IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE CONSERVATION OF
NEXTLEVEL HEALTH PARTNERS, INC.

Jacqueline Stevens, Intervenor, *Pro Se*

2020 CH 04431

MOTION TO RECONSIDER AND FOR ORDER TO OBTAIN EQUAL ACCESS TO COURT RECORDS

Introduction

Pursuant to 735 ILCS 5/2-1203, Intervenor Jacqueline Stevens ("Intervenor") respectfully requests this court vacate its order of June 13, 2022 ("Order"), declare unconstitutional 215 ILCS 188.1 (b) (4,5), and declare public all records and hearings for *In the Matter of the Conservation of NextLevel Health Partners, Inc. (*2020 CH 04431). The reconsideration of the Order is requested on grounds of clear legal errors and also new evidence, including the ongoing public access to records the court on November 29, 2021 lifting sequestration ordered sealed or redacted ("Lift and Seal Order"). Further, Intervenor respectfully requests this court order access be granted to Intervenor so that she may remotely access at no fee a digital database for Illinois court filings from which she is presently excluded while attorneys in this proceeding are allowed access, in clear violation of Intervenor's rights under the Fifth and Fourteenth Amendments, as well as Ill. Const., art. IV, sec. 22 pursuant to 705 ILCS 105/16(6). ("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...")

Proceeding History

On November 29, 2021, the Court issued an order lifting the stay on ending sequestration and granting NextLevel's motion to file exhibits under seal and replace the original Complaint of June 3, 2020 and order of June 9, 2020 with versions that had portions redacted. On December 6, 2021, the court issued an order granting Jacqueline Stevens Intervenor status for the purpose of making arguments about the "public nature of these proceedings." Intervenor filed her Amended Motion on January 31, 2022. On March 14, 2022, NextLevel Health Partner, Inc. ("NextLevel") filed its Opposition Response. On March 21, 2022 the People of Illinois representing the Department of Insurance ("DOI") filed its Opposition Response motion. Intervenor on April 4, 2022 filed a motion to obligate parties to notice all motions to Intervenor and to declare public all records for 2020 CH 04431 previously released by Chancery Division. On April 26, 2022, NextLevel filed its Sur-Reply. On June 8, 2022, Intervenor filed a motion for leave to file Supplemental Motion and attached as an exhibit a motion containing new evidence, a Sur-Sur Reply, and a motion for sanctions. Later that day, oral argument was held on the briefings and the Court announced an intention to issue the final judgment at 2 p.m. on June 13, 2022. On June 12, 2022, Intervenor filed a Motion to Postpone the Final Order. Following presentment at a hearing on June 13, 2022, the Court issued an order denying motions in the exhibit containing the supplemental motions with the exception of the motion for sanctions under Illinois Supreme Court Rule 137. The Court also denied the Motion for Postponement. In a written order issued later on June 13, 2022, the Court issued its final judgment on Intervenor's Amended Motion and denied the motion to vacate the seal and redaction orders November 29,

2021. On June 21, 2022, Intervenor filed a motion for a ruling on her motion to have public records declared public.

I. Burden on Opposition Parties to Show Historical Regulation of Public Access to Conservation Proceedings

The court states "the Privacy Provision was in fact the basis for withholding those documents from the public view" and that "[t]his case cannot be resolved without considering constitutional arguments" (Order, 3). By rejecting opposition claims that the order was based on the court's "'inherent power to control its docket'" (Order, quoting NextLevel Sur-Reply at 2), the court suggests that it relied on a standard other than those of the court's inherent power, i.e, "a statute such as ours, which explicitly provides for certain *court proceedings* to be conducted outside of public view." Order, p. 3, emphasis added. The court's stipulation to the fact that the records and hearings to which Intervenor seeks access to "court proceedings." Intervenor thus has met a threshhold burden for at minimum her common law claims. The court's statement that Intervenor failed to prove a "presumption of public access to *conservancy* proceedings" (emphasis added) necessary to trigger judicial review under standards obligated by common law or the First Amendment is the *first* clear legal error. *Bank of America Nat. Trust v. Hotel Rittenhouse*, 800 F.2d 339, 343, 345 (1986)("We have also held that the common law presumption of access encompasses as well all 'civil trials and records.' *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1066-67 (3d Cir.1984) .... Here, there were *motions* filed and *orders* entered that were kept secret, in direct contravention of the open access to judicial records that the common law protects." Emphases in original.)

Having acknowledged the controversy is about court records for civil litigation involving a company, the presumption obligates an assessment of either the common-law or constitutional equities, notwithstanding the court's citation to. *Skolnick v. Altheimer & Gray*, 1919 Ill. 2d 214, 232 (2000). Order, p. 4. Appellee Skolnicks lost their efforts to keep records sealed because "under either the common law standard or the first amendment standard, the Skolnicks failed to make the necessary showing to rebut the *presumption of a right of access to the court file*," (*Skolnick* at 232-233) not because appellant Altheimer proved that there was a specific history of public access to professionally damaging claims about Illinois attorneys filing professional complaints against colleagues included in court records historically.

Related to the standard of review, the court's order's distinguising the statutory basis of the exclusion from other precedents obligating public access ("[these] cases do not involve a statute such as ours, which explicitly provides for certain proceedings to be conducted outside public view") is a clear legal error. Order, p. 3. *See New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ___ (2022), finding that New York State statute in place for a century unconstitutional:

> This Second Amendment standard accords with how we protect other constitutional rights. Take, for instance, the freedom of speech in the First Amendment, to which *Heller* repeatedly compared the right to keep and bear arms...In some cases, *that burden includes showing whether the expressive conduct falls outside of the category of protected speech*. [citation omitted]. And *to carry that burden the government must generally point to historical evidence* about the reach of the First Amendment's protections. p. 15, emphases added.

Likewise, the Massachusetts Supreme Judicial Court held that a party seeking to defend provisions of a state law denying public access to certain criminal court records had to overcome a common law presumption of public access. *Commonwealth v. Pon*, 469 Mass. 296 (2014). ("This court concluded that the records of closed criminal cases that resulted in the entry of a nolle prosequi or a dismissal are subject ... to *a common-law presumption of public access* ..." [emphasis added.]) Intervenor has demonstrated public access to similar proceedings in several large states, including the headquarters of Centene (Reply, p. 12), not to mention lower courts routinely recognizing the common law presumption to public access to judicial proceedings triggering an obligation opposing parties must overcome. *See Rushford v. New Yorker Magazine, Inc.*, 846 F. 2d 249, 253 (1988). ("Under common law, there is a presumption of access accorded to judicial records. [Nixon v. Warner 435 U.S. 589, 597 (1978)....The party seeking to overcome the presumption bears the burden of showing some *significant interest* that outweighs the presumption." Citation omitted.) See also *In re Marriage of Johnson*, 232 Ill. App. 3d 1068, 1072, 1075 (1992):

> In order to overcome the presumption of access, the [opposing] party bears the burden of establishing a compelling interest why access should be restricted. Under either a common law or first amendment analysis, we find the trial court abused its discretion by denying access to the court records and transcripts in the two proceedings. In this case, there is no compelling interest in barring public access to the court files and transcripts .... The parties' desire and agreement that the court records were to be sealed falls far short of outweighing the public's right of access to the files.

And see *People v. Kelly*, 921 N.E.2d 333, 344 (2009). ("[I]n addition to the constitutional right of access, there is a 'parallel common-law right of access,' recognized by the Illinois Supreme Court" [citations omitted]); *A.P. v. M.E.E*, 354 Ill. App. 3d 989, 993-94 (2004), reversing on interlocutory appeal trial court sealing of civil records and remanding:

> Judicial proceedings in the United States are open to the public — in criminal cases by constitutional command, and in civil cases by force of tradition...Certain jurisdictions have recognized a constitutional right of access to civil court files and records." [Citations omitted.]....Moreover, the district court did not rely on any particularized showing of the need for continued secrecy, as asserted in *Ernst & Ernst*, but instead only on the general interest in encouraging settlement. As we have held, that is not enough. Even if we were to assume that some settlements would not be effectuated if their confidentiality was not assured, the generalized interest in encouraging settlements does not rise to the level of interests that we have recognized may outweigh the public's common law right of access.

Insofar as Intervenor is challenging the statutory standards obligating exclusions from court hearings and withholding of information in court records, the order's failure to provide a fact-based equitable analysis grounded in the record and balancing the benefits of the Privacy Provision against the burdens of a public denied access to information about the operations of a firm repeatedly attracting substantial and repeated regulatory fines and the response of the DOI in the wake of its order finding NextLevel's insolvent despite receiving $1.7 billion in taxpayer funds following bidding procedures implemented over objections from Illinois Comptroller (Reply, pp. 1-2, citing to facts in Mot. of January 31, 2022) is a clear legal error.Further, insofar as Intervenor's assertion of the public's prerogative to access to court proceedings relies in part on common law and not only a First Amendment right, the court's sole reliance on *In re S.G. 175* Ill. 2d 471, 486 (1997) to assign Intervenor the responsibility to overcome the "strong presumption of constitutionality" is inapposite, and further so as the subject matter concerns child welfare, not the welfare of the courts into which the legislature encroached when passing the Privacy Provisions. At no point does the court find that the statute advances "significant interests" sufficient to overcome the common law presumption that judicial records are open to the public.

The court's review of the Privacy Provision relies only on the mere recitation of the statutory text and the existence of similar policy in other states on which the court bases a conclusory finding that "[t]he interest being protected here is not the interest of the insurance company, but that of its creditors, policyholders, and the public." Order, p. 4. The court's analysis finds the statute is constitutional on grounds that are conceptually if not factually plausible, a test inconsistent with either the common-law or First Amendment rights presumptively afforded access to court proceedings. *Illinois Housing Dev. Auth. v. Van Meter,* 82 Ill.2d 116, 120 (1980), citing *Dandridge v. Williams*, 397 US 471, 485-87 (1970). The court's finding, in other words, is that "the legislation [of the Privacy Provisions"] simply must bear a rational relationship to a legitimate governmental interest [of creditors, etc.]." Even if the interest protected in the court's order of November 29, 2021 pursuant to the Privacy Provision were indeed those the court references – the motions state lender and purchaser Centene Corporation is the main beneficiary – a mere "interest" is insufficient to defeat the common-law or constitutional right to public access for a statute purportedly "designed to have the Director return control to the company without damaging it." Sur-Reply, 6.[1]

1 Among numerous incongruities for these proceedings is that, according to court records, other than for purposes of the Privacy Provisions being challenged NextLevel never functionally made use of the conservation policy. On June 3, 2020 the Attorney General filed the Complaint. On June 9, 2020 the firm's books and assets were under the control of the DOI. And on June 29, 2020, the officials who helped set up NextLevel were part of the corporation that paid NextLevel for its membership, and signed an agreement averring to sell at "arms-length" to the company where its officials were officers, "on the expectation of confidentiality" pursuant to 215 ILCS 188.5(5) NextLevel Motion Memorandum in Support of NextLevel's Proposed Limitations on Lift of Sequestration, November 11, 2021, p. 1, ¶¶11, 12. Whatever "conservation" function NextLevel is attributting to the statute never applied to the DOI and NextLevel, which court records show for over two years neither pursued nor obtained control the company after the DOI stepped in. Instead of actual conservation, NextLevel has been negotiating secret debt payment agreements with its creditors, including charity hospitals, and withholding financial information obligated to be released under the Insurance Code's Liquidation Provision. Even if the statute performed in this instance the conservation NextLevel claims as its *raison d'etre*, it would be unconstitutional. Its amenability to being used for no legitimate public policy purpose whatsoever, including that NextLevel attributes to the legislature's intent, was discussed in the Supplemental Motion the court denied for being untimely. Order, p. 4. The court's order failing to acknowledge materially important evidence for purposes of weighting equities under common-law at least is a clear legal error.

II. "Historical": 1776, not 1967

A *second* clear legal error is the court's assertion that by being in place for 55 years and similar provisions existing in other states during this time frame, the opposing parties have shown that these proceedings have indeed been historically confidential and therefore do not trigger any constitutional presumption of a First Amendment right the Privacy Provision violates. Order, p. 5. *See New York State Rifle and Pistol Assn. v. Bruen*. 597 U.S. __ (2022), finding unconstitutional law passed over 100 years ago. ("Today's licensing scheme largely tracks that of the early 1900s ... Only if a firearm regulation is consistent with *this Nation's historical tradition* may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command," citation omitted, emphasis added.)

Copious case law shows that a practice in place for 55 years does not count as "historical" for purposes of the Court's history and logic tests paraphrased in *Skolnick* (at 232) and from which this court quotes. Order, p. 4. As the Court recently affirmed, the time frame for ascertaining if a statute or case law is *historical* for purposes of denying constitutional relief is that of the founders. Elaborating on constitutional points cited in Intervenor's briefs, the Court notes:

> [W]hen a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment.

The court's order provides no examples of Privacy Provisions in place for court proceedings responsive to the societal problem of firms, including insurance firms, not paying commercial debts in the time frame of the founders, nor does the court point to any statutes obligating courts not to permit public access to financial records of firms sued by creditors or the state for

insolvency or potential insolvency. The silence in the record on these matters is a clear legal error.

III. Common Law Public Notice and Access to Similar Proceedings

A *third* clear legal error is failing to declare 215 ILCS 1881.1 (b) (4,5) unconstitutional on the grounds that historically the public has had access to to such proceedings and thus has a First Amendment right to records of such court proceedings. See *re Astri Inv., Management & Securities Corp*., 88 BR 730, 741 Bankr. Court, D. Maryland (1988) (holding "a presumptive First Amendment right of access to creditors' meetings exists"). Although the burden is not on Intervenor to prove that such court proceedings historically allowed public access, the record indicates this was the case. As stated in Intervenor's pleadings, U.S. bankruptcy proceedings today by statute are open to the public (Mot. ¶94 and note), and insurance firms operating in states with about half the U.S. population are unable to hide records the court order allows NextLevel and other firms not paying debts. Reply pp. 12-13.

To elaborate, U.S. bankruptcy proceedings[2] may in rare events use trustees for "return[ing] control to the company," the purpose NextLevel assigns to the conservation statute. Sur-Reply, p. 6. According to the agency administering the U.S. Courts:

> A case filed under chapter 11 of the United States Bankruptcy Code is frequently referred to as a 'reorganization' bankruptcy.' Usually, the debtor remains 'in possession,' has the powers and duties of a trustee .... The appointment or election of a trustee occurs only in a small number of cases .... The court, on motion by a party in interest or the U.S. trustee and after notice and hearing, shall order the appointment of a case trustee for cause ... The case trustee is responsible for management of the property of the estate, operation of the debtor's business, and, if appropriate, the filing of a plan of reorganization. Section 1106

2 Each federal district has a bankruptcy court. "Federal courts have exclusive jurisdiction over bankruptcy cases involving personal, business, or farm bankruptcy. This means a bankruptcy case cannot be filed in state court. Through the bankruptcy process, individuals or businesses that can no longer pay their creditors may either seek a court-supervised liquidation of their assets, or they may reorganize their financial affairs and work out a plan to pay their debts." "Court Role and Structure," https://www.uscourts.gov/about-federal-courts.

> of the Bankruptcy Code requires the trustee to file a plan 'as soon as practicable' or, alternatively, to file a report explaining why a plan will not be filed or to recommend that the case be converted to another chapter or dismissed. 11 U.S.C. § 1106(a)(5).[3]

The procedures for federal court appointing a trustee to assist in the reorganization of a firm are those relied on by 215 ILCS 188.1, with the exception that hearings, filings, and even meetings are public by statute as well as common law:

> Public examination of the debtor has continued into modern times as a feature of English bankruptcy law. 'The public examination had traditionally been regarded [in England] as one of the most important aspects of the bankruptcy process, for it is intended to serve one of the main purposes of public policy associated with bankruptcy law, namely the protection of the public by gathering as much information as possible about the debtor and his affairs.' I. Fletcher, *Laws of Bankruptcy* 111 (1978) (footnote omitted)." *Re Astri* at 740.

The Bankruptcy Court in the federal district of Maryland further noted, "historical analysis of English and American practices would appear to support the media's position" on public access to creditor meetings in bankruptcy proceedings." *Id.* Citations omitted. This court's assertion that the Privacy Provision benefits policy-holders, creditors, and the public s exactly the opposite of case law going back to English common law and is a clear legal error.

Federal bankruptcy courts consistently recognize a presumption of public access to these proceedings, with no exceptions for circumstances of reorganization undertaken by a trustee, a position functionally similar to the work performed by the DOI Office of Special Deputy Receiver.[4] *In re Symington*, 209 BR 678, 681-2, 683 (1997), obligating public access to pre-litigation third party records obtained by subpoena. ("[T]he press and public are entitled to attend Rule 2004 examinations because such examinations were historically public proceedings

3 Chapter 11 - Bankruptcy Basics, https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics.

4 "The primary responsibilities of the Receiver are to marshal the assets of companies in liquidation; reduce those assets to cash; and to pay the cash to persons having claims against the liquidated company as directed in the Illinois Insurance Code." Office of the Special Deputy Receiver, https://www2.illinois.gov/sites/Insurance/AboutUs/Pages/OSD.aspx

and because public access plays significant role in the bankruptcy process." "The sweeping general examination" of debtors and others to recover assets and uncover fraudulent conduct is a traditional feature of bankruptcy jurisprudence that is traceable to the first bankruptcy statute enacted by the English Parliament more than 450 years ago. 5 *Remington on Bankruptcy* § 1979 (1953 ed.)."

English courts since at least 1589 obligated public notice and public access to hearings and records under statutes empowering a court or state official to seize control of a firm's assets for the purpose of insuring payment to creditors. *Smith v. Mills,* (1589) Trinity Term, 31 Elizabeth I. In the Court of the King's Bench, Part I, noting public announcement of bankruptcy and creditor awareness thereof as crucial to fair disbursement. ("And this Act gives benefit to those who will inquire and come in as creditors, and not to those, who either out of obstinacy refuse, or through carelessness neglect, to come before the commissioners and pray the benefit of the said statute; for vigilantibus et non dormientibus jura subveniunt, for otherwise a debt might be concealed, or a creditor might absent himself, and so avoid all the proceedings of the commissioners by force of the said Act. And every creditor may take notice of the commission, being matter of record, as is aforesaid, and so no inconvenience can happen to any creditor who will be vigilant...").[5]

Judges relying on English bankruptcy case law in the time frame of the founders would have made the same inferences of debt avoidance in violation of a contract that Kindred asserted in its complaint against NextLevel, which, along with Centene, and the DOI were using 188.1 (b) (4,5) for the sole purpose of maintaining secrecy during liquidation and not for reorganization.[6]

5 Edward Coke, p. 49. Part I, p. 47. The Case of Bankrupts. First Published in the Reports, volume 2, page 25a.

6 Since Next Level [sic] received payments from the government each month, one way in which it was able to increase its revenue was to delay payment (or deny payment entirely) to the medical and hospital providers that cared for its insureds and thereby earn money on the 'float.' The longer Next Level [sic] could hold on to these

Similar proceedings at the time of the founding of this country were advertised in newspapers; indeed, public access was a key component of their equitable objectives. *See Ex parte Bullock*, 14 Ves. 452 (1808), order denying bankrupt petition to avoid penalty of debt on grounds of prior bankruptcy hidden from creditors after removal from public docket of bankrupt debt on petition of one creditor in collusion with bankrupt's attorney and nephew working for the court not lawful grounds for avoiding subsequent debt.[7] Again, although NextLevel is asserting the policy rationale of conservation, but for the conjuncture of two rare events, NextLevel and its officials would have been in the situation of the bankrupt officials criticized in *Ex parte Bullock*.

IV. Unconstitutional Encroachment on Judicial Powers

The court observes that precedents Intervenor cited "do not involve a statute such as ours , which explicitly provides for certain court proceedings to be conducted outside of public view." p. 3. As noted above, the Supreme Court does not shift the presumption of boundaries for a constitutional right to the public because the limit is a statute. To distinguish the precedential authority and power of judicial orders limiting a court from excluding the public from court proceedings from the prerogative of a state legislature, and to accord more deference to the latter, derogates judicial power in violation of Article II, Sec. I of the Illinois constitution and is a *fourth* clear legal error in the court's order. Precedents with boilerplate language on constitutional avoidance are not applicable when the case law Intervenor cites clearly identifies a common-law and constitutional

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amounts before it paid those providers, the greater the returns from investing those funds." Kindred THC Chicago, LLC d/b/a Kindred Hospital – Chicago North and Kindred – Chicago- Central Hospital v. NextLevel Health Partners, Inc. 2021L002873, Complaint, Circuit Court of Cook County, Law Division, filed March 16, 2021, ¶14.s

7 "The Bankrupt Laws impose many hardships upon the bankrupt: on the other hand, if he can set up a secret act of bankruptcy, and, availing himself of it, set aside the Commission, the creditors are placed in a situation of difficulty, in which they ought not to be, and from which it is not easy to relieve them. The bankrupt may permit the Commission to proceed without objection, until he has obtained his certificate; and he has the whole benefit, if the creditors do not find out, that he has concealed any of his effects: but if they happen to make that discovery, the instant they complain he brings forward the secret act of bankruptcy; and thus defeats all prosecution." *Ex Parte Bullock* at 467.

right that is violated, be it the legislature or a court. *See Kunkel v. Walton*, 179 Ill. 2D 519 (1997), discussed in Reply at pp. 11-2.

V. "Logic" Rationale Illogical and Inaccurate

A *seventh* clear legal error is that the analysis favoring the putative "logic" prong of the test for public access – "public access to proceedings could lead to a 'run on the bank' by the company's creditors" p. 4 --is facially absurd, inconsistent with the statute, and supported by only vague policy concerns, absent specific analyses or evidence. *Bank of America Nat. Trust v. Hotel Rittenhouse*, 800 F. 2d 339, 346 (1986), finding trial court abused discretion by sealing records without specific findings:

> [T]he district court did not rely on any particularized showing of the need for continued secrecy, as asserted in *Ernst & Ernst*, but instead only on the general interest in encouraging settlement. As we have held, that is not enough. Even if we were to assume that some settlements would not be effectuated if their confidentiality was not assured, the generalized interest in encouraging settlements does not rise to the level of interests that we have recognized may outweigh the public's common law right of access.

On June 9, 2020 the court ordered NextLevel turn over its books and control of accounts to the DOI, thus prohibiting any payments outside the conservatorship. What sort of "run on the bank" do the opposing parties and court have in mind? *A.P. v. M.E.E*, 354 Ill. App. 3d 989, 996 (Ill. App. Ct. 2004), finding trial court in civil litigation abused discretion by sealing court record for family trust without specific reasons. ("A closure order should both articulate the privacy interest involved and be accompanied by a statement of reasons 'specific enough that a reviewing court can determine whether the closure order was properly entered.' *Press-Enterprise Co.*, 464 U.S. at 510 ..."). A "run on the bank" is not a reason, but here a clichè that amounts to gibberish.

The very order of June 9, 2020 the court insists requires redactions to avoid a "run on the bank" made it impossible for any party to receive funds from NextLevel without the approval of the DOI, which was:

> hereby authorized and directed to immediately take possession and control of the property, books, records, accounts, assets, business and affairs of NextLevel and of the premises currently occupied, or hereafter occupied, by NextLevel for the transaction of business, pursuant to the provisions of Article the same for the benefit XIII of the Code, 215 ILCS 5/187, et seq., and to conserve of the policyholders and creditors of NextL evel and of the public; and, further, to take such actions that the nature of this cause and the interests of the policyholders and creditors of NextLevel, or the public, may require, subject to the further orders of this Court...

The court further ordered that NextLevel officials were "enjoined and restrained from transacting any business approval of the Director, as Conservator, of NextLevel without the prior written or until further order of the Court ..." The court provides not even a whiff of a reason as to how redacting a line from a court order that is itself controlling NextLevel's disbursements, much less documents filed after this, could lead to a "run on the bank" or even a plausible parsing of the phrase for this context. To the extent that the court is claiming the Privacy Provision discharges the court of making specific findings justifying sealing records, the court's ruling is in clear legal error because on November 29, 2021 the Privacy Provision was irrelevant to these proceedings.

To be sure, there is a widely cited federal district bankruptcy court order affirming the sealing of financial records during bankruptcy proceedings to avoid what could be construed as a "run on the bank." However, this order was limited to the impact of publicity on *actual banks* that had lent funds to *other banks* that were in bankruptcy proceedings. *EPIC Assocs. V,* 54 B.R. 445, 449 (Bankr. E.D. Va. 1985. ("According to Professor Weimer, the recent savings and loan crises in Ohio and Maryland have created a climate that would make runs on area banks *reasonably probable* if the information requested by the Post is disclosed." Emphasis added.)

Insofar as NextLevel's largest creditor was the state of Illinois,[8] the invocation of a "run on the bank" reveals the absence of any assessment of how publicity would affect the actual proceeding. Further, the actual record shows a *certainty of no harm at all* from the release of all records ordered sealed or redacted in this case, discussed next, and is further grounds for finding clear legal error in the court's order of June 13, 2022.

VI. Records Ordered Redacted and Sealed Remain in Public Record

The *sixth* legal error in the order is its disregard of the record on the equities for the sealing and redacting of proceeding records. New evidence indicates that as recently as July 5, 2022 the public had access to the unredacted Complaint (Exhibit 1), unredacted Order of June 9, 2020 (Exhibt 2) and the exhibits to the Declaration of Glenn Giese (Exhibit 3), all filed as "confidential" here in deference to the court. Intervenor since early 2022 in hearings and filings has pointed out that the records in dispute were in fact in the public domain; any order that they should now be "confidential" is in clear legal error. Order, p. 3. *See United States v. Mitchell*, 551 F.2d 1252, 1261 (D.C. Cir. 1976) ("It suffices to note that once an exhibit is publicly displayed, the interests in subsequently denying access to it necessarily will be diminished."); *Levenstein v. Salafsky*, 164 F.3d 345, 348 (7th Cir. 1998), discussing information in a civil complaint that was under seal but the facts available to public in appellate filings. ("Litigation is a public exercise; it consumes public resources. It follows that in all but the most extraordinary cases — perhaps those involving weighty matters of national security complaints must be public. In any event, *given that the briefs on appeal are (appropriately) publicly available documents, and the briefs recount all allegations contained in the complaint, we present the facts as alleged in the complaint*." Emphasis added.)

8 NextLevel Opposition to Motion to Vacate Order of Sequestration, 2020 CH 4431, September 13, 2021 ¶10.

VII. Mootness

The court notes Intervenor sought "'anticipatory relief,' to declare the statute unconstitutional going forward, reasoning that this issue is 'capable of repetition yet evading review'" and ruled "[t]he Court will not decide hypothetical issues." Order, 3. The order disregards the case law and facts on mootness in Intervenor's pleadings, including in her amended motion (Mot., ¶1, ¶57, note 54, ¶76) and Reply, pp. 5-6,[9] and is a clear legal error. *People v. Kelly*, 397 Ill. App. 3d 232, 249 (2009), holding that a trial court's order to seal transcripts was not moot after the transcripts had been released. ("Two exceptions to the mootness doctrine include (1) the "'capable of repetition, yet evading review' exception; and (2) the public interest exception.") The court here claimed that Intervenor "did not address the mootness issue in her Amended Motion, though she did it address it in her reply." Order, p. 2. After citing relevant case law, Intervenor's stated, "Opposing parties do not refute Intervenor's statements about her status as a citizen with a career devoted to acquiring, analyzing,publishing information on government operations and an ongoing interest in accessing insurance firm conservancy proceedings. Mot., ¶1, ¶57, note 54, ¶76. 215 ILCS 188.1 (b)(4,5) obligates secret proceedings that will exclude Intervenor going forward. The court does not claim otherwise, nor cite any case law to support its silence on a fact-pattern numerous precedents find sufficient to overcome findings of mootness. *See In re A Minor*, 127 Ill. 2d at 258, issuing order on public access after a sealed transcript was released. ("[A]s in *Globe Newspaper, supra*, at 603, and *Gannett Co*. v. *DePasquale*, 443 U.S. 368, 377-378 (1979), this controversy is "'capable of repetition, yet evading review.'") And see *Gannett*

9 "The Court has held that where civil controversies are "capable of repetition, yet evading review," then even when the event giving rise to the challenge is in the past, unlike this current proceeding, the constitutional controversy remains live. First Nat. Bank of Boston v. Bellotti, 435 US 765, 774. (Holding that First Amendment appeal of ruling on law limiting campaign contributions not moot after referendum held, citing So. Pac. Terminal Co. v. Int. Comm. Comm., 219 US 498, 515 (1911).)" Reply, p. 5.

Co. v. Depasquale, 443 U.S. 368, 377-78 (1979), holding release to media of transcript and conclusion of trial did not moot declaratory relief. The court has not explained how going forward Intervenor would be capable of petitioning to intervene in a litigation under 215 ILCS 188.1 (b) (4,5) that by statute will not appear on the public docket.

VIII. Intervenor Denied Access to Records Available to Attorneys at No Cost

On July 5, 2022, Intervenor first discovered that via the "CCC Portal" attorneys in this case have access at no fee to all records in this and all other Illinois court filings at no cost and that she is prohibited from similar access: "Please note that the registration system on the portal is for justice partner and Illinois-licensed attorneys use only...If you are not one of these an [sic] authorized entities, PLEASE DO NOT REGISTER -- registration from unauthorized sources will be promptly denied. "[10] CCC Portal Home Page, Exhibit 4. This policy is unconstitutional. *Skinner v. Anderson*, 38 Ill.2d 455, 459 (1967), finding a statute limiting complaints for damages against architects violates art. IV, sec. 22. ("'The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: for — * * * Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever.'") The granting to licensed attorneys and state agencies access to a database with court records the legislature has declared public, and the denial of access to other Illinois residents, taxpayers, and litigants, including Intervenor, is a clear violation of art. IV, sec. 22. It is also clearly unfair for some parties to these proceedings to have access to these records and deny such access to Intervenor, especially in a case in which the public availability of these records is the source of the controversy. In addition, the prohibition violates Intervenor's right to due process and equal protection of the laws.

10 CCC Portal home page, https://cccportal.cookcountyclerkofcourt.org/CCCPortal.

Respectfully Submitted,
/s/ Jacqueline Stevens
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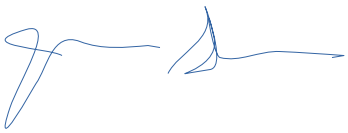
July 12, 2022

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

Certificate of Service

I certify that on July 12, 2022, I caused the foregoing document to be filed and served on all counsel of record.