IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DANNY HOMAN, STEVEN J. SODDERS, JACK HATCH, PAT MURPHY, and MARK SMITH **Plaintiffs,** **v.** **TERRY BRANSTAD, GOVERNOR, STATE OF IOWA and CHARLES M. PALMER, IOWA DEPARTMENT OF HUMAN SERVICES DIRECTOR,** **Defendants.**	**CASE NO. EQCE075765** **RULING AND ORDER ON PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTION AND DEFENDANTS' MOTION TO DISMISS**

The matter of Plaintiffs' Application for a Preliminary Injunction and the Defendants' Motion to Dismiss came before the Court for a contested hearing on January 31, 2014. Representing the Plaintiffs were Mr. Mark Hedburg and Mr. Nathaniel Boulton. Representing the Defendants were Iowa Assistant Attorney Generals Ms. Meghan Gavin and Mr. Timothy Vavricek. The Court, having heard the arguments of counsel, reviewed the court file, the affidavits and exhibits, finds as follows:

BACKGROUND FACTS AND PROCEDURE

On January 2, 2014, the Plaintiffs filed their Petition for Declaratory Judgment, Injunctive Relief and Writ of Mandamus. On January 10, 2014, the Plaintiffs filed an Application for Preliminary Injunction with Notice and Request for hearing. On January 21, 2014, the Defendants filed their Motion to Dismiss along with a supporting brief.

The Petition for Declaratory Judgment, Injunctive Relief and Writ of Mandamus identifies

the Plaintiffs as follows: Mr. Danny Homan, a taxpayer, resident and citizen of the State of Iowa; Mr. Steven J. Sodders, a State Senator, taxpayer, and resident and citizen of the State of Iowa; Mr. Jack Hatch, a State Senator, taxpayer, resident and citizen of the State of Iowa; Mr. Pat Murphy, a State Representative, a taxpayer, a resident and citizen of the State of Iowa; and Mr. Mark Smith, a State Representative, a taxpayer, a resident and citizen of the State of Iowa. The Defendants were identified as The Honorable Terry E. Branstad, Governor of the State of Iowa, and Mr. Charles M. Palmer, Director of the Iowa Department of Human Services.

In the general allegations the Petition notes that on June 20, 2013, the Governor of the State of Iowa approved Senate File 446, which was an appropriations bill, passed by the Iowa legislature, portions of which appropriated money to the Department of Health and Human Services. The relevant portions were attached as Exhibit A to the Plaintiffs' Petition. Under Section 17 of Senate File 446, as passed by the Iowa General Assembly and approved by the Governor of the State of Iowa, in part, is the following:

> SEC. 17 JUVENILE INSTITUTIONS. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 2013, and ending June 30, 2014, the following amounts, or such much thereof as is necessary, to be used for the purposes designated:
>
> 1. For operation of the Iowa juvenile home at Toledo and for salaries, support, maintenance, and miscellaneous purposes, and for not more than the following full-time equivalent positions:
>
> $8,859.355.00
>
> FTEs 114.00

After the adoption of Senate File 446, the Governor of the State of Iowa later appointed a task force under Executive Order No. 82 (attached as Exhibit B to the Plaintiffs' Petition) which

established a task force of no more than five members appointed by the Governor, with the following responsibilities designated to it:

a. Make recommendations about how to improve services for residents;

b. Review incident data to ensure a high-level of care was delivered at the Iowa Juvenile Home;

c. Recommend a strategy for the permanent elimination of seclusion rooms outside the cottage setting;

d. Recommend a strategy outlining the transition of the Iowa Juvenile Home's education plan from being managed from the Department of Human Services to Area Education Agency 267; and

e. Reach other goals and objectives as requested by the Office of the Governor.

(Executive Order No, 82, Plaintiffs' Exhibit B attached to Plaintiffs' Petition).

On October 9, 2013, the task force submitted a report to the Governor of the State of Iowa. The report did not suggest the closing of the Iowa Juvenile Home at Toledo, Iowa, but rather, made recommendations focusing on improving the Iowa Juvenile Home with the primary consideration being the best interests of the youth served at that facility. On December 9, 2013, Charles Palmer, as the Director of the Iowa Department of Human Services, gave notice that the Toledo Iowa Juvenile Home was closing. The notice stated that alternative placement would be found for the 21 youths currently being served at the Iowa Juvenile Home in Toledo, Iowa.

The Plaintiffs allege that the action by the Director of the Iowa Department of Human Services was done under the direction and/or the approval of Governor Terry Branstad, Governor of the State of Iowa. The Plaintiffs further claim in their Petition that as a result of the action taken on December 9, 2013, the Governor of the State of Iowa disallowed the spending of $8,859,355 that had been "legally appropriated for the operation of the Toledo Home and

therefore defeat[ed] the very purpose of the law." Plaintiffs further allege that the funds would, therefore, be available for other purposes for which they were not intended thus constituting a misappropriation of legally appropriated funds.

Plaintiffs further argued that the action by the Governor of the State of Iowa has injured and damaged the Plaintiffs as taxpayers, citizens, and legislators of the State of Iowa in that the impoundment of the funds by the Governor were impermissibly exercised and were beyond the scope of his constitutional and statutory authority. The Plaintiffs then prayed for relief as follows: (1) A ruling and judgment adjudging that the Governor's refusal to allow the spending of funds appropriated under Section 17 of Senate File 446 is an unconstitutional impoundment; (2) that an injunction prohibiting the closure of the Toledo Home and prohibiting the misappropriation of funds dedicated to the Toledo Home be issued; (3) that a Writ of Mandamus ordering that the Toledo Home remain open be entered by the Court; and (4) that an award of such additional relief as the Court may deem necessary, proper or appropriate including an order declaring that the costs of this action be taxed against the Defendants and awarded to the Plaintiffs (Petition for Declaratory Judgment, Injunctive Relief and Writ of Mandamus, January 2, 2014, page 5).

The Plaintiffs' Application for Preliminary Injunction, filed on January 10, 2014, requested the Court to issue an injunction pursuant to Iowa Rule of Civil Procedure 1.1502, which would restrain the Defendants from closing the Toledo, Iowa Juvenile Home, scheduled for January 16, 2014, and would disallow the spending of the money for other purposes that was lawfully appropriated for the operation of said facility. The Plaintiffs alleged in their Application for Preliminary Injunction that the "intentional impoundment of funds by the Defendants in this matter will work irreparable injury to the Plaintiffs." (Application for Preliminary Injunction with Notice

and Request for Hearing, January 10, 2014, page 1).

On January 21, 2014, the Defendants filed a Motion to Dismiss along with the supporting brief. The Defendants allege that the Plaintiffs lack standing to bring an action for declaratory relief, injunctive relief, or a writ of mandamus. Further, the Defendants argue that Plaintiffs have failed to state a claim upon which relief can be granted.

MOTION TO DISMISS

A. *Standard of Review*

"A motion to dismiss tests the legal sufficiency of the challenged pleading." *Southard v. Visa U.S.A., Inc.*, 734 N.W.2d 1942, 194 (Iowa 2007). The Court may grant a motion to dismiss only if the petition shows no possible right of recovery under the facts. *Trobaugh v. Sondag*, 668 N.W.2d 577, 580 (Iowa 2003). A motion to dismiss will rarely succeed. *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004). When considering a motion to dismiss, courts assess the petition "in the light most favorable to the plaintiffs, and all doubts and ambiguities are resolved in plaintiff's favor." *Robbins v. Heritage Acres*, 578 N.W.2d 262, 264 (Iowa Ct. App. 1998) (citation omitted). A petition must contain factual allegations sufficient to provide the defendant with "fair notice" of the claim asserted. *Id*. A petition satisfies the "fair notice" standard "if it informs the defendant of the incident giving rise to the claim and of the claim's general nature." *Id*. "The only issue when considering a motion to dismiss is the 'petitioner's right of access to the district court, not the merits of his allegations.'" *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 609 (Iowa 2012) (quoting *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001)); *Cutler v. Klass, Whicher & Mishne*, 473 N.W.2d 178, 181 (Iowa 1991) ("Both the filing and the sustaining [of motions to dismiss] are poor ideas.").

B. *Standing*

"'Standing to sue' has been defined to mean that a party must have 'sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.'" *Birkhofer ex rel. Johannsen v. Brammeier,* 610 N.W.2d 844, 847 (Iowa 2000) (quoting Black's Law Dictionary 1405 (6th ed.1990)). In Iowa, "a complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004).

An association has standing when it seeks an injunction or declaration to benefit its injured members. *Warth v. Seldin,* 422 U.S. 490, 515, 95 S.Ct. 2197, 2213 (1975). Plaintiff Danny Homan is the President of the American Federation of State, County, and Municipal Employees ("AFSCME") Iowa Council 61 (Affidavit of Danny Homan). He represents the interests of the employees who work at the Iowa Juvenile Home in Toledo. On January 15, 2014, 93 members of AFSCME Iowa Council 61 who worked at the Iowa Juvenile Home in Toledo were laid off following the closure of the facility. Therefore, the members have suffered an injury as a result of the Defendants' actions, and Danny Homan has standing as the President of AFSCME Iowa Council 61 to represent their interests.

Legislators have a "plain, direct and adequate interest in maintaining the effectiveness of their votes." *Coleman v. Miller,* 307 U.S. 433, 438, 59 S.Ct. 972, 975 (1939). The Iowa Juvenile Home in Toledo is specifically addressed in Section 233A.1, the Code of Iowa, and appropriations were directly made for its continued operation in Senate File 446, Section 17. The Plaintiff legislators have alleged that the Defendants' decision to close the facility frustrated legislative intent and constituted an impoundment of appropriated funds in violation of Article IV

Section 9 of the Iowa Constitution ("He shall take care that the laws are faithfully executed."). Therefore, the Plaintiff legislators have been injured by the Defendants' actions, and have standing in this case to protect the effectiveness of their votes.

C. *Failure to State a Claim*

"A motion to dismiss is only sustainable where it appears to a certainty that a plaintiff would not be entitled to any relief under any state of facts which could be proved in support of the claims asserted by him." *Newton v. City of Grundy Ctr.*, 70 N.W.2d 162, 164 (Iowa 1955). Plaintiffs allege that Defendants' decision to close the Iowa Juvenile Home in Toledo was an impoundment of lawfully appropriated funds in violation of Article IV Section 9 of the Iowa Constitution. While Iowa has not addressed the concept of impoundment of appropriated funds, other states have recognized such a constitutional claim. *See New Hampshire Health Care Ass'n v. Governor*, 161 N.H. 378, 390, 13 A.3d 145, 156 (2011); *Oneida County v. Berle*, 49 N.Y.2d 515, 404 N.E.2d 133 (Ct. App. N.Y. 1980); *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW, & Local 6000 v. State*, 194 Mich. App. 489, 491 N.W.2d 855 (Mich. Ct. App. 1992). The mere fact that there is an absence of judicial precedent for a constitutional claim does not mean the Plaintiffs have failed to state a claim under the Iowa Rules of Civil Procedure 1.421(1). The plaintiffs have cited a provision of the Iowa Constitution that they allege the Defendants have violated, and there is a possibility of a right of recovery under such a claim under the facts presented. Therefore, the Plaintiffs have stated a claim upon which relief can be granted.

D. *Judicial Review*

Defendants also argue that the Plaintiffs' Petition should be dismissed because the claim is

more appropriate as a Judicial Review of an action of the Iowa Department of Human Services under Iowa Code section 17A. Usually, the judicial review provisions are the exclusive means to challenge an administrative agency action and the Plaintiff must exhaust all administrative remedies before being entitled to judicial review. *Tindal v. Norman*, 427 N.W.2d 871, 872 (Iowa 1988). However, this exhaustion doctrine does not apply if an adequate administrative remedy does not exist. *Id.* As agencies cannot decide issues of constitutionality, administrative remedies are inadequate when a party claims the agency violated the Iowa Constitution. *Salsbury Laboratories v. Iowa Dep't of Envtl. Quality*, 276 N.W.2d 830, 836 (Iowa 1979). Since the Plaintiffs in this case allege the Defendants' actions violated the Iowa Constitution, the exhaustion doctrine does not bar their action before the Court.

PRELIMINARY INJUNTION

A. Applicable Law

Injunctions may be obtained by a party as an independent remedy by an action in equity or as an auxiliary remedy in any action. I.R.C.P. 1.1501. Temporary injunctions may be allowed under three circumstances as follows:

> When the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff.
>
> Where, during litigation, it appears that a party is doing, procuring, or suffering to be done, or threatens or is about to do, an act violating the other party's right respecting the subject of the action and intending to make the judgment ineffectual.
>
> In any case especially authorized by statute.

I.R.C.P. 1.1502.

In regard to temporary injunctions, the burden of proof requires a showing by the party seeking the injunction of the likelihood of success on the merits. *PIC USA v. North Carolina Farm Partnership,* 672 N.W.2d 718, 723 (Iowa 2003). A permanent injunction requires actual success. *Id.*

If an injunction is entered then, pursuant to I.R.C.P. 1.1508, the order directing a temporary injunction must require that before the writ issues, a bond is to be filed, with a penalty to be specified in the order, which shall be 125 percent of the probable liability to be incurred.

The issuance of temporary injunctions "invokes the equitable powers of the court and courts apply equitable principles." *Max 100 L.C. v. Iowa Realty Co., Inc.,* 621 N.W.2d 178, 181 (Iowa 2001). "The standards considered in granting temporary injunctions are similar to those for permanent injunctions, except temporary injunctions require a showing of the likelihood of success on the merits instead of actual success." *Id.*, quoting 42 Am. Jur. 2d *Injunctions* Section 8, at 566 (2000). In applying the principles stated to temporary injunctions, courts are to consider the "circumstances confronting the parties and balance the harm that a temporary injunction may prevent against the harm that may result from its issuance." *Max 100 L.C. v. Iowa Realty, Inc.,* 621 N.W.2d 178, 181 (Iowa 2001) quoting *Kleman v. Charles City Police Dept.,* 373 N.W.2d 90, 96 (Iowa 1985).

> An injunction is an extraordinary remedy which should be granted with caution and only when clearly required to avoid irreparable damage. An injunction should issue only when the party seeking it has no adequate remedy at law.

Planned Parenthood of Mid-Iowa v. Maki, 478 N.W.2d 637, 639 (Iowa 1991). In deciding whether to grant injunctions courts should be careful to weigh the relative hardship which would be suffered by the enjoined party upon awarding any injunctive relief. *Matlock v. Weets*, 531

N.W.2d 118, 122 (Iowa 1995).

B. Merits

At the outset, it is important to consider that the Plaintiffs and the Defendants represent two of the three separate departments of government as recognized by our Iowa Constitution. Article III, Section 1 of the Constitution of the State of Iowa states:

> The powers of the Government of Iowa shall be divided into three separate departments – the Legislative, the Executive, and the Judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

Further, Article IV, Section 9 of the Constitution of the State of Iowa, states:

> He shall take care that the laws are faithfully executed.

The "He" referred to in Article IV, Section 9, is the Governor of the State of Iowa.

The actions of an executive branch department head, such as Charles Palmer, the Director of the Iowa Department of Human Services, can only be done in accordance with the legislative authority granted to said department and also under the control and subject to the requirements of the duties and responsibilities of the executive branch as set forth in Article IV of the Constitution of the State of Iowa. In other words, a department head such as the Director of the Iowa Department of Human Services cannot have greater power than that of the Governor and such power is limited by our Constitution in the same manner as the Governor. To find otherwise would have the absurd result of granting to nonconstitutionally-designated directors of state agencies greater power than the executive, the Governor of the State of Iowa, or for that matter, any other of the two remaining branches of government. The actions, therefore, of the Director of the Department of Human Services are thus the actions of the executive branch and, therefore,

the actions of the Governor of the State of Iowa.

In addition, the Plaintiffs have brought this action seeking also a writ of mandamus. Under Section 661.1, the Code of Iowa, the action of mandamus "is one brought to obtain an order commanding an inferior tribunal, board, corporation, or person to do or not to do an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station." The restrictions on a writ of mandamus include the exercise of discretion by an inferior tribunal or person. Therefore, Section 661.2, the Code of Iowa, states that "where discretion is left to the inferior tribunal or person, then mandamus can only compel it to act, but cannot control such discretion." The district court has the authority to issue the writ of mandamus order. Section 661.4, the Code of Iowa. Section 661.8, the Code of Iowa, provides that the order of mandamus "is granted on the petition of any private party aggrieved … when the public interest is concerned, and is in the name of such private party or of the state, as the case may be in fact brought." The Petition itself has the following requirements:

> The plaintiff in such action shall state the plaintiff's claim, and shall also state facts sufficient to constitute a cause for such claim, and shall also set forth that the plaintiff, if a private individual, is personally interested therein, and that the plaintiff sustains and may sustain damage by the nonperformance of such duty, and that performance thereof has been demanded by the plaintiff, and refused or neglected, and shall pray an order of mandamus commanding the defendant to fulfill such duty.

Section 661.9, the Code of Iowa.

The Plaintiffs argue that the actions of the Defendants in this case are constitutionally forbidden in that a lawful act as adopted by the General Assembly of the State of Iowa and approved by the Governor, as evidenced by the bill in question here in fact becoming law and no veto being issued, that the executive branch, including the Governor as the head of that branch,

must faithfully execute the law as legally adopted. By ordering the closing of the Toledo Home the law's intent under Senate File 446 has been totally frustrated and, in effect, rendered null. The appropriation of $8,859,355.00 for the Iowa Juvenile Home at Toledo, Iowa, was to be used for salaries, support, maintenance, and miscellaneous purposes as set forth in the legislation.

However, as pointed out, the amounts so appropriated from the General Fund are to be for the purposes stated "or so much thereof as is necessary." The Defendants argue that the clause "or so much thereof as is necessary" means that the Defendants can, in their discretion, decide to spend none of the amounts appropriated under the legislation for the Iowa Juvenile Home at Toledo, Iowa. By a plain reading of the legislation such a definition is absurd and disingenuous.

Clearly, not only does Senate File 446 appropriate money for the operation of the Iowa Juvenile Home at Toledo, Iowa, but several other statutes contained in the Code of Iowa anticipate that the Home is operational and in existence. By closing the Toledo home, the other sections of the Code would be rendered ineffectual. A brief sampling of some of the statutes which anticipate the use of and purpose of the Iowa Juvenile Home at Toledo, Iowa, are as follows: Section 233B.1; Section 232.102; Section 233A.1 (the section which establishes the Toledo facility); Section 232.52; Section 231.424; Section 232.54; and Section 232.117, the Code of Iowa.

The Court finds that the facts and circumstances of this case support the burden of proof required by the Plaintiffs seeking the preliminary injunction. First, Plaintiffs are entitled to relief because the actions of the Defendants constitute an act or omission that would greatly and irreparably injure the Plaintiffs. In addition, it appears the Defendants are threatening to do or

have, in fact, already committed an act which violates the Plaintiffs' rights: the ignoring or contravention of a duly enacted law of the Iowa Legislature. There is also a likelihood of success on the merits.

However the issue before the Court is framed, whether as one of impoundment or simply an exercise of executive authority not allowed by our statutes or by our constitution, the Court finds that the actions of the Defendants, and, in particular, the Governor of the State of Iowa, allowing an appointee to unilaterally frustrate and, in effect, change the laws as duly enacted by the Iowa Legislature cannot be allowed. The Toledo Home has been established by the Iowa Legislature with the approval of the Executive branch. Appropriations to effectuate the purpose of the Toledo Home were properly passed by the Iowa Legislature and became law. It thus became incumbent upon the Defendants to ensure that the law is carried out. To argue that the language "or so much thereof as is necessary" in Senate File 446 means that the Governor and/or his Director of the Iowa Department of Human Services can spend none of the money as appropriated is clearly in error. The legislature intended that the Toledo facility be established and operate and that the money so appropriated be used for salaries, support, maintenance and miscellaneous purposes. If the Department of Human Services and the Toledo facility could operate with some amount less than the $8,859,355.00 appropriated, so be it. But to totally eliminate the operations of the Toledo Home under the guise of the language "or so much thereof as is necessary" is to essentially ignore the laws of the State of Iowa as enacted lawfully by the General Assembly and allows the Executive branch to unilaterally decide which laws it will obey and which laws it will not.

This is not the basis upon which our government in Iowa was established by our Iowa

Constitution that established the three separate branches of government along with their duties and responsibilities. The actions here by the Defendants effectively contravene the legislature's purpose and policy of establishing the Toledo Home and the appropriations legally and duly passed into law for its operation. To argue that those appropriations not already used for the Toledo Home would eventually finds its way back into the General Fund for the State of Iowa thus saving taxpayers' money is no argument at all. The legislators, as elected by the electorate of the State of Iowa, are bound under the Constitution to perform their duties as expressly set forth. If the Legislature, without veto from the Governor of the State of Iowa, passes a law or laws, which, in this case, established a facility for a specific purpose and then passes another law, again without veto, for the purpose of ensuring that the facility runs and operates as intended, then the Legislature is not only acting according to the Constitution of the State of Iowa, but is also acting in accordance with their obligation as the elected representatives from the citizenry. The argument of Defendants that taxpayer money not expended as appropriated and legislated is always a benefit to the taxpayer is misleading and wrong. To take such a view to any or all legislation as passed by the legislature would lead to ridiculous and illogical results. For instance, if in the name of saving taxpayers money no expenditures are made to repair bridges within the State of Iowa and the bridges are allowed to fall into disrepair to the point where persons and property are injured from the disrepair, although there may be savings from taxpayer expenditures from the General Fund, the harm to the citizenry by personal injury, property damage, interference with commercial trade and travel, would most likely far exceed any such savings.

If the Governor of the State of Iowa decided that the Toledo Home should not operate, he had the opportunity to end its operation when the appropriations bill was placed upon his desk for

signature. At that point the Governor could have vetoed the bill. To later, however, decide that the Toledo Home should no longer operate under any circumstances is to not only a failure to carry out his Constitutional duties to take care that the laws are faithfully executed, but is an affront to the very purpose and establishment of our governmental institutions as adopted by the Constitution of the State of Iowa with the approval of the people of the State of Iowa. The danger in allowing such an action to happen is the destruction of our republican form of government itself and the democracy which it is designed to serve for the general welfare of all of its citizens.

No citation is needed in recognizing that we are a nation of laws and not a nation of men and women. Our laws serve to protect the will of the majority and the rights of the minority. No one person under our form of government, unless duly authorized by that form of government through our Constitution can exercise a power not delegated to it or in contravention of the government itself and the laws duly enacted. As aptly pointed out in a case from the State of New Hampshire:

> While the Governor may not circumvent the appropriations process 'by withholding funds or otherwise failing to execute the law on the basis of his views regarding the social utility or wisdom of the law,' this must be distinguished 'from the exercise of executive judgment that the full legislative objectives can be accomplished by a lesser expenditure of funds then appropriated.' *New Hampshire Health Care Association v. Governor*, 161 N.H. 378, 390; 13 A.3d145, 156 (2011).

Here, the Governor did not lessen the expenditure of funds as is necessary to run the Toledo Home, but, rather, found that no Toledo Home should be established or operated any longer. This was not the intent of the legislature and the laws enacted establishing the Toledo Home and the appropriations to make sure that it operates appropriately. Again, as appropriately

noted in a New York case, *In The Matter of County of Oneida v. Berle*, 404 N.E.2d 133, 137; 427 N.Y.Supp.2d 407, 412:

> However laudable its goals, the executive branch may not override enactments which have emerged from the lawmaking process. It is required to implement policy declarations of the Legislature, unless vetoed or judicially invalidated.

In the New York case, as in this case, the "usurpation of the legislative function cannot receive judicial sanction." *Id*.

Other jurisdictions, including Michigan, Massachusetts, New Hampshire, and New York, have also found that this use of executive power to defeat lawfully enacted statutes cannot survive judicial scrutiny and are contrary to our form of government. (See *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Local 6000 v. State of Michigan*, 194 Mich. App. 489; 491 N.W.2d 855 (1992); *Felicetti v. Secretary of Communities & Development, et al.*, 386 Mass. 868; 438 N.E.2d 343 (1982); *Detroit Firefighters Assoc. v. City of Detroit*, 449 Mich. 629; 537 N.W.2d 436 (1995); *In The Matter of County of Oneida v. Berle*, 49 N.Y.2d 515; 404 N.E.2d 133; 427 N.Y. S.2d 407 (1980); *New Hampshire Health Care Assoc. v. Governor*, 168 N.H. 378; 13 A.3d 145 (2011)).

RULING AND ORDER

For the above reasons the Court finds that the Defendants' Motion to Dismiss is hereby denied and the Plaintiffs' Application for Preliminary Injunction is hereby sustained.

It is therefore the Order of the Court that the Defendants shall reopen the Toledo Home and abide by the duly passed laws of the State of Iowa which established the Toledo Home and shall allow the use of funds duly appropriated and passed by the legislature of the State of Iowa and the Governor of the State of Iowa to be used for the operation of the Toledo Home in

compliance with Senate File 446, Section 17, Laws of 85th General Assembly, 2013 Session.

It is further Ordered that pursuant to I.R.C.P. 1.1508, that a bond shall be posted with the Polk County Clerk of Court, Polk County, Iowa, by the Plaintiffs. In order to properly determine the amount of bond appropriate under these circumstances, that the parties shall file with the court any and all affidavits the parties deem necessary so that the Court may set a bond at 125 percent of the probable liability to be incurred in accordance with I.R.C.P. 1.1508. Said affidavits shall be filed no later than 25 days from the date of the filing of this Order.

Costs are assessed to the Defendants.

Dated this ____ day of February, 2014.

_____

SCOTT D. ROSENBERG
Judge, 5th Judicial District of Iowa

Copies to: