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

In the Matter of the Conservation of NextLevel Healthcare Partners, Inc.

2020 CH 04431

Jacqueline Stevens, *pro se*
Intervenor

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

Opponent parties' objections to Intervenor motion for orders allowing public access to all court records in 2020 CH 04431 and a declaration that 215 ILCS 5/188.1 (b) (4,5) ("Confidentiality Provisions") is unconstitutional and conservancy "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" (First Amended Intervenor Motion ["Mot."], p. 1) are as follows: (1) the Motion is moot; (2) the portions of the statute challenged do not violate Intervenor's constitutional rights; and (3) Intervenor motion fails to specify a rationale for accessing records sealed or redacted in 2020 CH 04331. The Reply will review each of these arguments in turn.

Before proceeding, it bears note that although this is a claim for equitable, constitutional remedies, at no point do NextLevel Health Partners, Inc. ("NextLevel") or the Attorney General for the People of the State of Illinois ("AG") respond to Intervenor points that the policy whose crafting by the Illinois legislature they claim insulates 215 ILCS 5/188.1 (b) (4,5) from constitutional challenges failed poor communities in Cook County, health care providers, and

taxpayers, and that the Confidentiality Provisions are benefitting political insiders in a government ridden with corruption (¶71). NextLevel: (a) obtained its managed care contract in a fashion sharply criticized by the Illinois Comptroller (Mot. ¶¶32-3); (b) repeatedly violated reporting rules (¶35, note 25); (c) was declared insolvent (¶26); (d) was alleged by Saint Anthony's Hospital not to pay its bills (Mot. ¶69); (e) left the Illinois Department of Health and Family Services ("HFS"), i.e., taxpayers, as its largest creditor (Mot. ¶¶39-40); (f) was taken over by a firm that per its HFS contract, diverted an unknown sum of taxpayer money from health care to officials or investors (Mot. ¶30); (g) was set up in part by investors who were officials of the corporation that took over NextLevel (¶¶ 43-46, 54); (h) was run by a woman who continued to influence HFS policy, managed the successful campaign for one House representative, and was the boss of a second politician who began her successful Congressional bid while a NextLevel official (¶¶41, 47, 50-52); (i) was overseen by two agencies with revolving doors to the industries they regulate (¶¶29, 85, 72); and (j) failed to make a discernible dent in racialized health care disparities in Cook County. ¶79.

If these are the interests and outcomes the Illinois legislature sought to promote through the Confidentiality Provisions (NextLevel Opposition Response ("NL Resp."), pp. 10-12), then NextLevel has given the court ample grounds to declare the Confidentiality Provisions unconstitutional discrimination against the public through a rational basis test. Mot. ¶¶8, 101. E.g., *Metropolitan Life Ins. Co. v. Ward*, 470 US 869, 882 (1985). (State of Alabama tax on out-of-state insurers violates Equal Protection Clause ("...promotion of domestic business by discriminating against nonresident competitors is not a legitimate state purpose.")) Intended or

not, the policy failures reflected in NextLevel's operation and insolvency are part of the equitable analysis now before this court, one with which opposing parties fail to meaningfully engage.[1]

In addition to disregarding Motion statements relevant to any analysis of the equitable relief Intervenor seeks, NextLevel and the AG apply jurisprudence for administrative matters to court proceedings. NL Resp., pp. 10-11; AG Opposition Response ("AG Resp."), pp. 4-5. This reveals a stunning legal confusion. When administrative agencies maintain private records they do not presumptively violate the First Amendment, unlike court proceedings. Mot. ¶¶88, 91, 94. 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.

MOTION CONTROVERSY

To support their claim the motion requesting constitutional relief is moot two arguments are made. First, the AG alleges, "Stevens already obtained access to the documents in this proceeding, which was the purpose for her intervention." AG Resp., p. 8. Second, NextLevel

1 About a motion replete with direct quotations from court documents filed in this case, government records, financial filings, and published articles, including 81 footnotes for verifying statements to support the need for information on what happened to taxpayer funds targetted for health care, NextLevel writes, "Intervenor presented no evidence in support of her motion, only vague and largely irrelevant suggestions of wrongdoing by various parties based on inadmissible hearsay." NL Resp. p. 8, citing *In re Marriage of Prusak*, 2020 IL App (3d) 190688, ¶¶ 31– 33 to disallow consideration of Mot. ¶¶7-21. *First*, unlike attorney claims possibly relied on by a judge in a hearing on a motion to reconsider a child custody dispute (*Prusak* ¶¶21-24), the facts in the paragraphs NextLevel references rely almost entirely on documents or information that are either: in the court record for this proceeding (¶¶7-9, 11); verifiable by checking an internet link (¶10), possessed by the AG, a party to this case (¶¶12-13), or under the control of the Chancery Division or a staff attorney for the court (¶¶15-24). *Second*, as NextLevel attorney Stephen Schwab at a hearing of February 7, 2022 noted, Intervenor has sworn to them as accurate under penalty of perjury. Mot. p. 30. *Third*, NextLevel and the AG had ample opportunity to dispute any of the Motion points with specific evidence and did not do so, nor did they move to strike any portions of Intervenor motion.

argues that "...any sealed or redacted documents remain so under the Court's inherent power, not the Sequestration statute," and that a consideration of Intervenor's constitutional claims would mean "relitigat"[ing] a previous decision. NL Resp., pp. 5, 7.

The arguments on mootness should be rejected for the following reasons. *First*, opposing parties provide no evidence that the court heard or weighed any of the public access equities or case law newly presented by Intervenor's motion. Mot. ¶¶29-73, 81-102. NextLevel states it "agreed to the Transfer Motion while the Sequestration Order was in full effect under the expectation that the motion and its exhibits would not be made public." NL Resp., pp. 3, 14. According to the record, the only equities the court weighed in its order of November 29, 2021 were claims about NextLevel's and Centene's expectations, *relying on the Confidentiality Provisions*, that they would be able to keep secret from the public records with allegedly "highly confidential and sensitive business information." NL Resp. p. 3. Per court order, Intervenor's Motion "makes constitutional arguments not previously made by the Director with respect to the Privacy Provision" that the court did not previously consider. Court order 2020 CH 04431, December 6, 2021, "Exhibit 1," p. 2, Mot. ¶¶80-101.

Second, the Confidentiality Provisions remain an obstacle to Intervenor obtaining information in 2020 CH 04431 for matters going forward involving Kindred THC Hospital LLC ("Kindred"), other new claimants, or new matters related to these proceedings. Court order, 2021 L 2873, March 10, 2022, "Exhibit 2." As long as the Confidentiality Provisions remain in place, NextLevel or the DOI can invoke the participation of a new claimant, party, or facts and pursue a new order obligating sequestration in this proceeding going forward, thereby depriving the public and thus Intervenor access to court records and hearings going forward. Indeed, the

Confidentiality Provisions make possible the DOI and NextLevel obtaining a final order from this court in 2020 CH 04431 and then initiating "new" proceedings under sequestration for allegedly newly discovered outstanding matters. Due to the Confidentiality Provision's requirement of secretly silo-ed court records (Mot. ¶¶7, 9), the public, Intervenor included, and other interested parties, even this court itself, would remain in the dark and it would be impossible to hold parties accountable to this court's orders of September 30 and November 29, 2021 ending the sequestration of this proceeding, in violation of the the First Amendment, the Fifth Amendment due process clause, and the Illinois Constitution, Article Two, Section 1.[2]

Third, the stated purpose of Intervenor's motion was not only to access all records of this proceeding, but anticipatory relief for the purpose of accessing court proceedings conducted under 215 Illinois Compiled Statutes 5/188 going forward. Mot., pp. 1-2, ¶124 (requesting court to "...declare 215 ILCS 5/188.1 (b) (4,5) unconstitutional and unenforceable, and further that all proceedings and oversight initiated by the DOI pursuant to 215 ILCS 5/188.1 be subject instead to 705 ILCS 105/16."). The Court has held that where civil controversies are "capable of repetition, yet evading review," then even when the event giving rise to the challenge is in the past, unlike this current proceeding, the constitutional controversy remains live. *First Nat. Bank of Boston v. Bellotti*, 435 US 765, 774. (Holding that First Amendment appeal of ruling on law limiting campaign contributions not moot after referendum held, citing *So. Pac. Terminal Co. v. Int. Comm. Comm.*, 219 US 498, 515 (1911).) Opposing parties do not refute Intervenor's statements about her status as a citizen with a career devoted to acquiring, analyzing, and

2 See Order of November 29, 2021, stayed vacation of sequestration order ("Exhibit 3"), and order of September 30, 2021 ("Exhibit 4"), lifting stay on order vacating sequestration. Intervenor required weeks of persistent efforts and a unique event to discover even the law that was keeping these proceedings secret. Mot. ¶¶11-22, and the Chancery Division did not originally release the order of November 29, 2021 ending sequestration. Case Summary, 2020 CH 04431, January 3, 2022. "Exhibit 5," p. 17.

publishing information on government operations and an ongoing interest in accessing insurance firm conservancy proceedings. Mot., ¶1, ¶57, note 54, ¶76.[3] They also do not suggest that if the law remains enforced, Intervenor will be able to access or even have knowledge of proceedings conducted under the Confidentiality Provisions (¶¶ Mot. 9-11, 14, 21, 23); and, they aver the secret proceedings are part of an ongoing practice per a legal mandate. NL Resp. 8-11; AG Resp., pp. 8-9.

Fourth, if the court grants Intervenor's motion of April 4, 2022 ("Exhibit 6"), then the question of public access to the records referenced in the Order of November 29, 2021 will be moot. However, opposing parties provide no information to dispute Intervenor's claim that the docket failed to list all court records and that as a result she is unable to access "unknown portions of this proceeding sealed or otherwise withheld." ¶83 and ¶¶28, 76. Even after the order of November 29, 2021 vacating the sequestration order of June 4, 2020, the Confidentiality Provisions so burdened the Chancery Division that the public was allowed access only to an ad hoc and unreliable release of court records, the remedy to which is to order the Chancery Division to produce an annotated list of all records under its control for 2020 CH 04431 and all records on file for the case, and then permit Intervenor to return to court for the purpose of obtaining records still withheld or court records referenced but not submitted to the Chancery Division. The unconstitutional expectation of confidentiality demonstrably led parties to produce documents they expected would remain secret, and could also have led parties to withhold from the Chancery Division documents that are court records but were not filed as such. ¶¶28, 83.[4]

3 "If the full records for this proceeding are not released *and 215 ILCS 5/188.1 remains enforced*, this will impair her ability to unearth information … important to share with other citizens." ¶76, emphasis added.

4 Discrepancies exist between documents associated with this case and those listed on the Chancery Division docket, and record additional to those ordered sealed or redacted remain were withheld from the public and

If the court deems any of these matters a controversy, Intervenor motion is not moot. *Powell v. McCormack*, 395 US 486, 496-97 (1969). ("Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome. See E. Borchard, Declaratory Judgments 35-37 (2d ed. 1941).) Where one of the several issues presented becomes moot, the remaining live issues supply the constitutional requirement of a case or controversy. See *United Public Workers* v. *Mitchell*, 330 U. S. 75, 86-94 (1947); 6A J. Moore, Federal Practice ¶ 57.13 (2d ed. 1966).")

215 ILCS 5/188.1 (B) (4,5) UNCONSTITUTIONAL

Opposing parties' main arguments against the constitutional claims are: (1) the Illinois legislature had a legitimate policy goal in mind when passing the Confidentiality Provisions and related predecessor statutes that supersede the First Amendment; (2) the Illinois policy of closing conservancy proceedings has been in effect for a long period of time, thus depriving Intervenor of any presumption of constitutional claims to access conservancy proceedings pursuant to the Code; and (3) similar provisions are in effect in other states, further indicating Intervenor has no long-standing right to access such proceedings and the necessity of the policy, and declaring the Privacy Provisions unconstitutional would lead to adverse consequences.

1. Statute Unconstitutional since 1967

Assuming NextLevel's legislative history is correct, the plain text of the Confidentiality Provisions mandates the Illinois judicial branch to make secret records, hearings, and even

Intervenor, including but not limited to the Declarations of Cheryl Whitaker and Kevin Baldwin referenced the court's order of June 29, 2020. "Exhibit 7", p. 3; Case Record for 2020-CH-04431, April 10, 2022, "Exhibit 8," pp. 9-10. The case record posted online on April 10, 2022 shows 43 filings listed as "restricted," even though the court order of November 29, 2021 covers at most four records. Exhibit 8, Exhibit 1.

existence of certain state court proceedings, including final orders. NL Resp. 9-10, citations omitted. However, neither opponent brief provides a single precedent from any state or federal court finding a state or federal legislature can create laws obligating judges to order all court proceedings involving insurance firm insolvency, *or any other civil court proceeding*, to occur "privately in chambers … on request of any officer of the company proceeded against" (215 ILCS 5/188.1 (b)(4) without violating the First Amendment. Such precedents do not exist.

Instead of acknowledging that the Confidentiality Provisions infringe on Intervenor's constitutional rights (Intervenor Motion ("Mot.") ¶¶88-96, 101-102), and then providing evidence necessary to meet the government's burden of showing a compelling interest to overcome the presumption of unconstitutionality, opposing parties rely on a tautology: having been prohibited from access to insurance firm conservancy proceedings since 1967, the public has no constitutional right to access these proceedings. Opposing briefs offer only a conclusory defense of the merits of court secrecy as part of an overall scheme for regulating the insurance industry and imply a rational basis test as a means to evade strict scrutiny of a law and practice offensive to the constitutions of Illinois and the United States.[5] They also fail to explain how the Confidentiality Provisions are not encroachments on judicial power in violation of Article II, Section 1 of the Illinois Constitution. Mot. ¶100.

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5 Supreme court precedents presuming public access to state court proceedings are voluminous and unambiguous, even when a compelling interest has been asserted, which opponent briefs do not actually assert for the Constitutionality Provisions challenged herein. In *Globe Newspaper Co. v. Superior Court, County of Norfolk*, 457 US 596, (1982)), for instance, 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.

Opposing parties' main gambit – that Intervenor has no presumption of a First Amendment right to challenge the Confidentiality Provisions – fails for several reasons, the most obvious being that the Confidentiality Provisions obligate Illinois circuit court judges to close all conservancy proceedings to the public for no reason other than the request of a private party. AG Resp., p. 5 and NL Resp. 11, quoting the Confidentiality Provisions. Sheer nominalism indicates that any law that denies the public's access to court proceedings for the benefit of a private party infringes on the constitutional presumption of the public's right to access court records and hearings. Such an arrangement is not justified by inapposite rulings denying public access to juror questionairres, warrant application procedures, or videotaped depositions referenced by NextLevel (NL Resp. p. 9). Opposing briefs disregard the case law Intervenor cites that establishes a high burden for overcoming the First Amendment's presumption of open proceedings, and relies on conclusory assertions of "sensitivity," clearly disregarding *In the Matter of Continental Illinois Securities Litigation*, 732 F.2d 1302, 1315 (1984) (Mot. ¶92), one of several decisions the Motion cites holding that court records are presumptively public, in this case regardless of any equities associated with prior expectations of confidentiality. ("We agree that the device of a special litigation committee to conduct an investigation and make a report may be useful in handling derivative litigation. We recognize that confidentiality may advance this process. But when the report is used in an adjudicative procedure to advance the corporate interest, there is a strong presumption that confidentiality must be surrendered.") NextLevel and the AG fail to recognize much less carry their very high burden for justifying why a single record in 2020 CH 04431 should be hidden from the public.

2. 55 Years of a Wrong Does not Make a Right

By alleging a "long history of confidentiality" in conservancy proceedings, opposing parties would have the court believe that since 1967 it has been constitutional for corporations to exclude the public from court proceedings as part of a specially crafted insurance regulation scheme. AG Resp. p. 4, NL Resp. pp. 9-10. NextLevel points out the absence from Intervenor's motion of "any case finding that insurance conservation proceedings historically have been open to the public." NL Resp. 9. In light of the near impossibility of even learning of such proceedings (Mot. ¶¶6 – 14), and in view of parties agreeing that the purpose of the Confidentiality Provisions is to prevent anyone from knowing about such hearings (AG Resp. pp. 2, 4-5), the obvious inference is that Illinois and other states have held their secrets tightly and that this is a case of first impression, not an exception from Court precedents affirming the public's right to access court hearings and proceedings.

In addition to case law indicating access to court proceedings is a clearly established right under the First Amendment (Mot. ¶¶89-92), in *Tumey v. Ohio* 273 U.S. 510 (1927) the Court refutes opposing parties' claims that a state statute about judicial proceedings can overcome constitutional defects simply by having been in place for an extended period of time and being in effect in other states. NL Resp. p. 12, AG Resp. pp. 8-9. The Court in *Tumey* notes the Ohio attorney general averred the legislature's rationale for compensating officials presiding over trials of those accused of violating local prohibition laws from fines imposed (*Tumey* at 520-522), and that the State was claiming "the validity of the practice as an exception to the general rule" (523) based on the practice being longstanding in Ohio and other states.[6] The opposing parties

6 "Counsel contend that in Ohio and in other States, in the economy which it is found necessary to maintain in the administration of justice in the inferior courts by justices of the peace and by judicial officers of like jurisdiction, the only compensation which the State and county and township can afford is the fees and costs earned by them..." *Tumey* at 523-24.

similarly claim that the crafting of the Illinois and similar Confidentiality Provisions are an exception from the general rule of public access to court proceedings.

The Court in 1927 evaluated the constitutionality of the legislature's encroachments into judicial proceedings and rejected the tautology opposing parties offer in this controversy: "[T]he Court must look to those settled usages and modes of proceeding *existing in the common and statute law of England*…" 523, citations omitted, emphasis added. After a recitation of law reaching back to the thirteenth century, similar to the First Amendment cases Intervenor Motion cites (¶¶89-92), the Court in *Tumey* held it unconstitutional for the legislature to "vest[] the judicial power in one who by reason of his interest, both as an individual and as chief executive of the village, is disqualified to exercise it in the trial of the defendant." *Tumey* at 535. Likewise, vesting judicial power in a private corporation violates prerogatives of courts and the public that reach back to common law.

NextLevel's own Response provides conclusive precedent and argument to support Intervenor's claim that the Confidentiality Provisions encroaches on judicial powers, in violation of the Illinois state constitution Article II, Sect. 1. Mot. ¶100; NL Resp. p. 15, citing *Kunkel v. Walton*, 179 Ill. 2D 519 (1997). *Kunkel* relies on Article II, Section 1 to find a statute mandating specific discovery rules for malpractice cases "represents an impermissible encroachment upon the authority of the judicial branch." *Kunkel* at 537. The Illinois Supreme Court in *Kunkel* states:

> 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.[7]

NextLevel avers that the court has an "inherent power to control its docket" (e.g., NL Resp. p. 1) and does not explain how the Confidentiality Provision's mandatory sequestration obligation is a permissible encroachment on this inherent judicial power.[8]

3. Centene and Insurance Firms Operate in States Without Secret Court Proceedings

NextLevel claims "comparable provisions have existed in most other states for decades without issue" and argues they are useful to the insurance industry. NL Resp. p. 1. First, even if the Confidentiality Provisions were in all 50 states, opponent parties would still bear the burden of proving they were narrowly tailored to advance a compelling interest. Second, Centene Corporation, on whose behalf NextLevel seeks to conceal records in this proceeding (Mot. ¶96, Memorandum in Support of NextLevel's Proposed Limitations of Lift of Sequestration, November 12, 2021, "Exhibit 9," ¶9), advertises as operating in all states listed below except Virginia.[9] Centene claims it is a "leader" in financing Medicaid managed care in New York, a state that obligates insurance regulators to issue annual reports on conservancy proceedings.[10]

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7 *Kunkel* at 528.

8 *Kunkel* cites several other Illinois precedents in support of the Motion's claim that the Confidentiality Provisions violate Article II, Section 1: *People v. Joseph*, 113 Ill. 2d 36, 45 (1986) (statute holding post-conviction proceedings be conducted by "judge who was not involved in the original proceeding" violates Article II, Section 1); *People v. Jackson*, 69, Ill. 2d 252, 259 [260] (1977) (Illinois statute regulating *voir dire* is a "legislative infringement upon the powers of the judiciary."); and *Agran v. Checker Taxi Co*., 412 Ill. 145, 149, (1952) (statute stating "no *ex parte* action shall be taken to dismiss a case for want of prosecution until every attorney of record has been notified at least five days by the clerk of the court that such action was contemplated on the date that such order was entered notice dismissing claim for failure to appear" violates Article II Section 1.

9 Centene operates in all states without Confidentiality Provisions. https://www.centene.com/site-map.html.

10 "The superintendent shall transmit to the legislature in his annual report the names of all insurers proceeded against under this article together with such facts as shall acquaint the policyholders, creditors, shareholders, and the public with all proceedings. To that end the special deputy superintendent in charge of any such insurer shall file annually with the superintendent a report of the affairs of such insurer. " New York State, 7420 Annual report

Moreover, NextLevel's global headquarters is in Missouri,[11] a state that does not restrict public access to court proceedings.[12] States with Codes lacking Confidentiality Provisions include:[13]

Alabama: AL Code § 27-32-4 (2021)
Arizona: AZ Rev Stat § 20-613 (2021)
California: CAL. INS. CODE §§ 1077.3 (2009)
Florida: FL Stat § 624.82 (2002 through 2nd Reg Sess)
Maryland: MD. Ins Code § 9-226 (2013)
Missouri: MO. REV. STAT. § 375.1160
New York: NY Ins L § 7417 (2012)
Virginia: VA Code §§ 38.2-1502, 1505

Third, the stated policy concern of a "run on the bank" is inapposite. AG Resp., p. 9; NL Resp. p. 2. Merriam-Webster Dictionary defines a "run on the bank" as "an occurrence when a lot of people take their money out of a bank because they are afraid that the bank will fail."[14] The Confidentiality Provisions are not protecting the public from chaos created by the fear of chaos. These provisions are protecting NextLevel and other insurance firm investors from those to whom their corporations owe money, in this case, government funds targetted to advance the country's health policy. *Fourth*, neither NextLevel nor the AG provide a scintilla of evidence that states without Confidentiality Provisions have produced a single adverse outcome for anyone.

SEALING AND WITHHOLDING RECORDS UNCONSTITUTIONAL

NextLevel claims that Intervenor did not "identify and explicate any legal errors the Court made in its Seal Order" or "even mention the specific documents that remain sealed or redacted, much less explain why their disclosure is necessary to her work." NL Resp. 8. NextLevel's argument is that insurance conservancy proceedings have some sort of magical

11 "Contact Centene," https://www.centene.com/contact.html
12 Centene operates in all states without Confidentiality Provisions. https://www.centene.com/site-map.html.
13 Original dates of insurance code enactments relevant to this proceeding are earlier, e.g., AL Code § 27-32-4 (2021) was enacted in 1971 (Acts No. 407, p. 707, §623).
14 Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/run%20on%20the%20bank.

immunity from the First Amendment, and thus Intervenor fails to meet her unspecified burden for justifying the court overturning its November 29, 2021 order sealing and redacting several documents. After pointing out how the Code obligates *administrative* restrictions on releasing information, NextLevel states, "Intervenor has not argued that insurance conservation proceedings are any different from these other mechanisms that provide certain degrees of confidentiality, and her argument has no limiting principle. The First Amendment does not require such a wholesale rewrite of the Code." NL Resp. 13-14.

NextLevel's arguments reveal a profound misunderstanding of the order of December 6, 2021, Intervenor's motion, and the U.S. legal system. First, the petition to intervene was granted to allow the Intervenor to "make constitutional arguments not made by the Director." Exhibit 1, p. 2. Second, Intervenor made constitutional arguments and opponent parties disregarded them, choosing instead to declare the Illinois Insurance Code is shielded from constitutional prohibitions.[15] Third, U.S. precedents make it abundantly clear that if *any* law violates the First Amendment, the government bears the burden of showing the law "'furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Citizens United v. Federal Election Commission* 130 S.Ct. 876, 882 (2010), (2010), quoting *Fed. Election Com'n v. Wisc. Right to Life*, 127 S.Ct. 2652, 2654 (2007) citing to *Belloti* at 786. Both the AG and NextLevel urge the court to side-step constitutional review (AG pp. 6-7), but NextLevel on behalf of Centene says the quiet part out loud: an industry-friendly insurance code trumps the First Amendment. For NextLevel's arguments to prevail would mean the First Amendment provides corporations relief from laws restricting their expenditures on speech influencing elections (*Citizens United* and

15 If "the First Amendment does not require such a wholesale rewrite of the Code" what other amendment could obligate the Code's compliance with the constitutions of Illinois or the United States?

Belotti), but accommodates the stated prerogative of Medicaid profiteers to avoid paying all their debts, i.e., avoid a "run on the bank." To paraphrase Justice Neil Gorsuch, for courts to treat the public's claims of a First Amendment right to access court proceedings allocating public health care funds as less valuable than corporations' First Amendment right to sway election outcomes would be the "rule of the strong, not the rule of law."[16]

If the court takes the position of NextLevel, that the Illinois Insurance Code is mightier than the constitutions of the United States or Illinois, in departure from an Illinois Supreme Court overturning a separate section of the Code,[17] then the order sealing documents stands as is. But if the court is persuaded by Intervenor's constitutional arguments, then the failure of opposing parties to prove a compelling interest in sealing or redacting records means opposing parties have failed to articulate the equities necessary to meet their well-established burden of overcoming the presumption of public access to court proceedings, including records.

Respectfully Submitted,

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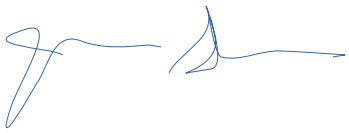
16 *McGirt v. Oklahoma* 591 U.S. ___ (2020) at p. 28. (Overturning long-standing jurisprudence on Indian treaties and statutes on which the state of Oklahoma relied for jurisdiction over Creek Indian criminal trials. "None of these moves would be permitted in any other area of statutory interpretation ...") Although this case involves statutory interpretation, Gorsuch's equitable analysis is even more relevant to constitutional jurisprudence. Insofar as it is easier to revoke laws than amend the Constitution, applying different standards to the constitutional claims of the weak versus those of the powerful is especially corrosive to the rule of law.

17 *Milwaukee Safeguard Ins. Co. v. Selcke*, 688 N.E.2d 68, 73 (1997) (finding that "section 409 of the Illinois Insurance Code (215 ILCS 5/409 (West 1992)) violates article IX, section 2, of the Illinois Constitution of 1970.")

VERIFICATION

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



Jacqueline Stevens

CERTIFICATE OF SERVICE

I certify that on April 10, 2022, I caused the foregoing document to be filed and served on all counsel of record.

/s/ Jacqueline Stevens