

**IN THE CIRCUIT COURT OF CHAMPAIGN COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION**

John C. A. Bambenek)	
)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
Daniel W. Hynes, in his official capacity as Comptroller of the State of Illinois)	
)	
Respondent.)	
)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Now comes Plaintiff John C. A. Bambenek, a citizen of the state of Illinois, by and through his Attorney, Bruno Behrend, complaining of the Respondent, THE HONORABLE DANIEL W. HYNES, COMPTROLLER OF THE STATE OF ILLINOIS, in his official capacity, state as follows;

COUNT 1

Parties and Jurisdiction

1. Plaintiff John C. A. Bambenek lives in the city of Champaign, County of Champaign, State of Illinois, and is therefore enjoys the rights and is subject to the responsibilities of a citizen living under the Constitution of the State of Illinois.

2. Defendant Daniel W. Hynes is the duly elected Comptroller of the state of Illinois, an office created under Article V of the Illinois Constitution.

3. Plaintiff has standing to sue under 735 ILCS 5/11-301 of the Illinois Code of Civil Procedure.

Sec. 11-301. Who may file action. An action to restrain and enjoin the disbursement of public funds by any officer or officers of the State government may be maintained either by the Attorney General or by any citizen and taxpayer of the State.

4. This Court has jurisdiction and venue to decide the issues raised in this Complaint as a court of competent jurisdiction to decide constitutional questions and the Defendant is a Constitutional Officer of the state of Illinois.

5. The Honorable Daniel W. Hynes, as the Comptroller of Illinois, is empowered by Article V, Section 17 of the Constitution of Illinois to “maintain the State's central fiscal accounts, and order payments into and out of the funds held by the Treasurer.”

6. The Constitution of the State of Illinois, Article VIII, Section 2(b) further states that “The General Assembly by law shall make appropriations for all expenditures of public funds by the State. Appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year.”

7. That sometime during early February of 2009, the Comptroller issued a report entitled *Transitional Fiscal Report/FY 2010 Budgetary Outlook* on the official website of the Office of the Comptroller (Exhibit A - <http://www.ioc.state.il.us/ioc-pdf/dwhreportFeb2009.pdf>). This report indicates that “According to the Governor’s Office of Management and Budget (GOMB), the 2009 budget, as initially approved by the General Assembly, authorized spending in excess of \$2.1 billion over then-anticipated revenues.”

8. The *Transitional Fiscal Report/FY 2010 Budgetary Outlook* continues by stating “As illustrated in the accompanying chart, this amount exceeds sustainable spending authority by \$8.95 billion, without *any* growth in General Funds appropriations for the rest of

state government. The magnitude of this number represents the deep financial hole in which we now find ourselves after many years of avoidance and gimmicks, made worse by a struggling economy.”

9. The *Transitional Fiscal Report/FY 2010 Budgetary Outlook* concludes with “Faced with a record \$8.95 billion deficit for FY 2010, Illinois now stands at the precipice of the worst fiscal crisis in the state’s history. If the recession is prolonged beyond this summer and/or revenues erode further, the state’s fiscal situation will deteriorate even more than the bleak assessment presented here. It cannot be over emphasized that the federal government will be unable to rescue Illinois from these severe financial difficulties. The reality is that even with substantial federal assistance, Illinois will likely confront at least a \$6 billion dollar deficit that requires action over the next few weeks and months.”

10. The publication of the *Transitional Fiscal Report/FY 2010 Budgetary Outlook* constitutes an incontrovertible admission by the Constitutional Officer responsible for maintaining “the State’s central fiscal accounts” that the budget of the state Illinois is out of balance. Such admission indicates that any funds disbursed by the State of Illinois under the current financial condition constitute actions that are prohibited by Article VIII, Section 2(b), and are therefore unconstitutional.

11. That the publication of the *Transitional Fiscal Report/FY 2010 Budgetary Outlook* constitutes an admission that “years of avoidance and gimmicks” resulted in the act of passing out-of-balance budgets for years prior to Fiscal Years 2008 and 2009, and that such behavior has led to a significant fiscal crisis that damaged every citizen of this state.

WHEREFORE, the Plaintiff prays for this Court to:

- A. Order for declaratory judgment that the Budget of the state of Illinois for the fiscal year 2009 is unconstitutional.
- B. Order injunctive relief permanently enjoining the Comptroller from authorizing any expenditures until the state rectifies the unconstitutional state of the budget.
- C. Order that said permanent injunction allow a “grace period” of 30 days so that the Legislative and Executive Branches, each executing their proper roles under Illinois Constitution, have time to rectify the unconstitutional budget situation in the manner envisioned by the framers of the Constitution.
- D. That this Court retain jurisdiction to enforce the order, including jurisdiction to order the Comptroller to make available any applicable public information regarding the state's financial records and accounting processes available for public review to verify compliance with the Illinois Constitution, any applicable legislation, and the order of this court.

Respectfully submitted,

John C.A. Bambenek
Plaintiff,

By _____
Plaintiff's Attorney

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