

No. 111903

IN THE
SUPREME COURT OF ILLINOIS

W. ROCKWELL WIRTZ, on Behalf of and for the
Benefit of the Taxpayers of the State of Illinois,
and WIRTZ BEVERAGE ILLINOIS, LLC,

Petitioners-Respondents,

v.

HON. PATRICK QUINN, in his official capacity
as Governor of the State of Illinois; DANIEL W.
HYNES, in his official capacity as Comptroller of
the State of Illinois; ALEXI GIANNOULIAS, in
his official capacity as the Treasurer of the State
of Illinois; the ILLINOIS DEPARTMENT OF
REVENUE and its Director BRIAN HAMER; the
ILLINOIS GAMING BOARD and its members,
HON. AARON JAFFE, CHARLES GARDNER,
REV. EUGENE WINKLER, JOE MOORE, JR.,
and HON. JAMES E. SULLIVAN, in their official
capacities; and the ILLINOIS LOTTERY and its
Superintendent JODIE WINNETT,

Respondents-Petitioners.

) On Petition for
) Appeal from the
) Appellate Court of Illinois,
) First Judicial District
) Nos. 1-09-3163 & 1-10-0344

)
) There on Appeal from the
) Circuit Court of Cook
) County, Illinois, County
) Department, Law Division,
) Tax and Miscellaneous
) Remedies Section
) No. 09 CH 30136
) (Transferred to Law
) Division)

) The Honorable
) LAWRENCE O'GARA,
) Judge Presiding

**PETITION FOR APPEAL AS OF RIGHT UNDER RULE 317 OR,
ALTERNATIVELY, AS A MATTER OF DISCRETION UNDER RULE 315**

FILED

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FEB 16 2011

**SUPREME COURT
CLERK**

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PRAYER FOR LEAVE TO APPEAL

Pursuant to Supreme Court Rule 317, Respondents-Petitioners Illinois Governor Patrick Quinn, *et al.* (the “State Parties”) petition to appeal as of right the appellate court’s opinion declaring Public Act 96–34 unconstitutional and further invalidating Public Acts 96–35, 96–37 and 96–38. (2009 Ill. Laws 469-770, 784-1010.) The State Parties alternatively pray for leave to appeal under Supreme Court Rule 315.

Review is authorized under Rule 317 because the appellate court held that Public Act 96–34 violates the Single Subject Clause of the Illinois Constitution (Ill. Const. art. IV, § 8(d)) and is “void in its entirety.” (A 2, 17-18.)¹ Review is alternatively warranted under Rule 315 in light of the importance of the Appellate Court’s ruling nullifying Public Act 96–34, which created and amended several revenue-raising programs as part of the General Assembly’s mid-2009 initiative to authorize \$31 billion in capital projects and related public spending throughout the State. Review under Rule 315 is also warranted because the appellate court not only failed to hold that Public Acts 96–35, 96–37 and 96–38 (which were enacted at the same time as part of this initiative and further implemented it) satisfy the Single Subject Clause, but declared these Acts invalid on grounds that were not raised by the parties and lack merit. (*Id.*)

¹ References to the Appendix begin with the letter “A.” References to the record on appeal begin with the letter “C.”

STATEMENT REGARDING JUDGMENT AND REHEARING

The appellate court issued its decision on January 26, 2011. (A 1-18.) No petition for rehearing was filed. On February 1, 2011, this Court entered a stay of enforcement of the appellate court's judgment pending filing and disposition of the State Parties' petition to appeal.

POINTS RELIED UPON IN SEEKING REVIEW

1. The appellate court erred in holding that Public Act 96-34 violates the Single Subject Clause and is void in its entirety, and in failing to rule that Public Acts 96-35, 96-37 and 96-38 comply with the Single Subject Clause.

2. The appellate court erred in holding that Public Acts 96-35, 96-37 and 96-38 are invalid if Public Act 96-34 is unconstitutional.

STATEMENT OF FACTS

The Capital Projects Acts

Public Acts 96-34, 96-35, 96-36, 96-37 and 96-38 (the "Capital Projects Acts") were all signed into law on July 13, 2009 and, by their terms, took effect immediately. (A 2; 2009 Ill. Laws 631-32, 770, 784, 936, 1010.)² Collectively, the Capital Projects Acts implemented the General Assembly's initiative to authorize, provide revenue for, finance and appropriate funds for \$31 billion in capital projects throughout the State. These projects (the "Capital Projects"), identified in Public Acts 96-36 and 96-37, include, among others, construction and improve-

² Searchable versions of all of the Capital Projects Acts are available on the General Assembly's website at www.ilga.gov/previousga.asp.

ment of public schools, hospitals, libraries, parks, and roads. Public Act 96–37 created new projects, and Public Act 96–36 authorized bond financing for those projects and added funding for existing project categories by increasing their bonding authority. Among other projects, Public Act 96–37 authorized hospital capital investments (2009 Ill. Laws 784-87); new community health centers (2009 Ill. Laws 787-91); public library construction (2009 Ill. Laws 791-94); school energy efficiency projects, and early childhood and charter school construction (2009 Ill. Laws 807-09). Public Act 96–36 increased the bond authorization limits for construction of, among other things, rail and mass transit facilities, airport facilities, and highways, roads and bridges. (2009 Ill. Laws 774-75.) Public Act 96–36 also provided for the new bond proceeds to be used to fund these projects and directed that the corresponding bonds be repaid out of the newly created “Capital Projects Fund” with the revenue sources specified in Public Act 96–34. (2009 Ill. Laws 770-71.) (Plaintiffs’ proposed complaint did not challenge the validity of Public Act 96–36, constitutionally or otherwise.)

Public Act 96–34 created the Capital Projects Fund as a separate fund in the State Treasury (2009 Ill. Laws 491) and established revenue sources for the Capital Projects, including increased taxes on sales of alcoholic beverages by manufacturers and importing distributors (2009 Ill. Laws 571-74), and increased fees and fines under the Vehicle Code (2009 Ill. Laws 576-88). Public Act 96–34 also established revenue for the Capital Projects from two additional sources:

video gaming and private management of the state lottery.³ Public Act 96–34 further specified that certain existing sources of state revenue would be devoted to the Capital Projects, instead of to other purposes. (2009 Ill. Laws 494-96.)

Public Act 96–38 changed various provisions in Public Act 96–34, including requiring that persons seeking certain positions in the video gaming business submit to a background investigation, and giving the Gaming Board jurisdiction over all gaming operations and the authority to administer rules and regulations for video gaming. (2009 Ill. Laws 1000-03.) For the fiscal year ending on June 30, 2010, Public Act 96–35 appropriated public funds for the projects authorized by Public Act 96–37 and for expenditures on projects for which PA 96-36 authorized additional funding. (2009 Ill. Laws 632-770.)

Some of the Capital Projects Acts contain provisions stating that the relevant Act, or specified portions, would take effect only if another Act “becomes law.” Thus, Public Act 95–35 provided that it would not “take effect” unless Public Act 96–34 “becomes law.” (2009 Ill. Laws 770.) Some of the provisions of Public Act 96–37 likewise provided that they would not take effect unless Public Act 96–34 “becomes law.” (2009 Ill. Laws 825, 836, 850, 853, 856, 859, 862, 868,

³ Public Act 96–34 authorized video gaming in licensed establishments under the administrative authority of the Illinois Gaming Board, subject to a 30% tax on the “net terminal income” after payouts to players of at least 80% of the combined amounts wagered. (2009 Ill. Laws 469-71, 477-78.) Public Act 96–34, as modified by Public Act 96–37, also authorized engaging a private manager for the State Lottery who would receive “no more than 5% of Lottery profits” and be subject to the Department of Revenue’s control over “all significant business decisions.” (2009 Ill. Laws 480-81, 843-44.) Public Act 96–34 provided for the payment into the Capital Projects Fund of the increase in lottery proceeds to the State over those received in 2009, adjusted for inflation. (2009 Ill. Laws 490-91.)

871, 896, 899.) Similar language was contained in parts of Public Act 96–38. (2009 Ill. Laws 936, 953, 963, 976, 998, 1003, 1006.)

Circuit Court Proceedings

As described by their proposed pleading, W. Rockwell Wirtz and Wirtz Beverage Illinois, LLC (“Plaintiffs”) are an Illinois citizen and taxpayer, and an Illinois-based corporation licensed as a wholesaler and importing distributor of wine and spirits that is required to collect and pay the taxes prescribed by the Liquor Control Act, 235 ILCS 5/1–1 *et seq.* (2008). (C 13-14.) Shortly after passage of the Capital Projects Acts, Plaintiffs filed a petition pursuant to Section 11–303 of the Code of Civil Procedure, 735 ILCS 5/11–303 (2008), for leave to file their proposed complaint seeking a declaration that Public Acts 96–34, 96–35, 96–37 and 96–38 are unconstitutional and an injunction against implementing them. (C 6-10.) (As noted above, Plaintiffs’ proposed complaint did not challenge the validity of Public Act 96–36.) Among other claims, the proposed complaint alleged that Public Acts 96–34, 96–35, 96–37 and 96–38 violate the Single Subject Clause of the Illinois Constitution (C 26-29, 39), which provides: “Bills, except bills for appropriation and for the codification, revision or rearrangement of laws, shall be confined to one subject.” Ill. Const. art. IV, § 8(d).⁴

⁴ Plaintiffs’ proposed complaint raised other claims the appellate court did not address, including that Public Act 96–34’s imposition of different taxes at the wholesale level on various classes of alcoholic beverages (e.g., beer, wine and spirits) violated the Uniformity of Taxation Clause of the Illinois Constitution, Ill. Const. art. IX, § 2. (C 34-37.)

The Attorney General filed a response to the petition. (C 1016-62.) After briefing and argument, the circuit court denied the petition, finding that Plaintiffs' complaint did not state reasonable grounds for pursuing any of their proposed claims. (C 1172, 1229.)

The Appellate Court's Decision

The appellate court reversed the circuit court's judgment, holding that Public Act 96-34 violates the Single Subject Clause and is therefore "void in its entirety." (A 2, 17-18.) The appellate court further held that Public Acts 96-35, 96-37 and 96-38 "cannot stand" in light of the provisions making them "contingent on the enactment of Public Act 96-34." (*Id.*)

Describing the relevant principles for evaluating a Single Subject Clause claim, the appellate court stated:

The subject of a bill may be as broad as the legislature chooses, as long as the bill's provisions have a natural and logical connection. [*People v.*] *Reedy*, 186 Ill. 2d [1,] at 9 [(1999)]. The legislature violates the single subject rule when "it includes within one bill unrelated provisions that by no fair interpretation have any legitimate relation to one another." *Reedy*, 186 Ill. 2d at 9.

(A 9-10.) After reciting some of the evolution of the bill that became Public Act 96-34, the court concluded: "the wide range of topics in Public Act 96-34 cannot be considered to possess a 'natural and logical connection.' *Johnson [v. Edgar]*, 176 Ill. 2d [499,] at 517 [(1997)]." (A 13.) The court added:

While defendants assert that the varied provisions in Public Act 96-34 fit within the broad category of

'revenue,' defendants' argument is unconvincing. . . .
In the present case, not all of the provisions of Public Act 96-34 have a natural and logical connection to the single subject of revenue to the state.

(*Id.*) The Court did not discuss the State Parties' argument that all of the provisions in Public Act 96-34 have a natural and logical connection to the subject of the "capital projects initiative" reflected in the Capital Projects Acts collectively. (See below at 8-10.)

After finding Public Act 96-34 unconstitutional, the appellate court stated, without further elaboration:

Pursuant to their own terms, Public Acts 96-35 (the Appropriation Bill), 96-37 (BIMP) and 96-38 (the Trailer Bill) are all contingent on the enactment of Public Act 96-34. Since we find Public Act 96-34 void in its entirety, the remaining acts cannot stand.

(A 18.)

ARGUMENT

I. The Appellate Court Erred in Holding that Public Act 96-34 Violates the Single Subject Clause and In Failing to Rule that Public Acts 96-35, 96-37 and 96-38 Comply With the Single Subject Clause.

The appellate court's opinion that Public Act 96-34 violates the Single Subject Clause is flawed in multiple respects. It misstates the test this Court has established, it focuses on incorrect or irrelevant criteria, and it entirely disregards the State Parties' argument — developed at length in their brief and at oral argument — that the General Assembly's mid-2009 "capital projects initiative" was a permissible single subject and that all of Public Act 96-34's provisions had a natural and logical connection to that subject.

In its statement that the Single Subject Clause requires all parts of a legislative enactment to be related to "one another" (A 9-10, citation omitted), the appellate court disregarded this Court's clear holding to the contrary in *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341 (1999). *Arangold* unambiguously ruled that although the Single Subject Clause requires that all provisions of a legislative enactment have a natural and logical connection to a permissible single subject, it does not impose the further requirement that these provisions "be related to each other." *Id.* at 354-56.

The appellate court compounded its error when it looked exclusively at whether the provisions of Public Act 96-34 related to the subject of "revenue" and completely disregarded the State Parties' position, presented in substantial detail in their brief and at oral argument, that all of these provisions had a natural and

logical connection to the “capital projects initiative” implemented by the Capital Projects Acts. The State Parties’ brief plainly stated: “All of the provisions of Public Act 96–34 relate to the *capital projects initiative* established by the Capital Projects Acts.” (State Parties’ Br. at 29, emphasis added.)⁵ Making no mention of this argument, the appellate court simply stated that “not all of the provisions of Public Act 96–34 have a natural and logical connection to the single subject of *revenue* to the state.” (A 15, emphasis added.)

The appellate court’s failure even to mention the State Parties’ argument that Public Act 96–34’s provisions all properly relate to the General Assembly’s capital projects initiative is all the more problematic in light of the State Parties’ significant reliance on *Arangold*, where this Court upheld the legislature’s inclusion of the wide variety of provisions in Public Act 89–21 because they all related to “implementation of the state budget for the 1996 fiscal year.” 187 Ill. 2d at 356. The State Parties maintained that a similar justification supported the narrower range of measures contained in the Capital Projects Acts (including both Public Act 96–34 and Public Act 96–37, which Plaintiffs separately challenged) because all of these measures related to the General Assembly’s capital

⁵ The State Parties elaborated:

[Plaintiffs] . . . level a single subject challenge at Sections 805, 935 and 955 of Public Act 96–34. None of these sections is unrelated to the subject of the capital projects initiative established by the Capital Projects Acts

(State Parties’ Br. at 32.) The State Parties reiterated the same position at the January 5, 2011 oral argument in this case, the audio recording of which is accessible at www.state.il.us/court/Media/Appellate/1st_District.asp. (See, e.g., this recording at 24:30 to 27:20, 31:30 to 35:05, and 36:20 to 37:15.)

projects initiative. (See State Parties' Br. at 24-27, 29-33.) In an apparent attempt to distinguish *Arangold*, the appellate court simply stated, without elaboration: "Public Act 96-34 does not involve the single subject of implementation of the state budget." (A 16.)

The appellate court is wrong. Under the principles and holding announced in *Arangold*, Public Act 96-34 satisfies the Single Subject Clause. If implementation of the budget for an entire fiscal year (considered in *Arangold*) represents a valid single subject for a legislative enactment, then the capital projects initiative passed by the General Assembly in mid-2009, when the State's economy was suffering the effects of the severe recession gripping the entire nation, does so even more easily. Further, as the State Parties explained to the appellate court, each of the provisions of Public Act 96-34 has a natural and logical connection to that subject. (State Parties' Br. at 29-33.)

The same analysis sustains the constitutionality, under the Single Subject Clause, of Public Acts 96-35, 96-37 and 96-38, and the appellate court therefore erred in failing to rule that these Acts do not violate the Single Subject Clause. As the appellate court noted, this Court's precedent establishes that normal severability analysis does not apply to Single Subject challenges. (A 16-17, citing *Johnson*, 176 Ill. 2d at 511-12.) Plaintiffs' proposed complaint included such challenges directed not only at Public Act 96-34, but also at Public Acts 96-35, 96-37, and 96-38. (C 26-29, 39.) The same errors in the appellate court's Single Subject ruling on Public Act 96-34 also apply to Plaintiffs' Single Subject attacks

on these other Acts, and it makes sense, from the perspective of a sound use of judicial resources, for this Court to address all of Plaintiffs' Single Subject claims in the same appeal, rather than in a piecemeal fashion.

This Court therefore should grant review pursuant to Supreme Court Rule 317, or alternatively under Rule 315, of the appellate court's ruling that Public Act 96-34 violates the Single Subject Clause and is "void in its entirety," and should further grant review of the appellate court's failure to sustain Public Acts 96-35, 96-37, and 96-38 against Plaintiff's Single Subject challenges.

II. The Appellate Court Wrongly Declared Public Acts 96-35, 96-37 and 96-38 Invalid if Public Act 96-34 Is Unconstitutional.

The appellate court also erred in holding that Public Acts 96-35, 96-37 and 96-38 are automatically invalid if Public Act 96-34 is unconstitutional. The appellate court provided no explanation for this ruling beyond stating:

Pursuant to their own terms, Public Acts 96-35 (the Appropriation Bill), 96-37 (BIMP) and 96-38 (the Trailer Bill) are all contingent on the enactment of Public Act 96-34. Since we find Public Act 96-34 void in its entirety, the remaining acts cannot stand. Accordingly, we need not consider plaintiffs' constitutional challenges to the remaining public acts.

(A 18.) That ruling was entirely unnecessary and glosses over several legally significant points.

First, this aspect of the appellate court's decision was not based on any argument made by Plaintiffs, and it was therefore improper. See *People v. Hunt*, 234 Ill. 2d 49, 56 (2009) (holding that it was error for appellate court *sua sponte*

to address “issues not considered by the trial court and never argued by the parties”). Plaintiffs’ proposed complaint contested the *constitutionality* of Public Acts 96–35, 96–37 and 96–38 on various grounds but did not allege any other basis for challenging the validity of these Acts. (C 12-13, 26-41.) Nor did they advance any nonconstitutional grounds to invalidate these Acts in the circuit court or on appeal. Thus, to the extent the appellate court specifically chose not to consider any of Plaintiffs’ constitutional challenges to these laws, it should not have declared them invalid *sua sponte* on some other basis that Plaintiffs did not advance.

Second, it is not the case that, as the appellate court stated, *all* of the provisions of Public Acts 96–35, 96–37 and 96–38 were “contingent upon the enactment of Public Act 96–34.” (A 18.) To the contrary, only *some* of the provisions in Public Acts 96–37 and 96–38 stated that they would take effect only if Public Act 96–34 “becomes law.” (See above at 4-5.)

Third, it is far from clear that the language the General Assembly used to define the condition for these provisions to take effect — i.e., that House Bill 255 “becomes law” — was intended to refer to whether a court might later declare Public Act 96–34 unconstitutional. Instead, in line with the well-established principle that the legislature may direct an Act to take effect only upon fulfillment of a future contingency, see *People ex rel. Thompson v. Barnett*, 344 Ill. 62, 72 (1931); *Rogers v. Desiderio*, 274 Ill. App. 3d 446, 449 (3rd Dist. 1995), this language strongly indicates that the General Assembly simply intended to have

these enactments become operative only if House Bill 255 (which became Public Act 96-34) was passed by both Houses of the General Assembly and signed into law by the Governor — all of which did occur.

Fourth, in its conclusory ruling declaring these Acts invalid, the appellate court failed to consider the scope of its decision, including its temporal effect. This creates needless confusion and uncertainty, especially where Wirtz Beverage Illinois complained about paying the higher taxes on alcoholic beverages imposed by Public Act 96-34 but made no complaints of any similar injury from any of the other Acts it challenged, yet the appellate court's ruling on the validity of Public Acts 96-35, 96-37 and 96-38 easily could affect tens of thousands of other individuals and businesses.

At a minimum, it is difficult to know what to make of the appellate court's ruling with respect to Public Act 96-35, which contained appropriations for the Capital Projects during the fiscal year that concluded in June 2010, more than seven months ago. Nor is it clear what effect this ruling may have on the General Assembly's similar appropriations for the current fiscal year and subsequent fiscal years. Moreover, in *Perlstein v. Wolk*, 218 Ill. 2d 448, 454-67 (2006), the Court clarified that even when a statute is declared invalid, equitable considerations control whether that ruling should have or be given fully retroactive effect — with the statute being treated as “void *ab initio*” — in all circumstances, or instead may be given more limited effect, such that, for example, interim actions taken in reliance on the statute's presumed validity are protected. See also *Exelon Corp.*

v. Department of Revenue, 234 Ill. 2d 266, 285-86 (2009) (exercising Court’s “inherent power to conclude that a decision will not apply retroactively, but only prospectively”). The appellate court’s ruling concerning Public Acts 96–35, 96–37 and 96–38 does not address this important issue.

For all of these reasons, the appellate court’s ruling regarding the validity of Public Acts 96–35, 96–37 and 96–38 was in error, and this Court should review that ruling as well.

CONCLUSION

For the foregoing reasons, this Court should grant review of the appellate court’s decision as of right under Supreme Court Rule 317, or in the alternative under Supreme Court Rule 315.

Respectfully submitted,

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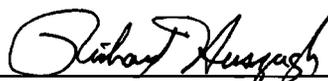
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Counsel for Respondents-Petitioners.

February 14, 2011

Rule 341(c) Certificate of Compliance

I certify that this Petition conforms to the form and length requirements of Supreme Court Rules 341(a) and (b), as modified by Rules 315 and 317. The length of this Petition, excluding the cover, this certificate of compliance, the certificate of filing and service by mail, and the attached appendix, is 14 pages.



Richard S. Huszagh

Appendix

Document	Page(s)
<i>W. Rockwell Wirtz, et al. v. Patrick Quinn, in His Official Capacity as Governor of the State of Illinois, et al.</i> (1st Dist., Jan. 26, 2011)	A 1-18

Nos. 1-09-3163, 1-10-0344

Illinois Code of Civil Procedure (Code) (735 ILCS 5/11-303 (West 2008)), seeking to enjoin the disbursement of public funds by the defendant public officials in connection with the “Capital Projects Acts,” four pieces of legislation passed by the Illinois General Assembly and signed into law by Governor Patrick Quinn on July 13, 2009. Specifically, plaintiffs alleged that the Capital Projects Acts, three substantive bills and one appropriation bill (now Public Acts 96-34, 96-35, 96-37 and 96-38), violated provisions of the Illinois Constitution, including the single subject rule, the uniformity clause, the requirement that an appropriation bill be confined to the subject of appropriation, the requirement that public funds be used only for public purposes and the requirements of separation of powers and effective date of laws. The circuit court denied plaintiffs leave to file their complaint and plaintiffs’ motion to reconsider. Plaintiffs now appeal. For the following reasons, we find that Public Act 96-34 was enacted in violation of the single subject requirement of our state constitution and, therefore, Public Act 96-34 is void in its entirety and because Public Acts 96-35, 96-37 and 96-38 are contingent on the enactment of Public Act 96-34, these public acts cannot stand.

I. BACKGROUND

Plaintiffs’ complaint challenged the constitutionality of Public Acts 96-34, 96-35, 96-37 and 96-38.

A. Public Act 96-34

Public Act 96-34 is titled “AN ACT concerning revenue.” Article 5 of Public Act 96-34 creates the Video Gaming Act, which allows licensed retail establishments where alcoholic liquor is served for consumption, licensed fraternal establishments, and licensed veterans

Nos. 1-09-3163, 1-10-0344

establishments and truck stops to conduct video gaming. Public Act 96-34 also amends the Riverboat Gambling Act to provide for administration and enforcement of video gaming by the Illinois Gaming Board. The bill also amends the Illinois Criminal Code to provide that gaming under the Video Gaming Act is not illegal gambling under Illinois law.

Public Act 96-34, article 800, creates the Capital Spending Accountability Law, which requires the Governor's Office of Management and Budget to make reports each quarter on the State's capital projects. Section 905 of Public Act 96-34 amends the State Finance Act to: (1) create the Capital Projects Fund and require transfers to the General Revenue Fund and that the Capital Projects Fund be used for capital projects and debt service; (2) create the Local Government Video Gaming Distributive Fund; and (3) stop all diversions from the Road Fund to the Secretary of State and State Police.

Public Act 96-34, section 910 and 925, also amends the Use Tax Act and Retailers' Occupation Tax Act to provide that candy, certain beverages, and grooming and hygiene products are taxed at the 6.25% rate (instead of the 1% rate) and to require deposit of the increased revenue into the Capital Projects Fund. Section 900 amends the Illinois Lottery Law to allow the Department of Revenue to conduct the Lottery through a management agreement with a private manager and to authorize a pilot program to allow the purchase of Illinois Lottery tickets on the Internet. Section 935 amends the University of Illinois Act to require the University to conduct a study on the effect on Illinois families of members of the family purchasing Illinois Lottery tickets and to report its findings.

Section 945 of Public Act 96-34 amends the Liquor Control Act of 1934 to increase the

Nos. 1-09-3163, 1-10-0344

tax on wine, beer, and alcohol and spirits. Section 955 amends the Illinois Vehicle Code to increase various fees and fines and to make changes concerning truck load and weight restrictions.

B. The FY2010 Budget Implementation Act (Public Act 96-37)

Public Act 96-37 creates the FY2010 Budget Implementation (Capital) Act (the BIMP) and is titled "AN ACT concerning government." Contingent upon Public Act 96-34 becoming law, the BIMP amends the provisions in Public Act 96-34 including those pertaining to the private manager for the lottery and to the central communications system for the video gaming program. The BIMP adds a new section 85 to the Video Gaming Act, making its provisions severable pursuant to section 1.31 of the Statute on Statutes (5 ILCS 70/1.31 (West 2008)).

Also contingent upon Public Act 96-34 becoming law, the BIMP clarifies that, while the proceeds of the new liquor tax are to be deposited into the Capitol Projects Fund, the existing liquor tax amounts are to be deposited into the General Revenue Fund. The BIMP also makes the additional tax severable under section 1.31 of the Statute on Statutes.

The BIMP contains other provisions, including: a provision that amends the River Edge Redevelopment Zone Act to provide for the certification of a pilot river-edge redevelopment zone in Elgin in 2009; a provision amending the Vehicle Code to mandate a financial disclosure in rental car contracts for consumers; provisions creating an urban weatherization program; provisions adding Gaming Board peace officers; and provisions authorizing the Capital Development Board to provide grants to fund capital projects to improve or renovate a hospital's facility or to improve, replace, or acquire equipment or technology.

C. The Trailer Bill (Public Act 96-38)

Public Act 96-38 (the Trailer Bill) is titled “AN ACT concerning government,” and is a trailer bill to Public Act 96-34. The Trailer Bill amends certain provisions of Public Act 96-34, if and only if Public Act 96-34 becomes law. Contingent upon Public Act 96-34 becoming law, the Trailer Bill changes the effective date for the increase in taxes on candy, certain beverages, and grooming and hygiene products to September 1, 2009 (rather than August 1, 2009).

Contingent upon Public Act 96-34 becoming law, the Trailer Bill amends the Video Gaming Act by: (1) making changes concerning the residency requirements for licensing; (2) clarifying that the 50% split of the after-tax profits from a video gaming terminal is mandatory “notwithstanding any agreement to the contrary” between the licensed establishment and the video gambling operator; and (3) adding a severability clause.

D. The Appropriation Bill (Public Act 96-35)

Public Act 96-35 (the Appropriation Bill) is titled “AN ACT making appropriations.” The Appropriation Bill provides appropriations for public funds for projects provided by Public Act 96-34 and the BIMP. The Appropriation Bill contains an article making its effectiveness contingent upon Public Act 96-34 becoming law, providing that it “does not take effect at all unless [Public Act 96-34], as amended, becomes law.”

The Appropriation Bill includes a provision that “[n]o contract shall be entered into or obligation incurred for any expenditures for appropriation in Sections 5 and 10 of this Article until after the purposes and amounts have been approved in writing by the Governor.” The Appropriation Bill also creates a grant program for the Environmental Protection Agency for

Nos. 1-09-3163, 1-10-0344

wastewater compliance, but only where “[t]hese grants are limited to projects for which the local government provides at least 30% of the project cost. There is an approved compliance plan, and there is an enforceable compliance schedule prior to grant award.”

E. Trial Court Proceedings

On October 20, 2009, the circuit court entered an order denying plaintiffs leave to file their complaint challenging the constitutionality of Public Acts 96-34, 96-35, 96-37 and 96-38.

In doing so, the circuit court stated as follows:

“This matter is an action that restrained and enjoined the disbursement of public funds by any officer or officers of the state government and that may be maintained under our laws by the Attorney General or any citizen and taxpayer of the state.

In this case, this is a hearing pursuant to that statute regarding the bringing of the action by a citizen taxpayer. And the determination for this court to make is *** whether or not there’s reasonable ground for the filing of such an action by, in this case, a citizen taxpayer.

* * *

And in making the court’s decision, in addition to reviewing the written submissions and listening to the arguments of counsel, I have to remain constantly aware that the judiciary close [*sic*] the legislative process and the legislation with a strong constitutional presumption, and, further, that the language they used in the submissions before the court clearly is not the language of common everyday

Nos. 1-09-3163, 1-10-0344

conversation, which is clearly evidenced by the discussion of the single subject rule that perhaps only lawyers or legislative analysts would conceive or define in the way that our courts have defined in a very, very broad, liberal sense, quite differently than most people on the street would define 'single subject.'

But the court has gone through all of the counts of the complaint, reviewed all the authorities and citations as to argument by counsel, and based on all of the authorities that have been submitted, the issue is whether or not a reasonable ground [for] filing a complaint is found, and this court respectfully finds in the negative, and, therefore, the petition to file is respectfully denied.”

On November 18, 2009, plaintiffs filed a notice of appeal from the circuit court's order denying leave to file their complaint (No. 1-09-3163). On January 29, 2010, the circuit court denied plaintiffs' motion for reconsideration and plaintiffs filed a second notice of appeal (No. 1-10-0344). On February 18, 2010, this court consolidated the two appeals.

On appeal, plaintiffs contend that the circuit court failed to apply the proper standard under section 11-303 of the Code (735 ILCS 5/11-303 (West 2008)), and the circuit court should have allowed plaintiffs leave to file their complaint which stated constitutional claims, including violations of the single subject rule, the uniformity clause, the requirement that an appropriation bill be confined to the subject of appropriation, the requirement that public funds be used only for public purposes and the requirements of separation of powers and effective date of laws.

II. ANALYSIS

A. Standard of Review

Plaintiffs' petition for leave to file their complaint was brought under section 11-303 of the Code (735 ILCS 5/11-303 (West 2008)). Section 11-303 provides: "Such action, when prosecuted by a citizen and taxpayer of the State, shall be commenced by petition for leave to file an action to restrain and enjoin the defendant or defendants from disbursing the public funds of the State." Section 11-303 further provides that if the court is satisfied that there is "reasonable ground for the filing of such action, the court may grant the petition." 735 ILCS 5/11-303 (West 2008). Our supreme court has held that a proposed complaint presents "reasonable grounds" for filing suit when there is nothing to indicate that the purpose of the petition "is frivolous or malicious." *Strat-O-Seal Manufacturing Co. v. Scott*, 27 Ill. 2d 563, 566 (1963).

Whether a statute is unconstitutional is a question of law subject to *de novo* review. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 227 (2010); *People v. Olender*, 222 Ill. 2d 123, 131 (2005). We are mindful that legislative acts are afforded a considerable presumption of constitutionality. *Olender*, 222 Ill. 2d at 132.

B. Single Subject Rule

We first consider plaintiffs' argument that the legislature violated the single subject rule of the Illinois Constitution (Ill. Const. 1970, art. IV, §8(d)) when it enacted Public Acts 96-34, 96-35, 96-37, and 96-38.

The single subject rule of the Illinois Constitution provides, in relevant part: "Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall

Nos. 1-09-3163, 1-10-0344

be confined to one subject.” Ill. Const. 1970, art. IV, §8(d). The single subject rule regulates the process by which legislation is enacted. *People v. Cervantes*, 189 Ill. 2d 80, 83 (1999).

Specifically, the single subject rule is designed to prevent the passage of legislation that, if standing alone, could not muster the necessary votes for enactment. *Olender*, 222 Ill. 2d at 132.

The practice of bundling less popular legislation with more palatable bills so that the well received bills would carry the unpopular ones to passage is known as “logrolling.” *Olender*, 222 Ill. 2d at 132.

In addition to preventing logrolling, the single subject rule also facilitates the enactment of bills through an orderly and informed legislative process. *Olender*, 222 Ill. 2d at 132. By limiting a bill to a single subject, legislators can better understand and more intelligently debate the issues presented by a bill. *Olender*, 222 Ill. 2d at 132 (citing *People v. Reedy*, 186 Ill. 2d 1, 14 (1999)). Further, “ ‘the single subject rule ensures that the legislature addresses the difficult decisions it faces directly and subject to public scrutiny, rather than passing unpopular measures on the backs of popular ones.’ ” *Olender*, 222 Ill. 2d at 132 (quoting *Johnson v. Edgar*, 176 Ill. 2d 499, 515 (1997)).

In determining whether a statute violates the single subject rule, the term “subject” generally is construed liberally in favor of the legislature. *Reedy*, 186 Ill. 2d at 8-9. While legislative acts are afforded a considerable presumption of constitutionality, that presumption is not without limits. *Reedy*, 186 Ill. 2d at 9. The subject of a bill may be as broad as the legislature chooses, as long as the bill’s provisions have a natural and logical connection. *Reedy*, 186 Ill. 2d at 9. The legislature violates the single subject rule when “it includes within one bill

Nos. 1-09-3163, 1-10-0344

unrelated provisions that by no fair interpretation have any legitimate relation to one another.”

Reedy, 186 Ill. 2d at 9.

C. Public Act 96-34

With these principles in mind, we examine the procedural history and the substance of Public Act 96-34 in order to determine if a single subject violation exists. See *Olender*, 222 Ill. 2d at 133; *Johnson*, 176 Ill. 2d at 516.

Public Act 96-34 began as House Bill 255, which was introduced on January 20, 2009. In its original form, House Bill 255 began as a five-page bill amending the Illinois estate and generation-skipping transfer tax. The original House Bill 255 was approved by the House on March 24, 2009. On May 20, 2009, the Senate adopted Senate Floor Amendment Nos. 1 and 3, which replaced everything after the enacting clause in the original House Bill 255 with 280 pages of the current provisions in Public Act 96-34. These provisions include the creation of the Video Gaming Act and the Capital Spending Accountability Law and amendments to the Illinois Lottery Act, the State Finance Act, the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailer’s Occupation Tax Act, the Motor Fuel Tax Law, the University of Illinois Act, the Riverboat Gambling Act, the Liquor Control Act, the Environmental Protection Act, the Vehicle Code, and the Criminal Code. On May 21, 2009, the House concurred with Senate Floor Amendment Nos. 1 and 3. On July 31, 2009, Governor Quinn signed Public Act 96-34 into law.

In *Johnson*, the Illinois Supreme Court invalidated a statute that violated the single subject rule. *Johnson*, 176 Ill. 2d at 516-17. At issue in Johnson was the constitutionality of

Nos. 1-09-3163, 1-10-0344

Public Act 89-428, which began as an eight-page bill addressing the narrow subject of reimbursement by prisoners to the Department of Corrections for the expense of incarceration. *Johnson*, 176 Ill. 2d at 517. The supreme court noted that Public Act 89-428 became a 200-page bill which created a law providing for the community notification of child sex offenders, created a law imposing fees on the sale of fuel, and enhanced the felony classifications for the possession and delivery of cannabis. *Johnson*, 176 Ill. 2d at 516. The bill also created an exemption from prosecution for eavesdropping applicable to employers who wish to monitor their employees' conversations, amended the law to allow the prosecution of juveniles as adults in certain cases, and created the new crime of predatory criminal sexual assault of a child. *Johnson*, 176 Ill. 2d at 516. The bill further changed the law governing the timing of parole hearings for prison inmates, changed the law governing when a defendant who is receiving psychotropic drugs is entitled to a fitness hearing, and added a provision to the law governing child hearsay statements. Finally, Public Act 89-428 amended a multitude of provisions in over 20 different acts and created several new laws. *Johnson*, 176 Ill. 2d at 516-17.

In determining whether the enactment of Public Act 89-428 violated the single subject rule, our supreme court explained, "While the length of a bill is not determinative of its compliance with the single subject rule, the variety of its contents certainly is." *Johnson*, 176 Ill. 2d at 516. Our supreme court noted that Public Act 89-428 encompassed subjects as diverse as child sex offenders, employer eavesdropping, and environmental impact fees imposed on the sale of fuel. The court concluded that "[b]y no fair intendment may the many discordant provisions in Public Act 89-428 be considered to possess a natural and logical connection." *Johnson*, 176

Nos. 1-09-3163, 1-10-0344

Ill. 2d at 516-17. Accordingly, our supreme court held that Public Act 89-428 was enacted in violation of the single subject rule of our state constitution. *Johnson*, 176 Ill. 2d at 517-18.

The Act at issue in the present case presents a similar example of the legislature violating the single subject rule. As noted above, Public Act 96-34 began as a five-page bill addressing the narrow subject of amending the Illinois estate and generation-skipping transfer tax. As enacted on July 13, 2009, Public Act 96-34 grew to 280 pages covering a variety of subjects. The original bill addressing the Illinois estate and generation-skipping transfer tax became a bill that created the Video Gaming Act, legalizing video gaming in licensed establishments, and the Capital Spending Accountability Law, requiring the Governor's Office of Management and Budget to make reports each quarter on the state's capital projects. The bill amended the Riverboat Gambling Act to provide for administration and enforcement of video gaming by the Illinois Gaming Board and amended the Criminal Code to provide that gaming under the Video Gaming Act is not illegal gambling under Illinois law. The bill also amended the State Finance Act to: (1) create the Capital Projects Fund and require transfers to the General Revenue Fund and that the Capital Projects Fund be used for capital projects and debt service; (2) create the Local Government Video Gaming Distributive Fund; and (3) stop all diversions from the Road Fund to the Secretary of State and State Police. The bill further amended the Use Tax Act and Retailers' Occupation Tax Act to provide that candy, certain beverages, and grooming and hygiene products are taxed at the 6.25% rate (instead of the 1% rate) and to require deposit of the increased revenue into the Capital Projects Fund. The bill amended the Illinois Lottery Law to allow the Department of Revenue to conduct the Lottery through a management agreement with

Nos. 1-09-3163, 1-10-0344

a private manager and to authorize a pilot program to allow the purchase of Illinois Lottery tickets on the Internet. The bill amended the University of Illinois Act to require the University to conduct a study on the effect on Illinois families of members of the family purchasing Illinois Lottery tickets and to report its findings. Finally, Public Act 96-34 amended the Liquor Control Act of 1934 to increase the tax on wine, beer, and alcohol and spirits, and the Illinois Vehicle Code to increase various fees and fines and to make changes concerning truck load and weight restrictions.

We find that the wide range of topics in Public Act 96-34 cannot be considered to possess a “natural and logical connection.” *Johnson*, 176 Ill. 2d at 517. While defendants assert that the varied provisions in Public Act 96-34 fit within the broad category of “revenue,” defendants’ argument is unconvincing. In *Johnson*, our supreme court rejected the argument that the discordant provisions of Public Act 89-428, entitled “An Act in relation to public safety,” were related “because of a tortured connection to a vague notion of public safety.” *Johnson*, 176 Ill. 2d at 517-18. Our supreme court cautioned in *Johnson*, the permitted use of such a sweeping and vague category to unite unrelated measures would “essentially elimina[te] the single subject rule as a meaningful check on the legislature’s actions.” *Johnson*, 176 Ill. 2d at 517-18.

Likewise, our supreme court in *Reedy*, 186 Ill. 2d at 12, found a single subject violation in the enactment of a public act entitled “An Act in relation to governmental matters, amending named Acts.” The *Reedy* court held that the act encompassed at least two unrelated subjects: matters related to the criminal justice system and matters related to hospital liens. *Reedy*, 186 Ill. 2d at 12. The *Reedy* court concluded, “that these topics might fit within the broad subject of

Nos. 1-09-3163, 1-10-0344

‘governmental matters’ is not compelling.” *Reedy*, 186 Ill. 2d at 12.

Similarly, in *Olender*, our supreme court found a single subject violation in the enactment of a public act that the State argued involved the legitimate single subject of “revenue.” *Olender*, 222 Ill. 2d at 140-41. The public act at issue in *Olender* amended the Illinois Income Tax Act to significantly increase the penalty, from misdemeanor to felony, for the first-time offense of willful and fraudulent acts, but included unrelated provisions such as matters creating a council to study issues relating to geographic information management technology and creating an authority which could issue bonds to support and develop university-related research parks. *Olender*, 222 Ill. 2d at 135-36.

The *Olender* court found that the State’s characterization of “revenue” was as broad as the subjects of governmental regulation, “governmental matters,” and “public safety” which were found to be too broad in *Reedy* and *Johnson* respectively. *Olender*, 222 Ill. 2d at 140. The *Olender* court explained that under the State’s interpretation of revenue, “almost any statute would have a natural and logical connection to the subject of revenue to the state as long as the statute had any tangential impact on the state’s economy.” *Olender*, 222 Ill. 2d at 140-41. In contrast to the State’s all-encompassing interpretation of revenue, the court noted, “Black’s Law Dictionary defines ‘revenue’ as ‘[g]ross income or receipts’ and defines ‘general revenue’ as ‘[t]he income stream from which a state or municipality pays its obligation unless a law calls for payment from a special fund.’ ” *Olender*, 222 Ill. 2d at 141 (quoting Black’s Law Dictionary 1344 (8th ed. 2004)). The *Olender* court concluded that in light of the definition of revenue, many of the provisions in the public act at issue had no natural and logical connection to the

Nos. 1-09-3163, 1-10-0344

single subject of revenue, including the creation of a council to study issues relating to geographic information management technology and creating an authority which could issue bonds to support and develop university-related research parks. *Olender*, 222 Ill. 2d at 141. Accordingly, the court concluded that the public act violated the single subject rule. *Olender*, 222 Ill. 2d at 142.

In the present case, not all of the provisions of Public Act 96-34 have a natural and logical connection to the single subject of revenue to the state. For example, we discern no natural and logical connection between the subject of revenue and the amendment to the University of Illinois Act to require the university to conduct a study on the effect on Illinois families of members of the family purchasing Illinois Lottery tickets.

Also, there is no natural and logical connection between revenue and the provisions creating the Capital Spending Accountability Law. Under the Capital Spending Accountability Law, the Governor's Office of Management and Budget is required to make reports each quarter on the state's capital expenditures. This requirement involves expenditures, rather than reporting on revenue.

Further, Public Act 96-34 amends the Illinois Vehicle Code to make changes concerning truck load and weight restrictions. This amendment bears no natural and logical connection to revenue to the state.

Defendants, nonetheless, rely on *Geja's Café v. Metropolitan Pier & Exposition Authority*, 153 Ill. 2d 239 (1992) and *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341 (1999) (*Arangold I*), in support of their contention that our supreme court has upheld similar legislation

Nos. 1-09-3163, 1-10-0344

as nonviolative of the single subject rule. However, we find defendants' reliance on these cases misplaced. In *Geja's Cafe*, our supreme court upheld an enactment that included, *inter alia*, provisions requiring Lake Shore Drive in Chicago to be rerouted around McCormick Place and requiring excess revenues obtained by the Sports Facilities Authority to go to the Metropolitan Pier and Exposition Authority, because all matters included within the enactment had a natural and logical connection to the subject of expanding McCormick Place facilities. *Geja's Café*, 153 Ill. 2d at 256-58. Unlike *Geja's Café*, not all of the provisions in Public Act 96-34 bear a natural and logical connection to a single subject (*i.e.* revenue to the state). In *Arangold I*, our supreme court held that the legislation at issue (Public Act 89-21) embraced the single subject of implementation of the state budget for the 1996 fiscal year, which was adopted on the same day as the actual state budget (Public Act 89-22). *Arangold I*, 187 Ill. 2d at 346-47, 352. Here, Public Act 96-34 does not involve the single subject of implementation of the state budget. Our supreme court considered the holdings in *Arangold I* and *Geja's Café* in *Cervantes*, where the court held that Public Act 88-680 (the Safe Neighborhoods Act) was unconstitutional as being violative of the single subject rule. *Cervantes*, 189 Ill. 2d at 94, 98.

Accordingly, we conclude that Public Act 96-34 was enacted in violation of the single subject rule. During arguments before this court, defendants conceded that a single subject violation is a question of law and, therefore, this court need not remand the case upon finding such a violation. See *Lebron*, 237 Ill. 2d at 227 (whether a statute is unconstitutional is a question of law subject to *de novo* review).

Our supreme court has held that when an act is found to violate the single subject rule, the

Nos. 1-09-3163, 1-10-0344

act must be struck in its entirety. *Johnson*, 176 Ill. 2d at 511-12; *Olender*, 222 Ill. 2d at 145-46.

In *Johnson*, our supreme court explained:

“[T]he single subject rule prohibits the enactment of bills that encompass more than one subject. Thus, a challenge that an act violates the single subject rule is, by definition, directed at the act *in its entirety*. There is no one provision or feature of the act that is challenged as unconstitutional, such that the defect could be remedied by a subsequent amendment which simply deleted or altered that provision or feature. In fact, a single subject challenge does not address the substantive constitutionality of the acts provisions at all. Rather, a single subject challenge goes to the very structure of the act, and the process by which it was enacted. If we determine that Public Act 89-428 in its structure is invalid, the Act may not be permitted to stand. The legislature is, of course, free to revisit the provisions contained in the Act in other legislation. Subsequent legislation, however, will not remedy the constitutional defect in Public Act 89-428 if it was passed in violation of the single subject rule.” (Emphasis in original.) *Johnson*, 176 Ill. 2d at 511-12.

In *Olender*, our supreme court followed its holding in *Johnson* that severability principles do not apply to single subject violations. *Olender*, 222 Ill. 2d at 146. In *Olender*, the court explained, “Allowing for severability with regard to single subject violations would be contrary to the purposes behind the single subject rule.” *Olender*, 222 Ill. 2d at 146.

We find that Public Act 96-34 violated the single subject clause of the Illinois

Nos. 1-09-3163, 1-10-0344

Constitution (Ill. Const. 1970, art. IV, §8), and therefore hold that Public Act 96-34 is void in its entirety. Pursuant to their own terms, Public Acts 96-35 (the Appropriation Bill), 96-37 (BIMP) and 96-38 (the Trailer Bill) are all contingent on the enactment of Public Act 96-34. Since we find Public Act 96-34 void in its entirety, the remaining acts cannot stand. Accordingly, we need not consider plaintiffs' constitutional challenges to the remaining public acts.

III. CONCLUSION

For the above reasons, we find that Public Act 96-34 was enacted in violation of the single subject rule and is, therefore, void in its entirety. As a result, Public Acts 96-35, 96-37, and 96-38 cannot stand. The judgment of the circuit court is reversed.

Judgment reversed.

Certificate of Filing and Service by Mail

The undersigned, an attorney, certifies that on February 14, 2011, he caused the foregoing Petition for Appeal as of Right Under Rule 317 or, Alternatively, as a Matter of Discretion Under Rule 315 to be filed by mail with the Clerk of the Supreme Court of Illinois, and three copies thereof to be served by postage prepaid first class mail in an envelope addressed to:

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