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Thomas D. Palella
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APPELLATE COURT 1ST DISTRICT

No. 1-23-0803
IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE MATTER OF CONSERVATION OF NEXTLEVEL HEALTH PARTNERS,

DR. JACQUELINE STEVENS,
Intervenor-Appellant,
v.
PEOPLE OF THE STATE OF ILLINOIS
ex rel. DANA POPISH SEVERINGHAUS,
Director of the Illinois Department of Insurance,
and DANA POPISH SEVERINGHAUS,
Director of the Illinois Department of Insurance,
acting solely in her capacity as Conservator
Plaintiffs-Appellees,

And

NEXTLEVEL HEALTH PARTNERS.

Defendant-Appellee

case no: 20 CH 4431
appeal from Circuit Court
Cook County

Honorable Judge Meyerson

APPELLANT'S OPENING BRIEF

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

INTRODUCTION

215 ILCS 5/188.1, titled *Provisions for Conservation of Assets of a Domestic, Foreign, or Alien Company***,** guarantees secret court proceedings by precluding and/or withholding any judicial discretion if the defendant firm requests private proceedings. Intervenor Jacqueline Stevens initiated this action to: (1) vacate all orders that deny public access to all documents or portions thereof filed pursuant to 215 ILCS 5/188.1 (4,5) in *People of the State of Illinois ex rel DOI v. NextLevel Health Partners, Inc.* 2020 CH 04431; (2) order the immediate release to Intervenor and the public all documents filed in these proceedings without redactions*;* and (3) declare 215 ILCS 5/188.1 (4,5) unconstitutional and unenforceable as violative of the United States and Illinois constitutions, and 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**.**

The matters from which this appeal arise were decided by the court not a jury. No questions are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether 215 ILCS 5/188.1 (4,5), a 1967 Illinois statute mandating circuit courts sequester a docket and close civil proceedings in part or their entirety and indefinitely on motion of a private party, is unconstitutional and thus violates Intervenor's constitutional rights to observe court proceedings.
2. Whether court records publicly available for more than one year following the party moving to seal records failure to follow Illinois court procedures to seal records can be subsequently sealed and Intervenor restrained from releasing lawfully obtained records under threat of contempt sanction.

3. Whether a 1967 Illinois statute mandating circuit courts to sequester a docket and close civil proceedings in part or their entirety and indefinitely on motion of a private party is "special legislation" in violation of Ill. Const. 1970, art. IV, § 13 (and the Illinois 1870 Constitution Article IV. Legislative Department, § 22).
4. Whether the doctrine of mootness applies to the facts of this case. -

JURISDICTION

This Appeal seeks review of the following orders that merged with the declaration and entry of a final judgment in the case below: (1) June 13, 2022 denying Intervenor's Supplemental Motions to Order Department of Insurance to Release Financial Records, Declare Termination Provision Unconstitutional and her motions for declaratory relief and sanctions and (2) the October 4 and 5, 2022 orders denying Intervenor motions for reconsideration of the orders entered on June 13, 2022 and a motion for sanctions under Ill. Sup. Ct. Rule 137. The jurisdiction of appellate courts "is limited to reviewing appeals from final judgments, subject to statutory or supreme court rule exceptions." *In re Marriage of Verdung,* 126 Ill.2d 542, 553, 129 Ill.Dec. 53 (1989). "A judgment is considered final 'if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof.'" *In re Curtis B.,* 203 Ill.2d 53, 59, 271 Ill.Dec. 1, 784 N.E.2d 219 (2002) (quoting *R.W. Dunteman Co. v. C/G Enterprises, Inc.,* 181 Ill.2d 153, 159, 229 Ill.Dec. 533, 692 N.E.2d 306 (1998)).

On 22 April 2023 the Court entered final judgment in the case finally disposing of all claims against all parties and the orders subject to this appeal merged with the final judgment.

On May 4, 2023 Intervenor filed a Notice of Appeal. Accordingly, this Court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments. Ill. S. Ct. R. 301.

Statutes Involved

This appeal involves the construction of the following statutory provisions:

A. 215 ILCS 5/188.1, titled Provisions for Conservation of Assets of a Domestic, Foreign, or Alien Company**,** is a portion of the Illinois Insurance Code that provides in subsections 4 and 5 as follows:

> (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.

1967 Ill. Laws, p. 1762, § 1.[1] (The entire statutory provision is reproduced in Appendix I)

B. 705 ILCS 105/16 (Court Records are Public Records) (Appendix II), Ill. Sup. Ct. R. 137 (Appendix III); 215 ILCS 155/21.1 Receive and Involuntary Liquidation (Appendix IV); 215 ILCS 5/402 Examinations, investigations and hearings (Appendix V).

STATEMENT OF FACTS

A. MEDIA EFFORTS OBSTRUCTED**.**

On June 4, 2020 at 10:36 a.m. investigative journalist Stephanie Goldberg sent an email to the Illinois Attorney General ("AG") press officer stating, "I'm having trouble accessing a case that was filed on June 3 against NextLevel Health Partners. Can you please share the

[1] These two subsections will be referred within this brief as the "Confidentiality Provisions".

complaint?" *See* Common Law Record [hereinafter "C"] at p. 891).[2] On June 5, 2020, she reported, "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." C 891.

B. NEXTLEVEL'S CONTRACT LACKED NORMAL PROCUREMENT OVERSIGHT

On or about February 25, 2017 Illinois Department of Health and Family Services ("DHFS") issued a Medicaid Managed Care Organization Request for Proposals, 2018-24-001 ("RFP"). The RFP 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..." C 896. On May 2, 2017 the Office of the Comptroller published a report ("Report") vociferously objecting to the RFP, including for its avoidance of review by the Chief Procurement Officer. C896-7. The Comptroller Report states, "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." C 897. The Comptroller 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." C 897. The Report urges DHFS to redraft the RFP to increase competition by soliciting bids from non-profits and non-minority owned firms. C 897. DHFS disregarded two Comptroller reports and went ahead with the RFP that awarded a "four-year, renewable contract to NextLevel..." C 897.

[2] Further citations to the record are in the following format: C [page number] V [volume number] for Volumes 2 and 3.

C. TRIAL RECORDS RELEASED IN 2022 INDICATE NEXTLEVEL EARLY SELL-OFF EFFORTS AND TAKEOVER BY FIRM WITH EXISTING NEXTLEVEL CONTRACTS AND OFFICIALS.

DHFS enrolled Cook County Medicaid patients as members in NextLevel at a rate incommensurate with NextLevel's extremely poor service record and reporting violations. C 898. Pursuant to DHFS contracts, NextLevel between 2017 and 2021 received over $1.2 billion in taxpayer funds. C 898. Although the contract was for four years, CEO Cheryl Whitaker ("Whitaker") in 2018 initiated negotiations for the sale of NextLevel to firms that were not minority-owned. C 332. On June 29, 2020, a circuit court judge -- the third or fourth judge presiding over the case in less than one month (C 76, C 82-3, C 84-90) – approved a Membership Transfer Agreement ("MTA") between NextLevel and Fortune 500 Centene subsidiary. C 369-75. The confidential order stamped June 29, 2020 and without a filing number or date (C 369-75) granted a joint motion of the Illinois Department of Insurance ("DOI"), NextLevel, and Meridian Health Plan of Illinois ("Meridian") to transfer NextLevel's assets to Meridian (C 147 - 368), including its enrollee contracts with the DHS (C 147-318). Like NextLevel, "Meridian has no commercial products, and thus receives all of its revenue from state or federal governments." C 902.

The MTA included a Declarationfrom NextLevel's CEO Whitaker stating that: NextLevel in 2017 received a $30 million loan from Centene and had interest due of four million dollars, none of which had been paid[3]; paid Centene subsidiaries for numerous subcontracts (*Id*. at 3); in

[3] "Declaration of Cheryl Whitaker," filed June 29, 2020 as Exhibit 4, pp. 2-3. C 330-1. The lines for the signature and date are left blank. Id. p. 10. C 338. The Declaration was not ordered sealed following the order lifting sequestration on November 29, 2021 but was withheld for no legal reason from release to the public and Intervenor.

September, 2018 obtained a finance firm to secure the sale of NextLevel, then in its second year of a four-year contract. *Id*., C 897. Following the conservation action assuring secrecy as to its confidentially declared insolvency, (C 644), and MTA, NextLevel determined a "transaction with Centene was the best reasonably available strategic alternative for the Company." *Id*. at5. Whitaker claimed that Centene and NextLevel transactions were "at arms-length" and "[n]o Company Principal is related to any Centene or Meridian Principal"; and that "[t]o the best of the Company's knowledge, no Principals of Centene, Meridian or the Company share investments or equity in any venture or enterprise." *Id*., at 3-4. Whitaker did not disclose that several of NextLevel's promoters had past and current ties to Centene. Whitaker in 2018 was listed as "operating partner" of Harthaven Capital Partners, "*At the intersection of Wall St and Healthcare.*"™ ("Harthaven").4 Three other individuals listed on Harthaven's 2018 "LeadershipTeam" web page also had investments or leadership roles at NextLevel: Kenneth R Alleyne MD ("Alleyne"), Michael Kinne ("Kinne"), and Keith Wolski ("Wolski").5 Prior to his position at NextLevel, Kinne "served as the President of Centene Corporation's Illinois Medicaid Health..."6 Kinne in 2015 was NextLevel's President and Chief Operating Officer, as well as an investor and promoter.7 Prior to his employment at NextLevel, Wolski also had worked for

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[4] "Leadership Team," https://web.archive.org/web/20180817101851/http://harthavencapital.com/team.php. C 899

[5] NextLevel Health Partners, LLC, "Notice of Exempt Offering of Securities," Form D ("Form D"), attested byWhitaker 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/. C 899.

[6] Form D. C 899.

[7] "A promoter acts on behalf of a corporation before it is formed." https://www.law.cornell.edu/wex/promoter. C 899.

Centene.8 Subsequent to his employment as NextLevel's Chief Financial Officer ("CFO"), Wolski became CFO at Meridian, the subsidiary of Centene that acquired NextLevel's membership.9

During the confidential proceedings triggered by the DOI order of insolvency, Whitaker, a close friend with Michelle and Barack Obama, and the 2014 campaign manager for Rep. Robin Kelly (D-IL),[10] continued to serve as a member of the DHFS Medicaid Advisory Council, whose members are appointed by DHFS Director Therese Eagleson ("Eagleson"), an appointee of Governor J.B. Pritzker.[11]

D. LAUREN UNDERWOOD, A NEXTLEVEL OFFICIAL, CAMPAIGNS FOR OFFICE, HIDES INCOME FROM HOUSE ETHICS COMMITTEE

Immediately prior to campaigning for Congress in 2017, Rep. Lauren Underwood (D-IL) ("Underwood") revolved out of her career in the federal government, which included meetings with health insurance firms, and into a position at NextLevel Health. C 902. There she received compensation from NextLevel in 2018 but failed to report it in her financial campaign statement, an omission she failed to explain to reporters seeking comment.[12] C 903. After the 2020

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[8] "Leadership Team," https://web.archive.org/web/20180817101851/http://harthavencapital.com/team.php. C 899.

[9] "Executive Bio," https://www.comparably.com/companies/meridian-health-plan/keith-wolski, https://wiza.co/d/meridian-health-plan/f5b6/keith-wolski. C 899

[10] "Robin Kelly, Running for Jesse Jackson Jr.'s Seat, Has Some Good Connections—and Good Luck," Chicago Magazine. Jan. 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/. C 901.

[11] Medicaid Advisory Committee, "Members," https://www2.illinois.gov/hfs/About/BoardsandCommisions/MAC/Pages/Bylaws.aspx; https://www2.illinois.gov/hfs/About/Pages/Director.aspx. C900.

John Washington and Jacqueline Stevens, "Democratic Representative Pushed to Create a Massive Migrant

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.[13] C 903. Underwood in 2017-18 was NextLevel's "senior director for strategic and regulatory affairs." Underwood did not register as an Illinois lobbyist. C 903. Underwood frequently prefaces public statements with the phrase, "As a nurse,..." *The Intercept* in 2020 reported, noting as well that "[a]lthough Underwood obtained degrees and certificates in nursing and public health, she has never been paid to care for patients."[14] C 903. Underwood worked for NextLevel in the time frame of the firm being fined for operating improperly and withholding payments to charity hospitals that provide care to low-income populations who are Medicaid recipients.[15] C 905.

E. INTERVENOR'S EFFORTS TO PROCURE COURT RECORDS SEQUESTERED UNDER 215 ILCS 5/188.1

Intervenor Stevens undertook her research into the AG complaint against NextLevel in order to expose corruption in Illinois and nationwide.[16] C 889-90, C 903. She did so after

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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"); Lauren Underwood Financial Disclosure Report, U.S. House of Representatives, Jan. 13, 2020, reporting on 01/01/2017 05/1/2018inc0me, Filing ID #1003244.

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

[14] "Healthcare Database No One Wants," C 903 (The article quotes and cites to Underwood's public statements.)

[15] Stephanie Goldberg, "Medicaid mystery: State sends lots of people to lowest-rated managed care plan," October4, 2019, https://www.chicagobusiness.com/health care/medicaid mystery-state-sends-lots people-lowest-rated-managed-care-plan

viewing Underwood on CSPAN. ("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. on which Stevens previously had reported.")[17] C 904. After reading about Goldberg's reporting on the June 2020 lawsuit against NextLevel, Stevens one year later also attempted to find the AG Complaint. C 892. Unable to locate any mention of it on the docket, "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." C 892. On August 10, 2021, an official working for the AG responding to a request for the Complaint referenced in the article by Goldberg, informed Stevens that the General Law Division was unable to release responsive records due to a "court order." C 892. Through subsequent independent investigation Stevens was able to acquire a docket number --2020 CH 04431-- for the sequestered case from a non-public source. C 892. Stevens's query on the Cook County Circuit Court Chancery case locator page using the obtained docket number elicited no records, including no information that the case was filed or pending. C 892. On or about August 12, 2021 Stevens then called the Cook County Court 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., 2020 CH 04431. 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. C 892. After extensive phone and email

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

communications Stevens was informed that in order to obtain these records, she would need to file an intervenor motion. C 892-94. The statute on which the court relied for closing the proceeding was withheld from Intervenor until August 18, 2021 and revealed only pursuant to her persistent efforts. C 892-94. At that time Stevens first learned of a statute that categorically and indefinitely denied the public access to judicial proceedings. Appendix I, 2.[18] As a result of the case being sequestered pursuant to 215 ILCS 5/188.1 (4) and (5), (C 918), as well as false statements by DLA Piper attorneys, (C 1313-18 v2, C1330-36 v2, C1365-68 v2, C1393-1400 v2, A I, 2), Stevens encountered numerous obstacles in petitioning the circuit court, including (1) the withholding from Stevens and the public of important records the circuit court ordered released following the lifting of the sequestration order, including Whitaker's Declaration and other exhibits to the motions filed on June 29, 2020 (C 1195 v2, C1650 v2); (2) attorneys representing the opposing party insisting they would not notice Intervenor on motions tied to NextLevel's ongoing dissolution, requiring Intervening to obtain a court order assuring compliance with rules of court (C 1047-1045); (3) DLA Piper attorney's misrepresentations of the actual records in dispute (C1705 v2); and (4) burdensome motions practice necessitated by the fact that certain records covered by the November 29, 2021'Seal and Redact' order remained in the public domain and available for anyone[19]. As late as the date of this appeal, there is no complete record of orders filed in 2020 CH 04431 and their substance, including the reasons for the initial order vacating sequestration in the fall of 2021. C 526.

[18] Hereafter information in relevant statutes are referenced in the respective appendices as "A" and then the Appendix number, in this case Appendix I, followed by the page number of the section referenced.

[19]The same records are now part of the Certification of Record, in the public domain and available to the public. (e.g., C 42-56, 344-55, 1107-19)

PROCEDURAL HISTORY

2020 SEQUESTRATION

An order stamped "ENTERED Judge Moshe Jacobius – 1556 June 2, 2020" was filed on June 3, 2020, granting leave to Robert Muriel, then Director of the DOI, to file *instanter* a "Verified Complaint for Conservation of Assets and Injunctive Relief as to and against NextLevel Health Partners, Inc," with additional text hand written, "pursuant to Section 1881.(5) of the Insurance Code." C 76. The order is captioned, "This Complaint is Confidential under 215 ILCS 5/188.1." *Id*. An order stamped as "Entered, June 4, 2020" by Cook County Circuit Court Judge Sanjay Tailor (and filed on August 6, 2021) 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(5), following which he issued an order stating: "The court file in this case is hereby sealed and sequestered from the public view." C 80-1. The order included in hand-writing a caveat: "Nothing herein precludes defendant from communicating with or disclosing to its attorneys and advisors the above-referenced documents and information." Also in hand-writing is an additional order: "The Clerk shall remove this case from its public website." C 81.

On August 6, 2021, after Stevens' FOIA request and follow-up with the AG office, the AG filed a motion to vacate the sequestration order. C 432-446.[20] NextLevel on September 13, 2021 opposed the motion. C483-97. NextLevel stated:

> On August 6, 2021, the Attorney General, without prior notice to NextLevel, filed her Motion to fully vacate the Sequestration Order. The Attorney General argues that it is no longer necessary to maintain confidentiality over this proceeding because the Director, as Conservator of NextLevel, has "completed all the tasks" set forth in the Conservation Order. The truth lies in a Freedom of Information Act ("FOIA") request made to the

[20] NextLevel references with disparagement the AG motion as C 487.

Attorney General, as confirmed in two muckraking filings recently made in this proceeding. C 487.

On September 30, 2021 the Court granted the motion but stayed it "pending the further Order of the Court." C 526-7. On November 29, 2021,the circuit court lifted the stay and granted NextLevel's motion to file two records under seal: (1) a redacted version of the AG Complaint and (2) a redacted version of the circuit court's order of June 9, 2020. ("Seal and Redact Order") C 671-2. On December 6, 2021, the circuit court granted Stevens's petition to intervene. C 674-75.

MISSING COURT RECORDS AND INFORMATION.

An order stamped as entered on June 9, 2020 by Judge Pamela Meyerson and containing no stamp or record number tracking it as filed with the Cook County Circuit Court notes the AG's Complaint allegation that "NextLevel is insolvent" and that the firm's continued operation "poses a hazardous condition." C 133.[21] The circuit court order enters "an Order of Conservation ... as to and against NextLevel." *Id.* There is no order transferring the case from the jurisdiction of Judge Sanjay Tailor to the control of Judge Pamela Meyerson, nor any order or reference to the previous transfers of the case from Judge Moshe Jacobius or Judge Cecilia Horan, although records and the Chancery Division clerk stated this had occurred. C 892-93.

On January 31, 2022, Intervenor filed a First Amended Motion to Intervene, ("Am. Mot. Int."). C 888-917. On June 13, 2022, the circuit court issued a final order denying intervenor motions as to the substantive relief requested and her request for sanctions under Rule 137

[21] The Appellate record of July 23, 2023 contains seven copies of the order, none of which indicate a date on which it was filed or a record number. C 84- 139. The last copy, also not stamped as filed, includes a redacted sentence at page 2. C 133.

against NextLevel counsel, Mr. Stephen Schwab. C 1406-10 V2. On October 5, 2022 the circuit court, referencing reasons given in her oral findings of October 4, 2022, denied Intervenor's motion for sanctions and reconsideration of the order of June 13, 2022. C 1384-5 V2.

STANDARD OF REVIEW

This case involves purely questions of law: Intervenor Professor Stevens claims the applicable Confidentiality Provisions are facially unconstitutional, and unconstitutional as applied to her. This court reviews issues of law *de novo. See Department of Public Aid ex rel. Davis v. Brewer*, 183 Ill.2d 540, 702 N.E.2d 563 (1998).

ARGUMENT

I. THE CONFIDENTIALITY PROVISIONS, 215 ILCS 5/188.1 (4, 5), ARE UNCONSTITUTIONAL.

Intervenor challenges the constitutionality of the following statutory provision:

> (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.

No Illinois legislative committee report details the rationale for the 1967 revisions to the Illinois amendments to the Insurance Code. No legislative history suggests, however, that the Legislature intended nor repealed by implication any common law or statutory rights or settled expectations of the public.

A 1938 law review article critical of 1937 NAIC-drafted legislation notes the great power the Illinois code concentrated in the hands of the Director, and expressed a special concern about abuses due to the secrecy of these operations even prior to mandatory closed conservation proceedings:

> It is further pointed out that such large discretionary power not only enables the Director to act for the benefit of the public, but also might enable him to discriminate unjustifiably, or to favor special or, friendly interests. Because of the technical and complicated nature of the business of insurance, the Director has unusual opportunities to permit or approve to one company values of assets that are inflated while approving actual values only to another company.[22] C 1789 V2.

The Confidentiality Provisions exacerbate the same conditions about which Fred Netto expressed concerns in 1938: the court reviews only conservation proceedings initiated by the receiver and must rely on the information provided by the receiver, without any public knowledge or oversight of what happens, in this case to billions in taxpayer funds targeted for health care.

A. 215 ILCS 5/188.1 (4, 5) is unconstitutional on its face.

Intervenor, a tenured professor and an award-winning researcher and expert on citizenship, the rule of law, and government misconduct, (C 889-90), was prevented from accessing court records in a case with significant public interest implications and from using and disseminating information and public records she obtained through lawful means solely on account of the application of the Confidentiality Provisions. Prof. Stevens, thus, brings a facial challenge to the Confidentiality Provisions under the First Amendment to the United States Constitution, which protects rights of expression, including the right to share information. *Kleindienst v. Mandel* (1972) 408 U.S. 753, 762 (the First Amendment protects the "right to

[22] Fred Netto, "The Insurance Director in Illinois,"16 Chi.-Kent L. Rev. 243 (1938), https://scholarship.kentlaw.iit.edu/cklawreview/vol16/iss3/2

receive information and ideas"); *Sorrell v. IMS Health Inc.* (2011) 564 U.S. 552, 570 ("the creation and dissemination of information are speech within the meaning of the First Amendment".) "The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws 'abridging the freedom of speech." *Reed v. Town of Gilbert, Ariz*., —— U.S. ——, 135 S.Ct. 2218, 2226, 192 L.Ed.2d 236 (2015) (quoting U.S. Const., Amdt. 1). Thus, a state Legislature "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Reed*, 135 S.Ct. at 2226 (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972)). "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id.* (citations omitted). "In contrast, [laws] that are unrelated to the content of speech are subject to an intermediate level of scrutiny, [ ] because in most cases they pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue." *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 512 U.S. 622, 642 (1994) (citing *Clark v. Community for Creative Non–Violence*, 468 U.S. 288, 293 (1984))

In her Amended Motion to Intervene and before this Court Intervenor asserts that section 215 ILCS 5/188.1 (4, 5) is unconstitutional in all, or nearly all, its applications and is also unconstitutional as applied to her specifically, but she seeks relief that extends "beyond [her particular] circumstances". The Court must, thus, first analyze the case as a facial challenge to the extent of that reach. *Doe v. Reed* (2010) 561 U.S. 186, 194.

A facial challenge to a statute will succeed after a showing "that no set of circumstances exist under which the law would be valid, or that the law lacks any plainly legitimate sweep." *Greater Balt. Center for Pregnancy Concerns, Inc. v. Mayor & City Council of Balt.*, 721 F.3d 264, 282 (4th Cir. 2013) (en banc) (internal quotation marks and alterations omitted). In the First Amendment context, a facial challenge may also succeed under the overbreadth doctrine. *Id.* The Confidentiality Provisions are content based legislation that fails to use the least restrictive means to achieve compelling state interests as it mandates an absolute and unrestricted sealing of all proceedings upon request by the defendant insurance company; the statute leaves no discretion to the trial court; does not balance the rights of the public to access court proceedings and the constitutional rights of persons to petition and participate in the government; and does not provide adequate means to distinguish between meritless claims for secrecy in insurance conservation proceedings seeking to shield political inconvenience and bad press and meritorious claims with no such goal. The Statute in essence elevates insurance bad actors to the status of "super protected" defendants and prevents access to court records in a single type of proceeding based solely on the contents of the petitioning activities implicated. In providing such an absolute, unlimited, and unilateral power to the defending insurance company the Legislature impermissibly disregarded that common law principle that "[t]he burden of demonstrating that a document submitted to a court should be sealed rests on the party seeking such action." *DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 826 (2d Cir. 1997). In ordinary court proceedings, when a party requests sealing, the court must evaluate that request under both a "common law right of public access to judicial documents," *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006), and the press and public's "qualified First

Amendment right to attend judicial proceedings and to access certain judicial documents." *Id.* at 120 (quoting *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 91 (2d Cir.2004)).

A legislature is presumed to act with knowledge of the existing laws of the state and of Congress. *See State of Illinois, Secretary of State v. Mikusch,* 138 Ill.2d 242, 247, 149 Ill.Dec. 704, 562 N.E.2d 168 (1990). "The upshot of this canon of statutory interpretation is that absent a clear manifestation of contrary intent, a newly-enacted or revised statute is presumed to be harmonious with existing law" and the law of the land. *In re Witt,* 113 F.3d 508, 513 (4th Cir. 1997) (internal citations and quotations omitted)

In determining whether the statute subject to this appeal is unconstitutional, the Court must apply both "overbreadth" precedents and a strict form of First Amendment scrutiny.

B. The statute is overly broad.

A government's overly broad restriction on speech and petitioning activities is invalid on its face "if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *U.S. v. Stevens*, 559 U.S. 460, 473 (2010) (citation omitted). Instead of judicial discretion for closing specific hearings, records, or orders, the Confidentiality Provisions obligate courts to hold private hearings and hide from the public ***all records***. Appendix I, C 910. Yet, the U.S. Supreme Court has held that the standard for presumptive access is whether proceedings are historically those to which the public has access. *Press-Enterprise Co. v. Superior Court of Cal., County of Riverside*, 478 US 1, 4 (1986). ("[W]e have considered whether the place and process have historically been open to the press and general public.") C 914.

Of particular concern is the statute's mandatory language and the withholding of any judicial discretion in evaluating a request for secret proceedings where public interest is at stake

or a case is newsworthy. Government may regulate in the area of First Amendment freedoms "only with narrow specificity." *See NAACP v. Button*, 371 U.S. 415, 433 (1963); *State v. Bahl*, 164 Wn.2d 739, 193 P. 3d 678, 685 (2008). The Act is, thus, constitutionally infirm and results in the chilling of protected speech. Federal and Illinois appellate courts relying on common law procedures for judicial powers regularly find trial courts closing hearings or sealing records without weighing counter-vailing equities an "abuse of discretion." *Bank of America Nat. Trust v. Hotel Rittenhouse,* 800 F. 2d 339, 346 (1986) ([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."); *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 statute mandating ongoing withholding of "all records of the company, other documents, and all insurance department files and court records and papers" on its face withholds the prerogative of judicial discretion and expectation of individualized findings reviewing courts require. (Appendix 2 &3) The Confidentiality Provisions' mandate that courts hide proceedings in their entirety, thus, suggests a law written for the benefit of one industry and in defiance of our federal and state republican form of governance, including long-standing precedents. Opposing parties have failed to produce a single example of another non-insurance industry statute that obligates courts to conduct civil proceedings "privately in chambers … on request of any officer of the company proceeded against" (215 ILCS 5/188.1 (4), much less a court order finding the Confidentiality Provisions constitutional. C 1440.

C. *735 ILCS 5/2 188.1 Violates Fundamental Rights Enumerated in the First and Fifth Amendments of the Federal and Illinois Constitutions.*

The right of public access derives from two independent sources: the First Amendment and the common law. Common law affords less substantive protection to the interests of the press and the public than the First Amendment. *Nixon v. Warner Communications, Inc.,* 435 U.S. 589, 597 (1978) "[C]ommon law presumes a right to access all judicial records and documents, but this presumption can be rebutted if 'the public's right of access is outweighed by competing interests." *In re Knight Publ'g Co.*, 743 F.2d 231, 235 (4th Cir.1984). In contrast, a right of access under the First Amendment applies only to particular judicial records and documents. *See Anderson v. Cryovac,* Inc., 805 F.2d 1, 13 (1st Cir. 1986) (recognizing that documents submitted as a part of motions for summary judgment are subject to public right of access); *In re Continental Illinois Sec. Litig.,*732 F.2d 1302, 1308-10 (7th Cir. 1984) (presumption of public right of access applies to motion to terminate derivative claims)*; Joy v. North,*692 F.2d 880, 893 (2d Cir. 1982) ("documents used by parties moving for, or opposing, summary judgment should not remain under seal absent the most compelling reasons")."[T]his right yields only in the existence of a 'compelling governmental interest ... [that is] narrowly tailored to serve that interest.'" *In re U.S. for an Ord.* , 707 F.3d at 290 (quoting *Va. Dep't of State Police*, 386 F.3d at 575).

1. *The common law right of public access to judicial documents.*

"The common law right of public access to judicial documents is firmly rooted in our nation's history." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006). "[J]udicial records are public documents almost by definition, and the public is entitled to access by default." *Kamakana v. City County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). Especially "where documents are used to determine litigants' substantive legal rights, a

strong presumption of access attaches." *Lugosch*, 435 F.3d at 121; *see also Standard Fin. Mgmt. Corp.*, 830 F.2d at 409 ("[R]elevant documents which are submitted to, and accepted by, a court of competent jurisdiction in the course of adjudicatory proceedings, become documents to which the presumption of public access applies[.]")."Where . . . the State attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling government interest, and is narrowly tailored to serve that interest." *Globe Newspaper Co. v. Superior* Court, 457 U.S. 596, 606-607 (1982).

2. *The public and the press have a qualified First Amendment right to attend judicial proceedings and to access certain judicial documents.*

The key jurisprudence on the public's right to access court proceedings reaches back to *Nixon v. Warner Communications, Inc.* 435 U.S. 589 (1978), a case of first impression in which the High Court kept under seal copies of President Nixon's tapes that were part of an evidentiary record reviewed in a jury trial that had resulted in convictions of presidential staff, then under appeal. *Id*. at 594-596. Justice Lewis Powell, who authored the majority opinion, introduced the Court's order by noting the public's "general right" under common law to government records and court proceedings, by judicial precedents and also statutes, including the Illinois statute on public court records [A II]. Id. at 597, note 7.[23] ("Also on respondents' side is the presumption - however gauged - in favor of public access to judicial records.") The opinions reflect a unanimous view of the common law right of the public to observe criminal as well as civil court proceedings, while five justices held that the substance of the Presidential Recordings Act

[23] "In many jurisdictions this right has been recognized or expanded by statute. See, *e. g.,* Ill. Rev. Stat., ch. 116, § 43.7 (1975)." *Warner Communications* at 5977, note 7.

("PRA") effectively mooted the Constitutional question, one the Court also found was unique, unlikely to be repeated, and thus required no decision on the merits.[24] None of the opinions disputed the detailed common law history on the public's "general right" to observe court proceedings, including civil proceedings. Crucially, the Court noted its order did not reflect deference to the legislative branch, but rather a recognition that the PRA ensured to the public even broader access than that requested by Warner Communications. *Id* at 603. ("Thus, Congress has created an administrative procedure for processing and releasing to the public, on terms meeting with congressional approval, all of petitioner's Presidential materials of historical interest, including recordings of the conversations at issue here.") The opinions together and individually reflect an analysis endorsing the Court's prerogative to determine the scope of access to judicial records. *Warner Communications* at 613. ("Nothing in the Act's history suggests that Congress intended the courts to defer to the Executive Branch with regard to these tapes. To the contrary, the Administrator of General Services had to defer to the District Court's 'expertise' in order to secure congressional approval.")

Since then the Supreme Court had on numerous occasions found the First Amendment did indeed imply the public's First Amendment right to access court proceedings. *See Press-Enterprise Co. v. Superior Court of Cal., County of Riverside*, 478 US 1 (1986) (*"Press-Enterprise II*"). C 475-6. The decisions are grounded in the fact that at the time of the founding, "court" effectively meant a "public court of record." *Press-Enterprise II* at 8. ("In *Richmond Newspapers,* we reviewed some of the early history of England's open trials from the day when a

[24] Chief Justice Burger, Stewart, Blackmun, and Rehnquist joined Powell. White dissented in part, joined by Brennan at 611, as did Marshall at 612, and Stevens at 613.

trial was much like a 'town meeting.'") That a "court" in the federal and state constitutions means a "public court of record" is implicit in all court orders on public access to hearings and court records:

> The time and effort expended in examining the court file to ascertain whether particular documents have been made part of the public record either because the court has relied on them or because the litigants have offered them as evidentiary support is a burden which the district courts should not have to bear. Nevertheless, as we have stated, the right of the press to obtain timely access to judicial decisions and the documents which comprise the bases of those decisions is essential. We conclude, therefore, that once the press has adequately demonstrated that its access has been unjustifiably limited, but where there are legitimate concerns of confidentiality, the burden should shift to the litigants to itemize for the court's approval which documents have been introduced into the public domain. We believe that such an approach provides a legitimate means of reconciling the press's rights with the time constraints facing the trial courts.

Grove Fresh Distributors, Inc. v. Everfresh Juice Co., 24 F.3d 893, 898 (7th Cir. 1994).

As Justice Powell pointed out, state statues that specify the public's right to access court records are codifying long-standing understandings of a court. *Warner Communications* at 597, note 7.[25] The prerogative to ensure regularity in court procedures by instructing court staff on the implementation of common law protocols on public court records does not imply legislatures are empowered to radically alter how courts should function. The circuit court's finding that a state legislature can abrogate the federal and state constitutions by displacing common law understandings on the meaning of our courts is thus a clear legal error.

3. Civil court proceedings confer a presumption to public access.

Federal case law.

[25] "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, and all persons shall have free access for inspection and examination to such records, docket and books, and also to all papers on file in the different clerks' offices and shall have the right to take memoranda and abstracts thereto." A II, 2.

Opposing parties may claim the First Amendment protects a public right to access criminal trials but not civil proceedings (C 1768 V2). This is incorrect. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555*,* cited by *Press II* was the first Supreme Court case finding the First Amendment protected the public's right to observe court proceedings. *Richmond Newspapers* overturned a Virginia statute affording state judges the discretion to close criminal proceedings for a case in which *the defendant requested a closed hearing* and the prosecutor did not object (*Richmond Newspapers*, 559-62)*,* thus requiring the Court to go through some logical contortions to infer from the Sixth Amendment rights for a defendant to the public's First Amendment right to observe a trial.

The *Richmond* oral argument is instructive. Of the motion by the defendant requesting a closed proceeding Richmond Newspapers attorney Laurence Tribe says,

> It is just a request by a private individual to invoke a censorial power which, by this Court's own decisions in cases like *Lamont* would not be acceptable... .This Court should articulate what the Constitution has traditionally meant, and what it has traditionally meant was perhaps too obvious to put in so many words was that criminal trials are to be public. The First Amendment provides a perfect textual home for that principle, due process would do as well.[26]

Intervenor agrees that parties to civil proceedings lack the Sixth Amendment protections provided criminal defendants. The Court's finding that the First Amendment implies the public's right to observe criminal proceedings *even over the objections of a defendant* indicates a lower hurdle for the public's First Amendment right to access civil trials, proceedings in which no one faces the threat of corporal punishment or imprisonment, an inference strongly promoted by the *Richmond Newspaper* majority.

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[26] *Richmond Newspapers Inc. v. Virginia*, Oral Argument, February 19, 1980, https://www.oyez.org/cases/1979/79-243.

Chief Justice Burger and authors of the concurring opinions found that the history and logic of the public's access to criminal and civil trials were identical. The plurality's analysis of the First Amendment right to access criminal trials repeatedly drew on examples from civil proceedings:

> '[O]ne of the most conspicuous features of English justice, that all judicial trials are held in open court, to which the public have free access, . . . appears to have been the rule in England from time immemorial.' Citation omitted ...In some instances, the openness of trials was explicitly recognized as part of the fundamental law of the Colony. The 1677 Concessions and Agreements of West New Jersey, for example, provided: 'That in all publick courts of justice for tryals of causes, civil or criminal, any person or persons, inhabitants of the said Province may freely come into, and attend the said courts, and hear and be present, at all or any such tryals as shall be there had or passed, that justice may not be done in a corner nor in any covert manner.') *Id* at 566-7.

Chief Justice Burger also quoted Jeremy Bentham on the "therapeutic value of open justice":

> "Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account. Recordation, appeal, whatever other institutions might present themselves in the character of checks, would be found to operate rather as cloaks than checks; as cloaks in reality, as checks only in appearance." 1 J. Bentham, Rationale of Judicial Evidence 524 (1827). *Richmond Newspapers* at 569.

The logic and history behind open court proceedings clearly covers civil cases, a point Chief Justice himself expressly underscores: "Whether the public has a right to attend trials of civil cases is a question not raised by this case, but *we note that historically both civil and criminal trials have been presumptively open*." *Richmond Newspaper* at 580, note 17, emphasis added. Further, in his concurrence, Justice Brennan turned the last footnote of the plurality into an extended argument specifying that the public's right to observe court proceedings extends equally to *civil* trials and other contexts that had historically been open to the public: "And it appears that 'there is little record, if any, of secret proceedings, criminal or civil, having occurred at any time in known English history.' [cit. omit.]"

Richmond Newspapers at 590. Justice Brennan devoted many paragraphs to the history and logic of open court proceedings, including the following:

> Tradition, contemporaneous state practice, and this Court's own decisions manifest a common understanding that "[a] trial is a public event. What transpires in the court room is public property." *Craig* v. *Harney,* 331 U. S. 367, 374 (1947). As a matter of law and virtually immemorial custom, public trials have been the essentially unwavering rule in ancestral England and in our own Nation. See *In re Oliver,* 333 U. S., at 266-268; *Gannett Co.* v. *DePasquale,* 443 U. S., at 386, n. 15; *id.,* at 418-432, and n. 11 (BLACKMUN, J., concurring and dissenting). [Note omitted.] Such abiding adherence to the principle of open trials "reflect[s] a profound judgment about the way in which law should be enforced and justice administered." [Cit. omitted][27]
>
> In sum, the Supreme Court's jurisprudence on the history and logic of civil court proceedings provides no grounds for presuming a greater public stake or right in accessing civil than criminal proceedings. *Richmond Newspapers* at 596. ("[M]istakes of fact in civil litigation may inflict costs upon others than the plaintiff and defendant. Facilitation of the trial factfinding process, therefore, is of concern to the public as well as to the parties.")

Indeed, precisely because of his concern for competing constitutional rights of a criminal defendant, Justice Stevens, part of the Burger majority in *Richmond Newspapers*, authored a dissent from the majority in *Press-Enterprise II* (joined by Justice Rehnquist, the brief and lone dissent in *Richmond Newspapers*). After affirming that "[n]either our elected nor our appointed representatives may abridge the free flow of information simply to protect their own activities from public scrutiny", (*Id*. at 19), Justice Stevens found that the trial judge in *Press-Enterprise II* had the discretion to seal a pretrial transcript to protect the rights of the accused criminal defendant to a fair trial. *Press-Enterprise II*, 478 U.S. at 20. ("In this case, the risk of prejudice to the defendant's right to a fair trial is perfectly obvious.")

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[27] "*Trial* (15c) A formal judicial examination of evidence and determination of legal claims in an adversary proceeding." Black's Law Dictionary (11th ed. 2019). The proceedings covered by the Confidentiality Provisions are clearly trials.

Applying the Supreme Court observations' federal courts have articulated two different approaches for determining whether the public and the press should receive First Amendment protection in their attempts to access certain judicial documents. The so-called "experience and logic" approach requires the court to consider both whether the documents "have historically been open to the press and general public" and whether "public access plays a significant positive role in the functioning of the particular process in question." *Hartford Courant Co. v. Pellegrino,* 380 F.3d 83, 91 *(2d Cir. 2004)* (quoting *Press-Enterprise Co.,* 478 U.S. at 8). "The courts that have undertaken this type of inquiry have generally invoked the common law right of access to judicial documents in support of finding a history of openness." *Id.* The second approach considers the extent to which the judicial documents are "derived from or [are] a necessary corollary of the capacity to attend the relevant proceedings." *Id.* at 93.

The qualified nature of the First Amendment right of access, however, provides that "documents may be sealed if specific, on the record findings are made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *In re New York Times Co.,* 828 F.2d at 116 (internal quotation marks omitted). "Broad and general findings by the trial court, however, are not sufficient to justify closure." *Id.; FTC v. Standard Fin. Mgmt. Corp*., 830 F.2d 404, 410 (1st Cir. 1987) ("The appropriateness of making court files accessible is accentuated in cases where the government is a party: in such circumstances, the public's right to know what the executive branch is about coalesces with the concomitant right of the citizenry to appraise the judicial branch.")

Illinois case law.

Illinois appellate courts have held the First Amendment protects the public's right to access court proceedings against parties that prefer otherwise, including in civil proceedings. *In re Marriage of Johnson*, 232 Ill.App.3d 1068, 1074 (1992). ("The file of a court case is a public record to which the people and the press have a right of access.")*; People v. Zimmerman,* 79 N.E.3d 209 (Ill. App. Ct. 2017); *Skolnick v. Altheimer Gray*, 191 Ill. 2d 214 (Ill. 2000) ("The first amendment right presumes a right to inspect court records which have 'historically been open to the public' and disclosure of which would further the court proceeding at issue.")

In short, although some common law rights on matters of general policy may be abrogated by a legislative statute, when it comes to the public's access to court proceedings or other functions *enshrined in constitutions*, there is only one standard of deference and review, that of a fundamental right, a point NextLevel confirms when noting that "legal analyses under the First Amendment, common law, and statutory law as to public access to court records are 'parallel' and 'analyzed . . . together.'" C 1746 V2 (citing *People v. Kelly*, 397 Ill. App. 3d 232, 256 (1st Dist. 2009)). As the circuit court correctly held, "The constitutional presumption [of public access] applies to court proceedings and records (1) which have been historically open to the public; and (2) which have a purpose and function that would be furthered by disclosure." *Skolnick [v. Altheimer and Gray]*, 191, Ill. 2d, 214, 232 [2000]." C 1404, V2.

4. Conservation court proceedings are civil "court proceedings".

The circuit court orders hang on a bizarre finding – that "a statute such as ours" (C 1403 V2) differs so radically from court proceedings referenced by the common law and U.S. Supreme Court precedents as to somehow immunize the Confidentiality Provisions from the jurisprudence on the qualified public's access to court proceedings. The right of access is

qualified, but the presumption of access may be overcome " ‘only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.’ " Press-Enterprise II, 478 U.S. at 9, 106 S.Ct. 2735 (quoting *Press-Enterprise Co. v. Superior Ct. of Calif., Riverside Cnty*., 464 U.S. 501, 510, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984). Here, what is at issue are non-privileged traditional civil filings (i.e. complaint, court orders, declarations, etc.)

In addition, the circuit court erred by asserting that precisely because the Confidentiality Provisions deviated from protocols for court proceedings, they had acquired some special carve-out from the presumption of openness for court proceedings. C 1403 V2. (“The powerful and indeed inspiring language Ms. Stevens cites concerning common law ... was issued in cases that do not involve a statute such as ours, which explicitly provides for certain court proceedings to be conducted outside of public view.... The Court agrees with the Director and NextLevel that conservation proceedings have not historically been open to the public.”) (C 1404 V2).

Richmond and its progeny, indeed all evaluations of the meaning of the constitution, depend on understandings of constitutional terms of art in the time-frame of the founders, in this case “courts” and “judicial powers.” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111, (2130, 2132, 2138, 2156), 2136 (2022) (holding unconstitutional a New York statute passed in 1902) [C1561 v2]. (“[W]hen it comes to interpreting the Constitution, not all history is created equal. ‘Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*.’ (*District of Columbia v.*] *Heller*, 554 U.S 570, 634-5 [(2008)], [emphasis in original].) Meanings imputed to the constitution that contradict the

understandings in the time frames of the framers and their amending heirs, who rightly and radically *changed the constitutional ratification*, make meaningless a written constitution.

The federal constitution requires states to have a "republican" form of government and thus to observe a similar separation of powers tracking that of the federal government. U.S. Const. Art. IV. Sec. IV. ("The United States shall guarantee to every State in this Union a Republican Form of Government...) Article VI, Sec. 1 of the Illinois Constitution vests judicial power in state courts, including circuit courts.[28]

> The legislature may enact laws that complement the authority of the judiciary or that have only a peripheral effect on court administration. *People v. Williams*, 124 Ill.2d 300, 306-07, 124 Ill.Dec. 577, 529 N.E.2d 558 (1988). Ultimately, however, this court retains primary constitutional authority over court procedure. Consequently, the separation of powers principle is violated when a legislative enactment unduly encroaches upon the inherent powers of the judiciary, or directly and irreconcilably conflicts with a rule of this court on a matter within the court's authority. *People v. Walker*, 119 Ill.2d 465, 475-76, 116 Ill.Dec. 675, 519 N.E.2d 890 (1988); *People v. Bainter*, 126 Ill.2d 292, 303, 127 Ill.Dec. 938, 533 N.E.2d 1066 (1989); *Williams*, 124 Ill.2d at 306-07, 124 Ill.Dec. 577, 529 N.E.2d 558; *S.G.*, 175 Ill.2d at 487, 222 Ill.Dec. 386, 677 N.E.2d 920. *Kunkel v. Walton*, 179 Ill. 2D 519 (1997) C 1143-1144.

Although case law provides the state court "constitutional authority over court procedure," the circuit court did not rule on whether the Confidentiality Provisions encroach on judicial powers. By obligating circuit courts to abide by court procedures dictated by the state legislature (A I), the Confidentiality Provision unduly encroaches on judicial powers. *People v. Davis*, 93 Ill.2d 155, 168 (1982) (distinguished). ("It should be noted that this is not a case in which a legislative enactment conflicts with a judicial rule of procedure.")

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[28] "The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts." Art. VI, Sec. 1.

At the founding and to this day it is a given that judicial proceedings occur in public courts of record. C 516; *see also A.P. v. M.E.E.*, 354 Ill. App. 3d 989, 993 (1st Dist. 2004). Any action to remove judicial discretion on closing hearings and sealing records by mandating closed courts deprives Intervenor and the public of their "general right" to access court proceedings: a legislature may not rewrite the meaning of judicial power in a fashion that deprives the people of the contributions to transparency and accountability from courts *qua* courts, again, both functions the Supreme Court has protected through the First Amendment.

Moreover, "conservation proceedings" are inherently and by definition conservation *court* proceedings (C 914, C 1135).[29] If courts relied on the tautological rationale of the circuit court and not the meanings of constitutional texts grounded in the understandings of the framers (C 1143), it would be impossible to find any law unconstitutional, save those that copied the exact language of statutes previously struck down. According to the circuit court's reasoning, a 1967 Illinois statute mandating the sequestration of a docket and hearings in all civil proceedings involving, say, cannabis dispensaries, on motion of the defendant would be equally immune from constitutional review, simply because no other court had reviewed this specific law (its operation occurring in secret), and regardless of copious case law finding unconstitutional statutes mandating closed proceedings, including for matters far more apparent and sensitive than the vague, illogical, or speculative harms to NextLevel and the public to which the circuit court orders allude. The circuit court's inference that a law passed in 1967 that violates core

[29] "The Motion before the court concerns only court proceedings. After the Illinois Insurance Code's (the "Code") 215 ILCS 5/188.1 administrative confidentiality provisions fail to protect the public from firm infractions (¶35, note 25) and to insure the firms maintain legally obligatory reserves (¶26), and court proceedings are necessary (¶27), the Intervenor, as a citizen and a journalist, has a presumptive right to access court hearings and the records of proceedings. ¶¶88, 91, 94." C 1135.

constitutional principles is somehow grandfathered in by its previously unchallenged existence is not supported by a single precedent. C 1404 V2. Especially when Intervenor and NextLevel agree this is a case of "first impression" (C 1142, C 1420 V2), made possible by an event that was *sui generis* (C 892), a finding that "statute such as ours" deserves an imprimatur of constitutionality *because* it differs from statutes that do not violate the constitution is a clear legal error.

(a) Bankruptcy courts presumptively open to the public.

Even if the precedents cited somehow depended on the exact content of the proceeding – a premise not held by even the most ardent constitutional originalists – see, e.g., *New York State Rifle & Pistol Assn, Inc. v. Bruen,* 142 S. Ct. 2111 (2022) ("Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.") – the Illinois insurance conservation court proceedings derive from the common law for bankruptcy case law and statutes. Federal bankruptcy courts, like Illinois circuit courts, presume court proceedings to be open, 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. C 1565 V2. *See In re Symington*, 209 BR 678, 681-2, 683 ((Bankr. D. Md. 1997), obligating public access to pre-litigation third party records obtained by subpoena. The order states:

> [T]he press and public are entitled to attend Rule 2004 examinations because such examinations were historically public proceedings 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.).") C 1566.

The history and logic elucidated for bankruptcies in general apply as well to insurance firms. The circuit court's order fails to note any distinctions that would result the order's conclusory findings otherwise. C 1404 V2 ("The reasoning behind the sequester, the Director explained, is concern that public access to the proceedings could lead to a 'run on the bank' by the company's creditors, hampering the Director's ability to protect the interests of the public."). C 1404 V2.

In contrast with the 1967 Insurance Code amendments (passed in violation of the 1870 Illinois Constitution's prohibition against special legislation, see infra Part VI), Congress in 1978, in direct response to *Warner Communications*, rewrote the law on public access to federal Bankruptcy Court records:

> The legal rights embodied in section 107 arise from Supreme Court jurisprudence. Section 107 is a composite of various public access principles cultivated by the United States Supreme Court in numerous decisions that implicate both the First Amendment and the common law right of access. Likewise, the exceptions to public access. provided for in the Bankruptcy Code have a rich heritage in Supreme Court decisions.... A proper interpretation of subsection 107(a) begins by recognizing its common law heritage. As noted, section 107 essentially codifies the broad common law public access doctrine to allow disclosure of filed papers. Subsection 107(b) codifies two exceptions to disclosure discussed by the Supreme Court in *Nixon v. Warner Communications, Inc*.[30] C 1782-3 V2
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> The equities for bankruptcy proceedings track those for conservation proceedings, and favor publicity, not secrecy.

(b) The bank is safe; Medicaid enrollees and taxpayers are not

[30]William Bodoh and Michelle Morgan, "Protective Orders in the Bankruptcy Court: The Congressional Mandateof Bankruptcy Code Section 107 and Its Constitutional Implications," 24 Hastings Const. L.Q. 67, 70, 90 (1996). https://repository.uchastings.edu/hastings_constitutional_law_quaterly/vol24/iss1/2.

"Sunlight is said to be the best of disinfectants; electric light the most efficient policeman. And publicity has already played an important part in the struggle against the Money Trust."[31] The Supreme Court has sided time and time again on the salutary effects of transparency and the corrosive effects of secrecy. To be sure, there is a widely cited federal district bankruptcy court order affirming the sealing of financial records during bankruptcy proceedings to avoid 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. *In Re: 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.") Insofar as NextLevel's largest creditor was the state of Illinois (C 486) and the records and assets of NextLevel were under the control of the conservator within days of the AG motion of June 3, 2020 (C 133), the invocation of a "run on the bank" reveals the absence of any concrete assessment of how publicity would affect the actual proceeding, especially from June 9, 2020 going forward. 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 and is further grounds for vacating the Seal and Redact order. 1571 V2.

The record in this case thus is clearly distinguished from that in *People v. Kelley* 397 Ill. App 3d 232 (1st Dist. 2009), a case finding against media intervenors and cited by the circuit court. C 1404 V2. In *Kelley,* the court stated, "[T]he media intervenors have not cited a case for

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[31] Louis Brandeis, "What Publicity Can Do," *in Other people's money, and how the bankers use it*, New York (1914), p. 92. https://archive.org/details/otherpeoplesmone00bran/page/n7/mode/2up.

the proposition that juror questionnaires have historically been made public, prior to their use.*"* *Id*. at 358. Here, as Intervenor has argued, insolvent insurance corporations historically had been subject to bankruptcy statutes (e.g., C 1503-06 V2). US Supreme Court precedents presuming public access to state court proceedings are voluminous and unambiguous, even when a compelling interest has been asserted. In *Globe Newspaper Co. v. Superior Court, County of Norfolk*, 457 US 596 (1982), the Court held that even though the state of Massachusetts had a compelling interest in passing a law to protect the privacy of juvenile sex crime victims, the state's interest did not obligate a mandatory closing of all proceedings: "[T]he first interest — safeguarding the physical and psychological well-being of a minor — is a compelling one. But as compelling as that interest is, it does not justify a *mandatory* closure rule, for it is clear that the circumstances of the particular case may affect the significance of the interest. A trial court can determine on a case-by-case basis whether closure is necessary to protect the welfare of a minor victim." *Globe* at 608-9, note omitted, emphasis in original.

II. The CONFIDENTIALITY PROVISIONS ARE UNCONSTITUTIONAL AS APPLIED.

As shown above, there is a presumption that court files should be open to the public for inspection and copying. *United States v. Corbitt*, 879 F.2d 224, 228 (7th Cir. 1989). Intervenor readily admits that a court has the inherent power to control its records, and the right to inspect public records is not absolute. *In re Marriage of Johnson*, 232 Ill. App.3d 1068, 1072 (1992). Nevertheless, although a court may restrict access to judicial records, a court does not have the inherent power to control the court files and to impound any part of a file in a particular case. *Deere Co. v. Finley*, 103 Ill. App.3d 774, 776 (1981). Instead, when determining whether to restrict access to judicial records, a court must balance the parties' reasons for restriction with

those interests supporting access. *Johnson*, 232 Ill. App.3d at 1072. The lower court failed to do so. Rather than hold NextLevel to its burden to overcome the presumption of access, *Johnson*, 232 Ill. App.3d at 1072-73(quoting *Shenandoah Publishing House, Inc. v. Fanning*, 235 Va. 253, 259, 368 S.E.2d 253, 256 (1988)), the court faulted and penalized Intervenor.

A. Refusal to declare "public" court records that were already in the public domain violates the First Amendment prohibition of prior restraint.

The circuit court's Orwellian insistence on labelling "confidential" records that remained in the public domain, including for months after Stevens drew attention to their availability to the public, effectively subjects Stevens, as Intervenor, to an order of prior restraint. No one disputes that Stevens acquired the records covered by the Seal and Redact order entirely lawfully, as did her research assistant and anyone else who made use of the public terminal in the Daly Center through at least July 5, 2022 or has reviewed the appellate record in this case, presumably prepared pursuant to 705 ILCS 105/16. A II 2. Indeed, as a result of the discrepancy between a court order and reality, Stevens on July 12, 2022 was forced to file under seal photographs of a monitor display taken at the Daly Center public terminals. C 1514-1537 V2. But for Stevens' status as an intervening party to this case, she could publish and report on the contents of these filings without sanction. However, the circuit court's failure to vacate the Seal and Redact order and Stevens's status as an intervenor targets Stevens, and only Stevens, for an order of contempt if she publishes records of great public interest. Intervenor was, thus, subjected to a de facto 'gag order'. Courts to have addressed the issue have found that 'gag orders' are prior restraints under the First Amendment. *See generally In re Murphy-Brown, LLC*, 907 F.3d 788, 796-97 (4th Cir. 2018). And so, "gag orders warrant a most rigorous form of review because they rest at the

intersection of two disfavored forms of expressive limitations: prior restraints and content-based restrictions." *Id*. Because gag orders are content-based, they are presumptively unconstitutional and must survive strict scrutiny. *Id*. at 797. Given this, gag orders must serve a compelling public interest and be narrowly-tailored to serve their intended purposes. *Id*. at 797-800. No such compelling public interest is present here: the documents were and continue to be in the public domain but only Prof. Stevens cannot disseminate them. Once the documents were put on the record and NextLevel failed to make sure that the documents were sealed, the right of access attached to the published records. *See In Re:* Johnson, 232 Ill. App.3d at 1075. ("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."); *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) is instructive. In that case a civil complaint that was under seal was available to the public in appellate filings. The redacted documents in this case are similarly available to everyone as part of the Certification of Record compiled and filed with this Court. Refusing to provide special protection for documents in the public domain the Seventh Circuit observed: "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.); *see also Smith v. Daily Mail Publishing Co*., 443 U.S. 97, 103 (1979) ("We held that once the truthful

information was "publicly revealed" or "in the public domain" the court could not constitutionally restrain its dissemination."). NextLevel has lost any right to confidentiality for the portions of records for which NextLevel sought redactions. C1709 V2.A key purpose of Intervenor's pleading had been accomplished, but neither the Intervenor nor the court were aware of this and thus were forced to waste time on a bogus record. Instead of having time to write about these proceedings, filings by DLA Piper caused Intervenor to pursue records that she possessed and that, had she not be an Intervenor, could have published without threat of sanctions. C1709 V2. The Supreme Court has held that parties publishing information obtained lawfully may not be punished. *Bartnicki v. Vopper*, 532 U.S. 514, 527-28 (2001). ("[T]his Court has repeatedly held that "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need . . . of the highest order."); *accord Landmark Communications, Inc. v. Virginia*, 435 U. S. 829 (1978); *Cox Broadcasting Corp. v. Cohn*, 420 U. S. 469, 491 (1975)("...[W]hether the State may impose sanctions on the accurate publication of the name of a rape victim obtained from public records —more specifically, from judicial records which are maintained in connection with a public prosecution and which themselves are open to public inspection. We are convinced that the State may not do so.")

B. <u>Court's refusal to vacate the Seal and Redact order for public records violates Stevens's right to equal protection</u>.

215 ILCS 188.1 (4,5) permits a private defendant corporation to share and use non-privileged information about a court proceeding purely on its motion, while denying the public access to this same information, in clear violation of the Fourteenth Amendment's Equal Protection Clause.

Solely due to Stevens's intervenor status, the refusal to vacate the Seal and Redact order leaves Stevens as the only member of the public subject to court punishment for publishing these records. Stevens showed opposing parties and the circuit court that the records covered by the Seal and Redact order were available to anyone at the Daly Center terminal, and that she was not accessing them as an intervenor. C 1514-1537 V2. By refusing to vacate the Seal and Redact order, effectively punishing Stevens for exercising her First Amendment right to petition the government, the circuit court clearly violated Stevens's right to equal protection. C 1573 V2, C 1555 V2. *People v. Masterson*, 958 NE 2d 686, 691 ("The equal protection clause requires that the government treat similarly situated individuals in a similar fashion, unless the government can demonstrate an appropriate reason to treat them differently.") C 1754 V2.

C. **Court's refusal to vacate the Seal and Redact order for public records violates Stevens's due process rights.**

The Confidentiality Provisions denies the public knowledge necessary to petition the government, including the courts, to intervene in the proceedings on any grounds, limiting standing to present arguments to the judge only to "the Director and the company," (188.1/5), thus also facially depriving the public of standing to challenge the secret hearings or sealed records and orders, a clear violation of due process. A I, 2, C 910, C 1137, C 1495 V2, C 1511 V2, C 1575 C2. *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 141, 161, (1951) ("We long have granted relief to parties whose legal rights have been violated by unlawful public action, although such action made no direct demands upon them....Fairness of procedure is "due process in the primary sense." C**i**t. omitted. It is ingrained in our national traditions and is designed to maintain them. In a variety of situations, the Court has enforced this requirement by checking attempts of executives, legislatures, and lower courts to disregard the deep-rooted

demands of fair play enshrined in the Constitution. ‘Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." citations omitted.)

The Illinois statute on court records passed in 1961 states in part: “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, and all persons shall have free access for inspection and examination to such records, docket and books, and also to all papers on file in the different clerks' offices and shall have the right to take memoranda and abstracts thereto.” The statute was cited in *Warner* majority as evidence of states incorporating the “general right” to court proceedings into their legal codes. *Warner* at 597, note 7. (“In many jurisdictions this right has been recognized or expanded by statute. See, e. g., Ill. Rev. Stat., ch. 116, § 43.7 (1975).”)

A law categorically depriving the public access to court proceedings deprives Intervenor of an intangible right, as defined by the Supreme Court. *Paul v. Davis*, 424 U.S. 693 (1976). (“It is apparent from our decisions that there exists a variety of interests which are difficult of definition but are nevertheless comprehended within the meaning of either ‘liberty’ or "property" as meant in the Due Process Clause. These interests attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law, and we have repeatedly ruled that the procedural guarantees of the Fourteenth Amendment apply whenever the State seeks to remove or significantly alter that protected status.”) By denying the public the

right to access court records, the Confidentiality Provisions on their face and in practice violate Intervenor's Fourteenth Amendment Due Process right.

III. THE CONFIDENTIAL PROVISIONS CONSTITUTE "SPECIAL LEGISLATION," IN VIOLATION OF THE ILLINOIS CONSTITUTION, ART. IV, § 13 (1970).

The inconsistency between the Confidentiality Provisions and 705 ILCS 105/16 Sec. 6 is unconstitutional. C 915. The Illinois Constitution prohibits the General Assembly from passing a special law when a general law is or can be made applicable:

> The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination. Ill. Constitution Art. IV, § 13 (1970).

The insertion in a portion of the Insurance Code of a special law mandating court procedures used only for insolvent insurance firms and no other corporations on its face is a clear and egregious violation of the Illinois constitutions of 1870, in effect when the Confidentiality Provisions were passed,[32] as well as the current constitution. In addition to the facial violation of federal and state constitutions, the facts in this case show the Confidentiality Provisions facilitate --if not incentivize -- financial schemes antagonistic to taxpayers, Illinois residents overcharged or treated at underfunded hospitals, and market competition, all of which a reviewing court should consider. *Best v. Taylor Mach. Works*, 689 NE 2d 1057, 1070-1 (1997). ("[I]n evaluating a challenged provision the court must consider the natural and reasonable effect of the legislation on the rights affected by the provision." Cit. omitted.). The law is not "reasonable" and there is

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Article IV. Legislative Department, § 22 Special Legislation prohibited. "The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: for ... Regulating the practice in courts of justice." Constitution of the State of Illinois: adopted and ratified in 1870, amended 1878.
https://www.idaillinois.org/digital/collection/isl2/id/396

zero evidence to indicate it is "sufficiently related to the evil to be obviated..." *Id.* 1071, while undisputed facts about 15% payments to providers and other contractual violations, revealed despite the law — and still only a partial record, again, because of the Confidentiality Provisions — provide copious evidence that the law itself is the evil to be obviated.

IV. THE DOCTRINE OF MOOTNESS DOES NOT APPLY.

The case was not mooted by the lifting of the sequestration order. Although a material change, this change occurred after Stevens filed her petition to Intervene. The AG seeking to lift the order of sequestration may well have been the right thing to do in accordance with state law. But as a litigation tactic, such reactive backpedaling cannot moot a case. *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.* , 528 U.S. 167, 189-94 (2000). The mootness doctrine ordinarily does not extend to situations where a party quits its offending conduct partway through litigation. *Id.* After all, "a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior." *Porter v. Clarke* , 852 F.3d 358, 364 (4th Cir. 2017) (internal quotation marks omitted). Here, Prof Stevens continued to be denied access to certain "redacted" and "sealed" portions of the record despite the fact that she had acquired the documents lawfully and the documents remains to this date available to everyone but Prof. Stevens. Opponents offered nothing but general and vague allusions to resolution and insistence on confidentiality. The court below accepted their palaver without reservation. Yet, desire and/or agreement that the court records were to be sealed falls far short of outweighing the public's right of access to the public court records. *Fidelity Financial Services, Inc. v. Hicks,* 267 Ill. App.3d 887, 893 (1994) (mere desire for secrecy cannot suffice as a compelling interest). NextLevel's insistence that the redacted and sealed document are and shall

remain "confidential" is not a compelling interest that could overcome the presumption of access to judicial files. Instead, the only documents that possibly could overcome such a presumption are those that are privileged and potentially seriously damaging or embarrassing. Cf. *Johnson*, 232 Ill. App.3d at 1076 (Steigmann, J., specially concurring). No such showing has been made here.

Moreover, Stevens 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. C 889. No one has disputed her ongoing interest in the misallocation of taxpayer funds. Nor has anyone disputed that as long as the Confidentiality Provisions remain in effect, she and the public will be denied access to court proceedings. C 1510 V2.

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.) Cit. omit. C 1137. *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.'")

CONCLUSION

Intervenor respectfully requests that the Court (1) Vacate all orders for 2020 CH 04431 that redact or seal any court records from the public; (2) Declare unconstitutional 215 ILCS 188.1 (4,5); (3) Order that all conservation proceedings be conducted in accordance with 705 ILCS 105/16.(3); and (4) Find that NextLevel has waived any and all rights to confidentiality in records in this matter by its failure to comply with the court's orders.

Respectfully Submitted by

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CERTIFICATTION OF COMPLIANCE

I, Nicolette Glazer, certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover and the Rule 341(h)(1) statement of points and authorities, Rule 341(c) certificate of compliance ,the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 43 pages.

s/Nicolette Glazer
Nicolette Glazer

CERTIFICATION OF FILING AND SERVICE

I certify that on 14 September 2024 I electronically filed the foregoing **Appellant's Opening Brief** with the Clerk of the Court for the Illinois Appellate Court, First Judicial District, by using the Odyssey efileIL system to be served on all parties entitled to notice and service as follows.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

s/Nicolette Glazer
Nicolette Glazer

APPENDIX I

215 ILCS 5/188.1

Provisions for Conservation of Assets of a Domestic, Foreign, or Alien [Insurance] Company

(215 ILCS 5/188.1) (from Ch. 73, par. 800.1)

Sec. 188.1. Provisions for conservation of assets of a domestic, foreign, or alien company.

(1) Upon the filing by the Director of a verified complaint alleging (a) that with respect to a domestic, foreign, or alien company, whether authorized or unauthorized, a condition exists that would justify a court order for proceedings under Section 188, and (b) that the interests of creditors, policyholders or the public will probably be endangered by delay, then the circuit court of Sangamon or Cook County or the circuit court of the county in which such company has or last had its principal office shall enter forthwith without a hearing or prior notice an order directing the director to take possession and control of the property, business, books, records, and accounts of the company, and of the premises occupied by it for the transaction of its business, or such part of each as the complaint shall specify, and enjoining the company and its officers, directors, agents, servants, and employees from disposition of its property and from transaction of its business except with the concurrence of the Director until the further order of the court. Copies of the verified complaint and the seizure order shall be served upon the company.

(2) The order shall continue in force and effect for such time as the court deems necessary for the Director to ascertain the condition and situation of the company. On motion of either party or on its own motion, the court may from time to time hold such hearings as it deems desirable, and may extend, shorten, or modify the terms of, the seizure order. So far as the court deems it possible, the parties shall be given adequate notice of such hearings. As soon as practicable, the court shall vacate the seizure order or terminate the conservation proceedings of the company, either when the Director has failed to institute proceedings under Section 188 having a reasonable opportunity to do so, or upon an order of the court pursuant to such proceedings.

(3) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the company.

[continued]

(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.

(6) Any person having possession of and refusing to deliver any of the property, business, books, records or accounts of a company against which a seizure order has been issued shall be guilty of a Class A misdemeanor.

(Source: P.A. 89-206, eff. 7-21-95.)

Appendix II

705 ILCS 105/16 (from Ch. 25, par. 16)

Sec. 16. Records kept by the clerks of the circuit courts are subject to the provisions of "The Local Records Act", approved August 18, 1961, as amended.

Unless otherwise provided by rule or administrative order of the Supreme Court, the respective clerks of the circuit courts shall keep in their offices the following books:

1. A general docket, upon which shall be entered all suits, in the order in which they are commenced.

2. Two well-bound books, to be denominated "Plaintiff's Index to Court Records," and "Defendant's Index to Court Records" to be ruled and printed substantially in the following manner:

.....

Plaintiffs	Defendants	Kind of Action	Date Commenced	Record Book	Pages

.....

.....

.....

Date of judgment	Judgment docket Book	Page

.....

Certificate of levy	Certificate of sale	Certificate of redemption	Satisfied or not satisfied	Number of case

.....

Fee Book	Book	Page	Book	Page	Book	Page

.....

All cases shall be entered in such books, in alphabetical order, by the name of each plaintiff and defendant. The books shall set forth the names of the parties, kind of action, date commenced, the record books and pages on which the cases are recorded, the date of judgment, books and pages of the judgment dockets, fee book, certificates of levy, sale and redemption records on which they are entered satisfied or not satisfied, and number of case. The defendant's index shall be ruled and printed in the same manner as the plaintiff's except the parties shall be reversed.

3. Proper books of record, with indices, showing the names of all parties to any action or judgment therein recorded, with a reference to the page where it is recorded.

4. A judgment docket, in which all final judgments (except child support orders as hereinafter provided) shall be minuted at the time they are entered, or within 60 days thereafter in alphabetical order, by the name of every person against whom the judgment is entered, showing, in the proper columns ruled for that purpose, the names of the parties, the date, nature of the judgment, amount of the judgment and costs in separate items, for which it is issued, to whom issued, when returned, and the manner of its enforcement; a blank column shall be kept in which may be entered a note of the

satisfaction or other disposition of the judgment or order and when satisfied by enforcement or otherwise, or set aside or enjoined; the clerk shall enter a minute thereof in such column, showing how disposed of, the date and the book and page, where the evidence thereof is to be found. In the case of child support orders or modifications of such orders entered on or after May 1, 1987, the clerk shall minute such orders or modifications in the manner and form provided herein but shall not minute every child support installment when due or every child support payment when made. Such dockets may be searched by persons, at all reasonable times without fee.

5. A fee book, in which shall be distinctly set down, in items, the proper title of the cause and heads, the cost of each action, including clerk's, sheriff's and witness' fees, stating the name of each witness having claimed attendance in respect of the trial or hearing of such action with the number of days attended. It shall not be necessary to insert the cost in the judgment; but whenever an action is determined and final judgment entered, the costs of each party litigant shall be made up and entered in such fee book, which shall be considered a part of the record and judgment, subject, however, at all times to be corrected by the court; and the prevailing party shall be considered as having recovered judgment for the amount of the costs so taxed in his or her favor, and the same shall be included in the certified copy of such judgment, and a bill thereof accompanying certified copy of the judgment. If any clerk shall issue a fee bill or a bill of costs, with the certified copy of the judgment without first entering the same in the fee book, or if any such bill of costs or fee bill shall be issued which shall not be in substance a copy of the recorded bill, the same shall be void. Any person having paid such bill of costs or fee bill, may recover from the clerk the amount thereof, with costs of the action, in any circuit court.

6. Such other books of record and entry as are provided by law, or may be required in the proper performance of their duties. 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, and all persons shall have free access for inspection and examination to such records, docket and books, and also to all papers on file in the different clerks' offices and shall have the right to take memoranda and abstracts thereto.

(Source: P.A. 85-1156.)

APPENDIX III

Provisions for Liquidation of Insurance Firms

(215 ILCS 5/202) (from Ch. 73, par. 814)

Sec. 202. Appointment of special deputies; employees and professional advisors; contracts; qualified immunity.

(a) For the purpose of assisting the Director [of Insurance] ["Director"] in the performance of the Director's duties under Articles VII, XIII, and XIII 1/2 of this Code, the Director has authority to appoint one or more special deputies as the Director's agent or agents, and clerks, assistants, attorneys, and other personnel as the Director may deem necessary and to delegate to each such person authority to assist the Director as the Director may consider appropriate. The compensation of each special deputy, clerk, assistant, attorney, and other designated personnel shall be fixed and paid by the Director. The Director shall also have the authority to retain and pay attorneys, actuaries, accountants, consultants, and such other persons as the Director may deem necessary and appropriate. The Director shall fix the rate of compensation of these attorneys, actuaries, accountants, consultants, and other persons subject to the approval of the court. The Director, however, has the authority to fix, without the approval of the court, the rate of compensation of attorneys, actuaries, accountants, consultants, and other persons that he considers necessary and appropriate if the Director determines that the projected expenditure for professional fees to each such person will not exceed $20,000 per company in any calendar year.

(b) The special deputies may enter into leases or contracts for the procurement of real or personal property, and on such terms and conditions as the Director may deem necessary or advisable for the purpose of performing the Director's duties under Articles VII, XIII, and XIII 1/2 of this Code. Any such lease or contract that requires an aggregate expenditure in excess of $150,000 shall be subject to the approval of the court before which is pending the delinquency proceeding of the estate of the company on whose behalf the lease or contract is entered into. In the event that the lease or contract is entered into on behalf of 2 or more companies, the delinquency proceedings of the 2 or more companies shall be consolidated for the sole purpose of obtaining approval of the lease or contract from the court before which is pending the delinquency proceeding of the estate of the company that, in the judgment of the Director at the time of application for approval, is to bear the largest portion of the amounts to be expended under the lease or contract under the allocation methods established by the Director under subsection (c)(1) of this Section.

(c) (1) The compensation of the persons appointed by the Director and the attorneys, actuaries, accountants, consultants, and other persons retained by the Director, the payments under the leases or contracts described in subsection (b) of this Section, and all other expenses of taking possession of the property and the administration of the company and its property shall be paid (i) out of the funds or assets of the company on whose behalf the compensation, payments, or expenses were incurred or (ii) in the event that the compensation, payments, or expenses were, in the judgment of the Director, incurred in behalf of 2 or more companies, out of the assets of those companies on the basis of allocation methods established by the Director.

(2) Notwithstanding the foregoing provisions of this subsection (c), the salary of the special deputies, together with the salaries or fees of those clerks, assistants, attorneys, actuaries,

accountants, consultants, or other persons appointed or retained by the Director under this Section, and the other expenses of taking possession of the property and the administration of the company and its property, may be paid out of amounts appropriated to the Department of Insurance. Any amounts paid under this Section from appropriated funds shall be repaid to the State treasury from any available funds or assets of the company on whose behalf the expenses were incurred, subject to the approval of the court before which is pending the delinquency proceeding of the company.

(d) (1) For each calendar quarter or other period as the court may determine, the Director shall file with the court before which is pending the delinquency proceeding of each company in liquidation or rehabilitation a report for the period reflecting the company's (i) cash and invested assets held by the Director at the beginning of the period, (ii) cash receipts, (iii) cash disbursements for payments of salaries, compensation, professional fees, and all other expenses of administration of the company and its property, (iv) all other cash disbursements, and (v) cash and invested assets held by the Director at the end of the period; provided that the report need not be filed more than once for each calendar year if the cash and invested assets of the company are less than $250,000. For each such period, the Director shall file with the court a similar report for each company in conservation, except that this report shall reflect only those cash disbursements for payments of salaries, compensation, professional fees, and all other expenses of the administration of the company and its property.

(2) No party to the proceedings may object to any aspect of that report unless the basis of the party's objection is set forth in a motion filed with the court not later than 30 days after the filing of the report. In the event that objections to the report are filed, the Director shall have 15 days to file a response to the objections, and a hearing on the matter shall be held at the earliest possible date consistent with the schedule of the court. Any hearing on objections shall be limited solely to the specific objections raised in the original motion.

(e) (1) For purposes of this subsection (e):

"Receiver" means the Director in his or her capacity as the liquidator, rehabilitator, or conservator of a company in liquidation, rehabilitation, or conservation.

"Director as trustee" means the Director when appointed as trustee under this Article.

"Employees" means all present and former special deputies appointed by the Director and all persons that the Director or special deputies may appoint or employ or may have appointed or employed to assist in the liquidation, rehabilitation, or conservation of a company. "Employees" shall not include any attorneys, accountants, auditors, or other professional persons or firms (or their employees) who are retained as independent contractors by either the Director or by any special deputy appointed under this Section.

"Advisors" means all persons that the Director may appoint or may have appointed under Section 202.1.

(2) If a cause of action is commenced against the receiver, the Director as trustee, employees, or advisors, either personally or in their official capacity, alleging property damage, property loss, personal injury, or other civil liability arising out of any act, error, or omission of the receiver, the Director as trustee, employees, or advisors committed within the scope of their duties or employment involving a company in liquidation, rehabilitation, or conservation, the receiver, the Director as trustee, employees, or advisors shall be indemnified out of the assets of the company for all expenses, attorneys' fees, judgments, settlements, decrees, fines, penalties, or amounts paid in satisfaction of or incurred in the defense of the cause of action unless it is determined upon a final adjudication on the merits that the act, error, or omission of the receiver,

the Director as trustee, employees, advisors, or the court giving rise to the claim was not within the scope of his or her duties or employment or was caused by intentional, wilful, or wanton misconduct. Any payments out of the assets of the company under this subsection (e) shall be subject to the prior approval of the court before which is pending the delinquency proceeding of the company.

The court shall be entitled to indemnification under Section 2 of the Representation and Indemnification of State Employees Act.

Attorneys' fees and expenses incurred in defending an action against the receiver, the Director as trustee, employees, or advisors for which indemnity is available under this part (2) may, upon the approval of the receiver and the court before which is pending the delinquency proceeding of the company, be paid from the assets of the company's estate in advance of the final disposition of the action upon receipt of an undertaking by or on behalf of the receiver, the Director as trustee, employees, or advisors to pay that amount, if it shall ultimately be determined upon a final adjudication on the merits that he or she is not entitled to be indemnified under this part (2).

Any indemnification, expense payments, and attorneys' fees from the company's assets for actions against the receiver, the Director as trustee, employees, or advisors under this part (2) shall be considered an administrative expense of the estate.

In the event of actual or threatened litigation against the receiver, the Director as trustee, employees, or advisors for which indemnity is available under this part (2), a reasonable amount of funds, which in the judgment of the Director may be needed to provide indemnity, may be segregated and reserved from the assets of the company as security for the payment of indemnity until all applicable statutes of limitations shall have run and all actual or threatened actions against the receiver, the Director as trustee, employees, or advisors have been completely and finally resolved.

(3) Nothing contained or implied in this subsection (e) shall operate, or be construed or applied, to deprive the Director, receiver, the Director as trustee, the company's estate, any employee, any advisor or the court of any defense, claim, or right of immunity heretofore available.

(Source: P.A. 88-297; 89-206, eff. 7-21-95.)

(215 ILCS 5/202.1) (from Ch. 73, par. 814.1)

Sec. 202.1. The Director may, with the approval of the court, appoint an Advisory Committee, consisting of policyholders, claimants, or other creditors, including Guaranty Funds and Guaranty Associations, should the Director deem it necessary to the proper performance of his responsibilities under this Article and Article XIII 1/2. The Committee shall serve at the pleasure of the Director and shall serve without compensation other than reimbursement for travel and per diem living expenses incurred in attending committee meetings. No other committees of any nature shall be appointed by the Director or the court in any proceeding conducted under this Article and Article XIII 1/2.

(Source: P.A. 86-1155; 86-1156.)

APPENDIX IV

(215 ILCS 155/21.1)

Sec. 21.1. Receiver and involuntary liquidation.

(a) The Secretary's proceedings under this Section shall be the exclusive remedy and the only proceedings commenced in any court for the dissolution of, the winding up of the affairs of, or the appointment of a receiver for a title insurance company.

(b) If the Secretary, with respect to a title insurance company, finds that (i) its capital is impaired or it is otherwise in an unsound condition, (ii) its business is being conducted in an unlawful, fraudulent, or unsafe manner, (iii) it is unable to continue operations, or (iv) its examination has been obstructed or impeded, the Secretary may give notice to the board of directors of the title insurance company of his or her finding or findings. If the Secretary's findings are not corrected to his or her satisfaction within 60 days after the company receives the notice, the Secretary shall take possession and control of the title insurance company, its assets, and assets held by it for any person for the purpose of examination, reorganization, or liquidation through receivership.

If, in addition to making a finding as provided in this subsection (b), the Secretary is of the opinion and finds that an emergency that may result in serious losses to any person exists, the Secretary may, in his or her discretion, without having given the notice provided for in this subsection, and whether or not proceedings under subsection (a) of this Section have been instituted or are then pending, take possession and control of the title insurance company and its assets for the purpose of examination, reorganization, or liquidation through receivership.

(c) The Secretary may take possession and control of a title insurance company, its assets, and assets held by it for any person by posting upon the premises of each office located in the State of Illinois at which it transacts its business as a title insurance company a notice reciting that the Secretary is assuming possession pursuant to this Act and the time when the possession shall be deemed to commence.

(d) Promptly after taking possession and control of a title insurance company the Secretary, represented by the Attorney General, shall file a copy of the notice posted upon the premises in the Circuit Court of either Cook County or Sangamon County, which cause shall be entered as a court action upon the dockets of the court under the name and style of "In the matter of the possession and control by the Secretary of the Department of Financial and Professional Regulation of (insert the name of the title insurance company)". If the Secretary determines (which determination may be made at the time of, or at any time subsequent to, taking possession and control of a title insurance company) that no practical possibility exists to reorganize the title insurance company after reasonable efforts have been made, the Secretary, represented by the Attorney General, shall also file a complaint, if it has not already been done, for the appointment of a receiver or other

proceeding as is appropriate under the circumstances. The court where the cause is docketed shall be vested with the exclusive jurisdiction to hear and determine all issues and matters pertaining to or connected with the Secretary's possession and control of the title insurance company as provided in this Act, and any further issues and matters pertaining to or connected with the Secretary's possession and control as may be submitted to the court for its adjudication.

The Secretary, upon taking possession and control of a title insurance company, may, and if not previously done shall, immediately upon filing a complaint for dissolution make an examination of the affairs of the title insurance company or appoint a suitable person to make the examination as the Secretary's agent. The examination shall be conducted in accordance with and pursuant to the authority granted under Section 12 of this Act. The person conducting the examination shall have and may exercise on behalf of the Secretary all of the powers and authority granted to the Secretary under Section 12. A copy of the report shall be filed in any dissolution proceeding filed by the Secretary. The reasonable fees and necessary expenses of the examining person, as approved by the Secretary or as recommended by the Secretary and approved by the court if a dissolution proceeding has been filed, shall be borne by the subject title insurance company and shall have the same priority for payment as the reasonable and necessary expenses of the Secretary in conducting an examination. The person appointed to make the examination shall make a proper accounting, in the manner and scope as determined by the Secretary to be practical and advisable under the circumstances, on behalf of the title insurance company and no guardian ad litem need be appointed to review the accounting.

(e) The Secretary, upon taking possession and control of a title insurance company and its assets, shall be vested with the full powers of management and control including, but not limited to, the following:

(1) the power to continue or to discontinue the business;

(2) the power to stop or to limit the payment of its obligations;

(3) the power to collect and to use its assets and to give valid receipts and acquittances therefor;

(4) the power to transfer title and liquidate any bond or deposit made under Section 4 of this Act;

(5) the power to employ and to pay any necessary assistants;

(6) the power to execute any instrument in the name of the title insurance company;

(7) the power to commence, defend, and conduct in the title insurance company's name any action or proceeding in which it may be a party;

(8) the power, upon the order of the court, to sell and convey the title insurance company's assets, in whole or in part, and to sell or compound bad or doubtful debts

upon such terms and conditions as may be fixed in that order;

(9) the power, upon the order of the court, to make and to carry out agreements with other title insurance companies, financial institutions, or with the United States or any agency of the United States for the payment or assumption of the title insurance company's liabilities, in whole or in part, and to transfer assets and to make guaranties, in whole or in part, in connection therewith;

(10) the power, upon the order of the court, to borrow money in the name of the title insurance company and to pledge its assets as security for the loan;

(11) the power to terminate his or her possession and control by restoring the title insurance company to its board of directors;

(12) the power to appoint a receiver which may be the Secretary of the Department of Financial and Professional Regulation, another title insurance company, or another suitable person and to order liquidation of the title insurance company as provided in this Act; and

(13) the power, upon the order of the court and without the appointment of a receiver, to determine that the title insurance company has been closed for the purpose of liquidation without adequate provision being made for payment of its obligations, and thereupon the title insurance company shall be deemed to have been closed on account of inability to meet its obligations to its insureds or escrow depositors.

(f) Upon taking possession, the Secretary shall make an examination of the condition of the title insurance company, an inventory of the assets and, unless the time shall be extended by order of the court or unless the Secretary shall have otherwise settled the affairs of the title insurance company pursuant to the provisions of this Act, within 90 days after the time of taking possession and control of the title insurance company, the Secretary shall either terminate his or her possession and control by restoring the title insurance company to its board of directors or appoint a receiver, which may be the Secretary of the Department of Financial and Professional Regulation, another title insurance company, or another suitable person and order the liquidation of the title insurance company as provided in this Act. All necessary and reasonable expenses of the Secretary's possession and control shall be a priority claim and shall be borne by the title insurance company and may be paid by the Secretary from the title insurance company's own assets as distinguished from assets held for any other person.

(g) If the Secretary takes possession and control of a title insurance company and its assets, any period of limitation fixed by a statute or agreement that would otherwise expire on a claim or right of action of the title insurance company, on its own behalf or on behalf of its insureds or escrow depositors, or upon which an appeal must be taken or a pleading or other document filed by the title insurance company in any pending action or proceeding, shall be tolled until 6 months after the commencement of the possession, and no judgment, lien, levy, attachment, or other similar legal process may be enforced upon or satisfied,

in whole or in part, from any asset of the title insurance company or from any asset of an insured or escrow depositor while it is in the possession of the Secretary.

(h) If the Secretary appoints a receiver to take possession and control of the assets of insureds or escrow depositors for the purpose of holding those assets as fiduciary for the benefit of the insureds or escrow depositors pending the winding up of the affairs of the title insurance company being liquidated and the appointment of a successor escrowee for those assets, any period of limitation fixed by statute, rule of court, or agreement that would otherwise expire on a claim or right of action in favor of or against the insureds or escrow depositors of those assets or upon which an appeal must be taken or a pleading or other document filed by a title insurance company on behalf of an insured or escrow depositor in any pending action or proceeding shall be tolled for a period of 6 months after the appointment of a receiver, and no judgment, lien, levy, attachment, or other similar legal process shall be enforced upon or satisfied, in whole or in part, from any asset of the insured or escrow depositor while it is in the possession of the receiver.

(i) If the Secretary determines at any time that no reasonable possibility exists for the title insurance company to be operated by its board of directors in accordance with the provisions of this Act after reasonable efforts have been made and that it should be liquidated through receivership, he or she shall appoint a receiver. The Secretary may require of the receiver such bond and security as the Secretary deems proper. The Secretary, represented by the Attorney General, shall file a complaint for the dissolution or winding up of the affairs of the title insurance company in a court of the county in which the principal office of the title insurance company is located and shall cause notice to be given in a newspaper of general circulation once each week for 4 consecutive weeks so that persons who may have claims against the title insurance company may present them to the receiver and make legal proof thereof and notifying those persons and all to whom it may concern of the filing of a complaint for the dissolution or winding up of the affairs of the title insurance company and stating the name and location of the court. All persons who may have claims against the assets of the title insurance company, as distinguished from the assets of insureds and escrow depositors held by the title insurance company, and the receiver to whom those persons have presented their claims may present the claims to the clerk of the court, and the allowance or disallowance of the claims by the court in connection with the proceedings shall be deemed an adjudication in a court of competent jurisdiction. Within a reasonable time after completion of publication, the receiver shall file with the court a correct list of all creditors of the title insurance company as shown by its books, who have not presented their claims and the amount of their respective claims after allowing adjusted credit, deductions, and set-offs as shown by the books of the title insurance company. The claims so filed shall be deemed proven unless objections are filed thereto by a party or parties interested therein within the time fixed by the court.

(j) The receiver for a title insurance company has the power and authority and is charged with the duties and responsibilities

as follows:

(1) To take possession of and, for the purpose of the receivership, title to the books, records, and assets of every description of the title insurance company.

(2) To proceed to collect all debts, dues, and claims belonging to the title insurance company.

(3) To sell and compound all bad and doubtful debts on such terms as the court shall direct.

(4) To sell the real and personal property of the title insurance company, as distinguished from the real and personal property of the insureds or escrow depositors, on such terms as the court shall direct.

(5) To file with the Secretary a copy of each report that he or she makes to the court, together with such other reports and records as the Secretary may require.

(6) To sue and defend in his or her own name and with respect to the affairs, assets, claims, debts, and choses in action of the title insurance company.

(7) To surrender to the insureds and escrow depositors of the title insurance company, when requested in writing directed to the receiver by them, the escrowed funds (on a pro rata basis), and escrowed documents in the receiver's possession upon satisfactory proof of ownership and determination by the receiver of available escrow funds.

(8) To redeem or take down collateral hypothecated by the title insurance company to secure its notes and other evidence of indebtedness whenever the court deems it to be in the best interest of the creditors of the title insurance company and directs the receiver so to do.

(k) Whenever the receiver finds it necessary in his or her opinion to use and employ money of the title insurance company in order to protect fully and benefit the title insurance company by the purchase or redemption of property, real or personal, in which the title insurance company may have any rights by reason of any bond, mortgage, assignment, or other claim thereto, the receiver may certify the facts together with the receiver's opinions as to the value of the property involved and the value of the equity the title insurance company may have in the property to the court, together with a request for the right and authority to use and employ so much of the money of the title insurance company as may be necessary to purchase the property, or to redeem the property from a sale if there was a sale, and if the request is granted, the receiver may use so much of the money of the title insurance company as the court may have authorized to purchase the property at the sale.

The receiver shall deposit daily all moneys collected by him or her in any State or national bank approved by the court. The deposits shall be made in the name of the Secretary, in trust for the receiver, and be subject to withdrawal upon the receiver's order or upon the order of those persons the Secretary may designate. The moneys may be deposited without interest, unless otherwise agreed. The receiver shall do the things and take the steps from time to time under the direction and approval of the court that may reasonably appear to be necessary to

conserve the title insurance company's assets and secure the best interests of the creditors, insureds, and escrow depositors of the title insurance company. The receiver shall record any judgment of dissolution entered in a dissolution proceeding and thereupon turn over to the Secretary a certified copy of the judgment.

The receiver may cause all assets of the insureds and escrow depositors of the title insurance company to be registered in the name of the receiver or in the name of the receiver's nominee.

For its services in administering the escrows held by the title insurance company during the period of winding up the affairs of the title insurance company, the receiver is entitled to be reimbursed for all costs and expenses incurred by the receiver and shall also be entitled to receive out of the assets of the individual escrows being administered by the receiver during the period of winding up the affairs of the title insurance company and prior to the appointment of a successor escrowee the usual and customary fees charged by an escrowee for escrows or reasonable fees approved by the court.

The receiver, during its administration of the escrows of the title insurance company during the winding up of the affairs of the title insurance company, shall have all of the powers that are vested in trustees under the terms and provisions of the Illinois Trust Code.

Upon the appointment of a successor escrowee, the receiver shall deliver to the successor escrowee all of the assets belonging to each individual escrow to which the successor escrowee succeeds, and the receiver shall thereupon be relieved of any further duties or obligations with respect thereto.

(l) The receiver shall, upon approval by the court, pay all claims against the assets of the title insurance company allowed by the court pursuant to subsection (i) of this Section, as well as claims against the assets of insureds and escrow depositors of the title insurance company in accordance with the following priority:

(1) All necessary and reasonable expenses of the Secretary's possession and control and of its receivership shall be paid from the assets of the title insurance company.

(2) All usual and customary fees charged for services in administering escrows shall be paid from the assets of the individual escrows being administered. If the assets of the individual escrows being administered are insufficient, the fees shall be paid from the assets of the title insurance company.

(3) Secured claims, including claims for taxes and debts due the federal or any state or local government, that are secured by liens perfected prior to the date of filing of the complaint for dissolution, shall be paid from the assets of the title insurance company.

(4) Claims by policyholders, beneficiaries, insureds, and escrow depositors of the title insurance company shall be paid from the assets of the insureds and escrow depositors. If there are insufficient assets of the insureds and escrow depositors, claims shall be paid from the assets of the title insurance company.

(5) Any other claims due the federal government shall be paid from the assets of the title insurance company.

(6) Claims for wages or salaries, excluding vacation, severance, and sick leave pay earned by employees for services rendered within 90 days prior to the date of filing of the complaint for dissolution, shall be paid from the assets of the title insurance company.

(7) All other claims of general creditors not falling within any priority under this subsection (l) including claims for taxes and debts due any state or local government which are not secured claims and claims for attorney's fees incurred by the title insurance company in contesting the dissolution shall be paid from the assets of the title insurance company.

(8) Proprietary claims asserted by an owner, member, or stockholder of the title insurance company in receivership shall be paid from the assets of the title insurance company.

The receiver shall pay all claims of equal priority according to the schedule set out in this subsection, and shall not pay claims of lower priority until all higher priority claims are satisfied. If insufficient assets are available to meet all claims of equal priority, those assets shall be distributed pro rata among those claims. All unclaimed assets of the title insurance company shall be deposited with the receiver to be paid out by him or her when such claims are submitted and allowed by the court.

(m) At the termination of the receiver's administration, the receiver shall petition the court for the entry of a judgment of dissolution. After a hearing upon the notice as the court may prescribe, the court may enter a judgment of dissolution whereupon the title insurance company's corporate existence shall be terminated and the receivership concluded.

(n) The receiver shall serve at the pleasure of the Secretary and upon the death, inability to act, resignation, or removal by the Secretary of a receiver, the Secretary may appoint a successor, and upon the appointment, all rights and duties of the predecessor shall at once devolve upon the appointee.

(o) Whenever the Secretary shall have taken possession and control of a title insurance company or a title insurance agent and its assets for the purpose of examination, reorganization, or liquidation through receivership, or whenever the Secretary shall have appointed a receiver for a title insurance company or title insurance agent and filed a complaint for the dissolution or winding up of its affairs, and the title insurance company or title insurance agent denies the grounds for such actions, it may at any time within 10 days apply to the Circuit Court of Cook or Sangamon County to enjoin further proceedings in the premises; and the Court shall cite the Secretary to show cause why further proceedings should not be enjoined, and if the Court shall find that grounds do not exist, the Court shall make an order enjoining the Secretary or any receiver acting under his direction from all further proceedings on account of the alleged grounds. (Source: P.A. 101-48, eff. 1-1-20.)

APPENDIX V

(215 ILCS 5/402) (from Ch. 73, par. 1014)

Sec. 402. Examinations, investigations and hearings. (1) All examinations, investigations and hearings provided for by this Code may be conducted either by the Director personally, or by one or more of the actuaries, technical advisors, deputies, supervisors or examiners employed or retained by the Department and designated by the Director for such purpose. When necessary to supplement its examination procedures, the Department may retain independent actuaries deemed competent by the Director, independent certified public accountants, or qualified examiners of insurance companies deemed competent by the Director, or any combination of the foregoing, the cost of which shall be borne by the company or person being examined. The Director may compensate independent actuaries, certified public accountants and qualified examiners retained for supplementing examination procedures in amounts not to exceed the reasonable and customary charges for such services. The Director may also accept as a part of the Department's examination of any company or person (a) a report by an independent actuary deemed competent by the Director or (b) a report of an audit made by an independent certified public accountant. Neither those persons so designated nor any members of their immediate families shall be officers of, connected with, or financially interested in any company other than as policyholders, nor shall they be financially interested in any other corporation or person affected by the examination, investigation or hearing.

(2) All hearings provided for in this Code shall, unless otherwise specially provided, be held at such time and place as shall be designated in a notice which shall be given by the Director in writing to the person or company whose interests are affected, at least 10 days before the date designated therein. The notice shall state the subject of inquiry and the specific charges, if any. The hearings shall be held in the City of Springfield, the City of Chicago, or in the county where the principal business address of the person or company affected is located.
(Source: P.A. 87-757.)