

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

People of the State of Illinois ex rel DOI v. Next Level Health Partners, Inc.

20 CH 4431

Jacqueline Stevens, *pro se*
Applicant/Intervenor

PETITION TO FILE INTERVENOR MOTION, PURSUANT TO 735 ILCS 5/2-408

Pursuant to rights afforded by the constitutions of the United States and Illinois, and 735 ILCS 5/2-408 this is a petition to file a motion to intervene in the matter of *People of the State of Illinois ex rel DOI v. NextLevel Health Partners, Inc.* the purpose of which is to make available to Jacqueline Stevens and the public all court records filed in the above captioned case and declare **215 ILCS 5/188.1 (b) (4,5)** unconstitutional and unenforceable, and further that all proceedings initiated by the Illinois Department of Insurance be subject to **705 ILCS 105/16**.

Parties

1. Jacqueline Stevens ("Stevens") is a political science professor at Northwestern University. She publishes scholarly articles, and essays, and articles of investigative journalism. Her books have been published by Princeton University Press and Columbia University Press. Her scholarship has been published in top tier academic and law journals, including the *American Political Science Review*,

Political Theory, and *Georgetown Immigration Law Journal*. Her essays have been published widely, including in the *New York Times*, *Guardian*, and *American Prospect*.

2. On information and belief the State of Illinois is represented by the Law Division of the Illinois Attorney General office, on behalf of litigation pursued by the Illinois Department of Insurance.

3. On information and belief, Next Level Health Partners was a Medicaid managed care firm headquartered in Cook County and ceased operations on June 30, 2020.

Grounds for Petition to Intervene

4. Stevens seeks permission to intervene in the matter of *People of the State of Illinois ex rel DOI v. Next Level Health Partners, Inc.* 20 CH 4431 on the grounds that the representation of her interests and those of the Illinois public are not adequate in the current proceedings and under the statute challenged. See 735 ILCS 5/2-408 (a) (2)).

5. At present, the applicant is bound by current orders closing proceedings to her. See 735 ILCS 5/2-408 (a) (2)).

6. In the current proceeding Stevens, as applicant to file an intervenor motion, has a claim to access records of the case that present a common question of law subject to the main action of the proceedings with respect to the prerogative of the parties or court to close proceedings under **215 ILCS 5/188.1 (b) (4,5)** ("the Statute"). See 735 ILCS 5/2-408 (b)(2).

7. Applicant also seeks permission to file an intervenor motion on the grounds that the case involves the constitutionality of a statute "affecting the public interest." See 735 ILCS 5/2-408 (b)(2)).

8. As laid forth in the proposed motion and below, the sealing of records under 215 ILCS 5/188.1 (b) (4,5), violates Stevens' rights under common law, the constitutions of the United States and Illinois, and Illinois law. The only remedy is the court's review and granting of Stevens' intervenor motion, based on the reasons set forth as follows.

9. The Statute's sweeping language of records removed from public oversight is on its face in violation of the First Amendment. Instead of statutory provisions or exercises of judicial discretion for

closing specific records or orders, the Statute obligates courts to hold secret ("private") hearings and keep secret from the public all records. The Statute also deprives the public any standing to challenge the secret hearings or sealed records and orders. The Statute specifically limits standing to present arguments to the judge about releasing records only to "the Director and the company."

10. The Statute's sweeping prohibition on releasing judicial records also violates Stevens' Fifth Amendment right to due process, insofar as she has no information specific to the basis for the hearing being closed and there exists no procedure under the Statute to present her arguments to the court.

11. The secrecy allowed by the Statute for insurance firm conservation proceedings harms the public and fails to protect any legitimate interest. Instead it demonstrably provides individuals whose careers are in the same profit-driven industry -- one that relies in this case in particular on public, Medicaid funds -- to make multi-million dollar deals with no public oversight, contemporaneous or otherwise, and no accountability. It impairs democracy by shielding from public knowledge misconduct by politicians and officials receiving payments from revenues in the Illinois insurance industry.¹

Common Law

12. The Supreme Court in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978) noted the long history of precedents affording a "general right to inspect and copy public records and documents, including judicial records and documents..." (at 597, citations omitted).

13. The Court noted that, unlike English case law, "American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen's desire to keep a watchful eye on the workings of public agencies, see, *e. g.*, *State ex rel. Colscott v. King*, 154 Ind. 621, 621-627, 57 N. E. 535, 536-538 (1900); *State ex rel. Ferry*

¹ From January 1 - August 24, 2021, Illinois spent \$19.72 billion on managed care organizations. ILL. STATE COMPTROLLER, <https://www.illinoiscomptroller.gov/Office/MCO/> (last updated August 24, 2021).

v. *Williams*, 41 N. J. L. 332, 336-339 (1879), and in a newspaper publisher's intention to publish information concerning the operation of government, see, e. g., *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 677, 137 N. W. 2d 470, 472 (1965), modified on other grounds, 28 Wis. 2d 685a, 139 N. W. 2d 241 (1966)" (Id. at 598). The Statute clearly violates the protocols and purposes the Court has attached to the First Amendment.

14. The Court in *Nixon* stated there is a "presumption—however gauged—in favor of public access to judicial records." Id. at 609. The Statute clearly violates this presumption.

15. Illinois courts have relied on common law to infer the public's right of access to judicial proceedings entails as well access to case records filed with the courts. (In *re Marriage of Johnson*, 1068, 1071-72 and *A.P. v. M.E.E.*, 354 Ill. App. 3d 989, 1001 (1st Dist. 2004).) And see *Skolnick v. Alzheimer & Gray*, 730 NE 2d 4 Ill (2000), (quoting and affirming *Nixon* at 15). The Illinois Supreme Court has held that "The common law right of access to court records is essential to the proper functioning of a democracy (*Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 202 (Minn.1986)), in that citizens rely on information about our judicial system in order to form an educated and knowledgeable opinion of its functioning (*Minneapolis Star & Tribune Co.*, 392 N.W.2d at 202). Too, the availability of court files for public scrutiny is essential to the public's right to "monitor the functioning of our courts, thereby insuring quality, honesty and respect for our legal system." *In re Continental Illinois Securities Litigation*, 732 F.2d 1302, 1308 (7th Cir.1984); see also *Newell v. Field Enterprises, Inc.*, 91 Ill.App.3d 735, 748, 47 Ill.Dec. 429, 415 N.E.2d 434 (1980) [quotation omitted]."

U.S. Constitutional Law

16. Illinois courts have enforced the public's right of access to judicial records under the First Amendment in cases such as *Nixon v. Warner* (at 15), "The file of a court case is a public record to which the people and the press have a right of access." *re Marriage of Johnson*, 232 Ill.App.3d 1068, 1074.

17. The Court has held that the standard for presumptive access is whether proceedings are typically those to which the public has access ("we have considered whether the place and process have historically been open to the press and general public" (*Press-Enterprise Co. v. Superior Court of Cal., County of Riverside*, 478 US 1, 4). The records to which Stevens has a right to review, including the complaint, motions and orders, are typically those available to the public in court proceedings, including those involving financial and otherwise private information such as that produced in bankruptcy proceedings that allow for documents to be filed under seal but do not allow for much less obligate secret hearings, motions, orders, or dockets.²

18. Having established that under common law and the First Amendment, Stevens has a right to records in a judicial proceeding, the court or government may withhold from her review documents only on the basis of specific factual findings that the government has a compelling interest in hiding the entire record. ("Once documents are subject to the right of access, only a compelling reason, accompanied by specific factual findings, can justify keeping them from public view." *Johnson*, 232 ILL. App. 3d at 1075.)

19. Orders closing proceedings solely based on deference to one or both parties, as the Statute obligates, is not permissible. ("Courts cannot honor such requests without seriously undermining the tradition of an open judicial system.") *A.P.*, 354 Ill. App 3d at 995.

Statutory Right

20. The public's right to access court dockets and proceedings is specified in Illinois state law: "All records, dockets and books required by law to be kept by such clerks shall be deemed public records, and shall at all times be open to inspection without fee or reward..." 705 ILCS 105/16(6). This statute exempts from its general procedures only records associated with child support payments, but does not

² "Except as provided in subsections (b) and (c) and subject to section 112, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge." 11 U.S.C. § 107(a).

exempt any other dockets This statute is constitutional and implies the repeal of protocols in the Statute that are prima facie and in fact unconstitutional.

Illinois Constitution

21. Denying Stevens access to the records she seeks violates her rights under the Illinois Constitution, Article I, Section 1, "...governments are instituted among men, deriving their just powers from the consent of the governed." Stevens cannot provide consent to power exercised in secret, as the statute authorizes to the DOI.

22. Denying Stevens access to the records she seeks violates her due process rights under the Illinois Constitution, Article I, Section 1. The statute provides Stevens no process for reviewing or even being aware of orders sealing government records.

23. An order by the legislature to close all proceedings infringes on judicial prerogatives and is in violation of the Illinois Constitution Article II, Section 1. ("No branch shall exercise powers properly belonging to another.")

Fourteenth Amendment, Section 1

24. The Fourteenth Amendment holds that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

25. In violation of the Stevens' due process right under the Fourteenth Amendment, the record in this case indicates a long series of communications with inconsistent and unclear outcomes, no underlying order or rationale on which to rely for this motion, and only an ad hoc, discretionary statement from a communications officers proffering the law on which the judge who ordered the record sealed and sequestered relied.

26. Further, the Statute allows officials who have mismanaged their company and former officials of the industry they are regulating to have access to judicial records denied to Stevens and the general public, thus depriving her of the equal protection of the law, in violation of the Fourteenth Amendment.

27. For the reasons set forth above and in the accompanying motion to vacate orders sealing records pursuant to 215 ILCS 5/188.1 (b) (4,5) and declare unconstitutional 215 ILCS 5/188.1 (b) (4,5), Stevens respectfully requests permission to enter the case as an intervenor.

Jacqueline Stevens/s/

By: Jacqueline Stevens

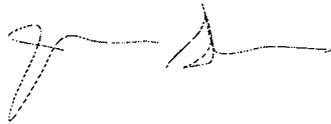
Pro Se

August 27, 2021

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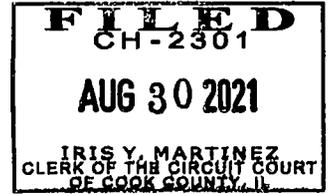
VERIFICATION

I, the undersigned, swear under penalty of perjury, as provided by law under Section I-109 of the Illinois Rule of Civil Procedure, that the statements contained in this motion are true and correct to the best of my knowledge and belief, except where I lack sufficient knowledge to form a belief of the truth of the allegations, where so stated.

A handwritten signature in black ink, appearing to read 'J. Stevens', with a long horizontal line extending to the right.

Jacqueline Stevens

Handwritten scribble or signature in the bottom right corner.



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

People of the State of Illinois ex rel DOI v. NextLevel Health Partners, Inc.

20 CH 4431

Jacqueline Stevens, *pro se*
Intervenor

INTERVENOR MOTION TO VACATE ORDER IMPOUNDING COURT RECORDS AND
DECLARE UNCONSTITUTIONAL 215 ILCS 5/188.1 (b) (4,5).

Pursuant to rights afforded by the constitutions of the United States and Illinois, this is a motion to: (1) vacate an order impounding, or sealing and sequestering, the records in *People of the State of Illinois ex rel DOI v. NextLevel Health Partners, Inc.*; (2) make available to Jacqueline Stevens and the public all court records filed in the above captioned case; and (3) declare **215 ILCS 5/188.1 (b) (4,5)** unconstitutional and unenforceable, and further that all proceedings initiated by the Illinois Department of Insurance be subject to **705 ILCS 105/16**.

Parties

1. Jacqueline Stevens ("Stevens") is a political science professor at Northwestern University. She publishes scholarly articles, and essays, and articles of investigative journalism. Her books have been published by Princeton University Press and Columbia University Press. Her scholarship has been published in top tier academic and law journals, including the *American Political Science Review*, *Political Theory*, and *Georgetown Immigration Law Journal*. Her

2

essays have been published widely, including in the *New York Times*, *Guardian*, and *American Prospect*.

2. On information and belief the State of Illinois is represented by the Law Division of the Illinois Attorney General office, on behalf of litigation pursued by the Illinois Department of Insurance.

3. On information and belief, NextLevel Health Partners was a Medicaid managed care firm headquartered in Cook County and ceased operations on June 30, 2020.

Facts

4. On information and belief, the Legal Division of the Illinois Attorney General office filed its complaint against NextLevel Health Partners on this matter sometime in late May or early June, 2020.

5. When Stevens attempted to locate the complaint and other documents filed with the court, she could not locate the case on any Cook County docket.

6. On July 12, 2021, she filed a request under the Freedom of Information Act to obtain a copy of the Complaint from the office of the Illinois Attorney General.

7. On August 10, 2021, an official responding to this request informed Stevens that the General Law Division did have records responsive to her request but was unable to release them due to a "court order."

8. At some point during her search Stevens through persistence and luck acquired a docket number for the case from a non-public source in a manner that is not generally available to her or anyone else for proceedings under the portions of the statute she is challenging.

3

9. On August 12 Stevens called the Cook County Chancery Division in order to obtain information on records about the status of the case.

10. The clerk informed her that his interface indicated that this case was "impounded," and he was unable to locate the name of the judge presiding over the case and would call her back.

11. The clerk called back and informed Stevens of the following:

(1) The case had been ordered closed by Judge Sanjay Taylor.

(2) The case was on the docket of "Calendar 9," and that cases might acquire new judges but would persist on the same docket.

(3) The clerk told Stevens that the case was under the control of Judge Cecelia Horan, whom he said was handling this calendar. He gave Stevens the email address for her to inquire of Judge Horan's assistant.

(4) About 15 minutes later, the same clerk called and advised that the information above was incorrect and the case was on the docket of Judge Pamela Mclean Meyerson, for Calendar 11. Stevens was then informed of the email address for Judge Meyerson's clerk.

12. On Monday, August 15, Stevens sent an email to ccc.chancerycalendar11@cookcountyil.gov. The email requested the following :"(1) A copy of the Complaint. (2) A copy of any motions associated with prohibiting public access to the record of proceedings. I would like to know which party moved for closing the docket and the reason for this. (3) A copy of the order for the docket to be impounded. (4) Cook County Chancery Court information on the difference between records being 'sealed' versus 'impounded.'"

13. On Tuesday, August 16, she received an email message informing her that in order to obtain these records, she would need to file an intervenor motion. No information was provided as to the nature of the proceeding nor the legal basis for closing the proceeding.

14. Stevens replied and requested an explanation of the difference between a docket being "sealed" versus it being "impounded," a question she also had asked in her Monday email.

15. She received no reply.

16. On Wednesday, August 18, 2021, Stevens received an unsolicited e-mail message from Mary Wisniewski, Communications Director with the Office of the Chief Judge ("Wisniewski"), stating in part: "I was sent me [sic] your request regarding the Next Level case. We are unable to share the contents of the file with you because it has been sealed and sequestered. If you have a request of Judge Meyerson, you will need to request intervention and bring a motion."

17. Stevens replied, requesting a definition of "sequestered" in the context of a record being "sealed." Wisniewski replied promptly: "The order to seal was made according to 215 ILCS 5/188.1 (b) (5), if you need for your motion. I can't give legal advice but can refer you to the statute."

18. Wisniewski did not explain why she had not provided this information in her first e-mail to Stevens, nor why no one prior to Wisniewski had informed Stevens of the legal basis for the order she was required to challenge pursuant to her efforts to assert her rights under the First and Fifth amendments of the United States constitution, as well as under Illinois common law, constitution, and state law.

19. Stevens on Thursday, August 26, 2021 had confirmed by two Chancery clerks with whom she had been on contact since Tuesday that it was impossible for Stevens to upload through the

E-file system any motions tied to a "restricted" case, and that the only person with the authority to to put into the docket her petition for a motion to intervene was the manager, who had since Tuesday afternoon been unavailable. She was further informed that there was a fee of \$137 to file, and that even if the petition and motion were physically in the Chancery office, the clerks did not have the authority to add her intervenor petition and motion to the case docket so it could be reviewed by Judge Meyerson.

20. On information and belief, this case was impounded or remained impounded after it received media coverage through a report by Stephanie Goldberg ("Goldberg") published on June 5, 2020 in *Crains Chicago Business* and republished elsewhere.

21. Goldberg reported as follows: "...Illinois Attorney General Kwame Raoul filed a complaint against NextLevel this week in Cook County Circuit Court. The nature of the complaint isn't clear. Crain's was unable to obtain a copy and Raoul's press office did not respond to numerous calls and emails. A NextLevel representative said she had not seen the complaint."¹

22. NextLevel Health Partners ("NHP" or "NextLevel") is a company whose owners had close personal ties to Illinois and United States government officials, including President Barack Obama.²

23. Prior to closing its doors, NextLevel received Medicaid referrals from the Illinois Department of Healthcare & Family Services incommensurate with its extremely poor service record and reporting violations.³

1 Stephanie Goldberg, "Medicaid managed-care plan NextLevel Health closing," June 5, 2020.

2 Stephanie Goldberg, "Medicaid mystery: State sends lots of people to lowest-rated managed care plan," October 4, 2019, <https://www.chicagobusiness.com/health-care/medicaid-mystery-state-sends-lots-people-lowest-rated-managed-care-plan>

3 "Since 2018, NextLevel has paid \$600,000 in fines, penalties and sanctions for failing to submit complete and comprehensive records of health care services covered by the plan. No other current Illinois Medicaid managed care

24. Immediately prior to campaigning for Congress in 2017, Rep. Lauren Underwood (D-IL) ("Underwood") revolved out of her career in the federal government, which included meetings with health insurance firms, and into a position at NextLevel Health. There she received compensation from NextLevel in 2018 she failed to report in her financial campaign statement, an omission she failed to explain to reporters seeking comment.⁴ Prior to her employment by NextLevel, Underwood was receiving unemployment benefits.⁵

25. Shortly after the 2020 publication of a link to her inaccurate financial disclosure report in *The Intercept*, Underwood submitted an amended 2018 campaign financial disclosure report to the U.S. House of Representatives.⁶ It reflected that in 2018 NextLevel employed Underwood and had paid her \$21,064, for a total income from NextLevel of \$102,313.⁷

26. On information and belief, Underwood was an executive at NextLevel in a time frame during which the firm was fined for operating improperly and has been alleged to have withheld payments to charity hospitals that provide care to low-income populations who are Medicaid recipients.

27. Underwood's position at NextLevel Health in 2017 - 18 was "senior director for strategic and regulatory affairs."⁸ Underwood did not register as an Illinois lobbyist.

plan incurred more fines during that period, except a much larger Blue Cross & Blue Shield of Illinois plan that serves customers throughout the state." *Id.*

4 John Washington and Jacqueline Stevens, "Democratic Representative Pushed to Create a Massive Migrant Health Database That No One Wants," *The Intercept*, January 4, 2020, <https://theintercept.com/2020/01/04/border-patrol-cbp-migrant-health-database/>. ("Health Database No One Wants.")

5 Lauren Underwood Financial Disclosure Report, U.S. House of Representatives, Jan. 13, 2020, reporting on 01/01/2017– 05/1/2018income, Filing ID #10032443.

6 *Id.*

7 Lauren Underwood Financial Disclosure Report, U.S. House of Representatives, May 13, 2018, for 01/01/2017 - 05/01/2018, Filing ID # 10022492.

8 "Healthcare Database No One Wants."

28. St. Anthony's Hospital in 2020 sued the State of Illinois for its failure to enforce the law obligating NextLevel Health to pay St. Anthony Hospital's claims, a complaint dismissed for failure to state a claim (holding the law did not give hospitals a private right of action).⁹

29. On August 25, 2021, Stevens received a letter from a DOI FOIA officer in response to Stevens' request of August 12 for records about "...Lauren Underwood in her work as a member of the Obama administration or otherwise, including but not limited to her work for NextLevel Health." The DOI letter stated it was withholding an undisclosed number of responsive records in their entirety despite Illinois law obligating release of segregable information. Stevens will be appealing.

30. Underwood frequently prefaces statements in Congress and to audiences with the phrase, "As a nurse,..." *The Intercept* reported, "Although Underwood obtained degrees and certificates in nursing and public health, she has never been paid to care for patients."¹⁰

31. On information and belief, voters who cast ballots for Underwood did not know that she was paid to direct strategy and regulatory affairs for a failing corporation accused of taking funds from the federal government and withholding payments to cash-strapped hospitals serving Medicaid patients, but Democratic politicians cultivating corporate donors appreciated Underwood's non-nursing expertise and backed if not encouraged her 2018 candidacy, for which she "raised almost \$5 million — more than twice the funds of the incumbent Republican."¹¹

32. In her first term in Congress, Underwood introduced legislation (H.R. 3525) to create a massive electronic records database under the control of Customs and Border Protection

⁹ *Saint Anthony Hospital v. Eagleson*, 1:20-cv-02561 (N.D. Ill. Apr 27, 2020), Order July 9, 2021.

¹⁰ "Health Database No One Wants."

¹¹ *Id.*

("CBP"), and claimed it would help immigrants. Immigrant rights groups reported they had not requested and even opposed the database.¹²

33. "Asked by *The Intercept* to name a single group that supported her bill, Underwood's staff requested time to consult a colleague, but produced no names and did not respond to a follow-up email."¹³

34. "The day before Underwood pushed her CBP health database bill through the Homeland Security Committee, General Dynamics kicked \$60,000 into the Democratic Congressional Campaign Committee, or DCCC, which is controlled by Democratic Rep. Cheri Bustos of Illinois, a former corporate health care executive and Underwood booster. General Dynamics also paid lobbyists almost \$8 million over the first nine months of 2019. The company disclosed that in the timeframe Underwood was introducing the CBP bill, General Dynamics sought to influence 'funding and issues related to Cyber programs; information systems; telecommunications; technology equipment; infrastructure; support and services; border security technologies; data centers,' indicating CBP among their target customers." *The Intercept* also reported that according to a staffer, Underwood was induced to introduce the bill by a "contractor."¹⁴

35. The bill passed the House but did not in 2020 go out of committee in the Senate.

36. In her second term in Congress, Underwood was appointed to the House Appropriations Committee, a highly coveted position incommensurate with Underwood's seniority, public service, and false statement on a financial disclosure to Congress.

12 *Id*

13 *Id.*

14 *Id.*

37. On July 7, 2021 she claimed credit for a Homeland Security Appropriations Subcommittee mark up of three million dollars for a CBP health information database similar to the bill that was not passed in the Senate.¹⁵

38. Illinois frequently operates as a kleptocracy, i.e., government by thieves. Its politicians have been convicted of violating laws against bribery, fraud, and tax evasion, although some corrupt politicians remain in office.¹⁶ Political scientists at the University of Illinois at Chicago report that "2019 was a highly explosive year, during which some of the most important political corruption in the history of Chicago and Illinois was exposed."¹⁷ According to Austin Berg of Illinois Policy, referencing the report of the UIC researchers, "Illinois is the second-most corrupt state in the nation...And corruption costs the state economy more than \$550 million per year."¹⁸

39. The Illinois Director of the Department of Insurance ("DOI") is Dana Popish Severinghaus. Severinghaus revolved from a private insurance firm into government, then back to the private sector, and then back into state office to regulate the industry of her former employers. The DOI website states that she "advised Allstate and its subsidiaries on legal, regulatory and legislative matters across the Midwest. Before that, she served as Senior Policy Advisor at the State of Illinois in Central Management Services where she oversaw the Bureau of

15 FY2022 Homeland Security and Defense Subcommittee Appropriations Bills,

<https://appropriations.house.gov/events/markups/fy2022-homeland-and-defense-subcommittee-appropriations-bills>

16 "Full List of Convicted Governors," August 17, 2019, Daniel Hautzinger, "A Short History of Corruption in Illinois," August 5, 2020 <https://interactive.wttw.com/playlist/2020/08/05/corruption-illinois>; Anti-Corruption Report #13, February 22, 2021, <https://www.centerforilpolitics.org/articles/governors-convicted-on-greater-federal-corruption-offenses>; "Long list of Illinois politicians convicted for corruption" WBEZ, Dec. 7, 2011, <https://www.wbez.org/stories/long-list-of-illinois-politicians-convicted-for-corruption/86da77fb-c3e4-4d08-adb2-f1c42110afe8>.

17 Dick Simpson, Marco Rosaire Rossi, and Thomas J. Gradel, "Corruption Spikes in Illinois," University of Illinois at Chicago, Department of Political Science, <https://pols.uic.edu/wp-content/uploads/sites/273/2021/02/Corruption-Spikes-in-IL-Anti-Corruption-Rpt-13-final2.-1.pdf>. 5

18 Austin Berg, "2019-2020 Illinois corruption tracker," <https://www.illinoispolicy.org/reports/2019-illinois-corruption-tracker/>

Benefits. Prior to that, Popish Severinghaus served as the Director of Government Relations for Blue Cross Blue Shield of Illinois."¹⁹

Legal Argument²⁰

The statute on which the order relies for closing hearings and sealing and sequestering the court records in this case is unconstitutional. Relying on it to deny Stevens access to all documents in an Illinois Circuit Court docket in their entirety is a violation of her rights under common law, Illinois state law, the Illinois Constitution, and the first and fifth amendments of the United States Constitution. Stevens seeks relief in the form of vacating the order in this case sealing and sequestering the proceedings as well as declaratory relief that 215 ILCS 5/188.1 (b) sections (4) and (5) are unconstitutional and the obligating any proceedings under 215 ILCS 5/188 follow 705 ILCS 105/16(6).

The following assumes facts as alleged in ¶¶4 - 39.

40. On information and belief, the order depriving Stevens and the people of Illinois records and information in this case relies on 215 ILCS 5/188.1 (b) (4-5) ("Statute"):

(4) The court may hold all hearings in conservation proceedings privately in chambers, and shall do so on request of any officer of the company proceeded against.

1. (5) In conservation proceedings and judicial reviews thereof, all records of the company, other documents, and all insurance department files and court records and papers, so far as they pertain to and are a part of the record of the conservation

¹⁹ <https://www2.illinois.gov/sites/Insurance/AboutUs/Pages/AboutIDOI.aspx>

²⁰ The legal argument tracks and paraphrases information on public access to court records that appears in a document published on the Cook County Court website. <http://www.cookcountycourt.org/Portals/0/Law%20Divison/Forms/Taylor%20-%20Outline%20Regarding%20Protective%20Orders.pdf>

proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless and until the court, after hearing arguments in chambers from the Director and the company, shall decide otherwise, or unless the company requests that the matter be made public.

41. The Statute's sweeping language of records removed from public oversight is on its face in violation of the First Amendment. Instead of statutory provisions or exercises of judicial discretion for closing specific records or orders, the Statute obligates courts to hold secret ("private") hearings and keep secret from the not only records in the proceeding but "other documents.. [that] pertain to" the proceedings, which arguably encompasses any record about the firm under the government's control and otherwise subject to release.

42. The Statute also deprives the public any standing to challenge the secret hearings or sealed records and orders. The Statute specifically limits standing to present arguments to the judge about releasing records only to "the Director and the company."

43. The Statute's sweeping prohibition on releasing judicial records also violates Stevens' Fifth Amendment right to due process, insofar as she has no information specific to the basis for the hearing being closed and there exists no procedure under the Statute to present her arguments to the court.

44. The secrecy allowed by the Statute for insurance firm conservation proceedings harms the public and fails to protect any legitimate interest. Instead it demonstrably provides individuals whose careers are in the same profit-driven industry -- one that relies in this case in particular on public, Medicaid funds -- to make multi-million dollar deals with no public oversight, contemporaneous or otherwise, and no accountability. It impairs democracy by shielding from

public knowledge misconduct by politicians and officials receiving payments from revenues in the Illinois insurance industry.²¹

45. The funds being distributed through the conservancy hearings are hard-earned taxpayer dollars. Their disbursement and any information through the conservancy proceedings revealing the nature of mismanagement resulting in NextLevel's insolvency are a matter of public concern that far outweighs any interest in maintaining the proceedings' secrecy afforded them under the Statute.

Common Law

46. The Supreme Court in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978) noted the long history of precedents affording a "general right to inspect and copy public records and documents, including judicial records and documents..." (at 597, citations omitted).

47. The Court noted that, unlike English case law, "American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen's desire to keep a watchful eye on the workings of public agencies, see, e. g., *State ex rel. Colscott v. King*, 154 Ind. 621, 621-627, 57 N. E. 535, 536-538 (1900); *State ex rel. Ferry v. Williams*, 41 N. J. L. 332, 336-339 (1879), and in a newspaper publisher's intention to publish information concerning the operation of government, see, e. g., *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 677, 137 N. W. 2d 470, 472 (1965), modified on other grounds, 28 Wis. 2d 685a, 139 N. W. 2d 241 (1966)" (Id. at 598). The Statute clearly violates the protocols and purposes the Court has attached to the First Amendment.

²¹ From January 1 - August 24, 2021, Illinois spent \$19.72 billion on managed care organizations. ILL. STATE COMPTROLLER, <https://www.illinoiscomptroller.gov/Office/MCO/> (last updated August 24, 2021).

48. The Court in *Nixon* stated there is a "presumption—however gauged—in favor of public access to judicial records." *Id.* at 609. The Statute clearly violates this presumption.

49. Illinois courts have relied on common law to infer the public's right of access to judicial proceedings entails as well access to case records filed with the courts. (In *re Marriage of Johnson*, 1068, 1071-72 and *A.P. v. M.E.E.*, 354 Ill. App. 3d 989, 1001 (1st Dist. 2004).) And see *Skolnick v. Altheimer & Gray*, 730 NE 2d 4 Ill (2000), (quoting and affirming *Nixon* at 15). The Illinois Supreme Court has held that "The common law right of access to court records is essential to the proper functioning of a democracy (*Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 202 (Minn.1986)), in that citizens rely on information about our judicial system in order to form an educated and knowledgeable opinion of its functioning (*Minneapolis Star & Tribune Co.*, 392 N.W.2d at 202). Too, the availability of court files for public scrutiny is essential to the public's right to "monitor the functioning of our courts, thereby insuring quality, honesty and respect for our legal system." *In re Continental Illinois Securities Litigation*, 732 F.2d 1302, 1308 (7th Cir.1984); see also *Newell v. Field Enterprises, Inc.*, 91 Ill.App.3d 735, 748, 47 Ill.Dec. 429, 415 N.E.2d 434 (1980) [quotation omitted]."

U.S. Constitutional Law

50. Courts have enforced the public's right of access to judicial records under the First Amendment, based on precedents from cases such as *Nixon v. Warner* (at 15), "The file of a court case is a public record to which the people and the press have a right of access." *re Marriage of Johnson*, 232 Ill.App.3d 1068, 1074.

51. The Court has held that the standard for presumptive access is whether proceedings are typically those to which the public has access ("we have considered whether the place and

process have historically been open to the press and general public" (*Press-Enterprise Co. v. Superior Court of Cal., County of Riverside*, 478 US 1, 4). The records to which Stevens has a right to review, including the complaint, motions and orders, are typically those available to the public in court proceedings, including those involving financial and otherwise private information such as that produced in bankruptcy proceedings that allow for documents to be filed under seal but do not allow for much less obligate secret hearings, motions, orders, or dockets.²²

52. Having established that under common law and the First Amendment that Stevens has a right to records in a judicial proceeding, the court or government may withhold from her review documents only on the basis of specific factual findings. ("Once documents are subject to the right of access, only a compelling reason, accompanied by specific factual findings, can justify keeping them from public view." *Johnson*, 232 ILL. App. 3d at 1075.)

53. Orders closing proceedings solely based on deference to one or both parties, as the Statute obligates, are not permissible. ("Courts cannot honor such requests without seriously undermining the tradition of an open judicial system.") *A.P.*, 354 Ill. App 3d at 995.

Statutory Right

54. The public's right to access court dockets and proceedings is specified in Illinois state law: "All records, dockets and books required by law to be kept by such clerks shall be deemed public records, and shall at all times be open to inspection without fee or reward..." 705 ILCS 105/16(6). This statute exempts from its general procedures only records associated with child support payments, but does not exempt any other dockets This statute is constitutional and implies the repeal of protocols in the Statute that are prima facie and in fact unconstitutional.

22 "Except as provided in subsections (b) and (c) and subject to section 112, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge." 11 U.S.C. § 107(a).

Illinois Constitution

55. Denying Stevens access to the records she seeks violates her rights under the Illinois Constitution, Article I, Section 1, "...governments are instituted among men, deriving their just powers from the consent of the governed." Stevens cannot provide consent to power exercised in secret, as the statute authorizes to the DOI.

56. Denying Stevens access to the records she seeks violates her due process rights under the Illinois Constitution, Article I, Section 1. The statute provides Stevens no process for reviewing or even being aware of orders sealing government records.

57. An order by the legislature to close all proceedings infringes on judicial prerogatives and is in violation of the Illinois Constitution Article II, Section 1. ("No branch shall exercise powers properly belonging to another.")

Fourteenth Amendment, Section 1

58. The Fourteenth Amendment holds that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

59. In violation of the Stevens' due process right under the Fourteenth Amendment, the record in this case indicates a long series of communications with inconsistent and unclear outcomes, no underlying order or rationale on which to rely for this motion, and only an ad hoc, discretionary statement from a communications officers proffering the law on which the judge who ordered the record sealed and sequestered relied.

60. Further, the Statute allows officials who have mismanaged their company and former officials of the industry they are regulating to have access to judicial records denied to Stevens and the general public, thus depriving her of the equal protection of the law, in violation of the Fourteenth Amendment.

61. Insofar as a dispute between the DOI and NHP has been publically reported, then the public has a presumptive right to have access to all records, even if they were sealed. Although Goldberg did not report the content of the complaint, the publication of its existence means parties interested in NextLevel's debt and creditors would have been made aware of the litigation by the publication of Goldddberg's online article.

62. The refusal to release any of the records in any form, i.e., with limited redactions, including the order impounding the case and the motions on which it is based, is a denial of Stevens' right under the Fifth Amendment to due process for appealing the order closing the docket.

63. Stevens respectfully requests that the court vacate the order in this case sealing and sequestering the proceeding;, order the immediate release of all court records associated with *People of the State of Illinois ex rel DOI v. NextLevel Health Partners, Inc.* 20 CH 4431; declare that 215 ILCS 5/188.1 (b) (4-5) is unconstitutional; and declare 705 ILCS 105/16(6) will be the Illinois law controlling the release of documents in any proceedings intiated by the DOI.²³

23 The court may want to consider that the Illinois Supreme Court held unconstitutional a different portion of the Illinois Insurance Code governing proceedings, finding that "section 409 of the Illinois Insurance Code (215 ILCS 5/409 (West 1992)) violates article IX, section 2, of the Illinois Constitution of 1970." *Milwaukee Safeguard Ins. Co. v. Selcke*, 688 N.E.2d 68, 73 (1997).

By: Jacqueline Stevens/s/
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Pro Se

August 27, 2021

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VERIFICATION

I, the undersigned, swear under penalty of perjury, as provided by law under Section I-109 of the Illinois Rule of Civil Procedure, that the statements contained in this motion are true and correct to the best of my knowledge and belief, except where I lack sufficient knowledge to form a belief of the truth of the allegations, where so stated.

A handwritten signature in black ink, appearing to read 'J. Stevens', with a long horizontal stroke extending to the right.

Jacqueline Stevens