Blind Budgeting

A Look into Springfield’s Court-Ordered Public Spending

Edward N. Tiesenga, Carl A. Miller, & Sophia Pethokoukis
2019
About the Authors

Edward N. Tiesenga (B.A. cum laude, Hope College, 1981; J.D. American University, 1984) practices commercial law with Tiesenga Reinsma & DeBoer LLP in Oak Brook, Illinois. Mr. Tiesenga is also a Village Trustee for the Village of Oak Brook, Illinois.

Carl A. Miller is a student at Hillsdale college pursuing a BA degree in Economics (2021). A Republican precinct committeeman with a penchant for state politics, Mr. Miller has made it his life-long mission to restore the Land of Lincoln as a beacon of prosperity.

Sophia Pethokoukis is a student at Santa Clara University pursuing a BA degree in Economics (2021).
“The legislative power is vested in a General Assembly consisting of a Senate and a House of Representatives… The General Assembly by law shall make appropriations for all expenditures of public funds by the State.

– Illinois State Constitution, Article IV, Section 1.; Article VIII, Section 2. (b). Bold and italics added.

The Constitution of the State of Illinois vests the budget-making power in the hands of the citizens through their elected representatives. Like the Constitution of the United States, Illinois’ governing document institutes the doctrine of separation of powers. Every dime of spending must be enacted by the House and the Senate. This mode of governance befits a representative republic; the government truly is the servant of the people when the electoral process empowers taxpayers to hold their legislators to account.

**Who Really Spends the Taxpayers’ Money?**

The impetus for this research endeavor was a 2017 conversation between Village of Oak Brook Trustee Edward Tiesenga and then-Illinois Rep. Patricia Bellock, during which Bellock explained that about 80% of the State’s spending is judicially compelled by about 20 court orders.

Throughout the summer of 2019, Tiesenga tasked his law interns, Carl Miller and Sophia Pethokoukis, with the process of uncovering the court orders and getting to the bottom of the budget.

The spending process is no exception to the political disrepair of the Prairie State. Despite the Constitutional vesting of the whole appropriations power in the people’s house, an undercurrent of judge-ordered spending has been flowing beneath the surface of the State’s budget.

Our research revealed that Illinois legislators have acquiesced to a power-grab by the Federal and State judiciary. What is the extent of our judicial spending? Nobody knows. Legislators have contented themselves with legalizing marijuana, loosening the bounds of gambling, and even outlawing elephants in circuses, while the plume of spending ordered by judges sitting in distant chambers flows on past the General Assembly.
The Research Process

Throughout the course of the summer, we ran a two-pronged strategy to find out about these court orders, so we could take the measure of this underground spending plume. First, we contacted local legislators on a bipartisan basis. Next, we submitted a series of specific, targeted FOIA requests to key state agencies.

In order to uncover the judge-legislated spending, we sought answers to two principal questions:

1. The list of court orders. This would allow us to know the names of the responsible judges, as well as the arguments that persuaded them to induce compulsory spending on behalf of litigants for special interest groups.
2. The dollar amount of compulsory spending pursuant to each individual court order, along with the aggregate amount of compelled spending.

Although our FOIA requests and legislative inquiries produced a few substantive responses and afforded clues to some of the court orders, nobody in Springfield seems to know the full extent of the legislative cession of power. Indeed, the legislature’s own research agency, an arm of government known as the Commission on Government Forecasting and Accountability, has stated that no list of the court orders even exists.

We submitted FOIA Requests to five key agencies. Refer to Appendix A for an example of one such request.

1. Governor’s Office of Management and Budget
2. Comptroller’s Office
3. Treasurer’s Office
4. Attorney General’s Office
5. Department of Revenue

The FOIA responses revealed that the highest levels of Illinois government have no real response to offer, other than reflexive finger-pointing at someone else who must know what’s going on, but doesn’t. This graphic depicts the vectors of finger-pointing, illustrating how each directed us on a self-chasing tail of referrals that feeds back upon itself.
Research Results

July 1, 2019 Comptroller Response
Adam Allstott, the Deputy General Counsel for the Comptroller, stated that the Office is “aware” of the court orders, but provided no responsive documentation on the grounds that they do not keep a “comprehensive listing” of the orders. Allstott suggested we direct our inquiry to the Attorney General’s Office for additional information.

We followed up with Allstott, requesting any orders of which he is aware, even in the absence of a comprehensive list. This time, he produced a list entitled “Consent Decrees and Orders List.”[1] However, the list only included consent decrees. It contained no information about court orders, despite the fact that the Comptroller’s office has published literature that references both “consent decrees” and “court orders” that impact the budget.

July 2, 2019 Treasurer Response
Jennifer Olaya, Assistant General Counsel and FOIA Officer for the Treasurer, produced no responsive documentation. Our request was “denied to the extent that it is voluminous.” Olaya claimed that the request would be “unduly burdensome” to the Office and suggested I seek the information from the Comptroller’s Office.

On July 2, we submitted an amended request, narrowing the scope of our query to judicial orders that affect the budget by more than $100 million.

Olaya subsequently responded with a July 9 letter of denial, once again referring us to the Comptroller’s Office.

July 3, 2019 Office of Management and Budget Response
Curt Clemons-Mosby, the OMB FOIA Officer, produced a spreadsheet outlining the spending and appropriations for Fiscal Year 2017. Although it does not provide the names of the cases spawning any court orders, the spreadsheet breaks down the portions of the budget pursuant to enactment, continuing appropriations, court orders, consent decrees, and capital. We utilized this information to calculate summary statistics for FY 2017 - included herewith.

Next, we submitted a July 8 follow-up request to obtain the FY 2015, 2016, and 2018 equivalents for that spreadsheet. Clemons-Mosby’s July 12 response produced only a FY 2016 version of the spreadsheet. The FY 2016 sheet was unhelpful, as it failed to distinguish the components of spending pursuant to judicial orders.

OMB’s unresponsive “response” letter deferred back to the Comptroller’s Office, suggesting that they might have additional information since it was their office that had provided OMB with the FY 2016 and 2017 data.

1. Appendix B.
July 8, 2019 Department of Revenue Response
Abbie Rennolds, the IDOR FOIA Officer, produced only one responsive court order, which was handed down from a state appellate court in St. Clair County. This amounted to $70,689,900 in expenditures from the IDOR in FY 2017.

When we spoke with Rennolds on July 30, she clarified that the dollar value cited in the response letter only included court-ordered expenditures relating to the IDOR’s budget, not the entirety of the State’s budget.

July 9, 2019 Attorney General Response
Caitlin Knutte, Assistant Attorney General and Senior FOIA Officer, notified me that “this office has conducted a search of its records, and we have located no records responsive to your request.”

We spoke with Knutte via telephone on July 23. She changed the narrative of the letter, this time making the claim that our request would be “unduly burdensome.” When we inquired as to the threshold of an “undue burden,” Knutte admitted that no precise standard exists; she simply made a discretionary determination. She suggested we direct our inquiry to the Comptroller.
Documents Retrieved in the Research Process

FY 2017 State Expenditures Spreadsheet\(^2\)

This sheet breaks State spending down by enactment, continuing appropriations, court orders, consent decrees, and capital. As indicated in Appendix B, we tallied the court orders and consent decrees to calculate the aggregate judicial spending as a fraction of the total - approximately 18%. This does not necessarily account for all the court-legislated spending, however. Much of the “enacted” spending may have been appropriated at judicial “gun point.”

![Governor’s OMB “FY17 Approp Spend Final”](image)

<table>
<thead>
<tr>
<th>Spending</th>
<th>Enacted</th>
<th>C.A. Counted</th>
<th>C.A. Not Count</th>
<th>CO</th>
<th>CD</th>
<th>Capital</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Funds</td>
<td>11,389,070,416</td>
<td>7,547,240,890</td>
<td>-</td>
<td>1,733,070,543</td>
<td>10,397,172,901</td>
<td>-</td>
<td>31,066,554,751</td>
</tr>
<tr>
<td>Other State Fund</td>
<td>26,823,426,890</td>
<td>27,256,548</td>
<td>-</td>
<td>7,568,086</td>
<td>-</td>
<td>3,922,253,267</td>
<td>30,780,504,790</td>
</tr>
<tr>
<td>Federal Funds</td>
<td>4,932,868,326</td>
<td></td>
<td>-</td>
<td>416,608</td>
<td>-</td>
<td>88,927,312</td>
<td>5,022,212,247</td>
</tr>
<tr>
<td><strong>All Funds Total</strong></td>
<td>43,145,365,632</td>
<td>7,574,497,438</td>
<td>-</td>
<td>1,741,055,237</td>
<td>10,397,172,901</td>
<td>4,011,180,579</td>
<td>66,869,271,788</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>% of Total</th>
<th></th>
<th>C.O. % of Total</th>
<th>CD % of Total</th>
<th>Judicial % of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enacted % of Total</td>
<td>65%</td>
<td>3%</td>
<td>16%</td>
<td>18%</td>
</tr>
<tr>
<td>C.A. % of Total</td>
<td>11%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital % of Total</td>
<td>6%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legislated % of Total</td>
<td>82%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Consent Decrees

- **Beeks** (Began in 1993)
- **Memisovski** (HFS, began in 2005)
- **Burgos** (DCFS, began in 1976)
- **N.B. v. Norwood** (HFS, began in 2018)
- **Williams** (DHS, began in 2010). Fiscal Impact: FY 2019 Cost of $45.5 million.
- **B.H.**
- **Benson**
- **Hampe**

\(^2\) “CO” is Court Order spending and “CD” is Consent Decree spending.
Specific and targeted FOIA requests to the Governor’s Office of Management and Budget, Illinois Department of Revenue, Comptroller, Treasurer, and Attorney General yielded little helpful information. We obtained several consent decrees that amount to nothing close to 80% of the budget. On December 16 and 17, I submitted separate FOIA requests to the Comptroller and Treasurer’s offices for each of the decrees and orders of which we are aware, requesting a dollar value of the State’s spending pursuant to each. In his December 19 response, included herewith as Appendix D, Deputy General Counsel and FOIA Officer Christopher Flynn wrote that the “Treasurer has no records responsive to the twenty (20) current requests.” He proceeded to deflect, directing us to the Comptroller’s office: “[T]he Treasurer would not be the custodian of such statewide records; rather, you may wish to contact the Office of the State Comptroller.” For its part, the Comptroller’s office replied on December 20 that it “does not receive information from the paying agencies in conjunction with these expenditures that would enable the IOC to link any expenditures to specific consent decrees or court orders.”

There are some other consent decrees and court orders that are referenced – but unnamed – in the OMB’s Spending and Appropriation spreadsheet. These only account for about 18% of the budget. The Governor’s and Comptroller’s budget literature makes reference to “consent decrees and court orders,” but nobody seems to know what these court orders are and how much they impact our budget. It is likely that the court-compelled spending has decreased as a proportion of the budget now that the General Assembly has spent its way out of the 2015-2017 budget impasse. However, none of the officials in the State’s government apparatus have been able to tell us the current extent of judicially mandated expenditures.
Conclusion

The black box of the Illinois budget is virtually impossible to crack open due to its complexity. Perhaps such opacity is the product of design. Even the most charitable and least cynical assessment leads to the conclusion that the elected representatives of the State of Illinois have unwittingly abdicated--or at least not asserted--their constitutional duty to steward the citizens’ resources.

Our legislators just look at other things, and soon, like fish who spend their entire lives in a sunless cave, their sight disappears and their eyes wither away. But legislative oversight of spending is a non-delegable power. This institutional atrophy also drains power from the people, who now become the subject of judicial oversight of legislatively unseen spending. Governmental transparency is necessary for accountable representation.

If “taxation without representation” started a revolution 250 years ago, where will “spending without representation” lead us today? Should the people’s representatives be required to use their legislative oversight of spending, or will they stay comfortable in their blindness, letting judges rule in their stead?
Appendix A
Sample FOIA Request

July 1, 2019

Caitlin Q. Knutte
FOIA Officer, Office of the Illinois Attorney General
500 S. Second Street
Springfield, IL 62701

Dear Ms. Knutte,
I hereby make the following requests pursuant to the Freedom of Information Act (5 ILCS 140):

1. I request a list of all Court Orders, Consent Decrees, Judgement Orders, Injunctions (either preliminary or permanent), and Writs of Mandamus that affected or compelled spending from the State of Illinois during of Fiscal Year 2017 when the State had no operating budget.

I also request a list and dollar value of each budget item affected by these Court Orders and other judicial actions.

2. I request a list of all Court Orders, Consent Decrees, Judgement Orders, Injunctions (either preliminary or permanent), and Writs of Mandamus that affect or compel spending from the State of Illinois, as of Fiscal Year 2019.

I also request a list and dollar value of each budget item affected by these Court Orders and other judicial actions.

If possible, I would like electronic copies of these records via email. Otherwise, please provide paper copies.

Thank you for your prompt attention to this matter.

Sincerely,

Carl Miller

Email: c.miller@oakbrook-law.com
Phone: 630-645-9881
1200 Harger Rd. Suite 830
Oak Brook, IL 60523
## Appendix B

**Comptroller’s “Consent Decrees and Orders List”**

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4 Beeks</td>
<td>92 CV 4204</td>
<td>Northern District federal court</td>
</tr>
<tr>
<td>3</td>
<td>CONSENT DECREES:</td>
<td>Aged, blind, and disabled and TANF</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5 Memisovski</td>
<td>92 CV 1982</td>
<td>Medicaid Cook County</td>
</tr>
<tr>
<td></td>
<td>6 Ligan</td>
<td>05 CV 4331</td>
<td>Northern District federal court</td>
</tr>
<tr>
<td></td>
<td>7 B.H.</td>
<td>88 CV 5599</td>
<td>DHS, services for adults with disabilities</td>
</tr>
<tr>
<td></td>
<td>8 Benson</td>
<td>80 CV 2346</td>
<td>Aging, Community Care Program</td>
</tr>
<tr>
<td></td>
<td>9 Williams</td>
<td>05 CV 4573</td>
<td>Mentally ill living in</td>
</tr>
<tr>
<td></td>
<td>10 Colbert</td>
<td>07 CV 4737</td>
<td>Aging, community-based services for mentally/physically disabled</td>
</tr>
<tr>
<td></td>
<td>11 Hampe</td>
<td>10 CV 3121</td>
<td>Northern District federal court</td>
</tr>
<tr>
<td></td>
<td>12 Jackson</td>
<td>04 CV 174</td>
<td>Medicaid for motori</td>
</tr>
<tr>
<td></td>
<td>13 M.H.</td>
<td>12 CV 8523</td>
<td>Prisoner Rev. Bd./ID</td>
</tr>
<tr>
<td></td>
<td>14 Rashe</td>
<td>07 CV 1298</td>
<td>Northern District federal court</td>
</tr>
<tr>
<td></td>
<td>15 Bogard</td>
<td>88 CV 2414</td>
<td>IDOC, mental health services for inmates</td>
</tr>
<tr>
<td></td>
<td>16 R.L. v. Jones</td>
<td>12 CV 7289</td>
<td>Northern District federal court</td>
</tr>
<tr>
<td></td>
<td>17 King v. Walker</td>
<td>06 CV 204</td>
<td>IDOC, parole hearings</td>
</tr>
<tr>
<td></td>
<td>18 Shango</td>
<td>74 CV 3598</td>
<td>Northern District federal court</td>
</tr>
<tr>
<td></td>
<td>19 King v. Norwood</td>
<td>06 CV 204</td>
<td>IDOC, inmate postage</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Child Support Enforcement Program</td>
</tr>
</tbody>
</table>
Appendix C
Calculated Court-Compelled Spending from OMB’s “FY17 Approp Spend Final”

**Governor’s OMB “FY17 Approp Spend Final”**

<table>
<thead>
<tr>
<th></th>
<th>Enacted</th>
<th>C.A. Counted</th>
<th>C.A. Not Counted</th>
<th>CO</th>
<th>CD</th>
<th>Capital</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Funds</td>
<td>11,389,070,416</td>
<td>7,547,240,890</td>
<td>-</td>
<td>1,733,070,543</td>
<td>10,397,172,901</td>
<td>-</td>
<td>31,066,554,751</td>
</tr>
<tr>
<td>Other State Fund</td>
<td>26,823,426,890</td>
<td>27,256,548</td>
<td>-</td>
<td>7,568,086</td>
<td>-</td>
<td>3,922,253,267</td>
<td>30,780,504,790</td>
</tr>
<tr>
<td>Federal Funds</td>
<td>4,932,868,326</td>
<td>-</td>
<td>-</td>
<td>416,608</td>
<td>-</td>
<td>88,927,312</td>
<td>5,022,212,247</td>
</tr>
<tr>
<td>All Funds Total</td>
<td>43,145,365,632</td>
<td>7,574,497,438</td>
<td>-</td>
<td>1,741,055,237</td>
<td>10,397,172,901</td>
<td>4,011,180,579</td>
<td>66,869,271,788</td>
</tr>
</tbody>
</table>

Enacted % of Total = 65%
C.A. % of Total = 11%
Capital % of Total = 6%
Legislated % of Total = 82%

CO % of Total = 3%
CD % of Total = 16%
Judicial % of Total = 18%
Appendix D
December 19, 2019 Treasurer FOIA Response

OFFICE OF THE ILLINOIS STATE TREASURER
MICHAEL W. FRIERICH

VIA EMAIL ONLY

December 19, 2019

Carl A. Miller

Re: FOIA requests regarding consent orders

Dear Mr. Miller:

The Office of the State Treasurer (the “Treasurer”) is in receipt of your December 17, 2019 requests pursuant to the Illinois Freedom of Information Act (“FOIA”), 5 ILCS 140/1 et seq. Your twenty (20) requests sought “the dollar value of the State’s spending for Fiscal Year 2019 under the” following (listed specifically as stated in your request):

1. AFSCME court order,
2. B.H. consent decree,
3. Beeks consent decree,
4. Benson consent decree,
5. Bogard consent decree,
6. Burgos consent decree,
7. Colbert consent decree,
8. Hampe consent decree,
9. Jackson consent decree,
10. King v. Norwood consent decree,
11. King v. Walker consent decree,
12. Ligas consent decree,
13. M.H. consent decree,
14. Memisovski consent decree,
15. N.B. v. Norwood consent decree,
16. O.B. consent decree,
17. R.J. v. Jones consent decree, including any subsequent court orders enforcing this consent decree,
18. Rasha consent decree,
19. Shango consent decree, and
20. Williams consent decree.
Please note that Section 2(g) of FOIA defines a “recurrent requester” to include one who has submitted “(ii) a minimum of 15 requests for records within a 30-day period, or (iii) a minimum of 7 request for records within a 7-day period.” Accordingly, under this definition the Treasurer would typically consider you a recurrent requester based on this frequency. Note, though, that this definition in FOIA does not include requests made by “academic organizations” in certain circumstances, so upon confirmation that you represent an academic organization and the principal purpose of the requests is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education, the Treasurer will no longer consider these requests “recurrent.” Absent such confirmation, the Treasurer will seek to comply with any future requests “within 21 business days after receipt,” 5 ILCS 140/3.2(a).

Please note, however, that the Treasurer has no records responsive to the twenty (20) current requests. The Treasurer itself had no Fiscal Year 2019 spending related to any listed consent decrees. In addition, as it relates to “spending for Fiscal Year 2019 under the AFSCME court order,” there is no known, recent court order based on which the Treasurer can identify a specific Fiscal Year 2019 expense. Further, the Treasurer would not be the custodian of such statewide records; rather, you may wish to contact the Office of the State Comptroller.

Pursuant to Section 9 of FOIA, I am the person responsible for this determination. Pursuant to Section 9.5 of FOIA, you may seek review by the Public Access Counselor at the Office of Attorney General (the “PAC”). You may reach the PAC at:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

Pursuant to Section 11 of FOIA, you may also seek judicial review of this determination.

Sincerely,

[Signature]

Christopher M. Flynn
Deputy General Counsel and FOIA Officer