

No. \_\_\_\_\_

119525

07/13/2015

Supreme Court Clerk

IN THE  
SUPREME COURT OF ILLINOIS

\*\*\*\*\*

PEOPLE OF THE STATE OF ILLINOIS,	)	Motion for Direct Appeal Pursuant
	)	to Supreme Court Rule 302(b).
Plaintiff-Appellee/Movant,	)	
	)	
v.	)	On interlocutory appeal from the
	)	Circuit Court of Cook County,
LESLIE GEISSLER MUNGER, in her capacity as	)	Illinois, County Department,
Comptroller for the State of Illinois,	)	Chancery Division, No. 15 CH
	)	10243, to the Appellate Court of
Defendant-Appellant/Respondent,	)	Illinois, First Judicial District, No.
	)	1-15-1877.
ILLINOIS DEPARTMENT OF CENTRAL	)	
MANAGEMENT SERVICES; AFSCME	)	
COUNCIL 31, <i>et al.</i> ,	)	The Honorable
	)	DIANE J. LARSEN,
Intervenors-Appellants/Respondents.	)	Judge Presiding.
	)	
<u>THE AMERICAN FEDERATION OF STATE,</u>	)	<u>On interlocutory appeal from the</u>
<u>COUNTY AND MUNICIPAL EMPLOYEES,</u>	)	<u>Circuit Court of the Twentieth</u>
<u>AFL-CIO, COUNCIL 31, <i>et al.</i>,</u>	)	<u>Judicial Circuit, St. Clair County,</u>
	)	<u>Illinois, No. 15 CH 475, to the</u>
Plaintiffs-Appellees/Respondents,	)	<u>Appellate Court of Illinois, Fifth</u>
	)	<u>Judicial District, No. 5-15-_____.</u>
v.	)	
	)	
STATE OF ILLINOIS,	)	
	)	
Defendant-Appellant/Movant,	)	
	)	
LESLIE GEISSLER MUNGER, in her official	)	The Honorable
capacity as Comptroller for the State of Illinois,	)	ROBERT P. LeCHIEN,
	)	Judge Presiding.
Defendant-Appellant.	)	

**EMERGENCY MOTION FOR DIRECT APPEAL  
PURSUANT TO SUPREME COURT RULE 302(B) AND OTHER RELIEF**

Movants People of the State of Illinois and the State of Illinois, through their attorney, Lisa Madigan, Attorney General of Illinois, request leave pursuant to Supreme Court Rule 302(b) for a direct appeal to this Court of the two above-

captioned appeals from conflicting temporary restraining orders specifying what actions the Appropriations Clause of the Illinois Constitution permits during a budget impasse. Because these appeals raise the fundamental question of when the State can expend public funds in the absence of a constitutionally required appropriations statute, and because simultaneous consideration by two appellate districts creates the possibility of continued confusion, movants ask that this Court consolidate those two appeals and order that they be transferred to the Court for consideration. And due to the exigencies of the expedited schedule under Rule 307(d) for the pending interlocutory appeals, movants also ask for emergency consideration of this motion and the exercise of this Court's supervisory authority to direct the appellate courts to stay consideration of the appeals pending resolution of this motion. In support, movants state as follows.

## **I. Introduction**

Movants ask this Court to resolve whether, and to what extent, the Illinois Constitution permits the payment of the state employee payroll when the General Assembly and Governor have failed to enact appropriations statutes. At the heart of the matter is the constitutional separation of powers under which the General Assembly and the Governor must take action to enact annual appropriations statutes. Although the appellate court had settled this issue in *AFSCME v. Netsch*, 216 Ill. App. 3d 566 (4th Dist. 1991), holding that the Appropriations Clause prohibits the payment of the state employee payroll without an appropriation, the Circuit

Court of St. Clair County has declined to follow that precedent, necessitating this Court's intervention. This Court should permit direct appeal pursuant to Rule 302(b) from the conflicting temporary restraining orders entered by two circuit courts in this matter of great public importance raising constitutional questions that affect the core of the government's operation.

In both of the underlying cases, the parties seek a determination of the State's authority to pay state employees during a budget impasse. In *People v. Munger*, the Circuit Court of Cook County entered a temporary restraining order that enjoined the Comptroller from processing payroll vouchers except (due to the operation of the Supremacy Clause of the United States Constitution) as necessary to meet only the requirements of the federal Fair Labor Standards Act (FLSA). Those requirements are the payment of federal minimum wage and overtime to non-exempt employees. S.R. 46-47. On interlocutory appeal, the Appellate Court of Illinois, First Judicial District, stayed the order pending appeal and declined the Comptroller's request for authorization to process the full state employee payroll. S.R. 66. Meanwhile, in *AFSCME v. State of Illinois*, the Circuit Court of St. Clair County entered a temporary restraining order directing the Comptroller to accomplish the payment of the full payroll to all state employees. S.R. 132-34. That order is on appeal to the Appellate Court of Illinois, Fifth Judicial District.<sup>1</sup> S.R. 168-70. Movants' briefs in

---

<sup>1</sup> In the St. Clair action, the unions sued both the State of Illinois and the Comptroller. The Attorney General filed a motion to dismiss and a brief in opposition to the unions' motion for temporary restraining order on behalf of both the State and the Comptroller asserting, *inter alia*, that the court lacked subject

both appeals have not been filed at the time of this writing. Movants will supplement the Supporting Record with those briefs once filed.

These appeals are a matter of great public concern that invoke basic questions regarding the constitutional role of the branches of state government in expending public funds. Additionally, the two circuit courts that have taken jurisdiction over this matter have entered conflicting orders, resulting in substantial uncertainty. Because of the public importance of this case and the uncertainty from parallel proceedings in two circuit courts (and now two appellate courts as well), this Court should consolidate the appeals and direct that they be transferred to it for

---

matter jurisdiction because sovereign immunity barred the unions' contract claims. At the hearing on the unions' motion, the Comptroller sent her in-house counsel to represent her and filed a motion to disqualify the Attorney General and appoint private counsel for her. S.R. 124-31; *see* SR. 135-67. Although the court took that matter under advisement, it allowed the Comptroller's unauthorized counsel to present their arguments, which included declining to join in any of the State's arguments (and thus purporting to waive sovereign immunity). Based on the positions taken by the Comptroller's unauthorized counsel, the circuit court dismissed the State as a defendant, but not the Comptroller, on sovereign immunity grounds. S.R. 133.

Even though the circuit court granted the motion to dismiss on sovereign immunity grounds as to the State, the State maintains standing to pursue this appeal because it has a direct, immediate and substantial interest that is prejudiced by the temporary restraining order and would be benefitted by its reversal. *In re O.H.*, 329 Ill. App. 3d 254, 257 (3d Dist. 2002); *In re Estate of Strong*, 194 Ill. App. 3d 219, 225 (1st Dist. 1990); *People v. White*, 165 Ill. App. 3d 249, 253 (4th Dist. 1988). That principle applies even to parties dismissed from the case. *People ex rel. Voss v. O'Connell*, 252 Ill. 304, 310-11 (1911). The State has a substantial interest that is prejudiced by the temporary restraining order in light of the impact it has on state finances. *See also People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill. 2d 473, 483-84 (1992) ("The Attorney General has the common law duty to protect the public purse as a matter of general welfare.").

consideration pursuant to Rule 302(b). And because the appeals are proceeding under the expedited schedule of Rule 307(d), this Court should expedite consideration of this motion and exercise its supervisory authority to order the appellate courts to stay consideration of the appeals during the pendency of this motion.

## II. Factual Background

Illinois has entered its 2016 Fiscal Year without an enacted budget other than for primary and secondary education.<sup>2</sup> S.R. 2. The Appropriations Clause of the Illinois Constitution provides that “[t]he General Assembly by law shall make appropriations for all expenditures of public funds by the State.” ILL. CONST. art. VIII, § 2(b). The appellate court has made clear that in the absence of appropriations statutes, the Comptroller may not authorize payment of the state employee payroll. *Netsch*, 216 Ill. App. 3d 566. This Court has cited *Netsch*’s holding with approval. *McDunn v. Williams*, 156 Ill. 2d 288, 308 (1993).

To ensure compliance with the Appropriations Clause when processing payments in the absence of appropriations legislation, the People sought declaratory and injunctive relief against the Comptroller in the Cook County action, asking the court to direct the Comptroller as to what may be paid during a budget impasse. S.R. 1-11. Several public labor unions and the Illinois Department of Central Management Services (CMS) were given leave to intervene in that case without objection. S.R. 45. Relying on the Appropriations Clause and *Netsch*, on July 7,

---

<sup>2</sup> On June 25, 2015, Governor Rauner item vetoed the capital spending bill and completely vetoed the appropriations bills for all other non-education spending.

2015, the circuit court entered a temporary restraining order that enjoined the Comptroller from paying the state employee payroll except as necessary to meet only the requirements of the FLSA. S.R. 46-47.

On July 8, 2015, the Comptroller and CMS filed an emergency motion with the appellate court, seeking a stay of the order directing the Comptroller to process only state payroll payments necessary to meet the FLSA requirements and asking the court to authorize and direct the Comptroller to pay the full state payroll. S.R. 55-65. Later that day, the court granted the stay of the temporary restraining order but denied the affirmative request for an order authorizing the Comptroller to pay the full payroll. S.R. 66. The unions also have appealed the Cook County decision. S.R. 116-17.

The day after the Cook County action was filed, the public labor unions filed an action against the State of Illinois and the Comptroller in St. Clair County. S.R. 67-91. The unions claimed that the failure to timely pay bargaining unit members their full pay was an unconstitutional impairment of contract. *Id.* A week after the unions filed their complaint in St. Clair County and were given leave without objection to intervene in the Cook County case, and the day after the temporary restraining order was entered in Cook County, the unions moved for a temporary restraining order in St. Clair County seeking a different resolution from the Cook County case. S.R. 92-123. On July 10, 2015, the circuit court there entered a temporary restraining order requiring the Comptroller to draw and issue warrants

for payment to all state employees, not just union members, at their normal rate.<sup>3</sup>

S.R. 132-34.

### **III. Argument**

As the officer tasked by the Illinois Constitution with processing payments of public funds, the Comptroller needs this Court's guidance. Moreover, expedited consideration by this Court is needed because the resolution of the questions presented impacts all of state government. Indeed, the Comptroller is only the final step in the payment process — all state offices and agencies that rely on public funds initially determine what funds to obligate then present vouchers to the Comptroller for processing. The Court's determination of whether full payroll can be paid despite the lack of an enacted budget will affect those decisions. Additionally, the General Assembly and the Governor, who are constitutionally charged with, respectively, passing and signing or vetoing (in whole or in part) appropriations statutes, need clarity as to the background principles against which they act when deciding to enact (or not to enact) appropriations.

#### **A. The public interest requires expeditious determination by this Court.**

These appeals raise fundamental questions that go to the foundation of our system of government and the separation of powers mandated by the Illinois

---

<sup>3</sup> Although the court stated orally that it was granting the unions' motion for temporary restraining order at the close of the July 9, 2015 hearing on the motion, the court did not enter the order until the afternoon of July 10, and this delayed the Rule 307(d) appeal from that order and, correspondingly, this motion.

Constitution. There is a strong public interest in the observance of these constitutional requirements, in the constitutionality of the payment of public funds during a budget impasse, and in the Comptroller's exercise of her constitutional duties. This interest requires expeditious determination by this Court of the issues raised in the interlocutory appeals. Rule 302(b) permits direct appeal to this Court in cases filed with the appellate court "in which the public interest requires prompt adjudication" by this Court. Ill. S. Ct. R. 302(b). This Court has the discretion to permit a Rule 302(b) direct appeal from interlocutory orders. *Desnick v. Dep't of Prof'l Regulation*, 171 Ill. 2d 510, 516 (1996); *Garcia v. Tully*, 72 Ill. 2d 1, 7 (1978).

To begin, this appeal raises important questions about what state funds may be expended during a budget impasse. These cases concern whether the Comptroller is authorized to process payment of state funds in the absence of appropriations legislation, despite the Illinois Constitution's directive that the General Assembly "shall make appropriations for all expenditures of public funds by the State." ILL. CONST. art. VIII, § 2(b). The public unquestionably has a strong interest in elected officials' constitutional performance of their duties and in enforcing constitutional limits on the expenditure of state funds.

Additionally, this Court has permitted direct appeal in other cases having a significant effect on the State's and local governments' finances. *See, e.g., Allegro Servs., Ltd. v. Metro. Pier & Exposition Auth.*, 172 Ill. 2d 243, 246 (1996) (challenge to tax for renovation of McCormick Place); *Geja's Café v. Metro. Pier & Exposition*

*Auth.*, 153 Ill. 2d 239, 245 (1992) (challenge to tax for expansion of McCormick Place); *Grais v. City of Chicago*, 151 Ill. 2d 197, 200-01 (1992) (challenge to tax for new public transportation system).

Next, this Court has permitted direct appeals in other actions concerning the public's interest in government services or public property. *See, e.g., Friends of Parks v. Chicago Park Dist.*, 203 Ill. 2d 312, 314 (2003) (use of public funds for improvements to public park for Soldier Field renovation); *Croissant v. Joliet Park Dist.*, 141 Ill. 2d 449, 450-51 (1990) (expansion of local airport on park district land); *Fumarolo v. Chicago Bd. of Educ.*, 142 Ill. 2d 54, 61 (1990) (public school reform); *Landmarks Pres. Council of Ill. v. City of Chicago*, 125 Ill. 2d 164, 167-68 (1988) (procedures for rescinding landmark designation).

This Court also has granted direct appeals in matters concerning public employment, *see, e.g., Kanerva v. Weems*, 2014 IL 115811, ¶ 1 (constitutionality of changes to health insurance of retired state employees); *Maddux v. Blagojevich*, 233 Ill. 2d 508, 510 (2009) (constitutionality of Compulsory Retirement of Judges Act); *Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 297-98 (2004) (cost-of-living-adjustment to judicial salaries), including public labor relations, *see Office of Cook Cnty. State's Attorney v. Ill. Local Labor Relations Bd.*, 166 Ill. 2d 296, 298 (1995) (union certification petition submitted by public lawyers).

This case certainly meets the Rule 302(b) standard and merits this Court's attention. Additionally, along with previous budget impasses such as in 1991, the

State has recently faced this situation repeatedly in 2007, 2009, and now in 2015. Although *Netsch* should have settled this issue, it is clear from the St. Clair County order that it has not. Therefore, this Court's intervention is required.

Furthermore, the conflicting orders entered by the different circuit courts, and the continuing risk of additional conflicting orders, justifies this Court's consolidation of the appeals and expeditious resolution of the matter. See *In re Schneider's Estate*, 6 Ill. 2d 180, 183 (1955) (granting leave to appeal "primarily because of a conflict in the decisions of the Appellate Courts"). Indeed, where a circuit court already has acquired jurisdiction over a matter, a later circuit court's "acceptance of jurisdiction and issuance of orders conflicting" with those of the first court is "clearly erroneous" and "can only serve to diminish public respect for the judicial system of this State." *People ex rel. E. Side Levee & Sanitary Dist. v. Madison Cnty. Levee & Sanitary Dist.*, 54 Ill. 2d 442, 445 (1973).

**B. This Court should exercise its supervisory authority to direct the appellate courts to stay resolution of the appeals pending the resolution of this motion.**

Additionally, movants request that this Court exercise its supervisory authority to direct the appellate courts to hold the appeals in abeyance pending resolution of this motion. Both appeals are from temporary restraining orders and are proceeding under the expedited schedule set forth in Rule 307(d). As a result, there is a risk of conflicting appellate decisions adding further confusion to the already uncertain landscape while this motion is pending. To avoid that outcome,

movants request that this Court direct the appellate courts to stay consideration of the appeals pending resolution of this motion.

In sum, because the underlying lawsuits concern matters of great public importance relating to the constitutional role of the branches of state government in determining the expenditure of public funds, the discharge of an elected official's duties under the Illinois Constitution, the provision of government services, and state employment and because expeditious resolution is needed due to conflicting orders already entered by different circuit courts and to avoid the entry of conflicting orders by different appellate courts, this Court should consolidate the underlying appeals and grant the State's Rule 302(b) motion for a direct appeal. And due to the expedited schedule for the appeals at issue, this Court should exercise its supervisory authority to direct the appellate courts to stay consideration of the appeals while this motion is pending.

Wherefore, movants request that this Court give this motion expedited consideration, order the appellate courts to hold the respective appeals in abeyance pending resolution of this motion, consolidate the appeals, and direct that the consolidated appeals be transferred to this Court for resolution.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

By: /s/ Brett E. Legner

CAROLYN E. SHAPIRO  
Solicitor General  
State of Illinois

BRETT E. LEGNER  
Deputy Solicitor General  
100 West Randolph Street, 12th Floor  
Chicago, Illinois 60601  
(312) 814-2146

July 13, 2015

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF ILLINOIS

<p>PEOPLE OF THE STATE OF ILLINOIS,</p> <p style="padding-left: 40px;">Plaintiff-Appellee/Movant,</p> <p style="text-align: center;">v.</p> <p>LESLIE GEISSLER MUNGER, in her capacity as Comptroller for the State of Illinois,</p> <p style="padding-left: 40px;">Defendant-Appellant/Respondent,</p> <p>ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES; AFSCME COUNCIL 31, <i>et al.</i>,</p> <p style="padding-left: 40px;">Intervenors-Appellants/Respondents.</p> <hr/> <p>THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL 31, <i>et al.</i>,</p> <p style="padding-left: 40px;">Plaintiffs-Appellees/Respondents,</p> <p style="text-align: center;">v.</p> <p>STATE OF ILLINOIS,</p> <p style="padding-left: 40px;">Defendant-Appellant/Movant,</p> <p>LESLIE GEISSLER MUNGER, in her official capacity as Comptroller for the State of Illinois,</p> <p style="padding-left: 40px;">Defendant.</p>	<p>) Motion for Direct Appeal Pursuant ) to Supreme Court Rule 302(b). ) ) ) On interlocutory appeal from the ) Circuit Court of Cook County, ) Illinois, County Department, ) Chancery Division, No. 15 CH ) 10243, to the Appellate Court of ) Illinois, First Judicial District, No. ) 1-15-1877. ) ) ) The Honorable ) DIANE J. LARSEN, ) Judge Presiding. ) ) ) On interlocutory appeal from the ) Circuit Court of the Twentieth ) Judicial Circuit, St. Clair County, ) Illinois, No. 15 CH 475, to the ) Appellate Court of Illinois, Fifth ) Judicial District, No. 5-15-_____. ) ) ) ) ) The Honorable ) ROBERT P. LeCHIEN, ) Judge Presiding.</p>
--	--

**NOTICE OF FILING BY ELECTRONIC MEANS**

To: See attached service list

PLEASE TAKE NOTICE that on July 13, 2015, the undersigned filed the original and one copy of the attached **Emergency Motion for Direct Appeal**

**Pursuant to Supreme Court Rule 302(b) and Other Relief** with the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701, via the electronic filing system of the Supreme Court of Illinois. A copy of said motion is hereby served on you.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

By: /s/ Brett E. Legner  
BRETT E. LEGNER  
Deputy Solicitor General  
100 West Randolph Street  
12th Floor  
Chicago, Illinois 60601  
(312) 814-2146

\*\*\*\*\* Electronically Filed \*\*\*\*\*

119525

07/13/2015

Supreme Court Clerk

\*\*\*\*\*

**Service List**

David Gustman  
Michael J. Kelly  
John E. Stevens  
Jill C. Anderson  
Freeborn & Peters LLP  
311 South Wacker Drive  
Suite 3000  
Chicago, Illinois 60606  
*janderson@freeborn.com*

Stephen Yokich  
Cornfield & Feldman  
25 East Washington Street, Suite 1400  
Chicago, Illinois 60602  
*syokich@cornfieldandfeldman.com*

Alissa J. Camp  
General Counsel  
Office of the Comptroller  
201 State Capitol Building  
401 South Second Street  
Springfield, IL 62706-1001  
*campaj@mail.ioc.state.il.us*

John J. Flood, Clerk  
Appellate Court of Illinois,  
Fifth Judicial District  
14th & Main Streets  
Mt. Vernon, Illinois 62864  
*JFlood@illinoiscourts.gov*

Michael W. Basil  
Jack Vrett  
Special Assistant Attorneys General  
Illinois Department of Central  
Management Services  
100 West Randolph, suite 4-500  
Chicago, Illinois 60601  
*Michael.Basil@illinois.gov*  
*Jack.Vrett@illinois.gov*

Joel A. D'Alba  
Asher, Gittler & D'Alba, Ltd.  
200 West Jackson Blvd., Suite 1900  
Chicago, Illinois 60606  
*jad@ulaw.com*

Steven M. Ravid, Clerk  
Appellate Court of Illinois,  
First Judicial District  
160 North LaSalle St.  
Chicago, Illinois 60601  
*TPalella@illinoiscourts.gov*

\*\*\*\*\* Electronically Filed \*\*\*\*\*

119525

07/13/2015

Supreme Court Clerk

\*\*\*\*\*