

IN THE  
SUPREME COURT OF ILLINOIS

W. Rockwell Wirtz, an individual, and Wirtz Beverage Illinois, LLC, an Illinois limited liability company, on behalf of and for the benefit of the Taxpayers of the State of Illinois,	)	
	)	
	)	
	)	
Plaintiffs-Appellants-Respondents,	)	On Petition for Leave to Appeal from the Illinois Appellate Court, First District, Nos. 1-09-3163 & 1-10-0344
	)	
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 Giannoulas, in his official capacity as 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; the Illinois Lottery and its Superintendent Jodie Winnett,	)	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)
	)	
	)	
Defendants-Appellees-Petitioners.	)	Honorable Lawrence O’Gara, Judge Presiding

**W. ROCKWELL WIRTZ AND WIRTZ BEVERAGE ILLINOIS, LLC’S  
ANSWER TO DEFENDANTS’ PETITION FOR LEAVE TO APPEAL AS A  
MATTER OF RIGHT OR, ALTERNATIVELY, AS A MATTER OF DISCRETION**

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**FILED**

FEB 28 2011

**SUPREME COURT  
CLERK**

## INTRODUCTION

As set forth below, Plaintiffs-Appellants-Respondents W. Rockwell Wirtz and Wirtz Beverage Illinois, LLC (collectively, the “Taxpayers” or “Plaintiffs”) filed this taxpayer action to challenge the constitutionality of four Public Acts that became law in 2009. These acts violated the Illinois Constitution’s Single Subject Rule, Uniformity Clause, and prohibition against including substantive language in an appropriation bill, as well as the Illinois Constitution’s provisions on separation of powers, the effective date of laws, presentment, and veto. (C 6–10, 12–13.)<sup>1</sup>

In the order from which this appeal is taken, the Appellate Court found that one of the four acts, Public Act 96–34, “An Act concerning revenue,” violates the Single Subject Rule, and declared it unconstitutional and void in its entirety. The Appellate Court concluded its single subject analysis by further holding that, because each of the other acts by their express terms is contingent upon Public Act 96–34 being law, the other three acts were invalid, as well.<sup>2</sup>

In the Circuit Court, the State Defendants had argued that the single subject of Public Act 96–34 was revenue. (C. 1021–1022; *see also* A 2–3.)<sup>3</sup> In their brief to the Appellate Court, the State Defendants argued its single subject was a “capital projects initiative.” During oral argument, the Attorney General shifted again, arguing that Public

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<sup>1</sup> All citations to the common law record are designated “C \_\_\_.” All citations to the Supplemental Record are designated “SC \_\_\_.” All citations to the Appendix to this Response are designated “A \_\_\_.”

<sup>2</sup> The Appellate Court did not rule fully as to Plaintiffs’ additional claims that the four acts violated constitutional provisions in addition to the Single Subject Rule, but the filings in the Circuit Court and Appellate Court address and show the additional constitutional failings of the acts. These arguments will be addressed in Plaintiffs’ Brief.

<sup>3</sup> The relevant pages of the Memorandum of Law in Opposition to Petition for Leave to File Verified Complaint filed in the Circuit Court are included in the Appendix.

Act 96–34 was akin to a budget implementation bill. (A 10–11.)<sup>4</sup> The Appellate Court questioned this shift in describing the subject of Public Act 96–34, and ultimately rejected the State’s arguments and found that Public Act 96–34 violates the Single Subject Rule.

The Attorney General now has filed a Petition for Leave to Appeal as of Right (“PLA”), which includes mischaracterizations of the Appellate Court’s decision and the content and subject of the four challenged public acts, and then erroneously argues that these acts meet the standards of the Illinois Constitution. Therefore, Plaintiffs submit this Response to clarify and correct the misrepresentations made in the PLA — and to ask this Court, before it issues any stay or other order, to consider and take steps to protect *all the taxpayers in the State including those who have paid unconstitutional taxes under the challenged acts.*<sup>5</sup>

## ARGUMENT

### Chronology of This Proceeding

On August 25, 2009, Plaintiffs-Appellants-Respondents W. Rockwell Wirtz and Wirtz Beverage Illinois, LLC (collectively, “Plaintiffs”), filed a petition pursuant to 735 ILCS 11–303 (“Section 11–303”) tendering a taxpayer complaint against the State Defendants and asking the Circuit Court to grant them leave to file it. (C 6–10.) The complaint challenged four bills signed into law on July 13, 2009, Public Acts 96–34, 96–35, 96–37, and 96–38, alleging they violated multiple provisions of the Illinois

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<sup>4</sup> A copy of the transcript of the Appellate Court oral argument is included in the Appendix.

<sup>5</sup> The Attorney General has filed a companion Motion for Accelerated Docket and for Continued Stay of the Appellate Court Judgment.

Constitution, including, *inter alia*, the Single Subject Rule, the Uniformity Clause and the prohibition against substantive language in an appropriation bill. (C 12–13.)

On September 9, 2009, after first having the matter transferred (over Plaintiffs' objection) from Chancery to the Tax and Miscellaneous Remedies Division, the Attorney General filed a motion to dismiss the Petition and deny entry of the complaint, arguing the proffered complaint was without merit and did not meet Section 11–303's standards. (C 1016.) On October 20, 2009, the Circuit Court granted that motion. Plaintiffs filed a motion for reconsideration on November 17, 2009. (SC 5.) The Circuit Court denied it on January 29, 2010. (SC 68.)

Plaintiffs appealed, filing their initial appellate Brief on April 27, 2010. Six months later, on October 22, 2010, the Attorney General filed a Response. Plaintiffs' appellate Reply brief was filed December 10, 2010.

On January 5, 2011, the Appellate Court heard oral argument. On January 26, 2011, it issued the ruling from which this appeal is taken. The Appellate Court first held that Public Act 96–34 violated the Illinois Constitution's Single Subject Rule and thus was void in its entirety and concluded its single subject analysis by holding that because, by their terms, the other acts challenged were contingent on the enactment of Public Act 96–34, they could not stand, either.

Upon learning of the opinion, the Attorney General informed Plaintiffs that the State intended to petition for appeal and to seek from this Court a stay of enforcement of the Appellate Court's ruling pending disposition of the PLA.

The Motion for Stay was filed January 27, 2011. It argued that some time was needed and a stay required because the taxes in three of the acts challenged were funding

projects, and continued funding for the projects was a concern. Plaintiffs' Response to that motion — wherein they did not object to the limited stay requested to allow some time to find other funding in consideration of the public interest — was filed the next day.<sup>6</sup> On February 1, 2011, this Court entered an order granting a stay pending the filing and disposition by this Court of the State's PLA.

On February 14, 2011, the PLA was filed.

On February 18, 2011, the Attorney General filed a Motion for Accelerated Docket and for Continued Stay of Appellate Court Judgment. Plaintiffs are filing a Response to that Motion concurrently herewith.

#### **The PLA and the Implications/Obligations to the Public Pending Appeal**

Although the Attorney General still tries to ignore the merit of the constitutional claims here, the PLA demonstrates that the State now shares Plaintiffs' view of the importance of protecting the public in this case. The PLA states that the Appellate Court's ruling on the validity of the challenged acts "easily could affect tens of thousands of other individuals and businesses." (PLA at 13.)

Plaintiffs, too, recognize that tens of thousands of other taxpayers may be impacted by the appeal here. Therefore, they ask that these taxpayers also be considered by this Court and protected by any stay this Court chooses to enter.

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<sup>6</sup> Prior to seeking it, the Attorney General asked Plaintiffs if they would agree not to oppose the stay. Plaintiffs did not oppose a limited stay pending disposition of the PLA, but the draft stay motion that the Attorney General subsequently shared with Plaintiffs included a highly contentious description of the litigation and of the Appellate Court's decision with which Plaintiffs could not agree. Plaintiffs so informed the Attorney General and filed the Response.

### **The Funds Are Substantially Used for General Revenue**

The acts Plaintiffs challenge impose substantial new taxes and fees. Tens of millions have been collected to date pursuant to their terms. Indeed, in a 14-month period, over \$402 million was deposited to and over \$249 million has been transferred to the General Revenue Fund. These acts purportedly create a special fund called the Capital Project Fund, and the taxes and fees they impose have been paid into that special fund since its creation. (See Public Act 96-34 creating Capital Project Fund; C84; A16.)

The funds are then disbursed by the terms of Public Act 96-34, which mandates a series of initial transfers of hundreds of millions of dollars to the General Revenue Fund and that thereafter the first \$244 million each year is earmarked for transfer to the General Revenue Fund. It is only the remainder which is to be available for capital projects, and only if appropriated. (See Public Act 96-34; C84; A16).<sup>7</sup>

State records show that during the pendency of this action, from December 2009 through January 2011, over \$402 million was collected in this special fund and dispersed, with over \$249 million transferred directly to the General Revenue Fund. (A 17-19).<sup>8</sup>

The State Finance Act, 30 ILCS 105/1, *et seq.*, provides that money deposited in the General Revenue Fund is used to pay for any state appropriation unless otherwise provided by law. 30 ILCS 105/7. Therefore, to date more than half the money expended has been transferred to General Revenue Funds for use in normal state operations.

It should be noted that, while the State has argued to this Court that the bill is a capital projects bill, to date, its funds have been used primarily for General Revenue

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<sup>7</sup> A copy of the relevant provision of Public Act 96-34 is included in the Appendix.

<sup>8</sup> Copies of the relevant pages of the Office of the Comptroller's fund transfer reports are included in the Appendix.

purposes. Public Act 96-34 by its terms annually provides \$244 million — nearly a quarter of a billion dollars — to the General Revenue Fund for any kind of general purpose expenditure.

**All Taxpayers Need to Be Protected But the Attorney General Has Made No Provision for This**

While the PLA warns of the dire consequences attendant to the invalidity of the challenged acts, in the four weeks since the Appellate Court decision issued, it appears that the General Assembly has made no attempt to re-enact in constitutional form even the popular parts of these bills. If there is a compelling public need for certain provisions of these bills, those popular components could be re-enacted in constitutional form.

The State's inaction here indicates that unpopular measures are included in these acts, and that but for their unlawful joinder with the popular measures, they have insufficient support to be passed.

The State, while failing to take any action to re-enact the subject bills in a format that comports with the Single Subject Rule, continues sweeping into its funds tens of millions of dollars a month pursuant to these bills, the majority of which, by statute, has been re-directed into the General Revenue Fund for ordinary expenses.

In that regard, while this case is pending, tens of millions of dollars of taxes are being assessed and collected pursuant to these acts. The State goes to great lengths to show the protest fund for the liquor taxes exists, but there are tens of millions of dollars being collected each month pursuant to these acts not related to the liquor taxes. Plaintiffs note that the Attorney General has failed to take action to account for and protect taxpayer rights in the taxes collected that are not protected by Plaintiffs' protest fund. The State itself has pled that the only way for a taxpayer to recover moneys paid

for an unconstitutional tax is pursuant to the Protest Money Act, which requires that an escrow in the State treasury be established for money paid the State subject to legal challenge. (See C 1105, State's Additional Authority in Support of Memorandum of Law in Opposition to Petition for Leave to File Verified Complaint.) Plaintiffs hereby waive any objection to the Attorney General establishing an escrow for all funds being collected from all other Illinois taxpayers whose taxes are not protected by the existing protest fund. Plaintiffs also hereby ask for, and seek an order requiring, an escrow of all taxes collected under the acts at issue to protect the public. Plaintiffs had no opportunity prior to this appeal to seek to establish an escrow as they were unlawfully denied leave to file their complaint below.

Any stay this Court orders should also order the State to establish an escrow in the State Treasury into which all moneys authorized to be collected under the substantive laws challenged here (Public Acts 96-34, 96-37, and 96-38) shall be paid, on a going-forward basis, until the final adjudication of this matter.

### **The Constitution Should Not Be Subordinated**

While a review of a decision declaring a statute unconstitutional is as of right, the fact the statute violates constitutional mandates is paramount to the review. The bills here violate our Constitution in several ways. This Court has steadfastly maintained that Illinois's constitutional supremacy doctrine forbids subordinating State constitutional provisions to legislative expediency. See *People ex rel. Miller v. Hotz*, 327 Ill. 433, 437 (1927); *People v. Humphreys*, 353 Ill. 340, 342 (1933); *Coalition for Political Honesty v. State Bd. of Elections* 65 Ill. 2d 453, 460 (1976). In *Hotz*, the Court stated:

The constitution is the supreme law, and every citizen is bound to obey it and every court is bound to enforce its provisions. It is a most extraordinary doctrine that the court has a discretion to enforce or not

enforce a provision of the constitution according to its judgment as to its wisdom or whether the public good will be subserved by disregarding it.

327 Ill. at 437.

The State is raising arguments not embracing the gist and importance of steadfast adherence to the supremacy of our Illinois Constitution, citing legislative expediencies. Further, the PLA professes concern about the “temporal” effect of the Appellate Court’s decision, questioning in particular with respect to the appropriation bill (Public Act 96–35), whether as an equitable matter the Appellate Court’s ruling should be treated as “void *ab initio*.” (PLA at 13 (citing *Pearlstein v. Wolk*, 218 Ill. 2d 448 (2006)).)

As the foregoing chronology of events illustrates, any delay here should be attributed to the State and its efforts at the inception of this taxpayer action to prevent the filing of the complaint and then on appeal with its multiple requests to extend the briefing schedule. Surely, the State’s delays should not limit the Taxpayer Plaintiffs’ right to a remedy where they seek that the State adhere to the Constitution. Further, to the extent the State argues that some amounts of money from the Capital Projects Fund are directed at projects underway, it does not explain why there has not been re-enactment of these bills and why this court must set aside constitutional mandates because of delays for which the State is principally responsible and has the right of re-enactment readily at hand, as the General Assembly is in session.

The Governor’s Illinois Fiscal Year 2012 State Budget Book, published recently and after the Appellate Court ruling, proposes a budget for 2012 using the funds from

these acts despite a judicial ruling that the challenged acts are unconstitutional and void.  
(A 22, 24.)<sup>9</sup>

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The purpose of a stay is to maintain a *status quo*. Collecting \$25 million a month and spending it on an unconstitutional law is not maintaining the *status quo*. Building a 2012 budget based on these bills after an Appellate Court has declared them unconstitutional demonstrates a blind commitment to tax and spend. Moreover, a stay in the form the Attorney General has proposed does nothing to protect taxpayer interests. Instead, it will require severe efforts to refund and unwind the harm of continued collection and spending of revenue unlawfully collected pursuant to the challenged acts.

The Single Subject Rule protects the public from the practice of logrolling — a practice that nearly bankrupted Illinois in the past. The Single Subject Rule is a constitutional mandate and doing what is politically expedient is not an acceptable alternative.

**This Court Should Affirm the Appellate Court’s Holding that the Omnibus Bill, Public Act 96–34, Violated the Single Subject Rule in the Illinois Constitution**

The PLA argues that the single subject of Public Act 96–34 is the “capital projects initiative” and that the Appellate Court erred by treating Public Act 96–34 as a bill with the single subject of “methods to accrue State revenue as well as where and how the revenue will be used.” (See PLA at 8–9.) Before the Circuit Court, in its motion to dismiss Plaintiffs’ petition for leave to file its taxpayer complaint, however, the Attorney

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<sup>9</sup> Excerpts from the Fiscal Year 2012 Capital Budget and Illinois State Budget for Fiscal Year 2012 are included in the Appendix. Both documents indicate: “GO Bonds issued for *Illinois Jobs Now!* will be primarily supported by revenue realized in the State’s Capital Projects Fund.”

General argued that Public Act 96–34 was about “revenue.” (*See id.* at A 2–3.) It was only at the Appellate Court level that the State decided that Public Act 96–34 was about a different subject, arguing that “all of [Public Act 96–34’s] provisions relate to the capital project initiative established by the Capital Project Acts.” (*See* A 26.)<sup>10</sup> The State did so in order to try to rationalize a series of non-revenue provisions included in that Act and to try to avoid the prohibition in *People v. Olender*, 222 Ill. 2d 123 (2005), against combining expenditure authorization in a “revenue” bill. The Attorney General also argued before the Appellate Court that Public Act 96–34, if not a revenue bill, was in effect a budget implementation bill or BIMP.

In any event, the State’s attempted rationalizations fail. First, as noted, Public Act 96–34 transfers annually nearly a quarter-billion dollars of revenue to the General Revenue Fund where it is available for any expenditure, not just capital projects initiatives. *See* P.A. 96–34 (adding Section 6z-77 to the State Finance Act, 30 ILCS 105/6z-77) (appended at A 16).

Second, Public Act 96–34 contains other provisions that do not relate to “capital projects initiatives.” For example, it changes funding for the State Police, prohibiting use of the Road Funds. *See* P.A. 96–34 at 46 (amending Section 8.3 of the State Finance Act, 30 ILCS 105/8.3). It actually functions as a capital project deconstruction program by raising truck weights to 80,000 pounds on many Illinois roads. *See id.* at 249.

Finally, in disregard of this Court’s decisions in *Olender, supra*, and in *People v. Reedy*, 186 Ill. 2d 1 (1999), and *Johnson v. Edgar*, 176 Ill. 2d 499 (1997), the General

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<sup>10</sup> An excerpt of the State’s Appellate Response Brief is included in the Appendix.

Assembly has included in Public Act 96–34 criminal law provisions establishing felonies. *See* P.A. 96–34 at 12, § 35.

Plaintiffs make detailed, specific arguments about the Single Subject Rule violations in their complaint and memoranda and briefs below. As the PLA is of right, Plaintiffs do not make that detailed argument here. In support of public policy, however, it is proper for Plaintiffs to explain that Public Act 96–34 violates the Single Subject Rule. It cannot be a revenue bill because it has expenditures, which is prohibited by *Olender*. It is not solely about capital projects as it involves General Revenue uses and a myriad of programs not involving capital projects. It is not a BIMP, either. Rather, it is a conglomerate of subjects tied to an appropriation bill that fails all tests for Single Subject.

**This Court Should Affirm the Appellate Court’s Holding that the Other Public Acts Challenged Could Not Stand Because, by Their Terms, They Are Entirely Contingent on the Omnibus Act**

In the PLA, the Attorney General argues both that it is unclear why the Appellate Court held that the three other acts challenged by Plaintiffs failed and that the Appellate Court’s decision was “improper” because it “was not based on any argument made by Plaintiffs.” (PLA at 11–12.) This argument is disingenuous. As discussed below, the Appellate Court held that these other acts could not stand by their own terms because they and their tying provisions violate the Single Subject Rule.

The briefs the parties submitted to the Appellate Court devoted pages and pages to Plaintiffs’ claim that the four acts collectively violated the Single Subject Rule because each contained tying provisions making its effectiveness entirely contingent on the effectiveness of another. (*See, e.g.*, A 35–40; A 26–30, 32–33.)<sup>11</sup> Furthermore, during

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<sup>11</sup> An excerpt of the relevant pages of Plaintiffs’ initial Brief is included in the Appendix.

oral argument, Plaintiffs' counsel made the argument (*see* A 11–12) and the Appellate Court questioned the Attorney General extensively on the subject (*see id.*).

Furthermore, the Appellate Court commenced its analysis of the Single Subject Rule as follows:

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.

(Appendix to PLA at A 8.) It concluded that analysis by finding that “[p]ursuant to their own terms [the other acts challenged] 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.” (*Id.* at A 18.)

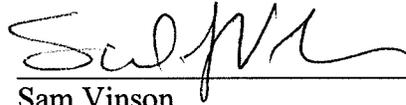
### **CONCLUSION**

**FOR THESE REASONS**, either independently or in combination, Plaintiffs-Appellants-Respondents W. Rockwell Wirtz and Wirtz Beverage Illinois, LLC, respectfully request that this Court: (1) affirm the judgment of the Appellate Court, which reversed the Circuit Court's judgment denying Plaintiffs leave to file their Complaint for Declaratory and Injunctive Relief and invalidated Public Acts 96–34, 96–35, 96–37 and 96–38; and (2) order such other and further relief as the Court deems just and proper.

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Dated: February 23, 2011

Respectfully submitted,



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Respondents W. Rockwell Wirtz and  
Wirtz Beverage Illinois, LLC*

**SUPREME COURT RULE 341(c)**  
**CERTIFICATE OF COMPLIANCE**

I, Claudette P. Miller, certify that **W. ROCKWELL WIRTZ AND WIRTZ BEVERAGE ILLINOIS, LLC'S ANSWER TO DEFENDANTS' PETITION FOR LEAVE TO APPEAL AS A MATTER OF RIGHT, OR, ALTERNATIVELY, AS A MATTER OF DISCRETION** conforms to the requirements of Supreme Court Rules 315, 317, 341(a), and 341(b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, the Rule 373 certificate of mailing, and those matters appended to the brief under Rule 315 is 13 pages.

Dated: February 23, 2011

Respectfully submitted,



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*Attorneys for Plaintiffs-Appellants-  
Respondents W. Rockwell Wirtz and  
Wirtz Beverage Illinois, LLC*

**CERTIFICATE OF SERVICE**

I, Claudette P. Miller, an attorney, certify that on February 23, 2011, I caused three copies of **W. ROCKWELL WIRTZ AND WIRTZ BEVERAGE ILLINOIS, LLC'S ANSWER TO DEFENDANTS' PETITION FOR LEAVE TO APPEAL AS A MATTER OF RIGHT, OR, ALTERNATIVELY, AS A MATTER OF DISCRETION** to be served on:

The Office of the Illinois Attorney General  
100 W. Randolph Street, 12th Floor  
Chicago, Illinois 60601  
Attn: Richard S. Huszagh, Assistant Attorney General

by causing the same to be placed in a properly sealed envelope addressed to the counsel listed above and deposited in the United States mail at 433 West Harrison Street, Chicago, Illinois 60699, with proper postage prepaid.



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Claudette P. Miller

**SUPREME COURT RULE 373**  
**CERTIFICATE OF MAILING**

I, Claudette P. Miller, an attorney, certify that on February 23, 2011, I caused 20 copies of **W. ROCKWELL WIRTZ AND WIRTZ BEVERAGE ILLINOIS, LLC'S ANSWER TO DEFENDANTS' PETITION FOR LEAVE TO APPEAL AS A MATTER OF RIGHT, OR, ALTERNATIVELY, AS A MATTER OF DISCRETION** to be delivered to:

Carolyn Taft Grosboll  
Clerk of the Supreme Court of Illinois  
Supreme Court Building  
200 East Capitol  
Springfield, Illinois 62701

by causing the same to be placed in a properly sealed package addressed to the individual listed above and deposited in the United States mail at 433 West Harrison Street, Chicago, Illinois 60699, with proper postage prepaid.



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Claudette P. Miller

# APPENDIX

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION  
TAX AND MISCELLANEOUS REMEDIES SECTION

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CLERK OF THE CIRCUIT COURT  
LAW DIVISION



W. Rockwell Wirtz, on Behalf of )  
and for the Benefit of the )  
Taxpayers of the State of Illinois, )  
and Wirtz Beverage Illinois, LLC, )  
an Illinois Limited Liability )  
Company, )

Petitioner-Plaintiffs, )

v. )

Hon. Patrick Quinn, in his official )  
capacity as Governor of the State )  
of Illinois; et al. )

Respondents. )

No. 09 CH 30136  
Transferred to Law Division  
Judge Lawrence O'Gara

3318  
3004

**MEMORANDUM OF LAW IN OPPOSITION TO PETITION FOR LEAVE TO  
FILE VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE  
RELIEF**

**INTRODUCTION**

On August 25, 2009, Petitioners, W. Rockwell Wirtz and Wirtz Beverage, filed a Petition for Leave to File and Verified Complaint for Declaratory and Injunctive Relief ("Petition"), a procedure required by Section 11-303 of the Code of Civil Procedure, 735 ILCS 5/11-303. A taxpayer seeking leave to file a lawsuit pursuant to Section 11-303 of the Code of Civil Procedure is requesting the court to restrain and enjoin officers of the state government from disbursing public funds of the state. 735 ILCS 5/11-301. Only if the court is "satisfied that there is a reasonable ground for the filing" of the complaint, will the complaint be filed and process issued to the defendants. 735 ILCS 5/11-303.

Place Facilities in *Geja's Café v. Metropolitan Pier & Exposition Authority*, 153 Ill.2d 239 (1992); *see also, Boclair*, 202 Ill.2d 89 (finding an enactment which included substantive criminal law matters and administrative provisions related to building and maintenance of correctional facilities to be constitutional); *Malchow*, 193 Ill.2d 413 (2000) (upholding an act which was entitled "An Act in relation to criminal and correction matters, amending named Acts" and amended the Medical Practice Act, Civil Administrative Code and Code of Civil Procedure); *Ogilvie v. Lewis*, 49 Ill.2d 476 (1971) (upholding an enactment where its provisions were naturally and logically connected to using the issuance and sale of transportation bonds to aid public transportation); and *Stein v. Howlett*, 52 Ill.2d 570 (1972) (upholding an enactment where its provision were all connected to ethics).

The Court did find a violation of the single subject rule in *People v. Reedy*, where the Court invalidated an enactment because the criminal justice system and hospital liens did not share a logical and natural connection to a single subject. 186 Ill.2d 1 (1999). Also, in *Johnson v. Edgar*, the Court invalidated an enactment because there was no natural and logical connection to a single subject in an Act concerning the diverse subjects of child sex offenders, employer eavesdropping and environmental impact fee. 176 Ill.2d 499 (1997).

In the present case, Petitioners fail to present reasonable grounds to support a claim that Public Acts 096-0034, 096-0037 and 096-0038 violate the single subject rule. For example, Public Act 096-0034 is "An Act concerning revenue". It addresses methods to accrue State revenue as well as where and how the revenue will be used. In their proposed Complaint, Petitioners allege that since the Act involves provisions related

to video gaming, lottery, and taxes imposed on liquor and candy, as well as related accountability laws and amendments to various other acts, that it somehow violates the single subject rule. However, the legislature can pass legislation that amends several acts, so long as the amendments relate to a single subject. *Malchow*, 193 Ill.2d at 443. In this case, it is apparent that each of these additions and amendments relate back to the subject of revenue.

Petitioners cite to the case *People v. Olender*, 222 Ill.2d 123, which found a lack of connection between the subject of revenue and the creation of the Illinois Research Park Authority Act, the Illinois Geographic Information Council Act and an amendment to the Communicable Disease Prevention Act, when it considered that:

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 obligations...."

*Id.* at 141 (citing *Black's Law Dictionary* 1344 (8<sup>th</sup> ed. 2004)). In the instant case, on the other hand, the provisions cited by Petitioners to be problematic directly relate to this definition. For example, video gaming, lottery and taxes imposed on liquor and candy bring in revenue to be deposited into the Capital Projects Fund created by the Act. *See i.e.*, Proposed Complaint, Exhibit A, pp. 16, 39, 70, 89, 144, 183. This Fund is deposited into the General Revenue Fund, which is used to pay the obligations of the State. *See* Proposed Complaint, Exhibit A, p. 40.

Petitioners also, for example, complain of the Capital Spending Accountability Law, which requires the Governor to provide a report as to the status of State Capital Projects. *See* Proposed Complaint, ¶ 30, Exhibit A, p. 19. However, this provides for accountability directly relating to the use of the revenue brought in under the Act through

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APPEAL NO. 09-3163

IN THE ILLINOIS APPELLATE COURT  
FIRST DISTRICT

W. Rockwell Wirtz, an Individual, and )  
Wirtz Beverage Illinois, LLC, an Illinois )  
Limited Liability Company, on behalf of )  
and for the benefit of the Taxpayers of the )  
State of Illinois, )  
Petitioner-Plaintiffs-Appellants, ) On Appeal from the Circuit Court of  
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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 ) Case No. 09 CH 30136  
Giannoulas, in his official capacity as )  
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, ) Honorable Lawrence O'Gara,  
Joe Moore, Jr. and Hon. James E. Sullivan ) Circuit Judge  
in their official capacities; the Illinois )  
Lottery and its Superintendent Jodie )  
Winnett, )  
Respondent-Defendants-Appellees. )

Audio recording of the January 5, 2011  
argument before the First District Illinois Appellate  
Court, transcribed by JERRI ESTELLE, CSR, RPR, at the  
request of Seth A. Horvath of the law firm of  
Ungaretti & Harris, and submitted on the 21st day of  
February, 2011.

1 MR. VINSON: Your Honor, I'm Sam  
 2 Vinson, representing Rocky Wirtz and Wirtz Beverage  
 3 Company.  
 4 THE COURT: AG?  
 5 MR. HUSZAGH: Assistant Attorney  
 6 General Richard Huszagh, representing the defendants  
 7 Governor Patrick Quinn and the Director of the  
 8 Department of Revenue and the other defendants.  
 9 THE COURT: For the record, I'm no  
 10 relation to the other Patrick Quinn. I'm sure he's  
 11 as happy about it as I am.  
 12 Each side has 15 minutes, but you can  
 13 take some more. Just keep it fresh. I can assure  
 14 you that we've read the record; although it's not  
 15 much of a record here, it's more of a legal issue.  
 16 And we've got this much stuff we've all reviewed.  
 17 So it really does behoove you, both  
 18 sides, to get to your strongest points first.  
 19 Thank you. Anytime you're ready,  
 20 Mr. Vinson.  
 21 MR. VINSON: Your Honor, as I said,  
 22 I'm Sam Vinson, representing Rocky Wirtz and the  
 23 Wirtz Beverage Company. They're petitioners and  
 24 appellants in this matter.

1 I'd like to thank the Court for so  
 2 quickly ordering argument after the briefing was  
 3 completed.  
 4 I'd like to illustrate the  
 5 constitutional importance of several of the matters  
 6 in the brief. I hope to do that quickly and reserve  
 7 a couple of minutes for rebuttal in case there's  
 8 further matters developed.  
 9 Most petitioners are Illinois  
 10 taxpayers. They seek to exercise rights Illinois law  
 11 has preserved from the common-law. And we've briefed  
 12 a lengthy number of cases in the legacy of that  
 13 history.  
 14 Quite simply, I'm here representing  
 15 taxpayers who had been denied the opportunity to  
 16 present their case in court, denied due process. The  
 17 circuit court misapplied a gatekeeper provision  
 18 designed to screen out frivolous suits, and by doing  
 19 so denied entry of a very serious constitutional  
 20 matter relating several laws enacted in 2009.  
 21 Those laws were passed in violation of  
 22 constitutional provisions, the single-subject rule,  
 23 the ban on substantive language in appropriation  
 24 bills and the uniformity clause in our constitution.

1 Wirtz Beverage is a firm engaged in  
 2 the business of distributing wine and spirits  
 3 throughout Illinois. Wirtz Beverage is closely  
 4 regulated by the Illinois Liquor Control Commission  
 5 under the Liquor Control Act. The Act requires  
 6 distributors to be licensed by the Commission.  
 7 The Act historically has imposed a tax  
 8 measured by the gallon on the occupation of  
 9 distributing beer, wine, and spirits. That tax is  
 10 deposited into the general revenue fund by law.  
 11 In 2009, the general assembly imposed  
 12 a new tax on the occupation of distributors to be  
 13 deposited into a new fund created at that time, the  
 14 Capital Projects fund, intended to finance a wide  
 15 array of new projects.  
 16 The numbers: The new tax is five  
 17 cents a gallon on beer distributors and \$4.05 a  
 18 gallon on spirits distributors. Historically, the  
 19 tax was 18 cents a gallon on beer distributors and  
 20 about \$4.50 a gallon on spirits distributors.  
 21 There's no difference in these  
 22 distributorships, certainly, no difference that  
 23 merits any kind of deferential treatment of this  
 24 magnitude.

1 THE COURT: Mr. Vinson?  
 2 MR. VINSON: Yes, sir.  
 3 THE COURT: Mr. Wirtz is a distributor  
 4 as a result of I don't want to say near monopoly, but  
 5 as a result of a different act of state legislature;  
 6 is that correct?  
 7 MR. VINSON: Excuse me, sir. I  
 8 couldn't hear you.  
 9 THE COURT: The liquor  
 10 distributorships are determined in Illinois by  
 11 legislation, are they not? The reason Mr. Wirtz is  
 12 able to be a liquor distributor is because the state  
 13 legislature said he could.  
 14 MR. VINSON: There's a law that  
 15 establishes a requirement that you be licensed as a  
 16 distributor. In fact, there are many distributors in  
 17 this state.  
 18 THE COURT: Right. And for Cook  
 19 County, how many would there be?  
 20 MR. VINSON: In Cook County there are,  
 21 I believe, five beer distributors and there are six  
 22 or seven wine and spirits distributors.  
 23 THE COURT: Okay. If I may -- and I  
 24 don't mean to cut you off.

1 If we agreed with you -- disagreed  
2 with you on uniformity but agreed with you on, say,  
3 single subject, what would the result be?

4 MR. VINSON: The result would be that  
5 you would probably send the case back to the circuit  
6 court, instruct the circuit court to enter the  
7 complaint, and have the case heard in circuit court  
8 and decided there.

9 THE COURT: And that's your --

10 MR. VINSON: I suppose -- I'd be  
11 perfectly happy, sir, if you just entered a judgment  
12 saying the case is unconstitutional. But I think, in  
13 fact, you'd probably send it back to the circuit  
14 court.

15 THE COURT: Indeed, in your  
16 conclusion, the relief you ask for is for us to find  
17 that the trial court misconstrued the applicable  
18 standard to review, and we should send it back for  
19 his decision as to whether or not to address the  
20 uniformity clause, the single-subject clause --

21 MR. VINSON: Yes, sir.

22 THE COURT: -- is that correct?

23 Okay. Well, go ahead.

24 MR. VINSON: As I said, the attorney

1 Shouldn't you explain to us why the  
2 trial court erred when it granted that section 2-615  
3 motion to dismiss?

4 MR. VINSON: Your Honor, when we were  
5 before the trial court, we specifically asked the  
6 trial court whether or not the trial court was ruling  
7 on a 2-615 motion, and the trial court said it was  
8 not. The trial court said it was ruling on an 11-303  
9 motion. And, in fact, the attorney general  
10 reiterated that point. So they were only asking for  
11 consideration on the 11-303 motion.

12 Now, the 11-303 motion goes to the  
13 question of whether there's any reasonable grounds  
14 for the entry of the complaint. And one of the  
15 things I believe that ought to be reviewed on appeal  
16 is whether one of those reasonable grounds is the  
17 fact that there was a well-pled constitutional  
18 violation, a well-pled constitutional violation that  
19 deserved that we get the benefit of every well-pled  
20 fact and that we get the benefit of every inference  
21 from those well-pled facts.

22 THE COURT: So you're essentially  
23 pointing out to the Court that you presented a  
24 reasonable ground --

1 general has not tried to justify the tax difference  
2 in articulating any difference in the occupations the  
3 tax is levied on.

4 Third, in the case of the historic tax  
5 for spirits distributors, it is 25 times that on beer  
6 distributors. The new tax is 81 times that on beer  
7 distributors. The disproportion is more than three.  
8 81 versus 25. That disproportion occurs in two taxes  
9 levied at the same time. How can two so  
10 disproportionate taxes be levied for the same purpose  
11 on the same occupations?

12 Combined, the historic tax and the new  
13 tax on spirits distributors is ten times the tax on  
14 beer distributors, even when you adjust for the  
15 amount of alcohol in the two products.

16 I'd like to bring the Court's  
17 attention to the deficiencies in the passage of these  
18 bills, constitutional deficiencies.

19 THE COURT: So may I ask a question.

20 You just pointed out to Justice Quinn  
21 that -- the case was brought here on a section 2-615  
22 motion, and you pointed out to him that we need to  
23 address that issue, and we really cannot address the  
24 constitutional challenges that you raise.

1 MR. VINSON: Yes, sir.

2 THE COURT: -- therefore, he should  
3 have granted your motion for leave to file the  
4 complaint?

5 MR. VINSON: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. VINSON: I'd like to go, first, to  
8 the appropriation bill.

9 It contains substantive language in  
10 violation of the constitution. Article IV, Section  
11 3(d) -- Section 8(b) prohibits substantive language  
12 in an appropriation bill.

13 The attorney general's answer in the  
14 trial court and in this court says then that it's  
15 perfectly okay for the legislature to include  
16 qualifiers and conditioners in an appropriations  
17 bill.

18 For support of that argument, they  
19 relied on one thing. That one thing is an attorney  
20 general opinion from 1975. Shortly thereafter, in  
21 1976, in a case we briefed in both courts, the Devon  
22 Bank case, the Supreme Court rejected that reasoning.

23 In the Devon Bank case, the Supreme  
24 Court said you cannot add a new conditioner that

1 qualifies the substantive language in a statute for  
2 it -- in an appropriation bill. That's adding  
3 substantive language, and it's prohibited by the  
4 constitution.

5 In this Appellate Court, the attorney  
6 general has continued to rely on that 1975 attorney  
7 general's opinion and used that same language.

8 We briefed to you a subsequent  
9 attorney general's opinion that actually superceded  
10 the 1975 decision where the attorney general  
11 recognized, in his opinion, that the Devon Bank case  
12 had been decided and that, in fact, the Devon Bank  
13 case controlled and that you could not have a  
14 conditioner or a qualifier that modified the  
15 substantive law in an appropriation bill, that that's  
16 simply unconstitutional.

17 There is substantive language in this  
18 appropriation bill. It imposes entirely new  
19 conditions on the Environmental Protection Agency  
20 grant which otherwise would be totally loss of  
21 grants.

22 There's language also for the  
23 expenditure of capital funds that creates a new  
24 condition on that expenditure and requires the

1 anything done under the omnibus bill is  
2 unconstitutional, it's wrong.

3 The general assembly has actually  
4 spoken. The words of the law are stronger than my  
5 simple description. The word in section 999 of the  
6 omnibus bill, the Revenue Act, call it what you will,  
7 states that it does not take effect unless 312 as  
8 amended. So 312 in its current form becomes law.

9 312 cannot become law in its current  
10 form because the appropriation bill contains that  
11 substantive language. Each bill conditions its  
12 effectiveness on its Siamese twin taking effect.  
13 Quote, as amended, they're joined not just at the  
14 hip. They're joined organ by organ, they're joined  
15 limb by limb.

16 This linkage, that's a mockery of the  
17 whole concept of single subject and appropriations  
18 language, substantive appropriation language, in an  
19 appropriation bill. It makes a mockery of it because  
20 it essentially says that what the generally assembly  
21 tried to do was incorporate in each bill the other  
22 bill.

23 And that means that it incorporated  
24 enormous substantive language into the appropriation

1 governor's approval for an expenditure of capital  
2 funds that otherwise would be expendable totally  
3 pursuant to the statute, to the existing statute.

4 That's a qualifier. That's a  
5 conditioner. That's a new clause put into the  
6 substantive law by an appropriation bill. And the  
7 Devon Bank case tells you, clearly, that that's  
8 impermissible, according to the Supreme Court of  
9 Illinois.

10 So, Your Honors, the appropriation  
11 bill is clearly unconstitutional. It violates Devon  
12 Bank. And when you recognize that, you come face to  
13 face with a very harsh reality.

14 What we call the omnibus bill, what  
15 the legislature calls an act concerning revenue, what  
16 the attorney general has called several other things,  
17 that bill created all of the funds for these various  
18 purposes. That bill created all of the funds, and it  
19 does not take effect -- it has a clause in it that  
20 says it does not take effect unless the appropriation  
21 bill takes effect.

22 The consequence of that, if you find  
23 that the appropriation bill is unconstitutional,  
24 means that the omnibus bill never took effect, and

1 bill, and it means it incorporated the appropriations  
2 into the substantive bill.

3 Our legal theory is wrong? Maybe it  
4 is. Okay. Then consider this. You've got to live  
5 with the language the general assembly gave you. And  
6 that language says that the omnibus bill doesn't take  
7 effect if the appropriation bill doesn't. And if the  
8 appropriation bill has substantive language, then the  
9 omnibus bill does not take effect.

10 Together, therefore, neither of these  
11 bills should take effect. They both should be found  
12 unconstitutional.

13 THE COURT: Well, they argue that's  
14 just logic, right? That it's logical that if there's  
15 no money which would come from the omnibus bill, the  
16 appropriations bill should not take effect.

17 Why is that wrong?

18 MR. VINSON: Why is that not logical,  
19 sir?

20 THE COURT: It's probably logical.  
21 Why is it illegal?

22 MR. VINSON: It's illegal because what  
23 you're essentially doing is incorporating into the  
24 appropriations bill all of the language in the

1 omnibus bill, and you're incorporating all of the  
2 language from the appropriations bill into the  
3 omnibus bill. And when you do both the those things,  
4 you violate the prohibition of doing the two things  
5 together in a single bill.

6 The Illinois constitution set out this  
7 rather new standard, this rather harsh standard,  
8 because it wanted the legislature to consider these  
9 things separately. And what they've done here is try  
10 to get around that constitutional restriction.

11 The legislature -- if I might proceed  
12 to the question of single subject.

13 Let's take that omnibus bill and  
14 discuss it on single-subject terms. It's Public Act  
15 9634, or when the legislature considered it, it was  
16 House Bill 255.

17 We agree with the attorney general  
18 there's a two-step test in single-subject analysis.  
19 First, is the subject so broad that it would render  
20 the single-subject clause in the constitution  
21 meaningless?

22 Second, the subject's okay. Do the  
23 provisions within the bill actually relate to the  
24 single subject?

1 The legislature called this bill an  
2 act concerning revenue. In the circuit court the  
3 attorney general stated, and I quote, it addresses  
4 the methods to accrue state revenue, as well as where  
5 and how it will be accrued, how it will be used,  
6 expended.

7 Now, after one reads the Olender case,  
8 one recognizes that the attorney general really tried  
9 its very best to define a single subject for the bill  
10 in the Olender case, and they called it a revenue  
11 bill. Just as they called the bill in this case, in  
12 the trial court, a revenue bill. They gave a very  
13 good college try with the argument that it was a  
14 revenue bill.

15 In fact, the Supreme Court said it  
16 doesn't pass the smile test. You don't have a  
17 revenue bill if you include within it provisions for  
18 the expenditure of funds. That's what happened in  
19 Olender. The Supreme Court found the bill  
20 unconstitutional because it provided the expenditure  
21 of funds on things like the collection of new  
22 geographical data for the State of Illinois.

23 Now, the attorney general argues, and  
24 I'm sure they're correct, the court earlier approved

1 the bill in the Gejas case. And in the Gejas case,  
2 the court reviewed a bill, the transfer of revenue to  
3 McCormick Place that raised new taxes for McCormick  
4 Place, that authorized new construction at McCormick  
5 Place, and that rearranged Lake Shore Drive around  
6 McCormick Place.

7 Is this inconsistent with the Olender  
8 test, even though Olender was decided after the Gejas  
9 case? No. Everything the -- the court said that  
10 everything in the bill was designed to deal with the  
11 expansion project at McCormick Place. It authorized  
12 one project. It financed one project. It was not a  
13 revenue bill. It was a single-project bill. That's  
14 very different than a revenue bill.

15 In this appellate court, the attorney  
16 general has turned up its nose at the trial  
17 division's endorsement and the legislature's  
18 description of the omnibus bill as a revenue bill.

19 Remember, I read to you what the trial  
20 division said. It addresses methods of accruing  
21 revenues, as well as where and how those revenues  
22 will be used. The appellate lawyers have tried to  
23 distance themselves from that description.

24 With the benefit of more time to study

1 this hydra-headed monster that we call the omnibus  
2 bill, the clever trial lawyers, herpetologists  
3 perhaps in the appellate division, have recognized  
4 that Olender comes back to haunt them if they, in  
5 fact, describe this bill as a revenue bill, because  
6 this bill would possess the same defects as the bill  
7 in the Olender case because it also authorizes the  
8 expenditure of revenue, not just the collection of  
9 revenue.

10 The attorney general was very honest  
11 in saying what was said in the circuit court, that  
12 the bill, in addition to revenue does authorize where  
13 and how revenue will be expended.

14 How do you get a regular report from  
15 the governor without spending money? How do you get  
16 a regular report from the University of Illinois  
17 without spending money? Obviously, you can't.

18 As to the expenditure of money, public  
19 funds. So on appeal, the attorney general shifted  
20 his the description of the single subject and the  
21 omnibus bill.

22 Everything in the bill now relates to  
23 Capital Projects. See page 48 of their appellate  
24 brief -- excuse me -- page 28 of their appellate

1 brief. The legislature's declaration is that a  
2 concerned revenue does not matter. See page 29.

3 All of the provisions of Public Act  
4 9634 relate to capital projects. That's what they  
5 argue on page 29 of their brief. But do they? Do  
6 they all relate to capital projects?

7 Let's look at the LUST fund, the Leaky  
8 Underground Storage Tank fund. It's not a new  
9 capital project. No new revenue goes to it. The  
10 language simply changes how the money in the fund  
11 will be expended.

12 It must now be expended for LUST,  
13 Leaky Underground Storage Tanks, not the sweeps that  
14 it was previously used for. It simply transferred  
15 the general revenue and spent it on other matters.

16 There's no capital project here  
17 whatsoever. There is simply a direction on how to  
18 respense state money.

19 Further, what the omnibus bill does is  
20 it devotes a quarter of a billion dollars in 2010 and  
21 every fiscal year thereafter to the expenditure to a  
22 transfer to general revenue. As the attorney general  
23 has pointed out in their brief, and as the State  
24 Finance Act states, money in the general revenue fund

1 we have a single-subject test, and it's an important  
2 single-subject test.

3 I'm prepared, sirs, to answer any  
4 questions or to prepare for anything you'd be  
5 interested in.

6 THE COURT: You have a few minutes for  
7 reply. We'll hear from the attorney general.

8 (Pause.)

9 THE COURT: Whenever you're ready.

10 MR. HUSZAGH: May it please the Court.  
11 Again, Assistant Attorney General Richard Huszagh,  
12 counsel for the defendants-appellees.

13 And I urge the Court to affirm the  
14 circuit court's ruling denying leave to file the  
15 complaint in this case, because on its face, it does  
16 not establish any viable constitutional claim toward  
17 challenging the various capital acts, or any of them  
18 that are the subject of this proposed taxpayer  
19 standing suit.

20 I was principally going to focus on  
21 the two issues: The uniformity clause challenge to  
22 the various rates for the wholesale alcohol taxes and  
23 the single-subject rule. But I see that additional  
24 attention was paid to the substantive legislation

1 can be expended for any obligation of the state. It  
2 can be expended for Medicaid. It can be expended for  
3 mental health. It can be expended for salaries. It  
4 can be expended for children in need, things that are  
5 important, things we all care about, things that we  
6 all hope the state and does and does effectively.

7 But those aren't concrete. They're  
8 not steel. They're not glass. They're not  
9 construction whatsoever. They're not asphalt.  
10 They're, in fact, human needs, human services. And  
11 that money, when it goes for human services, is no  
12 longer capital money. It is not money for a capital  
13 project.

14 The attorney general has simply failed  
15 in trying to find a single subject for this. It's  
16 not a revenue bill, and it's not a Capital Project  
17 bill.

18 Over the years, billions of dollars  
19 under this bill would be devoted to human service  
20 needs, not to capital projects whatsoever. So as a  
21 consequence, this bill fails the single subject test  
22 if there's any meaningful single-subject test in the  
23 Illinois constitution. And the Supreme Court has  
24 said in numerous cases, Olender, Johnson, Reedy, that

1 claim that the appropriations bill include  
2 substantive legislation. So I intend to cover that  
3 as well.

4 But if the Court has any questions  
5 about any of the other arguments that are made in the  
6 briefs on any of the other claims, I certainly do  
7 want to cover those.

8 THE COURT: I would suggest keeping  
9 the uniformity argument very short and very long on  
10 the single subject.

11 MR. HUSZAGH: Let me go with that,  
12 then.

13 I just want to, then, on the  
14 uniformity clause, I want to say that there's been a  
15 mischaracterization of the relevant tax rates.

16 The reply brief for the first time  
17 comes up with some strange contention that the tax  
18 rate on wine applies only to wines of less than 7  
19 percent. I think a reading of the statute makes it  
20 clear that that's directly contrary to the relevant  
21 language, that the tax rates per drink are 2.2 cents  
22 for beer, 5.4 cents for wine, and 10 cents for  
23 spirits and hard liquors, consistent with the notion  
24 that higher taxes on stronger alcoholic beverages

1 promotes the ultimate goal of temperance because  
2 stronger beverages have a history of being more  
3 conducive to excessive consumption and the social  
4 ills associated with that.

5 So let me, then, turn to the  
6 single-subject-rule arguments, if I may.

7 I believe that the thrust of the  
8 petitioner's claims in this case is to seek some  
9 single provision in one of the bills, examine it in  
10 isolation, out of context from the rest of the  
11 relevant statute, and then argue that it must,  
12 therefore, violate the single-subject rule because  
13 it's so disparate, it's so distant, it's foreign to  
14 the purpose of the relevant bill or statute.

15 And, in fact, a closer examination  
16 shows that that sort of myopic focus is misconceived.

17 The Valstad case, which following  
18 Arangold, upheld the 2004 budget implementation  
19 Act --

20 THE COURT: That was a budget. A  
21 budget will contain hundreds of different projects.

22 MR. HUSZAGH: Well, it --

23 THE COURT: This is not a budget bill,  
24 is it?

1 MR. HUSZAGH: It's a budget bill in  
2 almost every relevant sense of the word --

3 THE COURT: In that it covers many,  
4 many projects, I suppose you could say that, Counsel.  
5 But it's not a budget bill.

6 MR. HUSZAGH: Then I suppose, do we  
7 attach constitutional significance to the label that  
8 annually they're allowed to pass one budget but that  
9 until they do so, they're not allowed to do something  
10 on a separate initiative basis?

11 The context of this set of laws, all  
12 of which were signed together, was that it was the  
13 depths of the great recession. And whether the Court  
14 may agree or disagree with the wisdom of the  
15 legislature, the legislature's determination was that  
16 it was important to do something to create the type  
17 of initiative that comprise the various projects that  
18 were authorized in this bill and to do so without  
19 busting the budget but raising sufficient revenues  
20 and redirecting the existing sources of revenues to  
21 that purpose so that these projects could be  
22 implemented and go forward.

23 So --

24 THE COURT: And so that anybody who

1 would be against this type of bill would be accused  
2 of being against jobs. That's clearly --

3 MR. HUSZAGH: That's a political  
4 calculation that the legislature is entitled to  
5 engage in.

6 THE COURT: And they are as long as  
7 they're in separate bills.

8 MR. HUSZAGH: Well, I --

9 THE COURT: How --

10 MR. HUSZAGH: -- guess I have to ask  
11 this then.

12 If the legislature passes a bill  
13 authorizing hospital construction, does that have to  
14 be separate from a bill authorizing reconstruction of  
15 facilities and public parks? Does it have to be  
16 separate from a bill that authorizes the projects in  
17 schools to upgrade their technology?

18 If, in fact --

19 THE COURT: Who are you asking that  
20 question of, Counsel?

21 MR. HUSZAGH: Pardon me?

22 THE COURT: Who are you asking that  
23 question of?

24 We don't have --

1 MR. HUSZAGH: I'm saying as a  
2 constitutional matter, if Arangold upholds the  
3 principle that a budget implementation act can  
4 include all of these different types of projects and  
5 revenue-raising devices and specific spending  
6 initiatives, there isn't a defensible, constitutional  
7 boundary that prevents the legislature from doing  
8 less on a one-time initiative, especially in the  
9 context of the circumstances where this initiative  
10 was passed.

11 The roads and infrastructure that  
12 needed attention, including the bridges, the serious  
13 needs of the schools and the hospitals were all  
14 encompassed in this bill, and it was, we submit,  
15 within the constitutional prerogatives of the  
16 legislature to treat that as a permissible single  
17 subject. It is not so remote in generalness that it  
18 defeats the entire purpose of the single-subject  
19 requirement.

20 THE COURT: The Wirtz people  
21 complained that in the article for the appropriations  
22 bill, the article reading, this bill will not -- this  
23 -- quoting now -- does not take effect at all unless,  
24 in brackets, the omnibus bill, as amended, becomes

1 law.

2 So they're linking two different  
3 statutes completely together. You filed a memo in  
4 the trial court saying this makes -- this is logical,  
5 and it is logical.

6 Can you cite two other statutes which  
7 refer to each other in such a manner that if this is  
8 not signed, this will fail?

9 MR. HUSZAGH: I don't know that in the  
10 history of the Illinois legislature there's been a  
11 similar statute. I do know that the -- under a  
12 virtually identical provision in the Florida  
13 constitution, the Flor- --

14 THE COURT: So you don't have any  
15 instance in Illinois where that's occurred or been  
16 upheld or struck down?

17 MR. HUSZAGH: That specific issue, no.  
18 I can tell you that the notion that an appropriation  
19 bill can be -- excuse me -- that a bill can be made  
20 conditional upon future events has been upheld. That  
21 principle is well established.

22 THE COURT: It is in terms of school  
23 districts. When a school district wants to -- a  
24 school area wants to move from one school district to

1 MR. HUSZAGH: No, I can't. But I will  
2 say that the logic is consistent with the relevant  
3 constitutional principles.

4 I mean, here you have an  
5 interrelationship between various pieces of  
6 legislation where it made no sense to pass a bill  
7 creating new revenues and redirecting former sources  
8 of revenues to these projects unless the projects  
9 were passed.

10 You know, what's the point of raising  
11 the liquor taxes and the candy taxes and the other  
12 taxes and imposing that cost ultimately upon the  
13 taxpayers of the State of Illinois if the projects to  
14 which those revenue sources are going to be devoted  
15 aren't separately passed?

16 My question, what's the point of  
17 passing an appropriation bill where the  
18 appropriations are for non-existent revenues and  
19 non-existent projects?

20 What I would say is that there's a  
21 difference between saying the appropriation bill  
22 incorporates all of these other bills, which I don't  
23 believe it does, and to say that the appropriation  
24 bill makes its effectiveness subject to this

1 another, and that makes perfect sense, because you  
2 have to have a school district that's willing to  
3 accept them, and you have to have people who vote on  
4 that as to whether that's okay or not.

5 I suggest to you in what research I  
6 did in this area, when there's lack of money for an  
7 expenditure bill, they put that right in the bill.  
8 And they say, for example, on a highway bill, quoting  
9 now, this is from House Bill 6811 from March 12th of  
10 this year, quoting, expenditures shall not exceed  
11 funds to be made available by the federal government.

12 And that takes care of the logic  
13 problem that you point out in your memo, that if  
14 there's no money, well, you certainly couldn't spend  
15 it.

16 And there is a way to pass acts that  
17 say just that, that you can't spend more money than  
18 we have. But they don't say if you strike down this  
19 bill, if the House -- if the legislature fails to  
20 pass this bill, then the other bill fails. And they  
21 can't -- they don't say, and if the governor vetoes  
22 this bill, this other legislation fails.

23 You can't cite a case from that, can  
24 you?

1 condition. Then the question is, is that condition  
2 constitutionally valid? It's not incorporating those  
3 provisions. It's establishing --

4 THE COURT: The reason it should be  
5 done -- the way your question, apparently, is, well,  
6 doesn't this make logical sense? Why wouldn't you do  
7 it this way? And that was explained by our Supreme  
8 Court in Olender where they say to prevent log  
9 rolling, trying to pass an unpalatable bill by tying  
10 it to a palatable bill, the single-subject rule  
11 facilitates the enactment of bills through an orderly  
12 and informed legislative process.

13 By limiting a bill to a single  
14 subject, legislators can better understand and more  
15 intelligently debate the issues presented by a bill.

16 This bill and the -- I don't recall  
17 there being any debate about this bill. I recall --  
18 if you have it in the record, please send it to us --  
19 the single-subject rule ensures the legislature  
20 addresses the difficult decision it faces directly  
21 and subject to public scrutiny rather than passing on  
22 popular measures on the backs of popular ones.

23 And that's why you do it separately,  
24 Counsel.

1 MR. HUSZAGH: There's no dispute that  
2 there's a significant, substantive component to the  
3 single-subject rule, and it's a valid purpose  
4 supported by that. I mean, we see sometimes what  
5 happens in Washington where there isn't that type of  
6 requirement, and log rolling run amuck results in  
7 these Christmas tree bills tacked onto appropriation  
8 measures that have resulted in much of the dismay  
9 about that legislative process.

10 In Illinois, however, if an annual  
11 budget bill can include all of these things as a  
12 single subject, and budget bills are subject to the  
13 same requirement, I don't see a defensible line that  
14 would distinguish that type of process from the type  
15 of mini budget that goes on with respect to the type  
16 of initiatives involved here, passed in the  
17 circumstances in which these bills were enacted.

18 THE COURT: Well, then perhaps you  
19 should read Olender. I know you did, Counsel, but  
20 the argument was made in Olender and rejected because  
21 attorney general's office, and it's your job, has to  
22 come forth -- look, in Arangold, they passed a budget  
23 that included hundreds of things. And, yes, they  
24 did. That's what a budget bill does.

1 And so they cite -- in every case  
2 there is a single-subject argument, the AG has to  
3 say, well, in Arangold, we passed 150 different  
4 things.

5 Well, that's been rejected -- not  
6 Arangold -- rejected as to budget bills, but as to  
7 every other bill, it has been rejected. We don't --  
8 did they apply Arangold and say, we're going to  
9 follow Arangold and Olender and Reedy?

10 MR. HUSZAGH: Olender, the subject  
11 that was presented as the subject that supported all  
12 of the provisions in that bill was revenue. The  
13 government in this case -- although I will concede  
14 that there had been different subjects presented as  
15 the permissible subject of these acts, the Eau Claire  
16 case by the Supreme Court says what the legislature  
17 describes of the subject or the various descriptions  
18 of the subject given by the advocates are not  
19 controlling.

20 We look to the substance of the bill,  
21 and if the substance of the bill and all of its  
22 components relate to a permissible single subject,  
23 then that is constitutional under the single-subject  
24 clause.

1 THE COURT: And what's your strongest  
2 case for us to find that is polyglot of bills, of  
3 various projects, passes muster?

4 MR. HUSZAGH: I would say that the  
5 Valstad case, the Arangold case, and the Gejas Cafe  
6 case all are consistent --

7 THE COURT: Gejas Cafe, as they  
8 pointed out, involved McCormick Place, and they moved  
9 part of Lakeshore Drive for it, and they built  
10 McCormick Place.

11 That does look like one project, does  
12 it not?

13 MR. HUSZAGH: Let me say this. The  
14 petitioners have argued that the Court should  
15 essentially depart from the two-part test established  
16 by the Illinois Supreme Court, which is permissible  
17 single subject and all parts logically and naturally  
18 related to that subject.

19 And now to say, oh, it can't pass  
20 unless you also meet this additional element, which  
21 is that there only be one new act or one project, the  
22 case law doesn't say that. It's not incumbent upon  
23 this Court to change prior law that's clearly  
24 established and say, now, here's a new element. You

1 can only have one project to satisfy the  
2 single-subject bill, or you can only have one new  
3 act. That's not part of the test.

4 They haven't established that there's  
5 any difference under single-subject analysis between  
6 a budget bill, which is an annual budget, and the  
7 bills that comprise, each individually and all  
8 collectively, they comprise the Capital Projects  
9 initiative in this case.

10 They don't have a case the other way,  
11 we don't have case our way. But we're saying the law  
12 is established. There is no additional -- no  
13 multiple projects or no multiple acts requirement.

14 THE COURT: And it's so clear that the  
15 trial court should not have let this petition be  
16 filed.

17 MR. HUSZAGH: If it's ultimately a  
18 question of law, what are we going to do at the trial  
19 is to advance the question of whether they had stated  
20 on the face of this complaint reasonable grounds for  
21 going forward.

22 THE COURT: And it is a question of  
23 law, is it not?

24 MR. HUSZAGH: Absolutely, it is. And

1 if it's a question of law, then either up or down,  
2 the circuit court was correct or it was incorrect  
3 with respect to allowing this case to go forward.

4 THE COURT: And, therefore --

5 MR. HUSZAGH: With respect to  
6 single-subject clause.

7 THE COURT: Right. If we disagree  
8 with the trial court, there'd be no reason to send it  
9 back to the trial court since it's a question of law.

10 MR. HUSZAGH: On these --

11 THE COURT: We would not need Judge  
12 O'Gara's theories of why he was correct since we  
13 already found that he was mistaken.

14 MR. HUSZAGH: If you rule on the  
15 single-subject clause, yes, we agree.

16 THE COURT: Okay.

17 MR. HUSZAGH: I wouldn't say that's  
18 necessarily true with respect to all the --

19 THE COURT: You mean --

20 MR. HUSZAGH: -- other claims that  
21 they brought. On those, they make the argument that  
22 they're entitled to a trial. You know, we're going  
23 to call a witness to taste --

24 THE COURT: Right, uniformity --

1 intended to eliminate that type of legislative  
2 process. What it was intended to eliminate was  
3 taking hopelessly unrelated provisions that are  
4 foreign to a single subject, throwing them all  
5 together, because that's the only way they can get  
6 passed.

7 And we would submit that to the extent  
8 there is a permissible single subject, and we  
9 advocate the rule that the Capital Projects  
10 initiative is a permissible single subject under  
11 established law, the two-part test, then all the  
12 relevant provisions relate to it.

13 Now, they have argued, and I really  
14 haven't addressed much at oral argument here, that  
15 this provision doesn't relate, that provision doesn't  
16 relate. And I would like, if the Court believes that  
17 there's any potential merit to any of those  
18 provisions, you know, those arguments, to be able to  
19 address those specifically.

20 THE COURT: Go ahead. If you're  
21 right. If you win.

22 MR. HUSZAGH: There's the argument,  
23 for example, that the provisions relating to the  
24 pension benefits that are to be conferred upon

1 MR. HUSZAGH: -- beer and whiskey and  
2 see if there's a real and substantial difference.

3 I don't think that's really where that  
4 issue should be going, but --

5 THE COURT: But if we find  
6 single-subject violation, the solution, then, is  
7 first to find the entire acts, all of the acts,  
8 unconstitutional; isn't that correct?

9 MR. HUSZAGH: Absolutely.

10 THE COURT: We can't parse them out.

11 MR. HUSZAGH: There is no  
12 single-subject exception, because the purpose is to  
13 prevent log rolling.

14 And I'd like to hearken back to a  
15 comment that the Court made earlier, which is that  
16 log rolling doesn't mean that you eliminate any give  
17 and take in the negotiation process in the  
18 legislature so that if somebody is interested in a  
19 bill but that they say, listen, I can't support that,  
20 you know, because I think it really should look this  
21 way, and somebody says, well, I think that provision  
22 should be modified and this, that's part of the  
23 normal legislative process.

24 And the single-subject rule wasn't

1 investigators of the Illinois Gaming Board are  
2 unrelated to the bill in which that is located.

3 And, again, this is a classic example  
4 of taking something totally out of context and  
5 looking at it in isolation and then saying, well, it  
6 can't possibly relate to the relevant subject of the  
7 bill.

8 But that's not correct. The Illinois  
9 Gaming Board, the bill created the new authorization  
10 for video gaming and for additional management and  
11 supervision of the lottery system. And it  
12 specifically, because it expanded the Gaming Board's  
13 responsibility, authorized them to hire  
14 investigators. In the past, the Gaming Board relied  
15 upon investigators from the state police. Now the  
16 statute specifically gives them the power to hire  
17 these investigators.

18 Well, investigators, as state  
19 employees, are going to be subject to the pension  
20 benefit provisions of the pension code. And so there  
21 is a change in the relevant language to add Illinois  
22 Gaming Board investigators as one of the classes of  
23 persons that are eligible for, in this case, I  
24 believe it's the alternate retirement annuity

1 calculation, for people that are members of that  
2 retirement system.

3 It relates, it's perfectly consistent,  
4 and I would -- to the extent that the Valstad case  
5 provides a relevant analysis, I think it's helpful  
6 there.

7 There, the accusation was made that  
8 the requirement of disclosing your status as a seller  
9 of new or used tires was inconsistent with the  
10 purposes of that law.

11 And the Court said, no. We've  
12 increased the fees on the sales of tires, new and  
13 used, and it's -- and there's a responsibility for  
14 the state EPA to regulate that and to oversee the  
15 implementation of that program. And the requirement  
16 that these disclosures to the EPA made are naturally  
17 and logically connected to that part of that integral  
18 bill. The single is true here.

19 The LUST fund, the argument is made  
20 that the disbursements from the -- I'm sorry -- the  
21 disbursements authorized out of the LUST fund for  
22 remediation programs is outside the subject of that  
23 bill because it can't possibly be a part of the  
24 Capital Projects initiative.

1 But that, again, is sort of a myopic,  
2 isolated focus. What the bill did was, it prevented  
3 a sweeps by the LUST fund. Every year, the governor  
4 is authorized by statute to take sweeps out of moneys  
5 out of those funds. It stops that. And the bill, at  
6 the same time, increases the authorized disbursements  
7 for the remediation programs out of those funds. To  
8 the extent that they need to protect that LUST fund  
9 money for which additional disbursements are made,  
10 they're stopping the sweeps. This is integrally  
11 related and connected in a logical and natural  
12 fashion.

13 The same applies to all of the other  
14 provisions that they've tried to focus on in  
15 isolation. And except for the ones that are really  
16 articulated or fleshed out for the first time in  
17 their reply brief, which I think are, for that  
18 reason, forfeited, I believe they're satisfactorily  
19 addressed in our briefs with respect to the claim  
20 that, you know, they're disparate, they have no  
21 relationship.

22 I think the Valstad test is, is it  
23 foreign to the rest of the bill? You can't force  
24 them to put it into a different bill under some

1 contrived single-subject analysis if, in fact, it is  
2 logically and naturally related to the bill's other  
3 provisions that all connect to the same single  
4 purpose. So I would say that that is the test.

5 On the appropriation bill containing  
6 substantive law, I think there the battle line is  
7 drawn. We have said that an appropriation law can  
8 contain conditions. And the question then becomes,  
9 is it a permissible condition to say that the  
10 appropriation law doesn't become effective unless  
11 other bills for which those appropriations are  
12 related also become effective. It's not  
13 incorporating those laws. It's simply saying the  
14 appropriation does not become effective unless those  
15 laws are passed.

16 If the Court has no further questions,  
17 I urge it to affirm the circuit court's decision and  
18 thank you for its consideration.

19 THE COURT: Thank you for the  
20 argument.

21 Mr. Vinson, very briefly.

22 MR. VINSON: Your Honor, very briefly,  
23 I'd like to simply make the point in regard to the  
24 attorney general's comments on uniformity, that, in

1 fact, we agree on the legal analysis of whether  
2 something meets the uniformity clause.

3 If a plaintiff files a case  
4 challenging uniformity, the burden shifts to the  
5 state. And at that stage, the state has to identify,  
6 articulate a justification for the differential  
7 categories in the tax.

8 And if the State identifies an  
9 argument about that, a justification for the tax, the  
10 burden then switches back to the plaintiff to prove  
11 that there's something wrong with that justification.

12 In this case, we've articulated a  
13 difference between a tax on beer distributors and a  
14 tax on spirits distributors, an enormous difference.  
15 And, in fact, we've articulated the fact that there  
16 are two different taxes applied at the same time with  
17 just differential ratios.

18 Now, given that, the State has argued  
19 that to try to meet their burden of responsibility,  
20 that the purpose of the tax is, in fact, temperance.

21 What we have said --

22 THE COURT: They didn't really argue  
23 that here, no. It's their brief. It's absolutely in  
24 their brief, but it's really -- we didn't ask.

1 MR. VINSON: And the fact of the  
 2 matter is, very simply, the Supreme Court has said  
 3 you can't assume this tax passes through. It's a tax  
 4 on distributors. It's not compelled to pass through.  
 5 THE COURT: That's in the briefs,  
 6 Counsel.  
 7 MR. VINSON: Finally, I'd like to  
 8 simply make the point on single subject.  
 9 The State referred to a bill, they  
 10 call it the budget bill, historically decided --  
 11 THE COURT: Arangold.  
 12 MR. VINSON: -- by the Supreme Court.  
 13 The Arangold case. In fact, Arangold said something  
 14 very simple. Arangold said our review of the Act's  
 15 provisions persuades us that the entire Act is  
 16 directed toward changing substantive law to implement  
 17 the budget.  
 18 The legislature made these changes to  
 19 ensure that expenditures in the program did not  
 20 exceed appropriations for that specific fiscal year.  
 21 That's not what we're dealing with  
 22 here. This is not an attempt to reduce substantive  
 23 law requirement in order to meet a budget it.  
 24 There's no budget bill here whatsoever. What's going

1 REPORTER'S CERTIFICATE  
 2  
 3 I, JERRI ESTELLE, CSR, RPR, doing  
 4 business in the City of Chicago, County of Cook, and  
 5 State of Illinois, do hereby certify that I  
 6 transferred the foregoing audio-taped appellate  
 7 argument into my stenographic machine for the purpose  
 8 of shorthand transcription.  
 9 I further certify that the foregoing  
 10 is a true and accurate transcription of my shorthand  
 11 notes and said audio-taped appellate argument,  
 12 transcribed to the best of my ability, and contains  
 13 all the content within said audiotape.  
 14 IN WITNESS WHEREOF, I hereunto set my  
 15 hand as Certified Shorthand Reporter in and for the  
 16 State of Illinois on February 21, 2011.  
 17  
 18 *Jerr Estelle*  
 19 Jerr Estelle, CSR, RPR  
 20 License Number: 084-003284  
 21  
 22  
 23  
 24

1 on here is the creation of a vast array of new  
 2 programs.  
 3 And if you say that that's okay  
 4 because of Arangold, because of budget  
 5 implementation, then what you're saying is that  
 6 anything conceivable to the mind of man, or at least  
 7 to the mind of the legislators, could be included in  
 8 the budget bill.  
 9 My golly, that's quite a single  
 10 subject.  
 11 Thank you.  
 12 THE COURT: Thank you. Thank you,  
 13 both sides, for the briefs and the fine arguments,  
 14 and we'll take this case under advisement.  
 15 (End of Audio recording.)  
 16  
 17  
 18  
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 23  
 24

(30 ILCS 105/5.724 new)

Sec. 5.724. The Local Government Video Gaming Distributive Fund.

(30 ILCS 105/6z-77 new)

Sec. 6z-77. The Capital Projects Fund. The Capital Projects Fund is created as a special fund in the State Treasury. The State Comptroller and State Treasurer shall transfer from the Capital Projects Fund to the General Revenue Fund \$61,294,550 on October 1, 2009, \$122,589,100 on January 1, 2010, and \$61,294,550 on April 1, 2010. Beginning on July 1, 2010, and on July 1 and January 1 of each year thereafter, the State Comptroller and State Treasurer shall transfer the sum of \$122,589,100 from the Capital Projects Fund to the General Revenue Fund. Subject to appropriation, the Capital Projects Fund may be used only for capital projects and the payment of debt service on bonds issued for capital projects. All interest earned on moneys in the Fund shall be deposited into the Fund. The Fund shall not be subject to administrative charges or chargebacks, such as but not limited to those authorized under Section 8h.

(30 ILCS 105/8.3) (from Ch. 127, par. 144.3)

Sec. 8.3. Money in the Road Fund shall, if and when the State of Illinois incurs any bonded indebtedness for the construction of permanent highways, be set aside and used for

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PAGE: 401

FUND TRANSFER REPORT - BFY 2010  
AS OF 06/30/10

FUND: 0694 CAPITAL PROJECTS

TRANSFERS OUT

MONTH	TRANSFERRED TO	AMOUNT	MONTHLY TOTAL
DECEMBER	0001 GENERAL REVENUE	23,255,150.42	
	0011 ROAD	387,625.02	
	0101 GENERAL OBLIGATION BR&I	129,208.34	23,771,983.78
JANUARY	0001 GENERAL REVENUE	14,736,098.75	
	0101 GENERAL OBLIGATION BR&I	129,208.34	14,865,307.09
FEBRUARY	0101 GENERAL OBLIGATION BR&I	4,821,575.01	
	0970 BUILD ILLINOIS B R & I	4,190,793.37	9,012,368.38
MARCH	0001 GENERAL REVENUE	23,303,300.83	
	0101 GENERAL OBLIGATION BR&I	4,830,283.34	28,133,584.17
APRIL	0001 GENERAL REVENUE	7,000,000.00	
	0101 GENERAL OBLIGATION BR&I	9,926,922.70	16,926,922.70
MAY	0001 GENERAL REVENUE	10,000,000.00	
	0101 GENERAL OBLIGATION BR&I	9,926,922.70	19,926,922.70
JUNE	0001 GENERAL REVENUE	32,000,000.00	
	0101 GENERAL OBLIGATION BR&I	9,926,922.70	41,926,922.70
	TRANSFERS OUT TOTAL:	154,564,011.52	
	TOTAL NET TRANSFERS:	154,564,011.52-	

REPORT ID: ST10  
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STATE OF ILLINOIS  
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PAGE: 304

FUND TRANSFER REPORT - BFY 2011  
AS OF 01/31/11

FUND: 0694 CAPITAL PROJECTS

TRANSFERS OUT

MONTH	TRANSFERRED TO	AMOUNT	MONTHLY TOTAL
JULY	0001 GENERAL REVENUE	58,000,000.00	
	0101 GENERAL OBLIGATION BR&I	14,376,439.00	
	0970 BUILD ILLINOIS B R & I	4,145,839.85	76,522,278.85
AUGUST	0001 GENERAL REVENUE	15,589,100.00	
	0101 GENERAL OBLIGATION BR&I	14,422,072.33	
	0970 BUILD ILLINOIS B R & I	4,145,839.85	34,157,012.18
SEPTEMBER	0001 GENERAL REVENUE	6,000,000.00	
	0101 GENERAL OBLIGATION BR&I	14,693,551.21	
	0970 BUILD ILLINOIS B R & I	4,145,839.85	24,839,391.06
OCTOBER	0001 GENERAL REVENUE	10,000,000.00	
	0101 GENERAL OBLIGATION BR&I	14,908,287.69	
	0970 BUILD ILLINOIS B R & I	4,145,839.85	29,054,127.54
NOVEMBER	0001 GENERAL REVENUE	15,000,000.00	
	0101 GENERAL OBLIGATION BR&I	14,908,287.69	
	0970 BUILD ILLINOIS B R & I	4,145,839.85	34,054,127.54
DECEMBER	0001 GENERAL REVENUE	10,000,000.00	
	0101 GENERAL OBLIGATION BR&I	14,908,287.69	

REPORT ID: ST10  
DATE RUN : 01/31/11  
TIME RUN : 23:50:05

STATE OF ILLINOIS  
OFFICE OF THE COMPTROLLER

PAGE: 305

FUND TRANSFER REPORT - BFY 2011  
AS OF 01/31/11

FUND: 0694 CAPITAL PROJECTS

TRANSFERS OUT

MONTH	TRANSFERRED TO	AMOUNT	MONTHLY TOTAL
DECEMBER	0970 BUILD ILLINOIS B R & I	4,145,839.85	29,054,127.54
JANUARY	0001 GENERAL REVENUE	20,294,550.00	20,294,550.00
	TRANSFERS OUT TOTAL:	247,975,614.71	
	TOTAL NET TRANSFERS:	247,975,614.71-	



# ***Illinois Jobs Now!***

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**Pat Quinn, Governor**

## ***Fiscal Year 2012 CAPITAL BUDGET***

**STATE OF ILLINOIS  
Pat Quinn  
Governor**

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# CAPITAL BUDGET OVERVIEW

State of Illinois

Chart A

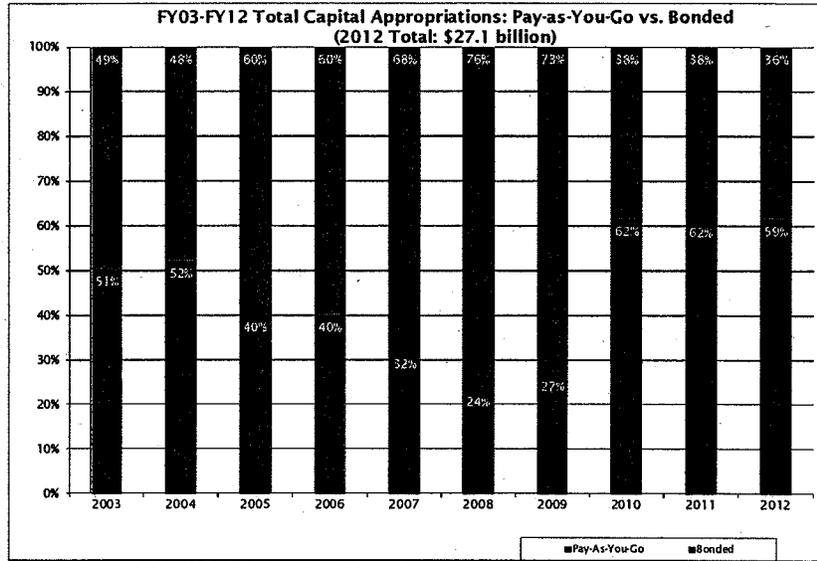
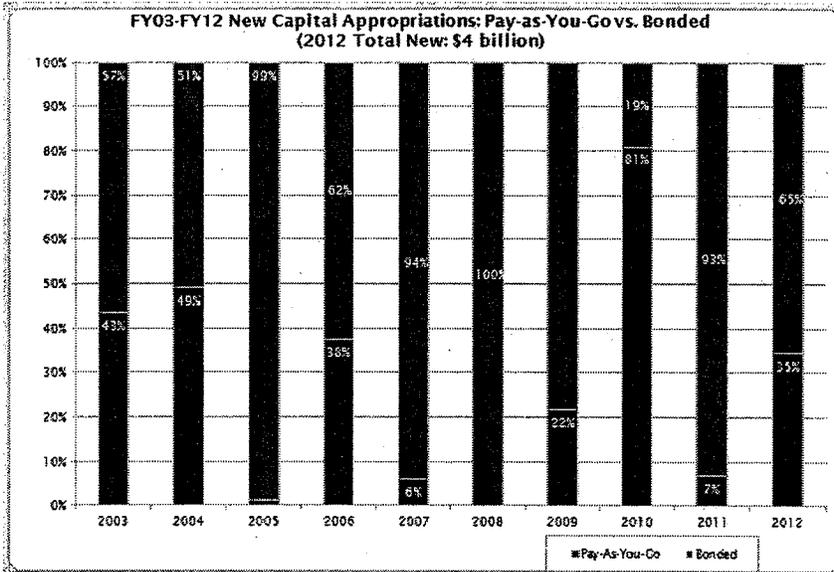


Chart B



**New Bonded and Pay-As-You-Go  
Capital Appropriations by Capital Component  
(\$ millions)**

Next Generation	219.0
Economic Development	36.4
Transportation	2,226.5
Higher Education	425.8
Environment, Energy and Technology	613.8
State Facilities	520.5
<b>Total New Appropriations</b>	<b>4,042.0</b>

# Debt Management

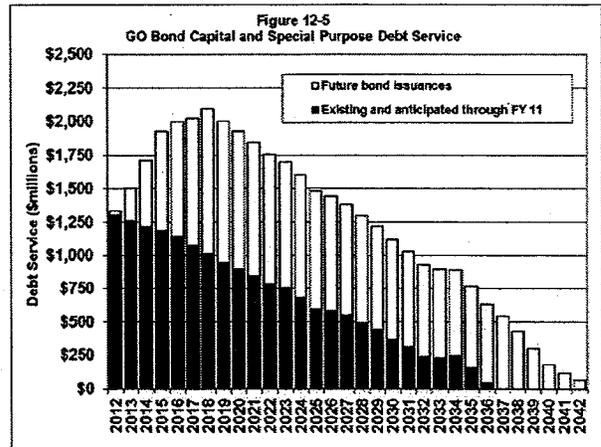
## State of Illinois

constitutes an irrevocable and continuing appropriation of all amounts necessary for that purpose and the irrevocable and continuing authority for, and direction to, the treasurer and the comptroller to make the necessary transfers, as directed by the governor, out of, and disbursements from, the revenues and funds of the state.

**Debt Service Obligation.** GO Bonds are primarily supported by revenue realized in the state's General Revenue Fund. The primary revenue sources that repay the GO Bonds are sales taxes, income taxes and motor fuel taxes. In addition, bonds issued for certain capital investments are supported by the following budgetary resources:

- Roads and Bridges - GO Bonds issued for road construction projects are primarily supported by motor fuel taxes received by the Road Fund.
- School Construction - GO Bonds for school construction purposes are repaid, in part, from cigarette and telecommunications taxes received by the School Infrastructure Fund.
- *Illinois Jobs Now!* - GO Bonds issued for *Illinois Jobs Now!* will be primarily supported by revenue realized in the state's Capital Projects Fund.

Figure 12-5 below displays GO Capital Bond debt service for all bonds issued and expected to be issued by June 30, 2011, and debt service for anticipated future issuances of Capital Bonds in fiscal years 2012-2017.



**Refunding Bonds.** The GO Bond Act also authorizes the issuance of General Obligation Refunding Bonds in an amount up to \$4,839,025,000 outstanding. Refunding bonds are issued to refund or advance refund the GO Bonds that are currently outstanding, in order to take advantage of favorable market conditions and reduce the state's debt service.

In February 2010, GO refunding bonds were issued to refund all or a portion of certain maturities of outstanding General Obligation bonds. Pursuant to the General Obligation Bond Act (30 ILCS 330), refunding bonds may only be issued if the net present value of debt service savings is at least 3 percent of the principal amount of the refunding bonds to be issued. The Series February 2010 bonds achieved approximately 7 percent, or \$106 million, in net present value savings and also reduced the average life of the refunded bonds.

**Interest Rate Exchange Agreements.** The use of derivative instruments, such as interest rate exchange agreements, allows the state to limit its exposure to interest rate fluctuations on variable rate bonds. An interest rate exchange consists of an agreement between two parties (known as counterparties), in which one stream of future interest payments is exchanged for another, with one stream being fixed and the other often linked to the London Interbank Offered Rate (LIBOR) or Securities Industry and Financial Markets Association (SIFMA) rate. In October 2003, the state entered into fixed interest rate exchanges with five separate counterparties (as shown below) in connection



# **Illinois State Budget**

**Governor Pat Quinn**

**Fiscal Year 2012**  
**July 1, 2011 – June 30, 2012**

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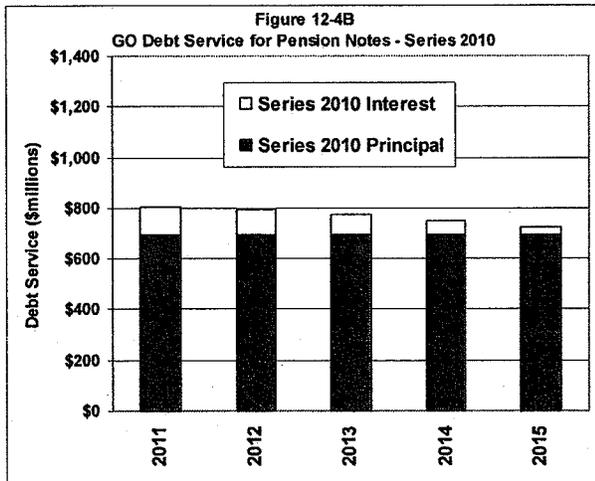


[www.state.il.us/budget](http://www.state.il.us/budget)

# Debt Management

## State of Illinois

During the 2009 spring session, the General Assembly approved the issuance of \$3.466 billion in Pension Obligation Notes. These notes, to be repaid in five annual installments, funded the majority of the required contributions to the state's five pension funds for fiscal year 2010. The notes were issued on January 15, 2010. Future debt service is shown in Figure 12-4B.



In January 2011, the governor signed into law Public Act 1497 authorizing the sale of 8-year final maturity Pension Obligation Bonds for the state's fiscal year 2011 contribution to the designated retirement systems. The first installment of principal will not come due until 2014 and thus is structured with the prior year's Pension Obligation Notes in mind limiting the financial impact to the state. The proceeds of the sale will be used to reimburse any payments made from the General Revenue Fund or Common School Fund to the retirement systems, followed by contributions to the state's five pension funds. The bonds are expected to close in March of this year.

**Security of the Bonds.** GO Bonds are direct, general obligations of the state and, by law, the full faith and credit of the state is pledged for the payment of interest and principal due on these bonds. The GO Bond Act provides that the sections of the GO Bond Act containing such a pledge shall not be repealed until all GO Bonds issued under the GO Bond Act have been paid in full.

**Continuing Appropriation.** If, for any reason, there are insufficient funds in the General Revenue Fund, or the Road Fund, to make transfers to the General Obligation Bond Retirement and Interest Fund (GOBRI), as required by the GO Bond Act, or the General Assembly fails to make appropriations sufficient to pay the principal and interest on the outstanding GO Bonds, the GO Bond Act constitutes an irrevocable and continuing appropriation of all amounts necessary for that purpose and the irrevocable and continuing authority for, and direction to, the treasurer and the comptroller to make the necessary transfers, as directed by the governor, out of, and disbursements from, the revenues and funds of the state.

**Debt Service Obligation.** GO Bonds are primarily supported by revenue realized in the state's General Revenue Fund. The primary revenue sources that repay the GO Bonds are sales taxes, income taxes and motor fuel taxes. In addition, bonds issued for certain capital investments are supported by the following budgetary resources:

- Roads and Bridges - GO Bonds issued for road construction projects are primarily supported by motor fuel taxes received by the Road Fund.
- School Construction - GO Bonds for school construction purposes are repaid, in part, from cigarette and telecommunications taxes received by the School Infrastructure Fund.
- *Illinois Jobs Now!* - GO Bonds issued for *Illinois Jobs Now!* will be primarily supported by revenue realized in the state's Capital Projects Fund.

Figure 12-5 below displays GO Capital Bond debt service for all bonds issued and expected to be issued by June 30, 2011, and debt service for anticipated future issuances of Capital Bonds in fiscal years 2012-2017.

No. 1-09-3163 & 1-10-0344  
(consolidated)

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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

Petitioner-Appellant,

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; the ILLINOIS LOTTERY  
and its Superintendent JODIE WINNETT,

Respondents-Appellees.

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

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**BRIEF OF RESPONDENTS-APPELLEES**

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Counsel for Respondents-Appellees.

ORAL ARGUMENT REQUESTED

96-37.<sup>6</sup> Petitioners complain that various provisions in Public Act 96-34 do not relate to the subject of "revenue," and that Public Act 96-34 therefore violates the single subject rule. These arguments are not well taken.

Among other provisions in Public Act 96-34, Petitioners complain about those that prohibit the use of Road Funds for the State Police and that exempt the Leaking Underground Storage Tank Fund (the "LUST Fund") from "sweeps" into the General Revenue Fund at the Governor's direction. (Pet. Br. at 31-32; P.A. 94-34, §§ 905, 950; C 83-93, 227-30.) Neither of these provisions, Petitioners maintain, relates to the subject of revenue. But while Public Act 96-34 states that it is "AN ACT concerning revenue" (C 45), that declaration is not controlling, *Boclair*, 202 Ill. 2d at 109, and Public Act 96-34 must be sustained as long as all of its provisions properly relate to a legitimate single subject, *Arangold I*, 187 Ill. 2d at 351-55. Public Act 96-34 readily satisfies that test.

All of the provisions of Public Act 96-34 relate to the capital projects initiative established by the Capital Projects Acts. These provisions include ones creating new revenues (e.g., new and increased fees and taxes on alcoholic beverages, candy, soft drinks and vehicle registrations, and new revenues from video gaming and state lottery operations), and others that require using existing revenues for these projects instead of for other purposes. Public Act 96-34's provisions relating to the use of Road Fund monies and the LUST Fund are of the latter variety. In the past, the General Assembly had authorized the use of Road

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<sup>6</sup> Public Act 96-34 also establishes the Capital Projects Fund as a "special fund" in the State Treasury and provides that it "may be used only for capital projects and the payment of debt service on bonds issued for capital projects." (P.A. 96-34, § 905; C 83-93.)

## NATURE OF THE CASE

This appeal contests the circuit court's denial of a petition for leave to file a "taxpayer standing" suit pursuant to Section 11-303 of the Code of Civil Procedure, 735 ILCS 5/11-303 (2008). Petitioners' proposed complaint sought an injunction against implementation of public acts that, collectively, authorized and funded \$31 billion in capital development projects throughout the State in 2009. Taken together, these laws (collectively, the "Capital Projects Acts," or "Acts") authorized these projects, established revenue sources for them, set up a fund to finance them, and appropriated funds to pay for them.

Among the new revenues established by Public Act 96-34 were increased taxes on the wholesale sale of alcoholic beverages, which rose, on a per-drink basis, to about 2.2¢ for beer, 5.4¢ for wine, and 10¢ for liquor. In addition, the effectiveness of Public Act 96-35, which appropriated funds for the capital projects, and the effectiveness of parts of Public Act 96-37, which authorized new projects, were conditioned on the effectiveness of Public Act 96-34, establishing additional revenue for those projects. The effectiveness of Public Act 96-34 was also conditioned on the effectiveness of Public Act 96-35, so that the new revenue sources would not take effect unless the General Assembly appropriated funds for the projects.

Petitioners' proposed challenges to these Acts asserted that they violated various provisions of the Illinois Constitution. Among other things, Petitioners alleged that the new tax rates on alcoholic beverages violate the Uniformity of Taxation Clause (Ill. Const., art. IX, § 2); that several of the individual Acts, and

all of them collectively, violate the Single Subject Clause (Ill. Const., art. IV, § 8(d)); that the appropriations law (Public Act 96–35) contains substantive law in violation of Article IV, Section 8 (Ill. Const., art. IV, § 8); that two provisions in Public Act 96–34, relating to video gaming and the state lottery, violate the requirement that public funds be used only for public purposes (Ill. Const., art. VIII, § 1(a)); and that the cross-effectiveness clauses in the Acts violate constitutional provisions involving the separation of powers, the presentment and veto procedures for legislation, and the effective date of laws (Ill. Const., art. II, § 1; art. IV, §§ 9(a), (b); art. IV, § 10).

The circuit court denied leave to file the suit, ruling that it did not meet the “reasonable grounds” standard of Section 11–303 of the Code of Civil Procedure. All questions on appeal are raised on the pleadings.

### **ISSUES PRESENTED FOR REVIEW**

1. Whether the circuit court properly held that petitioners’ proposed complaint did not state reasonable grounds for pursuing claims that:
  - a. the alcoholic beverages taxes established by Public Act 96–34 violate the Uniformity Clause;
  - b. any of the Capital Projects Acts, or all of them collectively, violate the Single Subject Clause;
  - c. the Capital Acts’ cross-effectiveness clauses violate the Illinois Constitution’s provisions on the separation of powers, the presentment and veto of legislation, and the effective date of laws;
  - d. Public Act 96–35, which appropriates funds for the projects

Section 4(d) of Public Act 96-36 increases the bond authority for transportation construction spending, including for state highways, roads and bridges (C 9), which by existing law are paid out of the Road Fund, 30 ILCS 105/8.3 (2008), and Public Act 96-34 discontinued the use of monies in the Road Fund for the State Police (C 87). In addition, Public Act 96-36 provided for increased expenditures out of the Leaking Underground Storage Tank Fund, and Public Act 96-34 exempted that Fund from “sweeps” into the General Revenue Fund at the Governor’s direction. (C 230.)

Public Act 96-35 included the legislative appropriations of public funds for individual projects authorized by the Public Acts 96-36 and 96-37. (C 723-978.) Among these appropriations were about \$46 million for the Illinois EPA to make “wastewater compliance grants” to local governments and wastewater treatment facilities (C 957), and \$25 million to the Illinois Emergency Management Agency for “safety and security improvements” at higher education facilities (C 859).

Finally, Public Act 96-38 changed various provisions in Public Act 96-34, including the effective date for tax increases on alcoholic beverages; changed the residency and profit-splitting provisions of the video gaming law; required that persons seeking certain positions in the video gaming business submit to a background investigation; and gave the Gaming Board jurisdiction over all gaming operations and the authority to administer rules and regulations for video gaming. (C 707.)

Some of the Capital Projects Acts contain provisions making their effectiveness depend on the effectiveness of another Act. The effectiveness of Public Act

96-34, establishing revenues for the Capital Projects, and Public Act 96-35, appropriating funds for those projects, were each conditioned on the effectiveness of the other. (P.A. 96-34, § 9999; P.A. 96-35, § 99; C 326, 978-79.) Parts of Public Act 96-37 take effect only if Public Act 96-34 and Public Act 96-36 also become effective (P.A. 96-37, §§ 30-11, 60-5 to 60-50; C 364, 400, 528), and Public Act 96-36 provides that it takes effect only if Public Act 96-34 becomes law. (P.A. 96-38, § 5; C 594.)

### **Petitioners' Request to Pursue a Taxpayer Standing Action**

Petitioners, as described by their proposed pleading, are an Illinois citizen and taxpayer, and an Illinois-based corporation licensed as a wholesaler and importing distributor of wine and spirits 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, Petitioners 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 the Capital Projects Acts are unconstitutional and an injunction against their implementation. (C 6-10.)

Pursuant to Section 11-303, the Attorney General filed a response to the petition. (C 1016-62) After briefing and argument, the circuit court denied the petition, finding that Petitioners's complaint did not state reasonable grounds for pursuing any of their proposed claims. (C 1172, 1229.)

306 Ill. App. 3d at 523 (citations omitted).<sup>5</sup>

That reasoning applies here. Whether imposing higher taxes on more potent alcoholic beverages promotes temperance is the type of legislative determination that is not subject to factual refutation in a courtroom. The validity of that determination therefore can be decided as a matter of law, and the circuit court properly denied Petitioners leave to pursue their proposed Uniformity Clause challenge to the alcoholic average taxes in Public Act 96-34 without further factual development.

**IV. The Circuit Court Properly Denied Petitioners Leave to Pursue the Claim that the Capital Projects Acts Violate the “Single Subject” Rule.**

The circuit court properly denied Petitioners leave to pursue their proposed claims that Public Acts 96-34, 96-37 and 96-38, or all of them collectively, violate Article IV, Section 8(d) of the Illinois Constitution. Ill. Const. art. IV, § 8(d).

**A. Standards for Evaluating Single Subject Claims**

The Single Subject Clause of the Illinois Constitution 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). The purposes of this provision include facilitating an orderly legislative process in which the issues presented by each bill can be better grasped and more intelligently discussed, and preventing the combining of popular measures with unpopular measures that otherwise could not be passed, commonly referred to as “log-

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<sup>5</sup> It is true, as Petitioners note (Pet. Br. at 27) that many Uniformity Clause cases have been disposed of by motion for summary judgment. It does not follow, however, that the type of factual development often presented in connection with such a motion is constitutionally required in all cases.

just licensed distributors and terminal operators, but also any “person with a substantial interest in a licensed distributor or terminal operator.” (Pet. Br. at 35-36; P.A 96-38 §§ 25(c), 25(f), 26; C 701-05.) Petitioners maintain that neither of these provisions is related to revenue. Their focus is too myopic, however.

The subject of the capital projects initiative embodied in the Capital Projects Acts properly encompasses financing those projects, including material aspects of the laws providing necessary revenues. See *Cutinello*, 161 Ill. 2d at 423-24; *Valstad*, 357 Ill. App. 3d at 920-22. Article 5 of Public Act 96-34, which Public Act 96-38 amends, authorized video gaming and established a 30% tax on net terminal income as a source for the Capital Projects established by the Capital Projects Acts. That Article logically relates to the capital projects initiative, and the amendments to it in Public Act 96-38 likewise relate to that initiative. An Act may amend another Act. *Arangold I*, 187 Ill. 2d at 352-53. Having created video gaming as a new revenue stream for the Capital Projects, the General Assembly properly addressed the many aspects of that activity necessary to ensure that it both generates income to the State and is operated in a way that best serves the public interest over the long term. See, e.g., *Geja's Café*, 153 Ill. 2d at 256-58; *Cutinello*, 161 Ill. 2d at 423-24.

**E. The Capital Projects Acts Do Not, Taken Together, Violate the Single Subject Rule.**

Petitioners also argue that the Capital Projects Acts, taken together, violate the single subject rule because they are interdependent, in the sense that the effectiveness of some of these Acts is made dependent, in whole or in part, on the effectiveness of one or more other Acts. Petitioners offer no authority for this

claim beyond their assertion that, as a logical matter, such provisions necessarily violate the purpose of the single subject rule by preventing one bill from becoming effective unless another bill, which *potentially* relates to a different subject, also becomes effective. Thus, Petitioners argue:

When a bill makes its effectiveness utterly dependent on another bill becoming effective, it requires that the subjects of the other bill become law, as well. In fact, *if* the other bill involves a different subject, *then* the tying provision involves a different subject. Thus, all the bills as tied violate the Single Subject Rule.

(Pet. Br. at 36, emphasis added.) The flaw in this argument is that, as Petitioners effectively acknowledged below (C 7), all of the Acts relate to the capital projects initiative. If, therefore, all of them (except the appropriations bill) could have been included in a single act, nothing about the single subject rule prevents them from being contained in several acts. The vagaries of the legislative process may partially explain why this legislation took the form of different bills, each having a different primary focus (e.g., revenue in Public Act 96-34, financing in Public Act 96-36, new projects in Public Act 96-37). But given their common subject, the single subject rule does not preclude their separation into several acts.

**V. The Circuit Court Properly Denied Petitioners Leave to Pursue the Claim that The Capital Projects Acts Violate the Separation of Powers, Veto, Presentment, and Effective Date Provisions of the Illinois Constitution.**

Petitioners further claim that tying the effectiveness of Public Act 96-34 and Public Act 96-35 violates the Separation of Powers, Presentment, Veto, and Effective Date clauses of the Illinois Constitution, Ill. Const. art. II, § 1; art. IV, §§ 9(a),(b); 10. These arguments have no merit. Although the legislative power

APPEAL NO. 09-3163

IN THE ILLINOIS APPELLATE COURT  
FIRST DISTRICT

W. Rockwell Wirtz, an Individual, and ) Wirtz Beverage Illinois, LLC, an Illinois ) Limited Liability Company, on behalf of ) and for the benefit of the Taxpayers of the ) State of Illinois, ) Petitioner-Plaintiffs-Appellants, ) 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 ) Giannoulas, in his official capacity as ) 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; the Illinois ) Lottery and its Superintendent Jodie ) Winnett, ) Respondent-Defendants-Appellees. )	On Appeal from the Circuit Court of ) Cook County, Illinois, County ) Department, Law Division, Tax and ) Miscellaneous Remedies Section )  Case No. 09 CH 30136 ) (Transferred to Law Division) )  Honorable Lawrence O’Gara, ) Circuit Judge )
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**BRIEF OF PETITIONER-PLAINTIFFS-APPELLANTS**  
**W. ROCKWELL WIRTZ AND WIRTZ BEVERAGE ILLINOIS, LLC**

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**ORAL ARGUMENT REQUESTED**

- Provisions including the phrase “as approximated below” or similar language (R. 786, 788, 790); and
- Provisions authorizing improvements at higher education facilities, for which there is no authorization in substantive law (R. 859).

The Complaint seeks: (1) a declaratory judgment that the challenged legislation violates the duties and limitats imposed on both the legislative and executive branches by the Illinois Constitution; and (2) an injunction to stop the expenditure of state funds and resources on the unconstitutional programs created in that legislation. (R. 12, ¶1.)

Briefly, it alleges violations of the following provisions of the Illinois Constitution:

**Uniformity Clause: Art. IX, §2.** The legislation violates the Uniformity Clause, which mandates uniform taxation and prohibits irrational tax classifications. It imposes arbitrary, wildly disproportionate new taxes on distributors of beer, wine, and spirits that are not based on real and substantial differences, comparable to taxing menthol and non-menthol cigarettes at different rates. (R. 9, 13.)

**Single Subject: Art. IV, §8(d).** The Single Subject Rule requires that a bill be confined to one subject in order to foster thoughtful debate about each subject to be enacted and to prevent “logrolling”—the corrosive practice of bundling less popular bills together with popular ones so that the well-received bills carry the unpopular ones to passage. Each of the three substantive bills challenged violates the Rule because each contains non-germane provisions. For example, the Omnibus Bill creates a brand new act legalizing video gaming. Video gaming is the poster child of logrolling. Bundled in with countless other popular programs, it was never debated. Had it been, it would not have passed. The largest city in this State had a video-poker ban in place long before the Omnibus Bill was passed, and since then over 50 communities and 5 counties have banned it. The legislation as a group also violates the Single Subject Rule because it is in effect a single bill: by virtue of tying provisions, the effectiveness of each depends entirely on the effectiveness of all. (R. 8-9, 13.)

**Substantive Law in an Appropriation Bill: Art. IV, §8(d).** The Appropriation Bill contains substantive law, violating the mandate that an appropriation bill be confined to the subject of appropriation. (R. 9, 13.)

**Public Funds for Public Purposes: Art. VIII, §§1(a) and (b).** The legislation makes the lottery privately managed and creates a video gaming program authorizing an expansion akin to adding 60 new casinos. Plaintiffs allege that, because these programs participate in interstate commerce and essentially will be run by and for the benefit of private parties, they violate federal gaming laws and

therefore violate the requirement that public funds be used only for public purposes. (R. 8, 12.)

**Separation of Powers/Veto Procedures/Presentment Clause/Effective Date of Laws: Art. II, §1; Art. IV, §§ 9, 10.** The Omnibus Bill contains language tying its effectiveness to the Appropriation Bill that funds program projects and *vice versa* such that if one of the bills does not become law the other “does not take effect at all.” This unprecedented “tied bill” arrangement violates the Single Subject Rule. It also ignores a fundamental constitutional requirement that controls the primary function of the legislative branch of government—passage of bills. The General Assembly is obligated by the Presentment Clause to present a passed bill to the Governor whereupon “[i]f the Governor approves the bill he shall sign it and it shall become law.” Under this “tied bill” arrangement, however, the Governor must sign both bills to get either; vetoing one renders his approval of the other nugatory. The arrangement also violates the Effective-Date-of-Laws Clause, which requires the General Assembly to adopt a uniform effective date for laws passed prior to June 1 and establishes a mandatory effective date for bills passed after May 31. Here, the legislature tried to choose its own effectiveness schedule for two bills passed after May 31. (R. 9, 13.)

At the urging of the Attorney General, on October 20, 2009, and again upon reconsideration on January 29, 2010, the Circuit Court denied Plaintiffs’ Petition to file their taxpayer action, ruling that the Complaint did not establish a “reasonable ground” for filing. (R. 1172; Tr. 60-62; Supp. R. 97.) The Circuit Court offered no rationale as to why Plaintiffs’ constitutional claims did not meet this standard. The Circuit Court’s ruling requires a *de novo* analysis of the validity of the causes of action pled in the Complaint.

#### **STANDARD OF REVIEW**

Whether a Circuit Court has interpreted a statutory provision correctly is a question of law subject to *de novo* review. *In re D.D.*, 196 Ill. 2d 405, 418 (2001). Likewise, whether a statute is constitutional and whether a party’s constitutional rights have been violated are matters that are reviewed *de novo*. *Doe v. Diocese of Dallas*, 234

**4. Uniformity Clause Claims Should Not Be Addressed On A Motion to Dismiss**

Finally, Uniformity Clause claims generally are not properly addressed on a motion to dismiss. This is evident from the Illinois Supreme Court Uniformity Clause cases cited above<sup>5</sup> and from all the Uniformity Clause cases the Attorney General cited to the Circuit Court, none of which were before the Supreme Court on an appeal from a motion to dismiss. See, e.g., *Allegro Servs. v. Metro. Pier & Exposition Auth.*, 172 Ill. 2d 243, 245 (1996) (summary judgment); *Cutinello v. Whitley*, 161 Ill. 2d 409, 416 (1994) (summary judgment); *Geja's Caf  v. Metro. Pier & Exposition Auth.*, 153 Ill. 2d 239, 245 (1992) (summary judgment); *Federated Distributions, Inc. v. Johnson*, 125 Ill. 2d 1, 4 (1988) (summary judgment); *Searle Pharms., Inc. v. Dep't of Revenue*, 117 Ill. 2d 454, 460-64 (1986) (administrative review). Rather, Uniformity Clause cases are decided after extensive evidence has been submitted to the court because they are very fact intensive and, as set forth above, the taxing body bears the burden of proof.

**B. Plaintiffs Stated A Single Subject Rule Claim And Ought To Have Been Allowed To Proceed Thereon**

Article IV, Section 8(d) of the Illinois Constitution, the Single Subject Rule, provides that:

Bills, except bills for appropriation and for the codification, revision or rearrangement of laws, shall be confined to one subject. Appropriation bills shall be limited to the subject of appropriation.

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<sup>5</sup> See Section III(A)(1), *supra*, at 23 (citing *Sunlife Assurance Co.*, 227 Ill. 2d at 136 (summary judgment); *Filan*, 216 Ill. 2d at 662 (summary judgment); *Arangold*, 204 Ill. 2d at 146 (summary judgment)).

As discussed below, not only does each of the four pieces of the legislation challenged here independently violate the Single Subject Rule, but, because each bill contains provisions tying its effectiveness to the others, they violate the Rule as a group.

1. **Standards And Purposes Of The Single Subject Rule**

The Illinois Supreme Court “use[s] a two-tiered analysis to determine whether an act violates the single subject rule”:

“First, we must determine whether the act, on its face, involves a legitimate single subject. [Citation.] Second, we must discern whether the various provisions within an act all relate to the proper subject at issue.” [Citation.] . . .

\* \* \*

Our analysis under the single subject rule is akin to statutory construction. In determining whether a provision of an act relates to a putative single subject, we must determine what that provision means. This begins and ends with the plain language of the provisions where that language is clear. [Citation.]

\* \* \*

An act violates the single subject rule when its plain language unmistakably embraces more than one subject. . . .

*People v. Burdunice*, 211 Ill. 2d 264, 268, 270-71 (2004) (citations omitted).

As discussed below, it is clear that the legislation challenged here fails both the first and second tiers of the analysis and therefore violates the Single Subject Rule. The Circuit Court also erred when, as is apparent from the language of its ruling, it failed to apply either the two-tier analysis or plain meaning and rejected Plaintiffs’ Single Subject Rule argument without any articulated basis. (Tr. 60-63; App. 3-5.)

The purpose of the Single Subject Rule in Article VIII of the Illinois Constitution was described by the Illinois Supreme Court in *People v. Olender*, 222 Ill. 2d 123 (2005):

“The practice of bringing together into one bill subjects diverse in their nature, and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure passage of several

is "revenue" (R. 1022), and, as the Complaint clearly demonstrates, the provisions in the Trailer Bill are *not* "naturally connected to" revenue. The Trailer Bill provision that licensed terminal operators and licensed establishments must split the profits of video gaming 50/50 "notwithstanding any agreement to the contrary" (R. 24, ¶38; 701) only affects the private parties that stand to benefit from video gaming. It does not relate to State revenue. The changes to the residency requirements for licensing are not related to revenue, either. (See R. 24, ¶38; 703; 705.) Like the Omnibus Bill, the Trailer Bill violates the Single Subject Rule.

**5. Because Their Provisions Tie Them Together, The Bills As A Group Violate The Single Subject Rule**

Plaintiffs pled that the unprecedented way in which the Public Acts at issue were tied together constituted a violation of the Single Subject Rule. (R. 39, ¶¶ 74-76.) The Attorney General admitted that tying the effectiveness of one bill to another was unprecedented and that there was no case law on the subject; it then simply resorted to arguing that Plaintiffs' "theory" that the tying violated the Single Subject Rule failed because it was "illogical." (R. 1039, 1040.) The theory, however, is consistent with the Rule's purpose of preventing logrolling.

The Constitution states that "bills . . . shall be confined to one subject." Ill. Const., art. IV, § 8(d). When a bill makes its effectiveness utterly dependent on another bill becoming effective, it requires that the subjects of the other bill become law, as well. In fact, if the other bill involves a different subject, then the tying provision involves a different subject. Thus, all the bills as tied violate the Single Subject Rule.

\* \* \*

As shown above, Plaintiffs stated a claim that the challenged legislation—both separately and as tied together—violated the Single Subject Rule of the Illinois Constitution. The Circuit Court should have granted leave for Plaintiffs to proceed on this claim.

**C. Plaintiffs Stated A Claim for And Ought To Have Been Allowed To Proceed On The Claim That The Appropriation Bill Contains Substantive Law In Violation Of The Illinois Constitution**

**1. The Prohibition Is Judicially Enforceable**

Article IV, Section 8(d) of the Illinois Constitution provides that “[a]ppropriation bills shall be limited to the subject of appropriation.”

An appropriation is defined under Illinois law as “the setting apart from public revenue of a certain sum for a specific object.” *Bd. of Trs. of Comm. Coll. Dist. No. 508 v. Burris*, 118 Ill. 2d 465, 477 (1987). By definition, an appropriation bill allocates public funds among authorized public purposes. The Constitution distinguishes between bills that establish substantive law authority (*i.e.*, establishing programs) from those that establish appropriation authority (specified funds made available for authorized programs) and requires there to be both substantive authority and appropriation authority before public funds may be expended on a program. Ill. Const., art. VIII, §§ 1(b), 2(b).

The Illinois Constitution mandates that appropriation bills be “limited to the subject of appropriation.” Ill. Const., art. IV, § 8(d). The Illinois Supreme Court has made clear that the prohibition is strictly enforced, and any substantive law authority included in an appropriation bill invalidates the entire bill. In *Benjamin v. Devon Bank*, 68 Ill. 2d 142 (1977), the Illinois Supreme Court struck down a general appropriation bill after finding substantive authority in provisions that limited the location of a state