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Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-23-0803

Appellate Court of Illinois
First Judicial District

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

Dr. Jacqueline Stevens,
Intervenor-Appellant, pro se

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 of NextLevel Health Partners, Inc.,
Plaintiffs-Appellees,

and

NextLevel Health Partners, Inc.
Defendant-Appellee

Appeal from the Circuit Court of Cook County, Illinois

Case No. 2020 CH 04431

Hon. Pamela McLean Meyerson, Judge Presiding

Notice of Appeal: May 4, 2023

MOTION FOR DECLARATORY RELIEF TO OBTAIN EQUAL ACCESS TO COURT RECORDS AND STAY PENDING GRANTING OF RELIEF OR INTERLOCUTORY APPEAL

Illinois Supreme Court rules and practices denying the public's access to state appellate and supreme court records have obstructed appellant Jacqueline Stevens ("Stevens" or "Intervenor") in her efforts to access records on equal footing with

opposing, government counsel, and to effectively litigate this appeal, in violation of Illinois law, common law, and the First, Fifth, and Fourteenth amendments of the United States constitution. The Administrative Office of Illinois Courts' ("AOIC") denial of Stevens's access to court filings has obstructed her ability to respond to motions and orders in this proceeding. Intervenor therefore respectfully requests the court declare all Illinois courts shall immediately make available for inspection to the public at all time all court filings maintained in the court's office on request, save those ordered sealed or otherwise restricted based on judicial findings ordered for a specific case or records. Stevens further requests this court declare all litigants have equal access to public court records available to judges and that the court stay these proceedings pending this result.

Should the appellate court deny Stevens her motion to obtain the same access to court records available to the judiciary and government counsel, Stevens respectfully requests a stay in these proceedings so that she may file an interlocutory appeal with the Illinois supreme court on this matter.

PROCEDURAL HISTORY

On May 4, 2023 Stevens, then represented by attorney Nicolette Glazer ("Glazer"), filed a Notice of Appeal for *In the Matter of Conservation of NextLevel Health Partners, Inc*. 2020 CH 04431. On September 14, 2023, Stevens, still represented by attorney Glazer, filed an appeal with this court. This court granted motions by Glazer and local counsel attorney Christina Abraham to withdraw. On November 1, 2023, this court ordered Defendant/Appellee NextLevel to "file a copy of

the record on appeal for the public with the impounded material removed and blank or redacted pages inserted and marked "impounded" as a placeholder for each page removed." On November 16, 2023 the Attorney General submitted a request for an extension of this deadline to January 2, 2024 for both parties.

FACTS IN SUPPORT OF DECLARATORY RELIEF, ORDERING APPELLATE COURT CLERKS RECOGNIZE APPELLATE COURT RECORDS ARE PUBLIC RECORDS

1. Intervenor is not a lawyer, but she does publish in law review journals and has access to proprietary databases, including Westlaw. However, Westlaw typically publishes only Illinois appellate and superior court final orders. Motions and orders for sealing records and other procedural matters are not available, even though under Illinois state law these are public records. There are no records on Westlaw for 1-23-0803.

2. On or about October 20, 2023, Intervenor entered the appellate court office at 160 North LaSalle St. in Chicago and asked how she could access Illinois appellate court records. Stevens stated she was interested in viewing the records publicly available for case 1-23-0803. The clerk asked if she were an attorney. Stevens explained she was a member of the public, and was seeking access to a terminal similar to those available in the nearby Richard Daley Center, where she and other members of the public can access Cook County circuit court records.

3. The clerk informed Stevens that the public was not allowed to view any appellate court filings.

4. Stevens expressed surprise. She asked if the clerk was aware of an Illinois statute that said the public had a right to access court records.

5. The clerk stated she had never heard of such a law and consulted another clerk. The second clerk also had no familiarity with this law. Intervenor invited them to look up the law on their internet search engine. “Maybe Google it,” Stevens suggested.

6. On information and belief, any normal member of the public, i.e., someone not pursuing a lawsuit to have records previously released to her as public records declared public records, by then would have been thirteen floors downstairs on La Salle Street, completely convinced that the public is not authorized to see Illinois appellate court filings.

7. A few minutes later a third official appeared. She told Stevens she was aware of a law stating the public had a right to access Illinois court records. She stated that when the appellate court relied on paper records, the folders were publicly available. She stated that since the court transitioned in 2017 to digital filings, only attorneys had access. She confirmed that there was no public terminal for digital access as there is for Cook County circuit court cases. She told Stevens that the policy on the restricted access was available on the appellate court page, as was information on how to write to appellate court clerk and request permission to review a specific case file. She stated it would take about a week for the clerk to decide on whether a request for access to a file would be granted.

8. Stevens was unable to find the information referenced by the clerk. On November 16, 2023, her assistant called the appellate court. A person who identified herself as Tina Schillaci reiterated the protocol that prohibited the public, attorneys, and pro se parties from accessing appellate court records via re:SearchIL.[1] When asked for a reference to the Supreme Court rule or legal statement of this policy, she replied, “I know the policy. I don’t know if I can give it out to the public.”

[1] RE:searchIL. https://research.illinoiscourts.gov.

9. Schillaci gave Stevens a phone number for someone in communications office and instructed her to call for information on the appellate court policy on releasing court records. This individual found the question and referral befuddling and provided a number for the Administrative Office of the Illinois Courts ("AOIC") in Springfield.

10. An official identified as "Jacque Hayes-Huddleston" ("Huddleston")[2] stated that that if the public wanted a copy of court records, she believed people could write to an appellate court clerk and request specific cases by mail and for a fee.

11. Stevens eventually located a document called "Illinois Supreme Court Remote Access Policy" ("RAP") through an online search that elicited a link to a pdf that is not available on the AOIC page providing information to the public.[3] RAP, "Ex. 1." The policy has no author and does not cite to any statute or Supreme Court order. It states that it is "Effective January 1, 2020" and "Revised Effective June 1, 2022," but the text contains no portions identified as revised. The policy states that it "applies only to Remote Access to court documents through re:SearchIL or a local court." Ex. 1, p. 2.

12. The RAP states: "This Policy establishes an initial step toward Remote Access to court records, taking into account public policy interests not compatible with unrestricted access. The intention is to balance competing interests with recognition that unrestricted access to certain court records could result in unwarranted invasion of personal privacy and unduly increase the risk of irrevocable harm." *Id*. The document provides no specific examples of harms from the release of appellate court records in particular, articulates no standard for this assessment, and provides no rationale for a policy restricting access to

[2] Nate Jensen, AOIC Assistant Director of Court Services, referred to Huddleston as the AOIC "guru." https://www.illinoiscourts.gov/aoic/court-services-division/

[3] AOIC, "Helpful Resources for the Public," https://www.illinoiscourts.gov/public.

appellate court records when the same potentially harmful information is available via circuit court public records, in compliance with Illinois law and the First Amendment.

13. The RAP states, "Access policies should be clear and applicable to all levels of courts statewide." Ex. 1, p. 3. This policy is demonstrably not enforced. (¶¶1-12)

14. The RAP establishes "User Groups" for remote access to court records based on professional accreditation and judicial employment. "Non-public documents" are defined as "Documents accessible at the courthouse, but excluded from Remote Access to User Groups 3 and 5 pursuant to this Policy." Ex. 1, 4. The policy states the Attorney General may be granted remote access by the AOIC at no cost, whereas the public and other litigants are categorically excluded from remote access to public records. Ex. 1, 12.

15. The Cook County Court Portal allows attorneys and "justice partners" remote access to all Cook County court filings at no cost. Non-attorneys are excluded from access[4] and are charged 25 cents/page for paper copies and 10 cents/page for digital copies of public court records at court locations.[5]

16. The federal courts through PACER ("Public Access to allow public access to Court Electronic Records") make publicly available remote, digital access to court briefs, exhibits, and orders for cases involving sensitive and otherwise private information across the country, including Illinois. The PACER web page states: "The Public Access to Court Electronic Records (PACER) service provides electronic public access to federal court

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[4] "Please note that the registration system on the portal is for justice partner and Illinois-licensed attorneys use only. Justice partners include, but are not limited to, the State Attorney's Office, Public Defender, Law Enforcement, Department of Social Services, and other authorized agencies ... Attorneys must have an active license to practice in the State of Illinois. If you are not one of these authorized entities, PLEASE DO NOT REGISTER -- registration from unauthorized sources will be promptly denied." https://cccportal.cookcountyclerkofcourt.org/CCCPortal

[5] Ill. Sup. Ct. Rule 313.

records. PACER provides the public with instantaneous access to more than 1 billion documents filed at all federal courts."[6]

17. PACER does not assess fees based on whether one is an attorney.[7]

Legal Argument

The following assumes all facts as stated at ¶¶1-17.

18. Illinois appellate court records are to be "at all times open to inspection without fee or reward" 705 ILCS 105/16. The statute states:

> "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."[8]

The Illinois appellate court stated *In Re Gee* 956 N.E.2d 460, 464 (2010) "Although the presumptions under common law and state statutory law have different sources, our supreme court has held they are *'parallel' to the first-amendment presumption* and has analyzed the three presumptions together. See *Skolnick* [*v. Altheimer Gray*] 191 Ill. 2d at 231-33, 730 N.E.2d at 16-17." *See also 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.*");* and *People v. Zimmerman,* 79 N.E.3d 209, 212 (Ill. App. Ct. 2017 ("[E]mbedded in the first amendment to the United States Constitution (U.S. Const. amend.

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[6] "FAQ. What is PACER?" https://pacer.uscourts.gov.

[7] "FAQ. How much does it cost to access documents using PACER? - Access to case information costs $0.10 per page .... The cost to access a single document is capped at $3.00, the equivalent of 30 pages for documents and case-specific reports like docket report, creditor listing, and claims register. The cap does not apply to name search results, reports that are not case-specific, and transcripts of federal court proceedings. NOTE: If you accrue $30 or less of charges in a quarter, fees are waived for that period. 75 percent of PACER users do not pay a fee in a given quarter." https://pacer.uscourts.gov/.

[8] 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.
https://www.ilga.gov/legislation/ilcs/documents/070501050K16.htm

I) is a right of access to court records.*).*"

19. The refusal to release to Intervenor or any member of the public court records on request during working hours at the court's public counter meets neither the "logic" or "experience" prongs for exceptions to Intervenor's right to access public court records. E.g., *People v. Zimmerman* at 212 ("[T]he first amendment right of access does not attach unless it passes the tests of experience and logic.") The clerks' statements recognize that the appellate court's long-standing "experience" was to provide access to the records Intervenor requested. ¶19. Further, it is patently illogical for a court to prevent the public much less litigants from access to all public court filings at all times, for all of the reasons courts across the country, including the Supreme Court and Illinois courts have long affirmed. See *Nixon v. Warner Communications, Inc*. 435 U.S. 589, 597 (1978), citing at note 7 the Illinois statute the AOIC refuses to execute as evidence of a "presumption - however gauged - in favor of public access to judicial records." See also *Press-Enterprise II*, 478 U.S. at 9, 106 (quoting *Press-Enterprise Co. v. Superior Ct. of Calif., Riverside City*., 464 U.S. 501, 510 1(1984), *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[.]"). And see *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606-607 (1982). ("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.") See also *Stone v. University of Md. Medical System Corp*., 855 F. 2d 178, 182 (1988) (remanding to

district court to unseal records sealed in chambers). ("The breadth of that order is particularly troubling, because it would be an unusual case in which alternatives could not be used to preserve public access to at least a portion of the record...The public's right of access to judicial records and documents may be abrogated only in unusual circumstances..."). The breadth of the appellate court staff denying the public access to appellate court records and the banality of the circumstances – the shift to digital records is hardly an "unusual circumstance" —lacks grounding in history or logic.

20. On their face, statements across several days from a range of staff at the Illinois Appellate Court and the AOIC to withhold from the public all appellate court records (¶¶1-17) violates 705 ILCS 105/16 and copious case law (see ¶¶18- 20).

21. The obligation to have to pay per page to inspect a record with no option to view without a fee violates Stevens's and the public's statutory, common law, and first amendment right to court records on request at any time at no cost. ¶18.

22. The RAP's discrimination against non-attorneys clearly violates the Fifth Amendment Due Process Clause as well as the Fourteenth Amendment's Equal Protection Clause.[9] *Boddie v. Connecticut*, 401 U.S. 371, 374 (1971) ("[D]ue process does prohibit a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages.") The right to access judicial records for the purpose of checking the power of a state government is no less protected by the Fifth Amendment than the right to dissolve a marriage. Indeed, in light of the value to other citizens from unimpeded access to court records, unlike the benefit accruing primarily to

[9] "...nor shall any State...deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

the spouses of a dissolved marriage, the due process protection to access records for which the additional cost of accessing is *de minimus* need not be triggered by indigency *per se*.

23. Unlike PACER, which charges attorneys at the same rate as non-attorneys (¶17), the Cook County Court Portal allows attorneys only access to court records without charge, while denying similar access to non-attorneys. Government actions infringing on a fundamental right by imposing fees or making distinctions based on broad classifications and not specific findings also violate the Equal Protection Clause. *Griffin v. Illinois*, 351 U.S. 12, 18 (1956) (overturning Illinois judicial rule requiring transcripts for appeal of criminal convictions). ("It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. [cit. omit.]. But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty.") See also *Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 100-101 (1972). ("[W]e reject the city's argument that, although it permits peaceful labor picketing, it may prohibit all nonlabor picketing because, as a class, nonlabor picketing is more prone to produce violence than labor picketing. Predictions about imminent disruption from picketing involve judgments appropriately made on an individualized basis, not by means of broad classifications ...") Similar to the judicial rule, the RAP discriminates against the indigent, who may not be able to afford attorneys or travel long distances to courts. And the RAP's discrimination against non-government attorneys relies on a broad classification. The RAP thus violates the EPC on its face, and provides an unfair advantage to the government similar to if some riders in the Tour de France could use electric bicycles while others were forced to pedal.

24. The U.S. Constitution, statutes, and case law have long held that for U.S. citizens happily tolerate the risk of harm from some loss of privacy through the public nature of court proceedings as a small and necessary price to pay for the transparency necessary for the rule of law. *Matter of Continental Ill. Sec. Litigation*, 732 F.2d 1302, 1308-9 (7th Cir. 1984) ("[W]e agree with the Sixth Circuit that the policy reasons for granting public access to criminal proceedings apply to civil cases as well. See *Brown Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1179 (6th Cir. 1983). See also *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580, 100 S.Ct. 2814, 2829, 65 L.Ed.2d 973 (1982) (opinion of Burger, C.J.); id. at 596, 100 S.Ct. at 2838 (opinion of Brennan, J.); id. at 599, 100 S.Ct. at 2839 (opinion of Stewart, J.). These policies relate to the public's right to monitor the functioning of our courts, thereby insuring quality, honesty and respect for our legal system. [Cit. omit.]" The AOIC's denial of equal access to court records violates a fundamental right, obstructs access to justice, corrodes faith in Illinois courts, and impairs democracy. *Matter of Continental Ill. Sec. Litigation*, 732 F.2d 1302, 1308 (7th Cir. 1984) ("The public's right of access to judicial records has been characterized as "fundamental to a democratic state[.]"" Cit. omit.)

November 22, 2023

Respectfully Submitted,
/s/ Jacqueline Stevens

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No. 1-23-0803

Appellate Court of Illinois First Judicial District

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

Dr. Jacqueline Stevens,

Intervenor-Appellant, pro se

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 of NextLevel Health Partners, Inc.,

Plaintiffs-Appellees,

and

NextLevel Health Partners, Inc.

Defendant-Appellee.

Appeal from the Circuit Court of Cook County, Illinois

Case No. 2020 CH 4431

Hon. Pamela McLean Meyerson, Judge Presiding

Notice of Appeal: May 4, 2023

[DRAFT] ORDER

THIS CAUSE COMING TO BE HEARD on the motion of Intervenor-Appellant to declare all Illinois courts immediately shall comply with 705 ILCS

105/16 and make available for public inspection at all times all court records on file without fee, with the exception of specific records ordered sealed based on a compelling government interest; that court clerks publicly post on websites and in court offices the text of 705 ILCS 105/16, as well as local rules to implement the statute; that the public have access to all Illinois court remote records on the same basis as access granted attorneys; and, finally, that all parties registered on re:SearchIL have access to all public court records in the re:SearchIL database.

IT IS HEREBY ORDERED that said motion is GRANTED and the appellate court will GRANT the motion to stay these proceedings pending implementation of the relief or on motion of Intervenor/Appellant.

OR

IT IS HEREBY ORDERED that said motion is DENIED; AND

IT IS FURTHER ORDERED that the motion to stay these proceedings pending Intervenor's/Appellant's petition to pursue interlocutory relief for the denial of her motions for declaratory relief and to petition for the removal of the appeals of the circuit court orders to the federal court of the Illinois Northern District is GRANTED.

OR

IT IS HEREBY ORDERED that said motion in its entirety is DENIED

ENTER:

_____

Certificate of Filing and Service

I certify that on November 21, 2023, I caused the foregoing document to be filed with the Clerk of the Illinois Appellate Court, First Judicial District, which will cause a copy of the document to be served on the following counsel of record:

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November 22, 2023

By: /s/ Jacqueline Stevens

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