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

IN THE MATTER OF THE CONSERVATION OF NEXTLEVEL HEALTH PARTNERS, INC.	**)** **)** **)**	**No. 2020 CH 4431**

NEXTLEVEL HEALTH PARTNERS, INC.'S MEMORANDUM IN OPPOSITION TO INTERVENOR'S FIRST AMENDED INTERVENOR MOTION

Intervenor Jacqueline Stevens' motion presents a solution in search of a problem. She asks the Court to strike down Sections 188.1(4) and (5) (the "Sequestration Statute") of the Illinois Insurance Code (the "Code") as unconstitutional, claiming they violate her right to access the court file in this case. But that issue is moot because the Court already deliberated and ruled upon the Attorney General's petition on behalf of the People of the State of Illinois to lift the sequestration. Nearly the whole docket is now publicly viewable except for two documents that the Court kept under seal and two other documents that contain narrowly defined bits of confidential financial information. The Court ordered those materials redacted or sealed under its inherent power to control its docket without relying on the Sequestration Statute. Intervenor submitted no evidence or argument supporting a reversal of that order, nor has she shown that the Court's reasoning was erroneous in any respect. The Court should deny Intervenor's motion for that reason alone without wading into the broad constitutional issues it raises.

In the unlikely event that the Court finds it necessary to reach constitutional issues, the Court should decline Intervenor's invitation to find the Sequestration Statute unconstitutional. Insurance conservation historically *has not* been a public proceeding, and neither its purpose nor function would be served by disclosure. The Sequestration Statute has been on the books since 1967, and comparable provisions have existed in most other states for decades without issue. These provisions are necessary because the goal of conservation is to fix the problems that led to it and

return control of the company to its own management. Disclosure would lead to a "run on the bank" by the company's creditors, preventing that goal from ever being achieved. And if the conservation fails, the proceeding will become either a rehabilitation or a liquidation, both of which *are* public. The General Assembly carefully weighed these considerations when it enacted the first conservation provisions as part of the Code's receivership article in 1937, and again in 1967 when it enacted the Sequestration Statute. Intervenor has given the Court no reason to override that legislative judgment. The Court should deny Intervenor's motion in its entirety.

I. Background

A. NextLevel's conservation.

On June 3, 2020, the Attorney General on behalf of the Director of the Department of Insurance (the "Director") filed a Verified Complaint for Conservation of Assets and Injunctive Relief (the "Complaint") against NextLevel Health Partners, Inc. ("NextLevel"). Schwab Decl. Ex. 1. The Court then issued an order in accordance with the Sequestration Statute placing these proceedings under sequestration (the "Sequestration Order") on June 4, 2020 and an order appointing the Director as NextLevel's Conservator (the "Conservation Order") on June 9, 2020. Schwab Decl. Exs. 2 & 3. Both the Complaint and Conservation Order contain the Director's references to NextLevel's alleged risk-based capital ("RBC") levels. *See* Schwab Decl. Exs. 1, 3.

The General Assembly has determined and declared its intent that "comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action" but is "not a means to rank insurers generally" and that disclosure of such information "would be misleading." 215 ILCS 5/35A-50(b).

To facilitate the conservation, NextLevel and the Conservator jointly filed a motion on June 24, 2020 (the "Transfer Motion") to approve NextLevel's transfer of assets to another insurer, Meridian Health Plan of Illinois, Inc., a subsidiary of Centene Corporation ("Centene"). Schwab

Decl. Ex. 4. NextLevel 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. Thus, NextLevel agreed to include a supporting declaration from actuary Glenn A. Giese (the "Giese Declaration"), which attached as its Exhibits A and B NextLevel's Annual Actuarial Certifications and supporting memoranda as of December 31, 2019, and May 31, 2020. These exhibits contain highly confidential and sensitive business information such as estimations of the reserve for claims unpaid, calculations of total margins for conservatism, reinsurance ceded, Other Direct-Paid Medical, amounts owed to certain providers for updated fee schedules, aggregate policy reserves, and an assessment of the necessity of cash flow testing.

B. The Seal Order.

On September 30, 2021, the Court granted the Attorney General's motion to lift the Sequestration Order over NextLevel's objection, finding that a complete sequestration of this proceeding under the Sequestration Statute was no longer necessary and that lifting it would further the public's general interest in access to court records. Schwab Decl. Ex. 5. The Court made clear that the records of the Illinois Director of Insurance, the Illinois Department of Insurance, and the Office of the Special Deputy Receiver were off limits. *Id.* However, the Court stayed its order to allow NextLevel to submit a list of documents containing NextLevel's most confidential and sensitive business information that the Court would consider keeping under seal or redacted.

In accordance with the Court's September 30, 2021 order (the "Lift Order"), NextLevel filed a memorandum requesting that the Court keep Exhibits A and B to the Giese Declaration under seal and allow NextLevel to file redacted versions of the Complaint and Conservation Order with NextLevel's RBC data redacted. Because the Court had found that the complete sequestration provided for by the Sequestration Statute was no longer warranted, NextLevel's motion cited as authority the Court's inherent power to control its own docket rather than the Sequestration Statute.

Schwab Decl. Ex. 6. On November 29, 2021, the Court issued an order (the "Seal Order") partially granting the relief NextLevel sought—and which the Attorney General did not oppose, ordering that Exhibits A and B to the Giese Declaration remain under seal and that the Complaint and Conservation Order be publicly available in redacted form. Schwab Decl. Ex. 7. The Court vacated the Sequestration Order as to the entire rest of the docket. *Id.*

Notwithstanding the Court's clear pronouncements, Intervenor and her Better Government Association reporter – who has monitored these proceedings and the public hearing in them – have persisted in their attempts to obtain materials the Court declared were off limits. Schwab Decl. Ex. 8.

C. Intervenor's Motion.

On August 30, 2021, Intervenor filed a petition to intervene in this case to challenge the constitutionality of the Sequestration Statute and gain access to sealed court records, claiming they are relevant to her monitoring of government agencies and operations, including courts. On December 6, 2021, the Court issued an order allowing her to intervene, finding that she was "not adequately represented by the existing parties . . . [and] may be bound by orders with respect to the extent to which these proceedings are made public." Schwab Decl. Ex. 9. The Court made that finding "without ruling on the merits of the constitutional arguments *or whether the Court should reach those arguments.*" *Id.* (emphasis added).

On January 31, 2022, Intervenor filed her First Amended Intervenor Motion to Vacate Orders Denying Access to Hearings and Records in this Proceeding and Declare Unconstitutional 215 ILCS 5/188.1(b) (4,5). Despite the Lift Order making virtually all of this docket publicly viewable, she seeks (1) vacatur of "all orders that have the effect of denying [her] and the public access to any documents or portions thereof filed with this court," (2) the "immediate release . . . [of] all documents filed in these proceedings without redactions," and (3) a declaration that the

Sequestration Statute is unconstitutional. Mot. at 29. She claims that "[i]f the full records for this proceeding are not released and 215 ILCS 5/188.1 remains enforced, this will impair her ability to unearth information to [sic] important to share with other citizens." *Id.* at 21. However, her motion does not explain why her interest specifically requires access to Exhibits A and B to the Giese Declaration or to NextLevel's RBC information contained in the Complaint and Conservation Order, which are the only parts of the docket that are still sealed or redacted.

II. Argument

A. The Court should deny Intervenor's motion based on the Court's prior Seal Order without reaching the constitutional question.

Courts do not reach constitutional issues when threshold legal questions fully resolve the matter presented. *People v. Bass,* 2021 IL 125434, ¶ 30 ("[C]ases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort."). Here, there is no need to reach any purported constitutional issues because any sealed or redacted documents remain so under the Court's inherent power, not under the Sequestration Statute.

1. Any controversy in this case regarding the Sequestration Statute is moot after the Lift Order and the Seal Order.

Under Article VI, section 9 of the Illinois Constitution, courts may only adjudicate "justiciable matters," not "hypothetical or moot" questions. *People v. Mosley,* 2015 IL 115872, ¶ 11 (quoting *In re Luis R.,* 239 Ill. 2d 295 (2010)). Thus, a court may not "rule on the constitutionality of a statute where its provisions do not affect the parties." *Id.*

Here, the Sequestration Statute no longer "affect[s] the parties" because the Lift Order removed the protection granted by the Sequestration Statute. *See* Schwab Decl. Ex. 5. Although the Seal Order declares that certain documents redacted or under seal, the Court did not rely on the Sequestration Statute to issue it. Instead, the Court relied on a finding that the information was "subject to protection as sensitive to NextLevel's interests." Schwab Decl. Ex. 7. The

Sequestration Statute applies automatically regardless of whether the material it covers is "sensitive to [a company's] interests." *See* 215 ILCS 5/188.1. Because the Court had already lifted that protection before the Court issued the November 29, 2021 Seal Order, the Seal Order can only be read as an exercise of the Court's inherent power to control its own docket, as NextLevel observed in its November 12, 2021 memorandum requesting such protection. *See* Schwab Decl. Ex. 6; *see also Deere & Co. v. Finley*, 103 Ill. App. 3d 774, 776-77 (1st Dist. 1981) (sealing court records that parties designated as confidential, relying on the court's inherent power due to the documents' sensitivity). The Seal Order is not a further application of the Sequestration Statute. Even if the Court were to hold the Sequestration Statute unconstitutional, the documents that currently are sealed or redacted would remain so under the Court's inherent power. Thus, Intervenor's request to strike down the Sequestration Statute is merely a request for an "advisory opinion[], which Illinois courts are not permitted to render." *Mosley*, 2015 IL 115872, ¶ 11.

2. Intervenor did not challenge the Court's exercise of its inherent docket control powers, and even if she did, the law of the case would preclude her from relitigating the issue here.

Under the law of the case doctrine, Intervenor is precluded from relitigating the dispute that led to the Seal Order. The law of the case doctrine generally precludes parties from relitigating disputes previously resolved in the same case. *CNA Int'l, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 38.

The relief Intervenor seeks is directly contrary to the Seal Order, which was issued less than four months ago. The Seal Order came *after* the Court had already heard argument and determined that the Sequestration Statute did not require it to keep the sequestration in place. The only remaining issue when the Court issued the Seal Order was whether NextLevel's interest in maintaining confidentiality over narrowly defined, specific pieces of information outweighed the general public interest in access to court records. The Court, after notice and a hearing, ruled that

it did, and it kept that information confidential while opening the entire rest of the docket to Intervenor and the rest of the public. Importantly, the Seal Order did *not* cite the Sequestration Statute but rather noted that "NextLevel has made a case that the information referenced in Paragraph 2 of this Order is subject to protection as sensitive to NextLevel's interests." Schwab Decl. Ex. 7.

Because the Court has now made virtually all of the docket in this case public, Intervenor's motion can only be read as a request to unravel the narrow confidentiality protections that the Court kept in place when it issued the Seal Order. Those confidentiality issues have already been "litigated and decided," so the Court's decision is now the law of the case and "settles the question for all subsequent stages of the suit." *See Baer*, 2012 IL App (1st) 112174, ¶ 39. Some courts regard that the law of the case doctrine may not apply where "different issues are involved, different parties are involved, or the underlying facts have changed," *see People v. Gliniewicz*, 2020 IL App (2d) 190412, ¶ 36, but nothing has changed here except that Intervenor is the one challenging NextLevel's confidentiality protections instead of the Attorney General. Judicial resources will be wasted if all of a court's orders can be relitigated every time a public interest monitor intervenes in a case. Here, Intervenor's motion serves only to "prolong the litigation and diminish the prestige of the courts by undermining the finality of this court's decisions." *See Am. Serv. Inc. Co. v. China Ocean Shipping Co. (Americas), Inc.*, 2014 IL App (1st) 121895, ¶ 20.

The Lift Order and the Seal Order are the law of this case and should not be relitigated.

3. There is no basis to reconsider and reverse the Seal Order.

Even if the Court finds the law of the case doctrine inapplicable here (and it should not so find), Intervenor's motion gives the Court no reason to reverse the Seal Order. Because the Lift Order granted virtually all of the relief Intervenor seeks and the Seal Order *already* balanced NextLevel's confidentiality interests against public access interests—the legal issue raised by

Intervenor's motion—Intervenor's motion is tantamount to an untimely motion to reconsider the Seal Order.

Reconsideration of a prior order is warranted only to account for new evidence or correct an error in the court's previous application of the law. *In re Marriage of Prusak*, 2020 IL App (3d) 190688, ¶ 30. Neither basis for reconsideration applies here. Intervenor presented no evidence in support of her motion, only vague and largely irrelevant suggestions of wrongdoing by various parties based on inadmissible hearsay. *See* Mot. at 7–21; *Prusak*, 2020 IL App (3d) 190688, ¶¶ 31–33 (reversing trial court's decision to grant motion to reconsider prior ruling, finding that trial court abused its discretion "to the extent the court accepted any of [the moving party's] unproven allegations into evidence"). Nor did Intervenor identify and explicate any legal errors the Court made in its Seal Order. In fact, her motion does not even *mention* the specific documents that remain sealed or redacted, much less explain why their disclosure is necessary to her work.

The Court correctly determined the confidentiality of those documents, and Intervenor's motion gives no reason for it to change course now.

B. In the alternative, if the Court finds that the Sequestration Statute is necessary to keep the Seal Order in effect, the Court should not strike down the Sequestration Statute as unconstitutional.

Although Intervenor cited the First Amendment, common law, and statutory law as authority supporting a presumption of public access to court records, *see* Mot. at 24–28, the presumptions under all three authorities are "parallel" and "analyzed . . . together," *People v. Kelly*, 397 Ill. App. 3d 232, 256 (1st Dist. 2009) (citing *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 231–33 (2000)). The presumption applies only to proceedings that (1) "have been historically open to the public" and (2) "have a purpose and function that would be furthered by disclosure." *Id.* at 256. Because insurance conservations and analogous proceedings historically *have not* been open to the public and because public disclosure would undermine the insurance conservation

procedure, the presumption of public access to court records does not apply to the Sequestration Statute. Even if it did, it would be overcome in this case.

1. The Sequestration Statute does not trigger the First Amendment's presumption of public access to court records because insurance conservation proceedings historically have not been open to the public.

Court records *in general* carry a presumption of public access, but there is no such presumption for *particular kinds* of court records that historically have not been available to the public. Courts define which kinds of records have been open to the public at a specific, granular level. *See e.g.*, *id.* at 259 (denying media intervenors' motion for access to juror questionnaires, noting that they had "not cited a case for the proposition that juror questionnaires have been made public prior to their use"); *In re Gee*, 2020 IL App (4th) 100275, ¶ 36 (affirming denial of media intervenors' access to warrant application proceedings, finding that they historically have not been public); *People v. Pelo*, 384 Ill. App. 3d 776, 783–84 (4th Dist. 2008) (denying access to videotaped evidence deposition, finding no historic right to access such material).

Intervenor failed to cite any case finding that insurance conservation proceedings historically have been open to the public, and even a cursory review of comparative state law would contradict any claim that they have been. The Conservation Statute provides that 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." The Statute further provides that:

> 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.

215 ILCS 5/188(5). These confidentiality protections have been in place since 1967, *see* 1967 Ill. Laws, p. 1762, § 1, and represent an extension of protections already in place for 30 years.

The General Assembly has provided for executive branch confidentiality since the Code was substantially rewritten in 1937 and the foundation for Article XIII was established after the Great Depression and many ensuing insurer insolvencies. Fred W. Netto, *The Insurance Director in Illinois,* 16 Chi.-Kent L. Rev. 243, 259 (1938). Section 132 of the 1937 Code provided that the "Director, for the purpose of ascertaining the assets, conditions and affairs of any company" could "examine the books, records, documents and assets of" the company. It further provided that the Director's examiners would draft a report of their examination but that "before making such report public or any matters relating thereto," the Director could "withhold any such report from public inspection for such time as he may deem proper" and could "publish any part or all of such report as he [deemed] to be in the best interest of the public." Section 404 of the 1937 Code also made the Director's records public "except as the Director, for good reason, may decide otherwise, or except as may be otherwise provided in this Code."

Legislative history and the intent of these 1937 provisions are recorded in Illinois State Bar Association, Section on Insurance Law, Annotating Committee, The Illinois Insurance Code Annotated 251 (1939). In particular, with respect to Section 132, the Committee noted that "the provision . . . authorizing the withholding of any report from public inspection . . . is new" and that "[a] number of states have provisions similar to" it (citing Edwin Wilhite Patterson, The Insurance Commissioner of the United States pp. 341–72 (1927)). The Committee listed the following states: "Ariz., Calif., Conn., Ga., La., Mich., Minn., Mo., N.Y., Ore., Va." *Id.*[1]

[1] In his treatise, Patterson notes that "at common law not even public documents were open to the inspection of person generally . . . [and] even where, by statute, a general right of access to public records is given, not all writings filed with a public official will be treated as 'public record.'" *Id.* at 415. He cites an 1897 New York attorney general opinion on point in respect of commissioner writings, and explains that "[a] nice balancing of interest in involved in determining" the publicity of records of a commissioner's proceedings: between the interests of citizens "in seeing that the insurance statutes are diligently and impartially enforced," and "the

The General Assembly has consistently expanded the confidentiality protection afforded to insurers (as well as consumers) throughout the Code. *See, e.g.,* 215 ILCS 5/131.22 (documents, materials and other information obtained in the course of a company examination are "confidential by law and privileged, shall not be subject to the Illinois Freedom of Information Act"); 215 ILCS 5/155.35 ("An insurance compliance self-evaluative audit document is privileged information and is not admissible as evidence in any legal action"); 215 ILCS 5/186.1 ("All administrative and judicial proceedings arising [in respect of corrective orders] shall be held privately unless a public hearing is requested by the company, and all records of the company, and all records of the Department concerning the company, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential, unless the company requests otherwise. Such records shall not be subject to public disclosure under the 'Illinois Freedom of Information Act'").

The same confidentiality protections found in the Conservation Statute also appear in the current version of the National Association of Insurance Commissioners[2] Insurer Receivership Model Act's section on "seizure," which is substantially analogous to conservation. *See* https://content.naic.org/sites/default/files/MO555.pdf. Section 201(F) of the Model Act provides that a hearing in a seizure proceeding "may be held privately in chambers and it shall be so held if the insurer proceeded against so requests." Section 206(A) provides that:

In all proceedings and judicial reviews under Section 201, all records of the insurer,

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demand of the companies that valuable business secrets be not disclosed, and that premature or hasty statements be not broadcast." *Id.* at 416 n. 13. He also draws a distinction between rulings – which may become public, such as when published in public media - and applications or information received from companies, which may be withheld in the exercise of the commissioner's discretion where the legislature has not declared it to be public or confidential. *See id.* at 416-18. Here, of course, the Illinois General Assembly has so declared.

[2] The National Association of Insurance Commissioners was founded in 1871 to "provid[e] expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers." https://content.naic.org/about. The NAIC develops model laws and regulations to help make insurance law uniform in the United States.

> department files, court records and papers, and other documents, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential, and all papers filed with the clerk of the [insert proper court] court shall be held by the clerk in a confidential file as permitted by law, except to the extent necessary to obtain compliance with any order entered in connection with the proceedings, unless and until: (1) The [insert proper court] court, after hearing argument in chambers, shall order otherwise; (2) The insurer requests that the matter be made public; or (3) The commissioner applies for an order under Section 207.

Comparable language appears in most states' insurance codes and has existed there for decades. For just a few examples, see:

- Pennsylvania: 40 P.S. § 221.13(a) and (b) (added in 1977 by P.L. 280, No. 92 § 2).
- Connecticut: C.G.S.A. § 38a-913 (added in 1979 by P.A. 79-382 § 11).
- Ohio: Ohio Rev. Code Ann. § 3903.11(A) (added in 1982 by H 830).
- Delaware: 18 Del. C. § 5944(a) and (b) (added in 1984 by 1964 Del. Laws, ch. 420 § 2).
- North Carolina: N.C.G.S.A. § 58-30-70 (added in 1989 by 1989 N.C. Laws, c. 452 § 1).
- Michigan: M.C.L.A. 500.8111(1) (added in 1990 by P.A. 1989, No. 302 § 1).
- Georgia: Ga. Code Ann. § 33-37-10 (added in 1991 by 1991 Ga. Laws, p. 1424 § 7).
- New Jersey: N.J.S.A. 17B:32-40 (added in 1992 by L.1992, c. 65 § 10).

Because the language in these statutes is substantially similar to the language in the Sequestration Statute, and the First Amendment applies equally in all states, granting Intervenor's request to invalidate Sections 188.1(4) and (5) would suggest that these comparable state statutes should also be struck down. The First Amendment does not require the Court to upend decades of insurance receivership law this way.

2. The Sequestration Statute does not trigger the First Amendment's presumption of public access to court records because the purpose and function of insurance conservation proceedings are not served by disclosure.

There also is no presumption of public access to court proceedings where the purpose and function would not be furthered by disclosure. *Kelly,* 397 Ill. App 3d at 260 (denying media intervenors access to juror questionnaires because it would "completely undermine their function, of eliciting honest and unrehearsed responses" and denying access to pre-trial motion to admit "other crimes" evidence because "the function of the hearing could be undermined, if the public and potential jurors received access to the information").

Making insurance conservation proceedings public would undermine their purpose. Section 188.1 explicitly contemplates insurance conservations terminating once the Director is able "to ascertain the condition and situation of the company." 215 ILCS 5/188.1(2). Unlike a rehabilitation or liquidation, which require a factual finding of insolvency, the Director can initiate a conservation merely "[u]pon the filing . . . of a verified complaint." 215 ILCS 5/188.1(1). As the National Association of Insurance Commissioners Receiver's Handbook for Insurance Company Insolvencies explains, "[i]f the regulator determines that he acted in good faith but erred in seizing the insurer, or if the regulator is successful in resolving the insurer's difficulties, he or she can release control and return the insurer to its previous management without seriously damaging the insurer's business." https://content.naic.org/sites/default/files/publication-rec-bu-receivers-handbook-insolvencies.pdf. "If, however, creditors and the public become aware of an insurer's potential problems, the insurer could suffer irreparable harm *even though the condition requiring seizure has been removed*." *Id.* (emphasis added).

The Sequestration Statute is not unique. The Code is rife with legislative judgments that in certain specific situations, insurance companies' confidentiality interests outweigh public access

interests. *See, e.g.*, 215 ILCS 5/35A-50(a) (generally keeping "RCB reports" and "RBC plans" confidential); 215 ILCS 5/129.1 (making Own Risk and Solvency Assessments "confidential document[s] filed with the Director"); 215 ILCS 5/130.6(a) (making "corporate governance annual disclosure[s] . . . confidential and privileged" and not subject to the Freedom of Information Act). 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.

3. Even if the presumption applied, it is overcome here.

Even where the presumption of access to judicial records applies, it is "not absolute." *People v. Zimmerman*, 2018 IL 122261, ¶ 43. A court has "supervisory authority over its own records and files and may deny access at its discretion." *Id.* ¶ 44. As NextLevel previously explained, *see* Schwab Decl. Ex. 6 at 5–9, the records that the Court kept under seal or redacted after it lifted the sequestration contain NextLevel's most sensitive and confidential business information that was made part of the court file under NextLevel's expectation that the proceeding would remain sequestered. The Court, exercising appropriate judicial judgment, found that NextLevel's confidentiality interests outweighed the public interest in access to this extremely narrow, limited slice of the court file. Intervenor has supplied no reason for the Court to change that determination and did not even *reference* the specific documents that are still sealed or redacted, choosing instead to mount a full-blown attack on Sections 188.1(4) and (5). Thus, the Court should apply its discretion the same way it did when it issued the Seal Order.

C. Intervenor's remaining constitutional arguments are meritless.

The final pages of Intervenor's motion raise cursory arguments under Article I, Section 1 of the Illinois Constitution and the Equal Protection and Due Process Clauses of the federal Constitution without citing any relevant case law. *See* Mot. at 28–29. These arguments are

meritless. Article I, Section 1 of the Illinois Constitution is "supplemental to and implicitly within [the due process clause]," not "an independent source of constitutional law." *Kunkel v. Walton*, 179 Ill. 2d 519, 540 (1997) (citing G. Braden & R. Cohn, The Illinois Constitution: An Annotative and Comparative Analysis 8 (1969)). And Intervenor's due process and equal protection arguments should be rejected as mere repackaged versions of her First Amendment argument. *See Bogart v. Vermilion Cty.*, 909 F.3d 210, 214–215 (7th Cir. 2018) (affirming dismissal of plaintiff's complaint where "the same considerations and evidence that defeat[ed] [the plaintiff's] First Amendment claim cause[d] the same claim repackaged under the Equal Protection Clause to fail"). *Wilks v. Rose*, 715 F. App'x 545, 548 (7th Cir. 2018) (same, as to the Due Process Clause).

III. Conclusion

For all of these reasons, and any further reasons provided in the Attorney General's brief, NextLevel respectfully requests that the Court deny Intervenor's motion in its entirety.

Dated: March 14, 2022

Respectfully submitted,

By: /s/ Stephen W. Schwab

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CERTIFICATE OF SERVICE

I certify that on March 14, 2022, I caused the foregoing document to be filed and served on all counsel of record.

/s/ Stephen W. Schwab

Attorney for NextLevel Health Partners, Inc.