 2007.

27. On September 4, 2007, Representative Hoffman raised a point of order during the regular session of the House, stating that the Governor returned House Bill 3866 and his objections to the Secretary of State as required pursuant to Article IV, Section 9(b) of the Illinois Constitution. Representative Hoffman further stated that, on August 24, 2007, the Secretary of State returned House Bill 3866, along with the Governor's objections, to the Speaker of the House and that once a bill has been returned by the Governor, Article IV, Section 9(c) requires the House to "immediately enter the Governor's objections upon its journal." Representative Hoffman then inquired of the Chair whether it was his intention to enter the Governor's objections to House Bill 3866 into the Journal and, if not, by what authority did the Chair intend to ignore our Constitution's clear mandate.

28. The Chair, Representative Art Turner, informed Representative Hoffman that his point of order would be taken under advisement.

29. Representative Hoffman never received a response to his point of order.

30. The Clerk's powers and duties with respect to entering the Governor's objections upon the Journal of the Illinois House of Representatives are defined and circumscribed by Article IV, Section 9(c) of the Illinois Constitution and House Rule 77.

31. The Clerk's powers and duties are ministerial, and he is without discretion to contravene the requirements of Article IV, Section 9(c) of the Illinois Constitution and House Rule 77.

32. The Clerk lacks any legislative or constitutional authority to unilaterally disregard the requirements of Article IV, Section 9(c) of the Illinois Constitution and House Rule 77.

33. The Clerk has a clear duty to enter the objections of the Governor on the Journal and inform the members of the House of Representatives of the Governor's veto.

34. The Clerk has failed to comply with the requirements of Article IV, Section 9(c) of the Illinois Constitution and House Rule 77.

35. The Governor has a clear and undeniable right to have his objections entered upon the Journal and for the House of Representatives to act on House Bill 3866 and his objections thereto.

36. As the State's chief executive officer, the Governor has an affirmative responsibility to see that the laws of this State are faithfully executed and an obligation to manage the administration of the numerous State agencies under his jurisdiction and control. The arranged delay in the finality of House Bill 3866 has frustrated both of these constitutional responsibilities.

**WHEREFORE**, Plaintiff, Governor Rod R. Blagojevich (“the Governor”), prays that the Court:

- (a) Issue a writ of *mandamus* ordering the Clerk to enter the Governor’s objections to House Bill 3866 upon the Journal for the Illinois House of Representatives pursuant to article IV, section 9(c) of the Illinois Constitution *nunc pro tunc* to September 4, 2007; and
- (b) Award the Governor such other and further relief as the Court deems just.

Date: September 11, 2007

ROD R. BLAGOJEVICH, in his official capacity as  
Governor of the State of Illinois,

By:   
One of His Attorneys

William J. Quinlan, General Counsel  
Melissa M. Riahei, Deputy Chief Legal Counsel  
Andrew R. Stolfi, Senior Counsel  
THE GOVERNOR OF ILLINOIS  
207 State Capitol  
Springfield, Illinois 62706  
Phone: (217) 557-7524

# **Exhibit A**



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

August 24, 2007

To the Honorable Speaker of the House:

Sir:

In compliance with the provisions of the Constitution of the State of Illinois, I am forwarding herewith the enclosed House Bill from the 95<sup>th</sup> General Assembly which the Governor vetoed in part (Line Item Vetoes) and reduced.

HOUSE BILL      PUBLIC ACT  
3866                      95-0348

Respectfully,

*Jesse White*

JESSE WHITE  
Secretary of State

RECEIVED BY:

*Darlene Papani*

DATE:

*8-24-07*