

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

INDEPENDENT VOTERS OF ILLINOIS )  
INDEPENDENT PRECINCT )  
ORGANIZATION, and AVIVA PATT )

Plaintiffs, )

v. )

STEVE LUX, City Comptroller, )  
JESSE WHITE, Illinois Secretary of State, )  
and DANIEL HYNES, Illinois Comptroller, )

Defendants. )

09CH28993

FILED  
CH-2601  
AUG 19 2009  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY

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PETITION FOR LEAVE TO FILE COMPLAINT

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Pursuant to 735 ILCS 5/11-303, Petitioners seek leave to file the attached Complaint (attached hereto as "Exhibit 1"), two of whose counts implicate 735 ILCS 5/11-301, seeking to enjoin public officer's misuse of public funds. In support of this Petition, Petitioners state as follows:

1. On February 13, 2009, the City of Chicago agreed to lease the approximately 36,000-space parking meter system to Chicago Parking Meters, LLC ("CPM"), an investment group consisting of Morgan Stanley Infrastructure Partners A Sub LP (76% ownership), Morgan Stanley Infrastructure Partners LP (23%), and other entities holding a combined 1% interest. CPM is not an agent of the City of Chicago, or any other municipality.

2. Petitioners' complaint challenges the City of Chicago Comptroller's, the Illinois Secretary of State's, and Illinois State Comptroller's expenditures of public monies relating to the City of Chicago's illegally and unconstitutionally privatized parking meter system.

3. As set forth in the Complaint, the Concession Agreement unconstitutionally obligates the City to expend public funds in order to police, enforce and maintain the privately-held and privately-controlled parking meter system, in violation of Article VIII, § 1(a) of the 1970 Illinois Constitution, which requires that “[p]ublic funds, property or credit shall be used only for public purposes.” Complaint, ¶¶ 21-23.

4. The Concession Agreement also illegally leases the City’s on-street parking meter system to CPM, which is beyond the authority granted by the Illinois General Assembly. Complaint, ¶¶ 24-26.

5. Next, the Concession Agreement illegally delegates the City’s police power over the City’s parking meter system, which is on the public streets. Complaint, ¶¶ 27-30.

6. Finally, the Concession Agreement illegally binds successive City Councils’ powers to regulate the City’s on-street parking meter system, for an excessive 75-year term. Complaint, ¶¶ 31-34.

7. Because the Concession Agreement’s terms are illegal and unconstitutional, Counts II and IV of Petitioners’ complaint seek to enjoin, pursuant to 735 ILCS 5/11-301:

- (i) the City of Chicago Comptroller from making further expenditures of funds relating to the City’s privatized parking meter system;
- (ii) the Illinois Secretary of State’s expenditure of funds relating to its statutory duty to suspend Illinois State driver licenses arising from fines or penalties arising from the City’s privatized parking meter system; and
- (iii) the Illinois State Comptroller from making expenditures in connection with the Illinois Secretary of State suspending or impairing Illinois State driver licenses based on violations arising from the City’s privatized parking meter system.

8. Petitioners are (1) an association of concerned Illinois and City of Chicago citizens, residents, and taxpayers, and (2) an individual citizen and taxpayer of the State of Illinois and City of Chicago.

9. Absent an order from this Court permitting the matter to proceed, Petitioners will have no recourse.

Dated: August 19, 2009

Respectfully Submitted,



By: Attorney for Petitioners

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Defendants. )

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**COMPLAINT**

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**NATURE OF THE CASE**

1. This action, brought by an association comprised of citizens and taxpayers of the City of Chicago and State of Illinois and an individual citizen and taxpayer of the City of Chicago and State of Illinois, challenges the City of Chicago's and State of Illinois' expenditures of public funds in connection with the City's leasing and privatization of its parking meter system on the City's public streets.

2. As a result of defendants' conduct, Plaintiffs Independent Voters of Illinois Independent Precinct Organization and Aviva Patt seek injunctions against:

- (i) the City of Chicago Comptroller from making further expenditures of funds relating to the City's privatized parking meter system;
- (ii) the Illinois Secretary of State's expenditure of funds relating to its statutory duty to suspend Illinois State driver licenses arising from fines or penalties arising from the City's privatized parking meter system; and

(iii) the Illinois State Comptroller from making expenditures in connection with the Illinois Secretary of State suspending or impairing Illinois State driver licenses based on violations arising from the City's privatized parking meter system.

### **JURISDICTION AND VENUE**

3. Jurisdiction. This Court has jurisdiction over this litigation pursuant to 735 ILCS 5/2-209(a)(1) (transaction of any business within the state) and (c) (to the extent allowed by the Illinois Constitution and the Constitution of the United States).

4. Venue. Venue is proper in Cook County pursuant to 735 ILCS 5/2-103(a) because Defendant City of Chicago's principal offices are located in Cook County, Illinois.

### **PARTIES**

5. Plaintiff Independent Voters of Illinois Independent Precinct Organization ("IVI-IPO") is an Illinois public interest association engaged in representing interests of taxpayers of the City of Chicago and the State of Illinois.

6. Plaintiff IVI-IPO has associational standing to assert this taxpayer action because its members are suffering the immediate and continued threat of injury as a result of the defendants' actions described herein, the taxpayer interests the Plaintiff's suit seek to protect are germane to the IVI-IPO's interests, and neither the claims asserted herein nor the relief requested requires the participation of the IVI-IPO's individual members in this lawsuit.

7. Plaintiff Aviva Patt is a citizen and taxpayer of both the State of Illinois and City of Chicago.

8. Defendant Steve Lux has been, and is now, the duly qualified and acting City of Chicago Comptroller, charged with the authority to disburse public monies of the City of Chicago.

9. Defendant Jesse White has been, and is now, the duly qualified and acting Illinois Secretary of State, charged with administering 625 ILCS 5/6-306.5, which obligates the Secretary of State to suspend or otherwise impair driving privileges for failure to pay fines or penalties due to violations of parking regulations.

10. Defendant Daniel Hynes has been, and is now, the duly qualified and acting Illinois Comptroller, charged with the authority to disburse public monies of the State of Illinois.

#### FACTS COMMON TO ALL COUNTS

11. On December 4, 2008, the Chicago City Council approved Mayor Richard J. Daley's proposal to lease the City's parking meter system to a private party for 75 years, under an agreement entitled "Chicago Metered Parking System Concession Agreement dated as of December 4, 2008 by and between City of Chicago and Chicago Parking Meters, LLC" (the "Concession Agreement" attached hereto as "Exhibit A").

12. Under the Concession Agreement, Section 2.1, the City transfers all Metered Parking System Assets to the Concessionaire, "free and clear of any Encumbrances," giving Concessionaire the control of the parking meter system, all system property, and all revenue produced from the parking meters.

13. Section 3.2(e) of the Concession Agreement grants the Concessionaire authority to issue parking tickets or citations for violations of the parking meter rules, and provides that the tickets issued by the Concessionaire "shall have the same legal efficacy as parking tickets issued by the City."

14. Section 3.2(e) also allows the City to retain the right and responsibility to provide all other enforcement of parking meter rules and violations, thereby obligating the City of Chicago to expend funds in order to enforce the purely private rights of the Concessionaire.

15. On February 13, 2009, the concession lease sale transaction closed between the City of Chicago and CPM, *inter alia*, transferring control of City's approximately 36,000 on-street parking meters to the Concessionaire for a 75-year period.

16. CPM is an investment group consisting of Morgan Stanley Infrastructure Partners A Sub LP (76% ownership), Morgan Stanley Infrastructure Partners LP (23%), and other entities holding a combined 1% interest. CPM is not an agent of the City of Chicago, or any other municipality.

17. CPM subcontracted with its affiliate LAZ Parking to manage and enforce the parking meter system by issuing municipal parking fines to persons parked at a meter without paying, or for those who park longer than the paid time.

18. Upon closing, the transaction transferred the City's parking meter system to CPM, granting CPM the right to operate Chicago's metered parking system for 75 years, in exchange for a \$1,156,500,000 payment to the City.

19. After the transaction closed, the City continued to expend public funds to maintain and repair CPM's privately-controlled meters, based on complaints that a number of CPM's parking meters were disabled, would not take coins, did not properly recognize the coins placed in the meters, and displayed inaccurate parking rates and times of enforcement.

**THE CONCESSION AGREEMENT UNCONSTITUTIONALLY REQUIRES THE EXPENDITURE OF PUBLIC FUNDS FOR CPM'S PURELY PRIVATE BENEFIT**

20. At all times relevant, Article VIII, § 1(a) of the 1970 Illinois Constitution requires that "[p]ublic funds, property or credit shall be used only for public purposes."

21. The Concession Agreement described herein has obligated and continues to obligate the City to expend public funds in order to police, enforce and maintain the privately-held and privately-controlled parking meter system.

22. Therefore, the Concession Agreement's obligating the City of Chicago to expend public funds for the private benefit of CPM violates Article VIII, § 1(a) of the 1970 Illinois Constitution.

**THE CONCESSION AGREEMENT ILLEGALLY LEASES THE CITY'S  
PARKING METER SYSTEM ON PUBLIC STREETS**

23. The City of Chicago's authority to establish and maintain its parking meter system, including the marking of parking spaces, installation of meters and setting of time limits for parking, is not an inherent power of the City, but derives from the City's strictly construed authority to regulate the use of the streets, pursuant to the Illinois Municipal Code, 65 ILCS 5/11-80-2:

The corporate authorities of each municipality may regulate the use of the streets and other municipal property.

24. This right to regulate the use of the streets does not grant the City of Chicago with authority to lease parts, or all, of a public street.

25. Therefore, the Concession Agreement's 75-year lease of the public streets is unlawful, exceeding the City's legislatively-granted authority to regulate the City streets.

**THE CONCESSION AGREEMENT ILLEGALLY DELEGATES  
THE CITY'S POLICE POWER**

26. The Illinois Constitution, Art. VII, § 6(a), provides the City of Chicago, as a home rule municipality, with its police power "to regulate for the protection of the public health, safety, morals and welfare."

27. It is fundamental, however, that the City may not surrender or delegate such power to private parties.

28. Section 3.2(e) of the Concession Agreement gives CPM the right “to issue parking tickets or citations for violation of the parking rules and regulations with respect to” the City’s parking meter system on the public streets.

29. Therefore, The Concession Agreement’s granting CPM the right to police the City’s parking meter system on the public streets constitutes an unlawful surrender or delegation of the City’s police power.

**THE CONCESSION AGREEMENT ILLEGALLY BINDS  
SUCCESSIVE CITY COUNCILS’ POWERS TO REGULATE  
THE CITY’S ON-STREET PARKING METER SYSTEM**

30. An elected city council may not enter into contracts beyond its own term because doing so would deprive succeeding city councils from exercising authority over important municipal functions.

31. Under the Illinois Municipal Code, 65 ILCS 5/3.1-20-22, the Chicago City Council members are elected for a term of four years.

32. Pursuant to § 2.1 of the Concession Agreement, CPM is granted control of Chicago’s parking meter system for 75 years, until February 29, 2084.

33. Therefore, the Concession Agreement’s depriving future City Councils the ability to exercise authority over the important City functions of the City’s parking meter system and the City’s public streets is illegal.

**COUNT I**

**Common Law Cause of Action to Enjoin the City of Chicago’s Comptroller  
from Disbursing Public Funds**

34. Plaintiffs reallege paragraph 1 through 33, as set forth herein.

35. It has long been the rule in Illinois that citizens and taxpayers have a right to enjoin the misuse of public funds, and that this right is based upon the taxpayers’ ownership of

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**COUNT I**

**Common Law Cause of Action to Enjoin the City of Chicago’s Comptroller  
from Disbursing Public Funds**

34. Plaintiffs reallege paragraph 1 through 33, as set forth herein.

35. It has long been the rule in Illinois that citizens and taxpayers have a right to enjoin the misuse of public funds, and that this right is based upon the taxpayers’ ownership of

such funds and their liability to replenish the public treasury for the deficiency caused by such misappropriation. The misuse of these funds for illegal or unconstitutional purposes is a damage which citizens and taxpayers to sue.

36. The Concession Agreement described herein has obligated and continues to obligate the City to expend public funds in order to police, enforce and maintain the privately-held and privately-controlled parking meter system.

37. As set forth herein, the terms of the Concession Agreement violate the Illinois Constitution and Illinois law.

38. The expenditure of public funds by the City of Chicago Comptroller, Steve Lux, pursuant to the terms of the illegal and unconstitutional Concession Agreement described herein, would cause irreparable harm to City of Chicago and Illinois citizens and taxpayers, to which there is no remedy at law, and must be enjoined.

## COUNT II

### **Statutory Cause of Action to Enjoin the City of Chicago's Comptroller from Disbursing Public Funds, Pursuant to 735 ILCS 5/11-301**

39. Plaintiffs reallege paragraph 1 through 38, as set forth herein.

40. Pursuant to 735 ILCS 5/11-301, taxpayers have standing to enjoin a public officer's misuse or disbursement of public funds.

41. The Concession Agreement described herein has obligated and continues to obligate the City to expend public funds in order to police, enforce and maintain the privately-held and privately-controlled parking meter system.

42. As set forth herein, the terms of the Concession Agreement violate the Illinois Constitution and Illinois law.

43. The expenditure of public funds by the City of Chicago Comptroller, Steve Lux,

pursuant to the terms of the illegal and unconstitutional Concession Agreement described herein, would cause irreparable harm to City of Chicago and Illinois citizens and taxpayers, to which there is no remedy at law, and must be enjoined.

**COUNT III**

**Common Law Cause of Action to Enjoin the Illinois Secretary of State and Illinois State Comptroller from Disbursing Public Funds**

44. Plaintiffs reallege paragraph 1 through 43, as set forth herein.

45. At all times relevant, 625 ILCS 5/6-306.5 requires that the Illinois Secretary of State shall suspend the driving privileges of Illinois citizens for failure to pay a parking meter fine or penalty:

Failure to pay fine or penalty for standing, parking, compliance, or automated traffic law violations; suspension of driving privileges.●

(a) Upon receipt of a certified report, as prescribed by subsection (c) of this Section, from any municipality stating that the owner of a registered vehicle has: (1) failed to pay any fine or penalty due and owing as a result of 10 or more violations of a municipality's vehicular standing, parking, or compliance regulations established by ordinance pursuant to Section 11-208.3 of this Code, or (2) failed to pay any fine or penalty due and owing as a result of 5 offenses for automated traffic violations as defined in Section 11-208.6, the Secretary of State shall suspend the driving privileges of such person in accordance with the procedures set forth in this Section. The Secretary shall also suspend the driving privileges of an owner of a registered vehicle upon receipt of a certified report, as prescribed by subsection (f) of this Section, from any municipality stating that such person has failed to satisfy any fines or penalties imposed by final judgments for 5 or more automated traffic law violations or 10 or more violations of local standing, parking, or compliance regulations after exhaustion of judicial review procedures.

46. The Secretary of State's legal obligation to suspend driving privileges for citizens' failure to pay fines arising from violations of Chicago's privately controlled parking meter system is void and without authority because the underlying parking violations arise from the illegal and unconstitutional Concession Agreement, as set forth herein.

47. Therefore, the Secretary of State's expenditure of public funds to suspend or otherwise impair someone's driving privileges, pursuant to 625 ILCS 5/6-306.5, is null and void in the case of Chicago's privatized parking meter system.

48. It has long been the rule in Illinois that citizens and taxpayers have a right to enjoin the misuse of public funds, and that this right is based upon the taxpayers' ownership of such funds and their liability to replenish the public treasury for the deficiency caused by such misappropriation. The misuse of these funds for illegal or unconstitutional purposes is a damage which entitles citizens and taxpayers to sue.

49. Because the Secretary of State's expenditures to impair or suspend driving privileges relating to the privately controlled City parking system would cause irreparable harm to City of Chicago and Illinois citizens and taxpayers, and there is no adequate remedy at law, the Secretary of State must be enjoined from expending public monies to impair or suspend Illinois State driver licenses because of fines or penalties arising from the City of Chicago's privatized parking meter system.

50. Further, the Illinois Comptroller's illegal expenditure of funds to suspend driving privileges for failure to pay fines or penalties relating to the privately controlled City parking meter system must be enjoined and declared illegal, because it would cause irreparable harm to Illinois taxpayers, and there is no remedy at law.

#### COUNT IV

##### **Statutory Cause of Action to Enjoin the Illinois Secretary of State and Illinois State Comptroller from Disbursing Public Funds**

51. Plaintiffs reallege paragraph 1 through 50, as set forth herein.

52. At all times relevant, 625 ILCS 5/6-306.5 requires that the Illinois Secretary of State shall suspend the driving privileges of Illinois citizens for failure to pay a parking meter

fine or penalty:

Failure to pay fine or penalty for standing, parking, compliance, or automated traffic law violations; suspension of driving privileges.

(a) Upon receipt of a certified report, as prescribed by subsection (c) of this Section, from any municipality stating that the owner of a registered vehicle has: (1) failed to pay any fine or penalty due and owing as a result of 10 or more violations of a municipality's vehicular standing, parking, or compliance regulations established by ordinance pursuant to Section 11-208.3 of this Code, or (2) failed to pay any fine or penalty due and owing as a result of 5 offenses for automated traffic violations as defined in Section 11-208.6, the Secretary of State shall suspend the driving privileges of such person in accordance with the procedures set forth in this Section. The Secretary shall also suspend the driving privileges of an owner of a registered vehicle upon receipt of a certified report, as prescribed by subsection (f) of this Section, from any municipality stating that such person has failed to satisfy any fines or penalties imposed by final judgments for 5 or more automated traffic law violations or 10 or more violations of local standing, parking, or compliance regulations after exhaustion of judicial review procedures.

53. The Secretary of State's legal obligation to suspend driving privileges for citizens' failure to pay fines arising from violations of Chicago's privately controlled parking meter system is void and without authority because the underlying parking violations arise from the illegal and unconstitutional Concession Agreement, as set forth herein.

54. Therefore, the Secretary of State's expenditure of public funds to suspend or otherwise impair someone's driving privileges, pursuant to 625 ILCS 5/6-306.5, is null and void in the case of Chicago's privatized parking meter system.

55. Pursuant to 735 ILCS 5/11-301, taxpayers have standing to enjoin a public officer's misuse or disbursement of public funds.

56. Because the Secretary of State's expenditures to impair or suspend driving privileges relating to the privately controlled City parking system would cause irreparable harm to City of Chicago and Illinois citizens and taxpayers, and there is no adequate remedy at law, the Secretary of State must be enjoined from expending public monies to impair or suspend Illinois

State driver licenses because of fines or penalties arising from the City of Chicago's privatized parking meter system.

57. Further, the Illinois Comptroller's illegal expenditure of funds to suspend driving privileges for failure to pay fines or penalties relating to the privately controlled City parking meter system must be enjoined and declared illegal, because it would cause irreparable harm to Illinois taxpayers, and there is no remedy at law.

### **PRAYER FOR RELIEF**

On their own behalf and on behalf of all other State of Illinois and Cook County, Illinois taxpayers similarly situated, Plaintiffs request that this Court find and declare illegal or unconstitutional the described provisions of the Concession Agreement:

- a. Enjoin the City of Chicago Comptroller from making further expenditures of funds relating to the City's privatized parking meter system;
- b. Enjoin the Illinois Secretary of State's expenditure of funds relating to his duty to impair or suspend Illinois State driver licenses based on violations arising from the City's privatized parking meter system; and
- c. Enjoin the Illinois State Comptroller from making expenditures in connection with the Illinois Secretary of State impairing Illinois State driver licenses based on violations arising from the City's privatized parking meter system.
- d. Award Plaintiffs' counsel attorneys' fees and costs.
- e. Grant any other relief as the court deems equitable and proper.

Dated: August 19, 2009

Respectfully Submitted,

  
By: Attorney for Plaintiffs

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