

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.)

MICHAEL J. MADIGAN, in his official
capacity as the Speaker of the Illinois House of
Representatives for the 95th General Assembly,)

Defendant.)

2007MR000473
No.

FILED

AUG 24 2007 CIV.-3

Dorothy P. Kelly
Clerk of the
Circuit Court

COMPLAINT FOR DECLARATORY JUDGMENT AND MANDAMUS

Plaintiff, Governor Rod R. Blagojevich ("the Governor"), brings this action for declaratory judgment and writ of mandamus against Michael J. Madigan, Speaker of the Illinois House of Representatives for the 95th General Assembly ("Madigan"), alleging as follows:

INTRODUCTION

1. This action arises out of a dispute between the Governor and Speaker Madigan over the interpretation of article IV, section 5(b) of the Illinois Constitution (Ill. Const. 1970, art. IV, §5(b)) and the Illinois Special Session Act (25 ILCS 15/1 *et seq.* (West 2007)), which explicitly grant the Governor the authority to convene special sessions of the General Assembly by proclamation. The power of the Governor to convene special sessions at a date and time he deems appropriate is a critical constitutional power, granted to the Governor to "allow[] him to have some control over a warring bicameral house . . . or over a body which fails to address itself to the needs of the society of this state, and force them to come back and to focus attention on [] things . . ." 4 Record of Proceedings, Sixth Illinois Constitutional Convention, p. 2688.

2. The Governor's fundamental constitutional authority to proclaim special sessions has been, and continues to be, eviscerated by Speaker Madigan at a critical juncture at which it is imperative that the General Assembly meet expeditiously to act upon matters that are of grave importance to the health, safety, and welfare of the people of the State of Illinois, including urgent matters facing the State's transportation infrastructure.

3. During the past two months, Madigan has engaged in a series of unauthorized and escalating acts aimed at eradicating the Governor's constitutional and statutory powers. These acts began with Madigan refusing to convene the General Assembly into special session at the time constitutionally proclaimed by the Governor, and have escalated to Madigan making a formal declaration that he is not legally obligated to comply with the directives of a proclamation issued pursuant to the Governor's constitutional and statutory authority, setting the date and time for the convening of a special session.

4. Madigan's actions have now spiraled into the formulation of a scheme to ensure that a quorum of the House is not present to allow any legislative business to be conducted when the Governor proclaims a special session of the General Assembly. Madigan has blatantly disregarded constitutional proclamations issued by the Governor to convene a "quorum[]" of the House into special session to address urgent matters, and has even gone so far as to openly instruct House members *not to appear* for special sessions lawfully proclaimed by the Governor. These unlawful acts by Madigan were all taken while the State of Illinois was facing the very real prospect of a government shutdown caused by the lack of a budget.

5. While an act providing appropriations has since been passed by the legislature, the legislature has in no way completed all the business necessary for the implementation of a budget. A budget implementation bill ("BIMP"), which provides the necessary legal framework

to allow state departments to spend the funds appropriated by the appropriations bill and transfer among certain funds for spending duly appropriated, has not yet been passed by the House. While the appropriations bill provides the authority to spend the money, it is the BIMP that in many circumstances places the funds in the proper accounts so that the money can actually be expended, as in the case of funds to pay State worker compensation claims, or in the case of education, so that the approximately \$554 million increase in appropriated spending can be sent to schools. Without the BIMP, the fully appropriated amount of general state aid payments cannot be provided to schools.

6. In addition to the passage of a BIMP, there are several other urgent issues that must soon be addressed by the General Assembly, two of which are capital expenditures necessary to fix an aging infrastructure that poses safety concerns, and funding and reform to transportation systems which impact the commute of millions of Illinoisans on a daily basis. Madigan has failed to formally convene the last two special sessions proclaimed by the Governor to address these critical transportation issues. If Madigan continues to disregard constitutional proclamations for convening special sessions, as he has clearly indicated he will, he can single handedly prevent the legislature from acting upon urgent matters impacting the health, safety and welfare of the People of Illinois.

7. Madigan's actions are in violation of the Illinois Constitution, the Special Session Act, the Governor's lawful proclamations, and the House's own Rules. This action seeks a declaration that, when the Governor has issued a proclamation for the convening of a special session of the General Assembly pursuant to his constitutional and statutory authority, the Speaker (a) does not possess the authority to disregard the date and time set by the Governor's proclamation for convening a special session; (b) is obligated to convene the House as a

legislative body, with a quorum of members present, such that it can conduct legislative business; and (c) cannot, without proper justification, excuse the absence of a sufficient number of members such that the House is unable to convene as a legislative body able to conduct business. This action further seeks a mandamus ordering Speaker Madigan to convene the Illinois House of Representatives in accordance with the directives set forth in the Governor's proclamation for special session, issued pursuant to article IV, section 5 of the Illinois Constitution and the Illinois Special Session Act, 25 ILCS 15/1.

PARTIES

8. Plaintiff, Rod R. Blagojevich, is the Governor of the State of Illinois, recently re-elected by the votes of over 1.7 million Illinoisans. 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.

9. Defendant, Michael J. Madigan, is a resident of the State of Illinois, and the Speaker of the Illinois House of Representatives for the 95th General Assembly. Madigan is the Representative of the 22nd Illinois House District. He represents one of 118 districts in Illinois. He was elected by approximately 20,216 votes in the 2006 election.

JURISDICTION AND VENUE

10. 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.

11. 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
DECLARATORY JUDGMENT: DATE AND TIME

A. THE GOVERNOR'S AUTHORITY TO CONVENE A SPECIAL SESSION OF THE GENERAL ASSEMBLY, AND SET THE DATE AND TIME.

12. The Illinois Constitution and the Special Session Act grant both the Governor, and the presiding officers of the House and Senate jointly, with a distinct and valuable power essential to protecting the health, safety and welfare of the citizens of Illinois at times of need – the power to proclaim a “special session” of the General Assembly. This power is the primary tool available to ensure that at times of need, the legislature can be required to expeditiously convene, as a legislative body able to transact business, to act upon vital matters facing the State.

13. The power to convene a special session is explicitly provided for in article IV, section 5(b) of the Illinois Constitution, which provides:

The Governor may convene the General Assembly or the Senate alone in special session by a proclamation stating the purpose of the session; and only business encompassed by such purpose, together with any impeachments or confirmation of appointments shall be transacted. Special sessions of the General Assembly may also be convened by joint proclamation of the presiding officers of both houses, issued as provided by law.

Ill. Const. art. IV, sec. 5(b).

14. The Governor’s power to proclaim a special session is codified and further expounded upon in the Special Session Act, which provides in relevant part:

Nothing in this Act affects the power of the Governor under Article IV, Section 5 of the Constitution of Illinois (1970) to call a special session. The Governor, when calling a special session, shall file the proclamation calling the session with the Secretary of State. The Secretary of State shall take whatever reasonable steps necessary to

notify the members of the General Assembly of the *date and time* of the special session.

25 ILCS 15/3 (West 2007) (emphasis added).

15. The Special Session Act specifically recognizes the Governor's authority to call a special session at a "date and time" designated by the Governor, of which the Secretary of State is to notify the members of the General Assembly.

16. Special session proclamations issued by the Governor pursuant to his explicit constitutional and statutory powers have the force and effect of law.

17. It is the duty of the Speaker of the House to "enforce all constitutional provisions, statutes, rules and regulations applicable to the House." House Rule 4(c)(15).

18. Just as the Governor is granted the authority to designate the date and time for the special sessions he calls, the Senate President and the Speaker are conferred with the authority to designate the date and time for special sessions they call pursuant to joint proclamation. 25 ILCS 15/1 (West 2007). This constitutional and statutory scheme balances the separate and independent authority of the two branches of government, in accordance with the constitutional principles of separation of powers.

19. The House Rules of the Ninety-Fifth General Assembly recognize the unique nature of the Governor's constitutional and statutory authority to schedule special session days, and provide that, unlike "[r]egular and veto session days [which] shall be scheduled with notice by the Speaker under Rule 9," any "[s]pecial session days *shall* be scheduled in accordance with the Constitution and laws of Illinois." House Rule 28(b) (emphasis added).

20. Dating back to the State's inception in 1818, no other General Assembly has ever convened a special session prior to the date and time proclaimed by a Governor.

21. Additionally, prior to July 7, 2007, while Speaker Madigan convened the House of Representatives for special sessions approximately 33 times during the past 22 years, he never before convened a special session prior to the time proclaimed.

22. This longstanding practice is consistent with the established principle that the dormant power of the General Assembly to convene into special session does not come to life until the date and time set by proclamation. This prevents the potential for abuse by respective House leaders who may convene their chambers early for the purpose of excluding votes of members who, in compliance with the proclamation, arrive on the date and time designated and are thus excluded from the legislative process, effectively disenfranchising their constituents.

B. MADIGAN'S UNPRECEDENTED USURPATION OF THE GOVERNOR'S AUTHORITY TO SET THE DATE AND TIME FOR A CONSTITUTIONALLY PROCLAIMED SPECIAL SESSION.

23. On July 6, 2007, pursuant to article IV, section 5 of the Illinois Constitution and Section 3 of the Illinois Special Session Act, the Governor filed a proclamation with the Secretary of State calling a special session of the General Assembly to "convene at 2:00 p.m. on Saturday July 7, 2007." (Exhibit A)

24. In accordance with the Special Session Act, the Secretary of State notified Speaker Madigan and the members of the House that a special session of the General Assembly was to "convene at 2 p.m. on Saturday July 7, 2007" by providing a copy of the proclamation on July 6, 2007.

25. On July 7, 2007, contrary to the date and time set in the Governor's proclamation, Speaker Madigan purported to convene the Illinois House of Representatives into special session at approximately 10:15 a.m., intentionally overriding the Governor's proclamation that the special session "convene at 2 p.m." (See Exhibit B, ¶ 4)

26. Of the 118 member House of Representatives, 34 members were not present at the premature special session the Speaker purported to convene on July 7, 2007. (Exhibit C)

27. The Illinois Senate, on the other hand, lawfully convened into special session in compliance with the date and time designated per the Governor's proclamation, at or around 2:00 p.m. on July 7, 2007.

28. On July 7, 2007, pursuant to article IV, section 5 of the Illinois Constitution and the Illinois Special Session Act, the Governor filed another proclamation with the Secretary of State calling a special session of the General Assembly to "convene at 2:30 p.m. on Saturday July 7, 2007." (Exhibit D)

29. The same day, the Secretary of State notified the Speaker that a special session of the General Assembly was to "convene at 2:30 p.m. on Saturday July 7, 2007" by providing the Speaker a copy of the Governor's proclamation.

30. Again, Madigan unilaterally decided to override the time set in the Governor's proclamation for convening the special session, and convened the House into special session at approximately 11:45 a.m., instead of 2:30 p.m. as proclaimed. Again, almost 30% of the House members were not present at the premature special session Madigan purported to convene. (See Exhibit B, ¶ 8)

31. Shortly thereafter, Madigan adjourned the House of Representatives and sent all present members home. Prior to adjourning, Madigan announced that he would not convene the House until 5 p.m. on Sunday July 8, 2007, regardless of any proclamations issued by the Governor calling for the convening of the General Assembly prior to that time. (Exhibit B, ¶ 11)

32. At least one member of the House vehemently objected to Madigan's failure to abide by the date and time set by the Governor's proclamation for convening a special session.

Representative Jay C. Hoffman raised a point of order, explaining that Madigan convening the House in special session at a time different than that designated by the Governor's proclamation was in violation of the Constitution and the Special Session Act, as well as the House Rules. Representative Hoffman further informed the Speaker of precedent from the Illinois Supreme Court, *Herzberger v. Kelly*, 366 Ill. 126, 131 (1937), holding that the Governor "possesses the authority to convene the General Assembly in special session at *any time* when, in the exercise of *his official discretion*, he deems the occasion warrants such action" (See Exhibit B, ¶ 5)

33. Madigan, through his Parliamentarian, ruled on Representative Hoffman's objection, essentially stating that the Speaker could override the date and time proclaimed by the Governor for convening a special session and that "there is no requirement that the General Assembly meet at any particular date or time" when a special session has been proclaimed. (See Exhibit B, ¶ 6).

34. Under Madigan's interpretation of the constitution and the Special Session Act, in theory, Madigan would possess the unilateral authority to wait ten years, if he so chooses, to convene a special session proclaimed by the Governor for tomorrow -- effectively eliminating the Governor's constitutional and statutory authority to call special sessions altogether.

35. There exists an actual controversy between the Governor and Speaker Madigan regarding the Governor's constitutional and statutory authority to convene a special session of the General Assembly at a date and time the Governor deems appropriate.

36. Speaker Madigan's public statements reveal that Madigan does not believe that the Governor possesses such authority, and will continue to disregard the date and time set by the Governor's constitutionally issued proclamations calling for special sessions, if he so chooses.

37. The Governor has a tangible legal interest in his constitutional and statutory authority to convene a special session of the General Assembly at a particular date and time, as he deems necessary.

38. Madigan has no authority to disregard the Governor's proclamations, issued pursuant to explicit constitutional and statutory authority.

39. The present controversy is urgent, and in no way prospective or theoretical.

40. The Governor intends to call additional special sessions in the near future to address significant issues facing the State, including issues pertaining to the Illinois transportation systems which impact more than two million public commuters per day.

41. A declaratory judgment that Madigan is obligated to convene the Illinois House of Representatives at the date and time specified by the Governor in a proclamation calling to convene the General Assembly for a special session, made pursuant to article IV, section 5(b) of the Illinois Constitution (Ill. Const. 1970, art. IV, §5(b)) and the Illinois Special Session Act (25 ILCS 15/1 *et seq.* (West 2007)), would terminate the uncertainty or controversy giving rise to this proceeding.

WHEREFORE, Plaintiff, Governor Rod R. Blagojevich, prays that the Court:

(a) Enter a declaratory judgment that Defendant, Michael J. Madigan, Speaker of the Illinois House of Representatives for the 95th General Assembly, does not have the legal authority to disregard the date and time set by the Governor for convening a special session of the General Assembly, pursuant to the Governor's powers under article IV, section 5 (b) of the Illinois Constitution, and the Illinois Special Session Act, 25 ILCS 15/3;

- (b) Enter a declaratory judgment that Defendant, Michael J. Madigan, Speaker of the Illinois House of Representatives for the 95th General Assembly, must convene the Illinois House of Representatives at the date and time specified by the Governor in a proclamation calling the General Assembly for a special session, made pursuant to article IV, section 5 of the Illinois Constitution and the Illinois Special Session Act, 25 ILCS 15/1; and
- (c) Award the Governor any such other and further relief as the Court deems just.

COUNT II
DECLARATORY JUDGEMENT: QUORUM

A. THE ILLINOIS CONSTITUTION REQUIRES THAT A QUORUM OF THE HOUSE CONVENE, WHEN A PROCLAMATION HAS BEEN ISSUED TO CONVENE THE BODY IN SPECIAL SESSION.

42. The Governor incorporates by reference paragraphs 1-41 and realleges the same as if fully restated herein.

43. Article IV, section 5(b) clearly contemplates that, when a special session has been proclaimed by the Governor, the General Assembly should "convene" as a body for the purpose of "transact[ing]" legislative "business." Ill. Const. art. IV, sec. 5(b).

44. In order to convene as a legislative body able to transact business, the Illinois House of Representatives must have a *quorum* of its members present. No question can be decided and no official action taken by the House in the absence of a quorum, except to order a call or to adjourn. In absence of quorum, any substantive business transacted by legislative body is null and void.

45. Thus, implicit in the constitutional mandate that the General Assembly "convene" to transact the business for which it was called into special session, is the requirement that each

house *convene a quorum* of its members so that the legislative business for which a special session was proclaimed can be transacted.

46. A gathering of several individual representatives is not tantamount to convening the Illinois House of Representatives as a legislative body.

47. The term "convene" as used in article IV of the Illinois Constitution has been interpreted by the Illinois Supreme Court to require the assembling of a quorum of members. *Rock v. Thompson*, 85 Ill.2d 410, 427 (1981).

48. Without a quorum, the House cannot be deemed to have *convened* into special session, as required under article IV, section 5(b) of the Illinois Constitution.

49. It is the duty of the Speaker of the Illinois House of Representatives to "enforce all constitutional provisions, statutes, rules and regulations applicable to the House," including convening the House into special session when a special session proclamation has been issued. See House Rule 4(c)(15).

50. House Rule 51 (i) provides that "[n]o member may be absent from a session of the House unless he or she has leave or is sick or his or her absence is unavoidable."

51. House Rule 32 (a) provides that "[t]he attendance of absent members may also be compelled by order of the Speaker."

52. Madigan has both the duty and the ability to convene the House as a legislative body, with a quorum present, when a proclamation has been issued to convene the General Assembly into special session pursuant to article IV, sec. 5(b) of the Illinois Constitution.

B. SPEAKER MADIGAN'S FAILURE TO CONVENE A QUORUM.

53. On July 27, 2007, at a time when the State was facing an impending government shutdown due to the General Assembly's failure to act upon a fiscal 2008 budget, the Governor

proclaimed a special session of the General Assembly for July 28, 2007, at 9:00 a.m., to act upon the passage of a State budget. (Exhibit E)

54. On July 28, 2007, Speaker Madigan excused 62 of the 118 members of the House from attending the special session called by the Governor, therefore making it impossible for a quorum to convene. Without a quorum, the House was unable to take action on the passage of a State budget. It transacted no business and simply adjourned. (Exhibit F)

55. Based upon information and belief, there is nothing to suggest that all the 62 House members Madigan excused from attending the July 28, 2007 special session were "sick" or that their absence was otherwise "unavoidable." See House Rule 51 (i).

56. On Friday, August 3, 2007, the State, then being three days past the expiration of a temporary one-month budget, was nearing even closer to a government shutdown. Accordingly, the Governor issued two proclamations calling the General Assembly into special session on Saturday, August 4, 2007, and Sunday, August 5, 2007, to act upon the passage of a budget. (Exhibits G and H)

57. On August 4, 2007, Speaker Madigan again prevented the Governor's constitutionally proclaimed special session from occurring by excusing 64 of the 118 members of the House. With only 54 members present, there was no quorum present and the House was again unable to convene as a body capable of conducting business. No business was conducted, and minutes later, Speaker Madigan adjourned the House. (Exhibit I)

58. Based upon information and belief, there is nothing to suggest that all 64 House members Madigan excused from attending the August 4, 2007 special session were "sick" or that their absence was otherwise "unavoidable." See House Rule 51 (i).

59. Madigan repeated the same unlawful conduct on August 5, 2007 by excusing 71 House members from attending the special session proclaimed for that day. (Exhibit J)

60. Based upon information and belief, there is nothing to suggest that all 71 House members Madigan excused from attending the August 5, 2007 special session were "sick" or that their absence was otherwise "unavoidable." See House Rule 51 (i).

61. On Friday, August 10, 2007, the Governor issued a proclamations calling the General Assembly into special sessions on Saturday, August 11, 2007, and Sunday, August 12, 2007, "in duly constituted *quorums* capable of conducting business" to consider, *inter alia*, a second temporary, one-month budget. (Exhibit K and L)(emphasis added).

62. The August 11 and August 12 proclamations, specifically requiring the convening of a quorum, were issued pursuant to the Governor's constitutional authority under article IV, sec. 5(b) of the Illinois Constitution, and the specific grant of authority under the Special Session Act. Accordingly, these proclamations, requiring the convening of a quorum, had the force and effect of law.

63. Shortly after Madigan was apprised of the Governor's August 11 and August 12 proclamations, and while the House was still conducting legislative business, Speaker Madigan declared to all House Representatives present:

The governor has already issued proclamations calling for special sessions for tomorrow and Sunday [to take up a one-month budget]. We've since sent the governor a twelve-month budget. We've done our job... Given what we've done, I don't think there's any need for consideration of a 30-day budget.

Gary Hannig, who lives locally, will be here at the appointed time to convene the special sessions. *** My advice to all members would be: Don't come to Springfield. We've done our job. There's no need to work on a 30-day budget. Again, don't come to Springfield until you get notice from my office or from Rep. Cross' office.

(See Exhibit B ¶¶ 13, 14)

64. On August 11, 2007, only 14 members of the House were present for the special session proclaimed. The overwhelming majority of the members, following their leader's directives, did not appear. With only 14 present, there was not a quorum, and the House was unable to conduct any legislative business. (Exhibit M)

65. On that same day, the Governor issued a proclamation calling the General Assembly into a special session on August 12, 2007, at 5:15 p.m., "in duly constituted quorums capable of conducting business" to consider funding for the Regional Transportation Authority, the Chicago Transit Authority, and downstate public transportation. (Exhibit N)

66. Only 6 members of the House were present for the special session proclaimed for August 12, 2007. The overwhelming majority of the members, following their leader's directives, did not appear. With only 6 present, there was no quorum and the House was unable to conduct any legislative business. (Exhibit O)

67. On August 13, 2007, the Governor issued a proclamation calling the General Assembly into a special session on August 13, 2007, at 2:15 p.m., to consider funding for the Chicago Transit Authority ("CTA"). (Exhibit P)

68. Without funding appropriated by the General Assembly, the CTA has announced that in September, it will be forced to layoff approximately 600 bus operators, mechanics and transportation managers, and will be compelled to implement significant fare increases and eliminate numerous bus routes to cut costs.

69. Despite the urgency of transportation funding, per Madigan's clear instructions, almost none of the House members appeared for the August 13 special session to address funding for the CTA. Only 6 members of the House were present, and without a quorum, the House was unable to conduct any legislative business to address this critical issue. (Exhibit Q)

70. Speaker Madigan's public statement of August 10, 2007, and his past repeated failure to comply with constitutionally issued proclamations, signify his intent to continue to disregard the Governor's proclamations in violation of the Constitution and the laws of Illinois.

71. There exists an actual controversy between the Governor and the Speaker regarding the Speaker's obligation to convene the House, as a legislative body able to conduct business, when a proclamation has been issued to convene into special session.

72. The Governor has a tangible legal interest in his constitutional and statutory authority to convene a quorum of the members of the House in special session of the General Assembly to act upon any subject that, individually, he deems of importance to the health, safety, and welfare of the People of Illinois.

73. A declaration of the Speaker's obligation to convene a quorum of the members of the House pursuant to the Governor's proclamation is critical to the protection of the rights of the people of the State of Illinois.

74. The Speaker has expressed his intent to not comply with lawfully issued proclamations of the Governor calling the General Assembly into special session "in duly constituted quorums capable of conducting business."

75. The present controversy is urgent, and in no way prospective or theoretical.

76. A declaratory judgment that the Speaker is obligated to convene the General Assembly in a quorum capable of conducting legislative business pursuant to the call of the Governor under article IV, section 5(b) of the Illinois Constitution (Ill. Const. 1970, art. IV, §5(b)) and the Illinois Special Session Act (25 ILCS 15/1 *et seq.* (West 2007)), would terminate the uncertainty or controversy giving rise to this proceeding.

WHEREFORE, Plaintiff, Governor Rod R. Blagojevich, prays that the Court:

- (a) Enter a judgment declaring that Defendant, Michael J. Madigan, Speaker of the Illinois House of Representatives for the 95th General Assembly, must comply with the directives of a lawful proclamation issued by the Governor pursuant to article IV, section 5(b) of the Illinois Constitution (Ill. Const 1970, art. IV, §5(b)) and the Illinois Special Session Act (25 ILCS 15/3 (West 2007)), to convene a quorum of the members of the House in special session, such that the House is capable of conducting the legislative business set forth by proclamation; and
- (b) Award the Governor any such other and further relief as the Court deems just.

COUNT III
DECLARATORY RELIEF: EXCUSING MEMBERS

77. The Governor incorporates by reference paragraphs 1-76 and realleges the same as if fully restated herein.

78. An actual controversy exists between the Governor and the Speaker regarding whether the Speaker can contravene the Governor's constitutional special session proclamation directing the House to convene into a "duly constituted quorum[] capable of conducting business" by excusing the absence of a sufficient number of House members such that it is impossible to convene the House, as a legislative body, with a quorum present capable of conducting legislative business.

79. The Governor has a tangible legal interest in his constitutional and statutory authority to convene a quorum of the members of the House in special session of the General Assembly to act upon any subject that, individually, he deems of importance to the health, safety, and welfare of the People of Illinois.

80. A declaration of the Speaker's lack of authority to excuse a sufficient number of members of the House such that it is impossible for the House to convene as a legislative body

capable of conducting business when a special session proclamation has been issued is critical to the protection of the rights of the people of the State of Illinois.

81. The Speaker has expressed his intent to not comply with lawfully issued proclamations of the Governor calling the General Assembly into special session "in duly constituted quorums capable of conducting business."

82. The present controversy is urgent, and in no way prospective or theoretical.

83. A declaratory judgment that the Speaker is without the constitutional or statutory authority to excuse a sufficient number of members of the House such that it is impossible for the House to convene as a legislative body capable of conducting business pursuant to the call of the Governor under article IV, section 5(b) of the Illinois Constitution (Ill. Const. 1970, art. IV, §5(b)) and the Illinois Special Session Act (25 ILCS 15/1 *et seq.* (West 2007)), would terminate the uncertainty or controversy giving rise to this proceeding.

WHEREFORE, Plaintiff, Governor Rod R. Blagojevich, prays that the Court:

- (a) Enter a declaratory judgment that Defendant, Michael J. Madigan, Speaker of the Illinois House of Representatives for the 95th General Assembly, is without the authority to contravene a special session proclamation issued by the Governor pursuant to article IV, section 5(b) of the Illinois Constitution (Ill. Const 1970, art. IV, §5(b)) and the Illinois Special Session Act (25 ILCS 15/3 (West 2007)), by excusing a sufficient number of members of the House such that it is impossible for the House to convene as a legislative body, with a quorum capable of conducting legislative business; and
- (b) Award the Governor any such other and further relief as the Court deems just.

COUNT IV
WRIT OF MANDAMUS

84. The Governor incorporates by reference paragraphs 1-83 and realleges the same as if fully restated herein.

85. The Speaker's powers and duties with respect to convening special sessions of the Illinois House of Representatives are defined and circumscribed by article IV, section 5(b) of the Illinois Constitution and the Illinois Special Session Act, 25 ILCS 15/3.

86. The Speaker's duty to "enforce all constitutional provisions, statutes, rules and regulations applicable to the House" is further defined by House Rule 4(c)(15).

87. The Speaker's powers and duties are ministerial, and he is without discretion to contravene the Governor's proclamation for a special session of the General Assembly, issued pursuant to article IV, section 5 of the Illinois Constitution and the Illinois Special Session Act.

88. The Speaker lacks any legislative or constitutional authority to unilaterally disregard the Governor's proclamation for a special session of the General Assembly pursuant to article IV, section 5 of the Illinois Constitution and the Illinois Special Session Act.

90. The Speaker has a clear duty imposed by law to convene a quorum of the Illinois House of Representatives at the date and time specified by the Governor when the Governor issues a proclamation to convene the General Assembly into special session in duly constituted quorums capable of conducting business, at a particular date and time.

91. The Governor has a clear and undeniable right to exercise his authority to convene a special session of the legislative branch of government to act upon any subject which, individually, he deems of importance for the welfare of the People of Illinois.

92. On August 11, 2007, the Governor issued a proclamation calling the General Assembly into a special session on August 12, 2007 at 5:15 p.m., "in duly constituted quorums

capable of conducting business to consider funding for the Regional Transportation Authority, the Chicago Transit Authority, and downstate public transportation." (Exhibit N)

93. On August 13, 2007, the Governor issued a proclamation calling the General Assembly into a special session on August 13, 2007 at 2:15 p.m. to consider funding for the CTA. (Exhibit O)

94. The Governor deems funding for the Regional Transportation Authority, the CTA, and downstate public transportation to be sufficiently important to the welfare of the People of Illinois to warrant convening the General Assembly in special session.

95. The Governor's proclamations to address the State's transportation system, issued pursuant to his explicit constitutional and statutory authority, has the force and effect of law.

96. Speaker Madigan has failed to comply with the Governor's outstanding proclamation to convene a quorum of the House members to consider urgent transportation issues. These special sessions proclaimed by the Governor have not yet been properly convened.

97. There is an actual controversy between the parties concerning their respective interests because the Governor's interest in funding for the Regional Transportation Authority, the CTA, and downstate public transportation is both present and urgent, and in no way prospective or theoretical.


98. The Governor has made a definite assertion of his constitutional and statutory right to convene the General Assembly in special session for the purpose of funding for the Regional Transportation Authority, the CTA, and downstate public transportation.

WHEREFORE, Plaintiff, Governor Rod R. Blagojevich ("the Governor"), prays that the Court:

- (a) Issue a writ of mandamus ordering the Speaker to convene a quorum of the House into special session at the date and time specified by the Governor by proclamation issued pursuant to article IV, section 5 of the Illinois Constitution and the Illinois Special Session Act, 25 ILCS 15/1; and
- (b) Award the Governor such other and further relief as the Court deems just.

Date: August 22, 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
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