

**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.)

2007MR00050

No.

FILED

SEP 11 2007 CIV.-3

Bethany P. ... Clerk of the Circuit Court

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S
COMPLAINT FOR MANDAMUS**

Plaintiff, Governor Rod R. Blagojevich (“the Governor”), by his undersigned attorneys, pursuant to 735 ILCS 5/14-101, respectfully submits this memorandum in support of his complaint for a writ of *mandamus* against Mark Mahoney, the Clerk of the Illinois House of Representatives for the 95th General Assembly (the “Clerk”).

INTRODUCTION

The Governor, as the constitutional officer conferred with supreme executive power responsible for the faithful execution of the laws of the State of Illinois, brings this action to enforce the Illinois Constitution and protect the rule of law. The recent actions of the Clerk of the House of Representatives directly contravene the express language of the Illinois Constitution and prevent the Governor from faithfully exercising his constitutionally mandated obligations. In fact, Article IV Section 9 of the Illinois Constitution was drafted by its authors to specifically prevent the type of chicanery undertaken by the Clerk of the House of Representatives. The constitutionally mandated method for the veto of bills must be followed.

Without prompt Court intervention to enforce the clear requirements of the Illinois Constitution, the strict fifteen-day limitation imposed by the Constitution for legislators to retain, review, and act on veto messages will be effectively voided and a significant issue of constitutional interpretation will unnecessarily arise. Finally, the entire budget of the State of Illinois will be called into question and the effective operation of State Government hindered.

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).

The strict time limits contained in Article IV, Section 9 of the Illinois Constitution are 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. The purpose is 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.

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. Moreover, the Governor's constitutional obligation 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.

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 and House Rule 77.

BACKGROUND

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. (Complt. at ¶ 20). 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. *Id.* at ¶ 21. 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 attached to the Complaint as Exhibit A.

On September 4, 2007, the House of Representatives convened in regular session. (Complt. at ¶ 23). On that same day, the Clerk failed to place the Governor's objections to House Bill 3866 on the Journal in accordance with Article IV, Section 9(c) of the Illinois Constitution and House Rule 77. *Id.* at ¶ 24.

On September 4, 2007, Representative Jay 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. (Complt. at ¶ 28). 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.” *Id.* 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. *Id.*

The Chair, Representative Art Turner, informed Representative Hoffman that his point of order would be taken under advisement. (Complt. at ¶ 29). Representative Hoffman never received a response to his point of order. *Id.* at ¶ 30.

On information and belief, having been shown Article IV, Section 9(c) which provides that the House “shall immediately” enter the Governor’s objections into the Journal, Steve Brown, a spokesman for the Speaker, replied that the term “[i]mmediate is in the eye of the beholder.” (Complt. at ¶ 27).

Defendant, Mark Mahoney, is the Clerk of the Illinois House of Representatives for the 95th General Assembly. (Complt. at ¶ 7). Mahoney was elected by the Illinois House of Representatives for the 95th General Assembly. *Id.*

ARGUMENT

I. THE GOVERNOR MEETS ALL OF THE REQUIREMENTS FOR THE ISSUANCE OF A WRIT OF MANDAMUS

Mandamus is a remedy used “to compel a public official to perform a ministerial duty.” *People ex. rel. Madigan v. Snyder*, 208 Ill.2d 457, 464-65, 804 N.E.2d 546 (2004). A plaintiff is entitled to a writ of *mandamus* if the plaintiff establishes a clear right to relief, a clear duty of the public official to act and a clear authority in the public official to comply with the writ. *Id.* As

described below, the Governor has a clear right to relief. The Clerk's entry of the Governor's objections to House Bill 3866 upon the Journal of the House of Representatives is a ministerial duty that the Clerk is required to perform in accordance with Article IV, Section 9(c) of the Illinois Constitution and House Rule 77.

A. The Governor Has a Clear Right or Interest in Need of Protection

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)

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).

During the 1970 Constitutional Convention, the 1870 Constitution was amended to, among other things, require that the Governor's objections "shall immediately" be entered on the Journal and commence the 15-day time limit for that chamber to consider an override upon that entry. The purpose of the amendment was to avoid "the undesirability of a bill remaining indefinitely in limbo after the Governor has vetoed it" and 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. 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.” *Id.* at 395. The strict time limits also 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.” *Id.*

By refusing to enter the Governor’s objections upon the Journal, the Clerk is ignoring the strict time limits set forth in Article IV, Section 9(c) of the Illinois Constitution. The Clerk also is attempting to prevent the bill from becoming law and reaching finality on the budget. The strict time limits were incorporated to serve the public interest, as well as the needs of the legislators and Governor. *Id.* The Governor, therefore, 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 in a timely manner. 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.

B. The Clerk has a Clear Duty to Act and the Authority to Act

Pursuant to Article IV, Section 9(c) of the Illinois Constitution, “[t]he house to which a bill is returned shall immediately enter the Governor’s objections upon its journal.” Ill. Const. 1970, art. IV, §9(c). 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, Sec. 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, 95th General Assembly, Illinois House of Representatives.

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. *See supra* at 3. On September 4, 2007, the House of Representatives convened in regular session. *Id.* The House had a constitutional duty to place the Governor's objections to House Bill 3866 on the Journal on September 4, 2007. Under the rules adopted by the Illinois House of Representatives, the Clerk was under a 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.

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

C. Failure to Grant Mandamus Will Have Severe Consequences

The Governor has the responsibility to enforce the Constitution and laws of the State of Illinois. If this Honorable Court fails to grant timely relief, the Clerk will be allowed to violate the Illinois Constitution and issues regarding the responsibilities and duties of the executive and legislative branches of government will arise. Specifically, on September 19, 2007, a constitutional issue will arise as to whether the Governor's veto of House Bill 3866 is in effect. Thus, without immediate *mandamus* relief, the Clerk's unconstitutional actions may prevent the House of Representatives from reviewing and acting on a veto message. As a result, items of appropriation reduced and vetoed in accordance with Article IV, Section 9(d) of the Illinois Constitution in the budget of the State of Illinois will be called into question.

Therefore, this Court can and should direct the Clerk to fulfill his constitutionally prescribed duties and enter the Governor's objections to House Bill 3866 on the Journal *nunc pro tunc* to September 4, 2007.

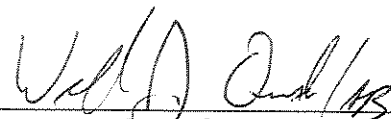
CONCLUSION

For all of the foregoing reasons, the Plaintiff, Governor Rod R. Blagojevich ("the Governor"), respectfully requests that the Court enter a writ of *mandamus* ordering the Defendant, Mark Mahoney (the "Clerk"), the Clerk of the Illinois House of Representatives for the 95th General Assembly, to enter the Governor's objections to House Bill 3866 on the Journal *nunc pro tunc* to September 4, 2007 in accordance with Article IV, Section 9(c) of the Illinois Constitution and House Rule 77.

Date: September 11, 2007

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

By: _____


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