

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
CHANCERY DIVISION

Matter of Conservation of NextLevel Health, Inc.

20 CH 04431

Jacqueline Stevens, *pro se*  
Intervenor

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FIRST AMENDED INTERVENOR MOTION TO VACATE ORDERS DENYING ACCESS TO  
HEARINGS AND RECORDS IN THIS PROCEEDING AND DECLARE  
UNCONSTITUTIONAL 215 ILCS 5/188.1 (b) (4,5)

**Introduction**

Pursuant to rights afforded by the constitutions of the United States and Illinois, and the order of this court of December 6, 2021, this is an intervenor motion to: (1) vacate all orders that have the effect of denying to intervenor (“intervenor” or “Stevens”) and the public access to any documents or portions thereof filed with this court in *Matter of Conservation of NextLevel Health, Inc.* (“the proceeding”); (2) order the immediate release to Stevens and the public all documents filed in these proceedings without redactions; (3) declare **215 ILCS 5/188.1 (b) (4,5)** (“the Statute”) unconstitutional and unenforceable, and further that all proceedings and oversight initiated by the Illinois Department of Insurance pursuant to **215 ILCS 5/188.1** be subject instead to **705 ILCS 105/16**.

On August 30, 2021, having been unable to obtain a complaint filed by the Attorney General against NextLevel Health, originally captioned as People of the State of Illinois ex rel DOI v. NextLevel Health Partners, Inc. Stevens submitted a *pro se* petition to intervene in these

proceedings, along with an accompanying motion requesting that the court open the records in this case and declare unconstitutional the portion of the law obligating their secrecy. On September 10, 2021, Judge Pamela McLean Meyerson, over the objections of NextLevel Health, ordered that the portions of the proceeding tied to the intervenor petition be open to the public. The court on December 6, 2021 granted Stevens' petition for intervenor status for the purpose of asserting the "public nature" of these proceedings and her rights violated by the secrecy obligated by **215 ILCS 5/188.1 (b) (4,5)**.<sup>1</sup>

### **PARTIES**

1. Intervenor Jacqueline Stevens ("Stevens") is a political science professor at Northwestern University and a resident of Cook County. She publishes academic works, 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 Newspaper*, and *American Prospect*. She was a Robert Wood Johnson Health Policy Scholar at Yale University (1997-1999) and in 2013 awarded a Guggenheim Fellowship in recognition of career achievement.<sup>2</sup> Dozens of publications by her and other reporters as well as the U.S. Commission on Civil Rights,<sup>3</sup> the General Accounting Office,<sup>4</sup> and U.S. senators have

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1 On January 28, 2021, Stevens, unable to access this case through the E-File system, submitted it to the Assistant Chief Deputy Clerk, Cook County Chancery Court and staff attorney for Judge Meyerson via e-mail, as well as the attorneys representing parties to this case. Stevens received no confirmation of receipt and no stamped copy of her motion. Stevens on January 30 notified these same individuals via e-mail of a request to withdraw that motion due to errors it contained, and an intention to file a new motion as well as petitions and notices on Monday, January 31.

2 "About the Fellowship," <https://www.gf.org/about/fellowship/>.

3 "U.S. Commission on Civil Rights Concerned with Alleged Abusive Labor Practices at Immigration Detention Centers," <https://www.usccr.gov/press/2017/12-21-PR.pdf>;

4 "Immigration Enforcement: Actions Needed to Better Track Cases Involving U.S. Citizenship Investigations GAO-21-487, July 20, 2021. <https://www.gao.gov/assets/gao-21-487.pdf>, referencing Deportation Research Clinic.

referenced findings and documents obtained from her requests under the Freedom of Information Act (“FOIA”).<sup>5</sup> Her research also helped catalyze nation-wide litigation against for-profit prisons unlawfully exploiting the labor of those in custody.<sup>6</sup>

2. The Illinois Department of Insurance (“DOI”) is a government agency. Its mission is “[t]o protect consumers by providing assistance and information, by efficiently regulating the insurance industry’s market behavior and financial solvency, and by fostering a competitive insurance marketplace.”<sup>7</sup>

3. The Office of the Special Deputy Receiver (“OSD”) is created by a statute that authorizes the DOI to “appoint a Special Deputy and other employees to assist in the administration of... receiverships...”<sup>8</sup>

4. The Illinois Attorney General (“AG”) is “the state’s chief legal officer and is responsible for protecting the public interest of the state and its people.”<sup>9</sup>

5. NextLevel MCO is an Illinois domiciled health maintenance organization and wholly owned subsidiary of NextLevel Health Innovations, Inc., a Delaware corporation (“NextLevel Parent”).

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5 E.g., Senator Elizabeth Warren letter to Jay Clayton, Chair, Securities and Exchange Commission, July 24, 2019. <https://www.warren.senate.gov/imo/media/doc/2019.07.24%20Letter%20to%20SEC%20on%20GEO%20Group's%20Misleading%20Statements.pdf>.

6 Kristine Phillips, “Thousands of ICE detainees claim they were forced into labor, a violation of anti-slavery laws,” Washington Post, March 5, 2017, <https://www.washingtonpost.com/news/post-nation/wp/2017/03/05/thousands-of-ice-detainees-claim-they-were-forced-into-labor-a-violation-of-anti-slavery-laws/>.

7 DOI homepage, <https://www2.illinois.gov/sites/insurance/Pages/default.aspx>.

8 “About OSD,” <https://www.osdchi.com/about.htm>.

9 “About Us,” <https://www.illinoisattorneygeneral.gov/about/index.html>.

**FACTS****Intervenor and Crain's Reporter Denied Access to Court Records**

6. On June 4, 2020 at 10:36 a.m. investigative journalist Stephanie Goldberg ("Goldberg") sent an email to Annie Thompson, senior press secretary for the Attorney General, stating, "I'm having trouble accessing a case that was filed on June 3 against NextLevel Health Partners. Can you please share the complaint?"<sup>10</sup>

7. On June 4, 2020, Judge Sanjay Tailor stated he had had been "advised of the automatic provisions of 215 1LCS 5/188.1 by KWAME RAOUL, the Attorney General of the State of Illinois," and quoted in its entirety 215 ILCS 5/188.1(b)(5), following which he issued an order stating: "The court file in this case is hereby sealed and sequestered from the public view."

8. Below the typescript, a caveat in hand-writing states: "Nothing herein precludes defendant from communicating with or disclosing to its attorneys and advisors the above-referenced documents and information."

9. Also in hand-writing is an additional order: "The Clerk shall remove this case from its public website."<sup>11</sup>

10. On June 5, 2020, an article by Goldberg reported that "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."<sup>12</sup>

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10 IL-AG FOIA Case 101, Release to Stevens on September 22, 2021. On information and belief, Goldberg learned of the complaint via a Bloomberg legal feed.

11 The party proposing these additions is unknown. Tailor's order was released to Stevens in the fall of 2021, after she filed her petition to intervene in this proceeding.

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

11. Over a year later, Stevens attempted to locate the complaint and other documents filed with the court on the Cook County Circuit Court Chancery case locator page. There was no public information on the nature of the case and no access to Judge Tailor's June 4, 2020 order to restrict it from public knowledge.

12. On July 12, 2021, Stevens filed a request under the Illinois Freedom of Information Act ("IL FOIA") to obtain a copy of the Complaint from the office of the Illinois Attorney General.

13. 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."

14. At some point during her search for the complaint Stevens acquired a docket number for this case from a non-public source in a manner that is not generally available to her or anyone else.

15. Relying on this non-public information, on August 12, 2021 Stevens called the Cook County Circuit Court Chancery Division ("Chancery Division") and requested information on how to access the record of proceedings for People of the State of Illinois ex rel DOI v. NextLevel Health Partners, Inc., 2020CH04431.

16. 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.

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

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

(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.

18. On Monday, August 15, Stevens sent an email to [ccc.chancerycalendar11@cookcountyil.gov](mailto: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.'"

19. On Tuesday, August 16, 2021 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.

20. 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.

21. 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."

22. 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."

23. 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 United States constitution, as well as under Illinois common law, constitution, and state law.

24. Stevens on Thursday, August 26, 2021 had confirmed by two Chancery clerks 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 even if the petition and motion were physically presented to the Chancery clerks, they did not have the authority to add her intervenor petition and motion to the case docket so it could be reviewed by Judge Meyerson.

### **Secret Court Proceedings for Firm Paid \$1.2 Billion Taxpayer Money**

25. Facts alleged in ¶¶ 26 - 27 were obtained in documents released to intervenor in January, 2022, following court orders and special efforts by intervenor, Cook County Chancery Court staff, and Judge Meyerson's staff attorney Mohammed Rathur, due to the case having been restricted on June 4.<sup>13</sup>

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<sup>13</sup> Everyone with whom intervenor has interacted has been extremely courteous, helpful, and professional; on information and belief, their ability to provide case information is hampered solely by the Statute challenged.

26. On April 9, 2020, the DOI issued Corrective Order 20-22 (“20-22”) to NextLevel Health. 20-22 states in part that that NextLevel “filed its 2019 Annual Statement on March 26, 2020, which reports that it is insolvent by an amount of (\$2,794,769) as of December 31, 2019. “ 20-22 also states that the DOI “has determined that the Company is operating in a manner that could lead to, or is in, a financial condition, which, if continued, would make it hazardous to the public, and its policyholders...” And, 20-22 specifies obligations for NextLevel that, if not followed, could result in penalties and the DOI initiating proceedings “for the conservation, rehabilitation, or liquidation of the Company.”

27. On June 3, 2020, the AG filed with the Chancery Court a complaint for conservation of assets and injunctive relief against NextLevel Health triggered when a firm’s debt “...indicates that the insurer's total adjusted capital is less than its mandatory control level...”<sup>14</sup> This complaint is captioned as “Confidential Under 215 ILCS 5/188.1.”

28. Because of the secrecy obligated by the Statute, there are no public records that would allow Stevens to specify the number of character of all of the records now withheld from her in this proceeding, nor the number of proceedings initiated by the DOI pursuant to the Statute.<sup>15</sup>

Revolving Doors, Funds Diverted from Health Care, and Cronyism at DHFS, DOI, Medicaid MCOs, and NextLevel Health

29. David Jackson (“Jackson”) is an investigative reporter who has been publishing articles on apparent profiteering by Illinois Medicaid MCO employees and investors.<sup>16</sup> He writes, “An

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<sup>14</sup> *AG Rel DOI Complaint*, ¶10, quoting 215 ILCS 5/35A-30(d), filed June 3, 2020.

<sup>15</sup> On January 20, 2022, Stevens sent an email to the attorneys representing the DOI and the AG, respectively. It states in part, “I finally have had a chance to review the record of proceedings released to me last week. In the interests of avoiding wasting time and resources on the part of all of us, I’m wondering if you could give me the opportunity to ask you a few questions. If you do not want to answer them, I understand. These are largely general questions about how insolvency proceedings are handled.” Stevens received no reply.

<sup>16</sup> “David Jackson,” Better Government Association, <https://www.bettergov.org/team/david-jackson>.



examination of state contracts, salary data, pension statements, court records and internal correspondence identified more than a dozen top-level Medicaid officials in Illinois who have current or recent financial ties to the giant insurance companies managing the \$16 billion taxpayers spend to provide medical care to people who cannot afford health coverage.”<sup>17</sup> The article quotes State Representative Fred Crespo stating, “It’s like interbreeding here. How can they have their hands out to the insurance companies and at the same time be making Medicaid policy?” *Id.*

30. According to Jackson, DHFS accounting rules allow Medicaid MCOs to categorize as health care expenditures funds diverted from paying bills to the coffers of corporate affiliates, including Centene, a corporation that has had records sealed at its request in this proceeding.<sup>18</sup> He writes: “Meridian Health Plan of Illinois Inc. reported a 2019 loss of \$77 million — but only after paying a \$287 million management fee to a subsidiary of its parent company, Centene Corp. Despite such state-level losses, Centene reported nationwide profits in 2019 of more than \$1 billion, records show.”<sup>19</sup>

31. The DHFS on or about February 25, 2017 issued a Medicaid Managed Care Organization Request for Proposals, 2018-24-001 (“RFP”). The RFP “Option B” states that MCOs eligible to bid on providing services “to cover Cook County only.... shall be either a Government-owned organization or a Minority-owned organization...”<sup>20</sup>

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17 “Illinois’ \$16 Billion Health Program Is Riddled with Industry Ties and Potential Conflicts of Interest,” November 8, 2021, <https://www.bettergov.org/news/illinois-16-billion-health-program-is-riddled-with-industry-ties-and-potential-conflicts-of/>.

18 Order of November 29, 2021, 20 CH 04431.

19 David Jackson, “Illinois Medicaid Companies Rake In Record Profits From Pandemic” <https://www.bettergov.org/news/illinois-medicaid-companies-rake-in-record-profits-from-pandemic/>, May 24, 2021.

20 DHFS, Medicaid Managed Care Organization Request for Proposals, [https://www2.illinois.gov/hfs/info/MedicaidManagedCareRFP/Documents/2018-24-001\\_Illinois\\_Medicaid\\_MCO\\_RFP.pdf](https://www2.illinois.gov/hfs/info/MedicaidManagedCareRFP/Documents/2018-24-001_Illinois_Medicaid_MCO_RFP.pdf)

32. On May 2, 2017 the Office of the Comptroller published a “Staff Report on the Medicaid Managed Care Organization RFP (2018-24-001)” (“Report”).<sup>21</sup> The Report states: “HFS again has claimed applicability of the ‘Purchase of Care’ exemption to effectively remove the procurement from the independent review afforded by the Chief Procurement Officer. This action in claiming exemption from independent oversight is concerning and highlights the need for transparency, unbiased procurement process, and adequate scrutiny of conflicts of interest.”<sup>22</sup>

33. The Report warns that the RFP would put “more pressure on the state’s managed care system while potentially driving up health care costs as a result of decreased competition.” The Report summarizes litigation and academic research, concluding that market concentration has led to MCOs “denying care or overruling physician decisions, resulting in financial difficulty for hospitals and access-to-care issues for patients.”<sup>23</sup> The Report notes a non-profit MCO founded 22 years earlier as a “partnership between five safety-net hospitals” in Cook County “fears it will dissolve as a result of the structure of this RFP” and urges the DHFS to redraft the RFP. *Id.*

34. According to portable document file (“PDF”) metadata, the DHFS on or about September, 2017 created a “Supplemental Notice of Award Medicaid Managed Care Organization RFP” (“Notice”) indicating that DHFS planned to award an additional contract to NextLevel Health for Option B – Cook County Only.” The Notice states, “The executed contract will be effective January 1, 2018 for an initial four (4) year term and will include the option to renew the contract for up to an additional four (4) years.”<sup>24</sup>

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21 <https://illinoiscomptroller.gov/financial-data/find-a-report/special-fiscal/mco-report/>.

22 *Id.*, p. 2.

23 *Id.* p. 7.

24 [https://www2.illinois.gov/hfs/SiteCollectionDocuments/MCO\\_RFP\\_Supplemental\\_Notice.pdf](https://www2.illinois.gov/hfs/SiteCollectionDocuments/MCO_RFP_Supplemental_Notice.pdf)

35. In 2019, DHFS enrolled Cook County Medicaid patients as members in NextLevel at a rate incommensurate with NextLevel's extremely poor service record and reporting violations.<sup>25</sup>

36. In 2019, the Comptroller continued to highlight the lack of transparency in Medicaid MCOs and complaints from providers. "Two audits conducted by the Illinois Auditor General, one in January 2018 and one in March 2018, revealed inadequate oversight of MCOs by HFS."<sup>26</sup>

37. The Illinois Comptroller website provides information on payments issued to NextLevel between 2017 and 2021. Pursuant to DHFS contracts, NextLevel received payments of over \$1.2 billion.<sup>27</sup>

38. According to a filing in this proceeding, DHFS on August 24, 2020 approved a memo for NextLevel to circulate to providers that "made clear that claims with dates of service for 2016 and 2017 were no longer eligible for payment."<sup>28</sup>

39. DHFS was or is NextLevel's largest creditor.<sup>29</sup>

40. No information has been released in the records of this proceeding or elsewhere to indicate the nature or amount of the funds owed by NextLevel to the DHFS, nor if these funds have been fully restored to taxpayers.

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25 "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 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.*

26 Susana Mendoza, Illinois Comptroller, "Fiscal Focus," May, 2019, p. 9.

[https://illinoiscomptroller.gov/comptroller/assets/file/fiscalfocus/FF-2019-05\\_web.pdf](https://illinoiscomptroller.gov/comptroller/assets/file/fiscalfocus/FF-2019-05_web.pdf)

27 <https://illinoiscomptroller.gov/index.cfm/financial-data/state-expenditures/contracts/>.

28 Joint Petition to Set a Date for the Fixing of Rights and Liabilities, and Deadlines, and Procedures for the Filing of Claims, Exhibit A to NextLevel Response, filed September 13, 2021, at 7.

29 "Special Deputy counsel will acknowledge advising NextLevel that before he could finalize the Dissolution Motion, he required a limited lift of the Sequestration Order to communicate with the Illinois Department of Health and Family Services ("IDHFS"), NextLevel's largest creditor, about IDHFS's claims against NextLevel." Verified Opposition to Motion to Vacate Order of Sequestration, 2020 CH 4431, defendant brief, ¶10, September 13, 2021.

41. NextLevel's Chief Executive Officer ("CEO") was Dr. Cheryl Whitaker ("Whitaker").<sup>30</sup>

The media have reported on her close personal ties to Illinois and United States government officials, including former President Barack Obama and his wife, Michelle.<sup>31</sup> Whitaker in 2013 chaired Robin Kelly's successful campaign to represent District 2 in Congress; Kelly remains in that office.<sup>32</sup>

42. Whitaker in 2018 was listed as "operating partner" of Harthaven Capital Partners, "*At the intersection of Wall St and Healthcare.*"<sup>TM33</sup> ("Harthaven") The three other individuals listed on Harthaven's 2018 "Leadership Team" web page also had investments in NextLevel: Kenneth R Alleyne MD ("Alleyne"), Michael Kinne ("Kinne"), and Keith Wolski ("Wolski").<sup>34</sup>

43. Kinne in 2015 was NextLevel's President and Chief Operating Officer, as well as an investor and promoter.<sup>3536</sup> Harthaven's website stated that prior to his position at NextLevel, Michael Kinne "served as the President of Centene Corporation's Illinois Medicaid Health..."<sup>37</sup>

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30 Intervenor lacks knowledge as to whether Whitaker remains NextLevel's CEO at the present time and the current status of the dissolution of NextLevel.

31 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>.

32 Carol Felsenthal, "Robin Kelly, Running for Jesse Jackson Jr.'s Seat, Has Some Good Connections—and Good Luck," January 15, 2013, <https://www.chicagomag.com/Chicago-Magazine/Felsenthal-Files/January-2013/Robin-Kelly-Running-for-Jesse-Jackson-Jr-Seat-Has-Some-Good-Connectionsand-Good-Luck/>; Rep. Robin Kelly, <https://robinkelly.house.gov/>.

33 "Leadership Team," <https://web.archive.org/web/20180817101851/http://harthavencapital.com/team.php>.

34 NextLevel Health Partners, LLC, "Notice of Exempt Offering of Securities," Form D ("Form D"), attested by Whitaker on September 22, 2015. Alleyne is not listed on Form D, but the Harthaven website states Alleyne is the Founding and Managing Partner and lists NextLevel first in its portfolio. <http://www.harthavencapital.com/portfolio/>.

35 Form D.

36 "A promoter acts on behalf of a corporation before it is formed." <https://www.law.cornell.edu/wex/promoter>.

37 <https://web.archive.org/web/20180817101851/http://harthavencapital.com/team.php>.

44. Wolski was NextLevel’s Chief Financial Officer (“CFO”), as well as an officer and promoter.<sup>38</sup> Harthaven’s website also stated that Wolski “oversaw the start-up of Centene Corporation’s Illinois Medicaid operations.”<sup>39</sup>

45. On information and belief, Wolski currently is the CFO at Meridian Health Plan,<sup>40</sup> a subsidiary of Centene, the firm that, though these proceedings, acquired NextLevel’s membership.

46. On information and belief, Alleyne, Kinne, Whitaker, and Wolski are among the NextLevel shareholders referenced in these proceedings.<sup>41</sup>

47. According to an Illinois government web page, Whitaker remains a member of the DHFS Medicaid Advisory Council, appointed by DHFS Director Therese Eagleson (“Eagleson”), an appointee of Governor J.B. Pritzker (“Pritzker”).<sup>42</sup>

48. Goldberg reports that when confronted with NextLevel’s poor performance, Eagleson replied that “assigning large numbers of enrollees to NextLevel advances the administration’s goal of supporting minority-owned businesses that ‘reflect the diversity of our Medicaid membership,’ adding, ‘We were trying to, because they got a late start, help make sure they had the ability to be successful.’”<sup>43</sup>

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38 Form D.

39 <https://web.archive.org/web/20180817101851/http://harthavencapital.com/team.php>

40 <https://www.comparably.com/companies/meridian-health-plan/keith-wolski>, <https://wiza.co/d/meridian-health-plan/f5b6/keith-wolski>.

41 E.g., Joint Petition to Set a Date for the Fixing of Rights and Liabilities, and Deadlines, and Procedures for the Filing of Claims, Exhibit A to NextLevel Response, filed September 13, 2021, ¶22 (“NextLevel Health Innovations, Inc.... intends to distribute all of said distribution of the remaining assets to [NextLevel] shareholders.”)

42 Medicaid Advisory Committee, “Members,”

<https://www2.illinois.gov/hfs/About/BoardsandCommisions/MAC/Pages/Bylaws.aspx>;

<https://www2.illinois.gov/hfs/About/Pages/Director.aspx>.

43 Goldberg, <https://www.chicagobusiness.com/health-care/medicaid-mystery-state-sends-lots-people-lowest-rated-managed-care-plan>.

49. On information and belief, a spouse reportedly in “one of two couples who are close to the Obamas in a let’s-vacation-in-Hawaii kind of way”<sup>44</sup> – a reporter’s description of Whitaker – does not reflect the Medicaid membership of Cook County.

50. Whitaker and others tied to NextLevel now operate Complete Care Management Partners LLC (“CCMP”), according to a website, which indicates Whitaker serves as CEO.<sup>45</sup>

51. CCMP’s website is soliciting paying clients, including “government entities.”<sup>46</sup>

52. On April 12, 2021, CCMP, CapGenus LLC, and Innovative Health LLC, operating as the “Complete Care Collaborative (CCC)” responded to a DHFS Request for Proposals with a \$400,000 bid. The submission to the DHFS notes additional bids contemplated: “The ultimate financial ask for this proposal will include a substantial sum to facilitate the agreed upon transformation...[W]e plan to seek required government and private financial resources available that support hospital transformation.”<sup>47</sup>

53. The fourth of the four-member Harthaven leadership team on the 2018 web page is Kenneth Alleyne MD, Harthaven’s “Managing and Founding Partner,” and the only member listed on the “our team” web page at present.<sup>48</sup> Alleyne also is listed as one of three members of the CCMP “Advisory Board.” The page states Alleyne was the “co-founder of NextLevel.”<sup>49</sup> Nowhere on the CCMP website, nor any other public venue, can taxpayers, investors, or even those in government learn that NextLevel failed to meet its financial obligations and thus was

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44 <https://www.chicagomag.com/Chicago-Magazine/Felsenthal-Files/January-2013/Robin-Kelly-Running-for-Jesse-Jackson-Jr-Seat-Has-Some-Good-Connectionsand-Good-Luck/>

45 <https://www.completecaremp.com/>.

46 “CCMP provides high intensity, driven community based care management services for managed care organizations, health systems, and government entities for their high risk members and clients.” <https://www.completecaremp.com/>, January 26, 2022.

47 <https://www2.illinois.gov/hfs/SiteCollectionDocuments/2021A-022%20Complete%20Care%20Management%20Partners%20LLC,%20Cap%20Genus%20LLC,%20Innovative%20Health%20LLC.pdf>.

48 “Our Team,” <http://www.harthavencapital.com/our-team/>.

49 CCMP Advisory Board, <https://www.completecaremp.com/about-us/advisory-board/>.

placed in these proceedings pursuant to an “enforcement action” initiated by the DOI in response to NextLevel’s debt.<sup>50 51</sup>

54. In June, 2020, Meridian Health Plan (“Meridian”), a subsidiary of Centene, entered into a Member Transfer Agreement with NextLevel on which the parties would rely to transfer to Centene NextLevel’s debt and assets.<sup>52</sup>

55. In an intervenor motion, Meridian stated, “Meridian has no commercial products, and thus receives all of its revenue from state or federal governments.”<sup>53</sup>

56. Whitaker has submitted documents in this proceeding that are currently under seal, according to records released in this proceeding.

#### **NextLevel Employee Lauren Underwood Runs for Congress**

57. Another member of Congress with whom Whitaker has ties is Lauren Underwood. 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,<sup>54</sup> 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.<sup>55</sup>

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50 Joint Reply of the Conservator and the Director, as Regulator, to NextLevel Health Partner, Inc.’s Memorandum, November 22, 2021, p. 1.

51 2020-20.

52 Memorandum in Support of NextLevel’s Proposed Limitations on Lift of Sequestration, November 11, 2021, 20 CH 04431, pp. 2-3,.

53 Saint Anthony Hosp. v. Eagleson, N.D. Ill., No. 1:20-cv-2561, (N.D. Ill. Apr 27, 2020), Meridian, Intervenor Motion at 3, June 16, 2020, Doc 28.

54 Meeting with Assurant, Exchange and Insurance Market Standards for 2015 and 2016 (CMS-9949-P), May 13, 2014, [https://deportationresearchclinic.org/Underwood\\_EO12866Meeting.pdf](https://deportationresearchclinic.org/Underwood_EO12866Meeting.pdf)

55 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.”)

58. 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.<sup>56</sup> It reflected that in 2018 NextLevel employed Underwood and had paid her \$21,064, for a total income from NextLevel of \$102,313.<sup>57</sup>

59. Underwood's position at NextLevel Health in 2017-18 was "senior director for strategic and regulatory affairs."<sup>58</sup> Underwood did not register as an Illinois lobbyist.

60. 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."<sup>59</sup>

61. 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."<sup>60</sup>

62. 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 ("CBP"), and claimed it would help immigrants. Immigrant rights groups reported they had not requested and even opposed the database.<sup>61</sup>

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56 *Id.*

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

58 "Healthcare Database No One Wants."

59 "Health Database No One Wants."

60 *Id.*

61 *Id.*



63. "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."<sup>62</sup>

64. "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 time frame 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."<sup>63</sup>

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

66. 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.

67. On July 7, 2021 Underwood 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 taken up by the Senate and not enacted in the previous Congress.<sup>64</sup>

62 *Id.*

63 *Id.*

64 FY2022 Homeland Security and Defense Subcommittee Appropriations Bills, <https://appropriations.house.gov/events/markups/fy2022-homeland-and-defense-subcommittee-appropriations-bills>

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

69. Saint Anthony's Hospital in 2020 sued Eagleson for failure to enforce the law obligating NextLevel Health to pay Saint Anthony Hospital's claims, a complaint dismissed by a federal district court for failure to state a claim (holding hospitals lacked a private right of action).<sup>65</sup> The case is now on appeal in the Seventh Circuit. Centene's Meridian Health Plan has intervenor status and has filed a brief.<sup>66</sup>

70. According to Jackson, DHFS denied his request under the IL FOIA for "records of routine performance presentations" after officials at Meridian "said disclosure of the quarterly performance presentations they make to state officials would put the company at a competitive disadvantage," leading the Better Government Association to sue DHFS for these records.<sup>67</sup>

71. 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<sup>68</sup> 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

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

66 *Saint Anthony Hospital v. Eagleson*, #21-2325, 7th Circuit (December 30, 2021).

67 Jackson, "BGA Sues for Illinois Medicaid Contract Records," July 13 2021, <https://www.bettergov.org/news/bga-sues-for-illinois-medicaid-contract-records/>.

68 "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>.

exposed."<sup>69</sup> 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."<sup>70</sup>

72. The Illinois Director of the 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 Benefits. Prior to that, Popish Severinghaus served as the Director of Government Relations for Blue Cross Blue Shield of Illinois."<sup>71</sup>

73. The DOI 2020 Annual Report to the Governor stated that NextLevel had assets of \$26,888,305, liabilities of \$17,815,512, a "policy surplus" of \$9,072,793, net income of \$10,465,695, and direct premiums of \$184,843,003.<sup>72</sup> It provided no information on DOI's finding of NextLevel's insolvency indicated in Order 2020-2 or conservatorship proceedings. Metadata indicates the report pdf was created on October 5, 2021, long after these proceedings had commenced. Id.

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69 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>. S

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



71 "About Us," <https://www2.illinois.gov/sites/Insurance/AboutUs/Pages/AboutIDOI.aspx>; <https://www.comparably.com/companies/meridian-health-plan/keith-wolski>

72 DOI Annual Report, p. 124, <https://www2.illinois.gov/sites/Insurance/Reports/Reports/2020AnnualRptToGovernor.pdf>

74. On January 3, 2022, Stevens called the Chancery Division to ask how she could access the public records in this proceeding, insofar as they were not listed on the internet web page. A clerk sent Stevens 17-page pdf that was averred to contain the record of proceedings, with designations as to portions that remained under seal (“Docket”).

75. On January 5, 2022 someone assisting Stevens went to the Chancery Division office in the Daly Center. She was able to review numerous documents from this proceeding via a public terminal and also received instructions from court staff on how to request an output of the records of the proceeding on a USB flash drive. On the basis of the assistant’s representation of the documents she was able to view and conversations with court staff, Stevens emailed Judge Meyerson’s legal assistant Mohammed Rathur (“Rathur”) and expressed concerns about discrepancies between the Docket released to Stevens and the actual docket for these proceedings.

76. Rathur sent Stevens an order on sequestration, sealing, and redactions dated November 29, 2021. The order is not listed on the docket Stevens received on January 3. Below is a screenshot of the PDF the Chancery Division sent by e-mail to Stevens on January 3, 2022.

11/22/2021	 Restricted Image Party: Plaintiff PEOPLE OF THE STATE OF IL Party 2: Attorney ATTORNEY GENERALS OFFICE
11/22/2021	 Restricted Image Party: Plaintiff PEOPLE OF THE STATE OF IL Party 2: Attorney ATTORNEY GENERALS OFFICE
12/06/2021	<b>Continued Hearing</b> (11:00 AM) (Judicial Officer: Mclean Meyerson, Pamela ;Location: Court Room 2305) Events: 10/28/2021 Continuance - Allowed -
12/06/2021	<b>Hearing</b> (11:00 AM) (Judicial Officer: Moreland, Caroline Kate ;Location: Court Room 2302) Events: 11/05/2021 Case Assigned to Zoom Hearing - Allowed <i>Hearing Code Description: CASE ASSIGNED TO ZOOM HEARING - ALLOWED</i>

77. As of January 23, 2022, there is no list of documents filed in this proceeding available on the Cook County Circuit Court website and no clear and authoritative record has been released to intervenor. Intervenor also is unable to upload motions for this case through the e-file system.

78. In 2021, Illinois spent \$19.2 billion on managed care organizations.<sup>73</sup> About a quarter of the state's expenditures "went to Medicaid, and more than one out of five state residents got their healthcare through the program."<sup>74</sup>

79. Chicago area newspapers regularly report on health inequities tied to government policies, to wit this article of January 15, 2022: "[T]here's a lot of talk about racial equity, but in some of the ways that could actually be affected, by helping poorer neighborhoods, it's just not happening,' said Claire Laurier Decoteau, a sociology professor at the University of Illinois at Chicago who has studied health inequity."<sup>75</sup>

80. Stevens has a long-standing and ongoing interest in government corruption, cronyism, incompetence, and policies that affect the public and public health<sup>76</sup> If the full records for this proceeding are not released and **215 ILCS 5/188.1** remains enforced, this will impair her ability to unearth information to important to share with other citizens.

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73 <https://illinoiscomptroller.gov/office/mco/>.

74 ; [https://igpa.uillinois.edu/sites/igpa.uillinois.edu/files/reports/IGPA\\_Medicaid\\_brief\\_final.pdf](https://igpa.uillinois.edu/sites/igpa.uillinois.edu/files/reports/IGPA_Medicaid_brief_final.pdf).

75 Joe Mahr and Lisa Schencker, "Health care inequities add to frustration as hospitals face fifth COVID surge," <https://www.chicagotribune.com/coronavirus/ct-hospitals-inequity-covid-surge-20220115-velawo7g6jecdau5zrsdrvxa4m-story.html>

76 For instance, Stevens in 2020 published two articles in the *Chicago Reader* revealing information obtained from her Freedom of Information Act requests about Governor J.B. Pritzker's emergency orders granting get-out-of-litigation-free cards to hospital industry insiders at the expense of their patients. The order granted hospital and nursing homes immunity for most malpractice, even for deaths that had nothing to do with the coronavirus, an expansive release other governors did not provide and that lapsed after Stevens' article was published and the order reported on by an a local NBC investigative news team. (Other orders were extended.)<https://chicagoreader.com/news-politics/the-problem-with-pritzkers-pandemic-immunity-orders/>

Legal Argument<sup>77</sup>**Summary**

But for an alert reporter and a lucky intervenor, the true reason for NextLevel's acquisition by Centene would be would have remained a well-kept secret. The Statute on which the order of June 4, 2020 relies for closing hearings and sealing and sequestering the court records in this case, as well as the unreliable and effectively still restricted Docket reverses a long-standing and well-established presumption of the public's access to court proceedings in Illinois and the United States.

The following assumes facts as alleged in ¶¶6 – 80.

81. The orders depriving Stevens and the people of Illinois records and information in this case rely 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.

(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 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.

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<sup>77</sup> Portions of the legal argument track and paraphrase 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>

82. 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 not only records in the proceeding but "other documents.. [that] pertain to" the proceedings, which arguably empowers the government to keep secret any record about insurance firms under the government's control and otherwise subject to release. For instance, DHFS and DOI could withhold from FOIA releases all information about NextLevel, insofar as such records may arguably "pertain" to the proceedings. Such secret withholdings would leave a requestor no basis on which to appeal, in violation of requestor/intervenor's fifth amendment right of due process.

83. Intervenor deeply appreciates and respects the use of discretion by the AG, conservator, and court to end the sequestration of these proceedings. However, the orders of September 30, 2021 and November 29, 2021 do not remedy the intervenor's and the public's inability to access: (a) a clear and accurate docket for this case; (b) unknown portions of this proceeding sealed or otherwise withheld; (c) NextLevel records from Illinois agencies that "pertain" to this proceeding; and (d) information about proceedings under 215 ILCS 5/188.1 in the future.

84. The Statute in word and operation limits standing to presenting arguments to the court about releasing records only to "the Director and the company." The First Amendment right to information from court proceedings is a right of the individual against the prerogatives of legislatures and agencies. The right is not diminished due to the grace and good judgment of government officials, especially when there remain vast discrepancies between access to information on the part of the AG, DOI, NextLevel and its advisers, on the one hand, and the

intervenor on the other, as well as demonstrable differences in the records to which the parties are assenting to be sealed.

85. The secrecy obligated by the Statute fails to protect any legitimate governmental interest, much less a compelling one. The Statute demonstrably allows individuals whose careers are in the same profit-driven industry -- one that relies on public funds – to make secret deals among cronies who appear to be shareholders in the company they are purchasing, aver these agreements are at “arms length,”<sup>78</sup> and then seemingly receive a get-out-jail-free card for potential fraud.<sup>79</sup>

86. As a result of the court’s order ending the sequestration for this proceeding, the public for the first time will learn that the DHFS was or is NextLevel’s largest creditor. The cause of a private firm owing money to the same office that has paid the firm over \$1 billion is of great public interest and thus favors release of the balance of the records in this proceeding.

87. The justification for ordering records sealed – the court finds they are “sensitive to NextLevel’s interests”<sup>80</sup> – fails to meet the criteria for sealing court records, as explained below, especially ¶88.

#### If There Were Only One Precedent

88. The Supreme Court of Illinois in *Union Oil Co. of California v. Leavell*, 220 F.3d 562, 568 (2000), has provided analysis and precedents that track closely the facts and equities intervenor presents in this motion:

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78 Order of June 29, 2020, ¶9. (“The Transaction Documents were negotiated and proposed by NextLevel MCO, NextLevel Parent, Centene and Meridian, as applicable, without collusion or fraud, in good faith, and from arm's length bargaining positions.”)

79 *Id.*, ¶18. (“215 ILCS 5/204, including specifically 215 ILCS 5/204(m)(A) and (C), constitute defenses to preference actions, fraudulent transfers and fraudulent conveyances, arising out of or relating to transactions such as the Agreement and Transaction that are approved by the Director in his capacity as regulator ...”)

80 Order of November 29, 2021, 20 CH 04431.



People who want secrecy should opt for arbitration. When they call on the courts, they must accept the openness that goes with subsidized dispute resolution by public (and publicly accountable) officials. Judicial proceedings are public rather than private property, *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 27–29, 115 S.Ct. 386, 130 L.Ed.2d 233 (1994); *In re Memorial Hospital of Iowa County, Inc.*, 862 F.2d 1299, 1302–03 (7th Cir.1988), and the third-party effects that justify the subsidy of the judicial system also justify making records and decisions as open as possible. What happens in the halls of government is presumptively public business. Judges deliberate in private but issue public decisions after public arguments based on public records. The political branches of government claim legitimacy by election, judges by reason. Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like fiat, which requires compelling justification.

Precisely because of the first amendment equities characterized in *Union Oil Co.* a law obligating a court to hide a proceeding's very existence, and subsequently defer to the parties as to the documents that will be sealed or released, is clearly unconstitutional. Moreover, the facts reviewed, including sharp and persistent criticisms from the Comptroller herself, undercut any *pro forma* assurances that since the DOI and creditor DHFS are using the courts, and not just private parties, interlocutor should just move along.

#### Common Law

89. 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).

90. 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).

91. 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.

92. 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. Alheimer & 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

93. 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.

94. 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 the public has a right to review, including the docket, complaint, motions, orders, and exhibits are typically those available to the public in court proceedings, including those involving financial and otherwise private information such as those 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.<sup>81</sup>

95. 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.)

96. The orders that continue to restrict access to records in this case are based exclusively on deference to the AG, the DOI, NextLevel and its new owner Centene/Illinois Meridian Health Plan, even though closing proceedings based solely 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.

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81 "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).

### Statutory Right

97. 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.

### Illinois Constitution

98. 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, even under protest of the Comptroller.

99. 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.

100. 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

101. At the same time as intervenor is denied any knowledge of records in this case, NextLevel relies on the Statute to share at its discretion information about the case with a vague

class of individuals referenced as “advisors.” (“...nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws.”) By affording access to information about Illinois health care operations to officials who failed to meet their financial obligations to the state, while denying Stevens access to this information, the Statute denies Stevens equal protection of the laws.


102. The unreliable Docket provided to Stevens for these proceedings violates her due process right under the Fourteenth Amendment.

WHEREFORE, for the foregoing reasons, intervenor respectfully requests that this honorable court: (1) vacate all orders that have the effect of denying to intervenor and the public access to any documents or portions thereof filed with this court in *People of the State of Illinois ex rel DOI v. NextLevel Health Partners, Inc.*; (2) order the immediate release to intervenor and the public all documents filed in these proceedings without redactions; (3) declare **215 ILCS 5/188.1 (b) (4,5)** unconstitutional and unenforceable, and further that all proceedings and oversight initiated by the DOI pursuant to **215 ILCS 5/188.1** be subject instead to **705 ILCS 105/16**.

Respectfully Submitted,  
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DATED: January 31, 2022

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.



Jacqueline Stevens