

IN THE
SUPREME COURT OF ILLINOIS

W. ROCKWELL WIRTZ and WIRTZ	)	On Appeal from the
BEVERAGE ILLINOIS, LLC, as taxpayers,	)	Appellate Court of Illinois,
	)	First Judicial District
Petitioners-Appellees,	)	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	)	There on Appeal from the
as Comptroller of the State of Illinois;	)	Circuit Court of Cook County,
ALEXI GIANNOULIAS, in his official	)	Illinois, County Department,
capacity as the Treasurer of the State of	)	Law Division, Tax and
Illinois; the ILLINOIS DEPARTMENT OF	)	Miscellaneous Remedies
REVENUE and its Director BRIAN HAMER;	)	Section, No. 09 CH 30136
the ILLINOIS GAMING BOARD and its	)	(Transferred to Law Division),
members, HON. AARON JAFFE, CHARLES)	
GARDNER, REV. EUGENE WINKLER,)	
JOE MOORE, JR., and HON. JAMES E.)	
SULLIVAN, in their official capacities;	)	The Honorable
and the ILLINOIS LOTTERY and its	)	LAWRENCE O'GARA,
Superintendent JODIE WINNETT,)	Judge Presiding.
)	
Respondents-Appellants.)	

BRIEF OF APPELLANTS

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NATURE OF THE CASE

This appeal arises from the circuit court's denial of a petition for leave to file a "taxpayer standing" suit in which the petitioners ("Plaintiffs") sought to enjoin implementation of four public acts — Public Acts 96–34, 96–35, 96–37, and 96–38 — that they identified as "comprising the 2009 capital program." (A 28.)¹ These Acts, along with Public Act 94–36, which was passed at the same time (collectively, the "Capital Projects Acts"), authorized and provided revenues, debt financing, and the first year's appropriations for \$31 billion in capital projects throughout the State, including the construction and improvement of roads and highways, public schools, hospitals, libraries, state universities and colleges, prisons, and facilities for mental health treatment and for the care of disabled veterans and their spouses.

Plaintiffs' proposed complaint (the "Complaint") alleged, among other things, that Public Acts 96–34, 96–37, and 96–38 each violate the Single Subject Clause of the Illinois Constitution, Ill. Const., art. IV, § 8(d). The Complaint further alleged that, in light of provisions in Public Acts 96–35, 96–37, and 96–38 providing that they would take effect only if House Bill 255 (enacted as Public Act 96–34) "becomes law," all four Acts together comprise "one bill" that also violates the Single Subject Clause.

Reversing the circuit court, the appellate court ruled that Public Act 96–34 violates the Single Subject Clause and is "void in its entirety." (A 2, 17-18.) The appellate court did not rule on Plaintiffs' other constitutional challenges but,

¹ References to record materials use the following prefixes: "A" – attached appendix; "C" – seven-volume common law record.

addressing a claim they did not make, held that its decision that Public Act 96-34 is unconstitutional, combined with the provisions in Public Acts 96-35, 96-37, and 96-38 making their effectiveness “contingent on the enactment of Public Act 96-34,” meant that these other Acts “cannot stand.” (A 2, 18.)

This Court granted the petition of the defendants (the “State Parties”) for review of these rulings by the appellate court and for review of its failure to hold that Public Acts 96-35, 96-37, and 96-38 satisfy the Single Subject Clause. (A 63.)

All issues in this appeal are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the appellate court erred in holding that Public Act 96-34 violates the Single Subject Clause.
2. Whether the appellate court erred in failing to rule that Public Acts 96-35, 96-37, and 96-38 satisfy the Single Subject Clause.
3. Whether, in the alternative, the appellate court erred by holding that, if Public Act 96-34 is unconstitutional, Public Acts 96-35, 96-37, and 96-38 are invalid, or by failing to limit the temporal scope of that holding.

STATEMENT OF JURISDICTION

Based on the appellate court's January 26, 2011 decision that Public Act 96-34 violates the Single Subject Clause of the Illinois Constitution, the State Parties on February 18, 2011 filed a petition for review of that decision as of right pursuant to Supreme Court Rule 317. Pursuant to Supreme Court Rule 315, the State Parties' petition also sought review of the appellate court's failure to hold that Public Acts 96-35, 96-37, and 96-38 satisfy the Single Subject Clause, and of its holding that Public Act 96-34's unconstitutionality rendered Public Acts 96-35, 96-37, and 96-38 invalid. On March 3, 2011, this Court granted the petition for review. (A 63.)

CONSTITUTIONAL PROVISIONS INVOLVED

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).

STATEMENT OF FACTS

The Capital Projects Acts

The Capital Projects Acts — the four Acts that Plaintiffs identified as “comprising the 2009 capital program” (C 28), along with Public Act 96–36, which Plaintiffs did not challenge — were all signed into law on July 13, 2009 and took effect immediately. (A 2; 2009 Ill. Laws 631-32, 770, 784, 936, 1010.) At that time, the State’s economy was suffering from the severe recession affecting the entire nation.² Collectively, the Capital Projects Acts implemented an initiative to authorize and provide revenues, debt financing, and the first year’s appropriations for \$31 billion in capital projects throughout the State.

Public Act 96–37

The short title of Public Act 96–37 is “the FY2010 Budget Implementation (Capital) Act,” and its stated purpose is “to make changes in state programs that are necessary to implement the Governor’s Fiscal Year 2010 budget recommendations concerning capital.” (2009 Ill. Laws 784.) The substantive provisions of the Act authorize capital projects, including hospital improvements (2009 Ill. Laws 784-87); new community health centers (2009 Ill. Laws 787-91); public library construction (2009 Ill. Laws 791-94); school energy efficiency projects, and early childhood and charter school construction (2009 Ill. Laws 807-09).

² In the 15 months before passage of the Capital Projects Acts, unemployment in Illinois rose to more than 10% from less than 6%, and the number of unemployed individuals increased to more than 700,000 from less than 400,000. See <http://lmi.ides.state.il.us/laus/historicalMonthly.htm> (accessed Mar. 21, 2011).

Public Act 96-36

Public Act 96-36 (the validity of which Plaintiffs do not contest) authorized bond financing for the projects specified in Public Act 96-37 and also increased the bond limits for several categories of projects already authorized by statute, including the construction and improvement of capital facilities at state universities, colleges, prisons and correctional centers; state facilities for child care, mental health treatment, and the care of disabled veterans and their spouses; and rail and mass transit facilities, airport facilities, and highways, roads, and bridges. (2009 Ill. Laws 772-75.) Public Act 96-36 provided for the new bond proceeds to be used to fund these projects (collectively, the “Capital Projects”) and directed that the corresponding bonds be repaid out of the newly created “Capital Projects Fund” with the revenue sources specified in Public Act 96-34. (2009 Ill. Laws 491, 770-71.) Section 10 of Public Act 96-36 also authorized an additional \$55 million in payments from the Underground Storage Tank Fund for approved remediation and related work on leaking underground storage tanks. (2009 Ill. Laws 776.)

Public Act 96-34

Public Act 96-34 secured revenue sources for the Capital Projects and created the Capital Projects Fund in the state treasury as part of the mechanism for channeling those revenues to the Capital Projects. (2009 Ill. Laws 469-632.) New revenues created by Public Act 96-34 included increased taxes on sales of alcoholic beverages by manufacturers and importing distributors (2009 Ill. Laws 571-74), increased fees and fines under the Vehicle Code (2009 Ill. Laws 576-626),

and higher retailers occupation taxes and use taxes on candy, soft drinks, and certain grooming and personal hygiene products (2009 Ill. Laws 514-15, 519-20, 525-26, 531, 537-38). Public Act 96-34 also established revenue for the Capital Projects from two additional sources: video gaming and private management of the state lottery.³

Public Act 96-34 requires that all of the new revenues it created be deposited in the Capital Projects Fund and, with one exception, requires that they be used “only for capital projects and the payment of debt service on bonds issued for capital projects.” (2009 Ill. Laws 491.) The exception is contained in Section 905, which directs annual transfers from the Capital Projects Fund to the General Revenue Fund of just under \$245.2 million (*id.*) and, at the same time, discontinues annual transfers of a corresponding \$245.2 million from the Road Fund (which receives motor fuel taxes and is used to pay principal and interest on bonds issued to pay for construction on state transportation projects, see 30 ILCS 330/15(a) (2008); 35 ILCS 505/8(e)(1)(B) (2008)) to pay for operations of the Illinois State Police and the Secretary of State, which are now paid from other sources. (2009 Ill. Laws 494-96, 1518, 1537-38.)

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

Section 955 of Public Act 96-34, in addition to increasing vehicle registration fees, made modest upward revisions in the vehicle weights for bridges and highways in the State, increased the fines for violations of these limits, and required the additional revenue to go into the Capital Projects Fund. (2009 Ill. Laws 578, 580, 582, 584, 588, 601, 604-06, 613-14, 617-21.) Section 935 authorizes a study of the “effect of the Lottery on Illinois families.” (2009 Ill. Laws 563.) And Section 805 requires the Governor to report on the status of Capital Projects, including, for each project, “[t]he amount and source of funds . . . appropriated,” “[t]he amount of expenditures to date . . . and estimated amount of total State expenditures and proposed schedule of future State expenditures,” and “[a] timeline for completion.” (2009 Ill. Laws 479-80.)

Public Act 96-38

Public Act 96-38 changed various provisions in Public Act 96-34, including the effective date of some of the tax increases. (2009 Ill. Laws 938, 954-55, 965-66.) Public Act 96-38 also gave the Gaming Board jurisdiction over all video gaming operations and the authority to administer rules and regulations for video gaming, and it further required that persons seeking certain positions in the video gaming business submit to a background investigation. (2009 Ill. Laws 1000-04.)

Public Act 96-35

For the fiscal year ending on June 30, 2010, Public Act 96-35 appropriated public funds for the projects authorized by Public Act 96-37 and for expenditures on projects for which Public Act 96-36 authorized additional funding. (2009 Ill. Laws 632-770.)

Contingent Effectiveness Provisions

Some of the Capital Projects Acts contain provisions stating that the relevant Act, or specified portions, would take effect only if another Act “becomes law.” Public Act 95–35 provides that it does not “take effect” unless House Bill 255 (which was later enacted as Public Act 96–34) “becomes law.” (2009 Ill. Laws 770.) Some of the provisions of Public Act 96–37 likewise provide that they do not take effect unless House Bill 255 “becomes law.” (2009 Ill. Laws 825, 836, 850, 853, 856, 859, 862, 868, 871, 896, 899.) And similar language is contained in parts of Public Act 96–38. (2009 Ill. Laws 936, 953, 963, 976, 998, 1003, 1006.)

Circuit Court Proceedings

As described by their proposed Complaint, Plaintiffs are an Illinois citizen and taxpayer, and an Illinois-based corporation licensed as a wholesaler and importing distributor of wine and spirits that is required to collect and pay the taxes prescribed by the Liquor Control Act, 235 ILCS 5/1–1 *et seq.* (2008). (A 29-30.) Shortly after passage of the Capital Projects Acts, Plaintiffs filed a petition pursuant to Section 11–303 of the Code of Civil Procedure, 735 ILCS 5/11–303 (2008), for leave to file their Complaint seeking an injunction against the expenditure of public funds to implement Public Acts 96–34, 96–35, 96–37, and 96–38, which they alleged were unconstitutional on various grounds. (A 22-26.)

The Complaint alleged, among other things, that Public Acts 96–34, 96–37, and 96–38 each violated the Single Subject Clause of the Illinois Constitution, Ill. Const., art. IV, § 8(d). (A 42-45.) The Complaint further alleged that, in light of provisions in Public Acts 96–35, 96–37, and 96–38 stating that they would take

effect only if House Bill 255 (enacted as Public Act 96-34) “becomes law,” all four Acts together comprised “one bill” that also violated the Single Subject Clause. (A 55.)⁴ The Complaint did not assert any nonconstitutional grounds to invalidate any of these Acts, nor did it contest the validity of Public Act 96-36.

The Attorney General filed a response to Plaintiffs’ petition maintaining that it should not be allowed because none of the proposed claims had merit. (C 1016-62.) After further briefing and argument (C 1065-1100, 1176-1230), the circuit court denied the petition, finding that Plaintiffs’ Complaint did not state a “reasonable ground” to pursue any of their proposed claims. (C 1172, 1229.)

Appellate Court Proceedings

On appeal, the parties briefed all of Plaintiffs’ constitutional challenges to Public Acts 96-34, 96-35, 96-37, and 96-38, including their challenge under the Single Subject Clause. In defense of Plaintiffs’ single subject challenge to Public Act 96-34, the State Parties asserted, both in their brief and at oral argument, that the “capital projects initiative” was a proper single subject for the Act and that all of its provisions had a natural and logical connection to this subject.⁵

⁴ The Complaint also alleged that the new tax rates on alcoholic beverages imposed by Public Act 96-34 — which amount to a tax per drink of about 2.2¢ for beer, 5.4¢ for wine, and 10¢ for liquor — violate the Uniformity of Taxation Clause of the Illinois Constitution (Ill. Const., art. IX, § 2). (A 29, 36, 50-53.)

⁵ This argument is set forth at pages 29-32 of the State Parties’ appellate brief and at pages A 10-13 of the argument transcript attached to Plaintiff’s answer to the petition for leave to appeal (“PLA Answer”). See also *id.* at A 8-9. The State Parties made the same argument regarding the other challenged Acts. (State Parties’ App. Br. at 21-28, 33-34.)

The appellate court, without mentioning this argument, and looking solely at whether “revenue” constitutes a proper subject for Public Act 96–34, reversed and held that Public Act 96–34 violates the Single Subject Clause and, therefore, is “void in its entirety.” (A 2, 17-18.) Describing the principles for evaluating a Single Subject Clause claim, the appellate court stated:

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

(A 9-10.) After describing part of the legislative history for House Bill 255, which became Public Act 96–34, the court concluded: “the wide range of topics in Public Act 96–34 cannot be considered to possess a ‘natural and logical connection.’ *Johnson [v. Edgar]*, 176 Ill. 2d [499,] 517 [(1997)].” (A 13.) The court added:

While defendants assert that the varied provisions in Public Act 96–34 fit within the broad category of ‘revenue,’ defendants’ argument is unconvincing. . . . In the present case, not all of the provisions of Public Act 96–34 have a natural and logical connection to the single subject of revenue to the state.

Id. Having found Public Act 96–34 unconstitutional, the appellate court, addressing a claim not raised by Plaintiffs, held, without further elaboration:

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

(A 18.)

ARGUMENT

I. Standard of Review

A circuit court's decision whether to permit the filing of a taxpayer standing action under Section 11-303 is reviewed for an abuse of discretion. *People ex rel. White v. Busenhart*, 29 Ill. 2d 156, 161 (1963); *Hamer v. Dixon*, 61 Ill. App. 3d 30, 32 (2d Dist. 1978). "One of the purposes of the [taxpayer standing statute] was to provide a check upon the indiscriminate filing of taxpayers' suits." *Busenhart*, 29 Ill. 2d at 161. In exercising its discretion, the circuit court must take the well-pled factual allegations as true, *id.*; *Hamer*, 61 Ill. App. 3d at 31-32, and review of its exercise of this discretion "involves ascertaining whether the complaint states a cause of action," *Busenhart*, 29 Ill. 2d at 161.

II. The Appellate Court Erred in Holding that Public Act 96-34 Violates the Single Subject Clause.

The appellate court's holding that Public Act 96-34 violates the Single Subject Clause of the Illinois Constitution was in error and should be reversed.

A. Standards for Evaluating Constitutional Challenges to Statutes

Legislative enactments enjoy a "strong presumption of constitutionality." *People v. Dabbs*, 239 Ill. 2d 277, 291 (2010). A party challenging a statute accordingly bears the burden of clearly establishing that it is unconstitutional. *Id.*; *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306 (2008). Courts must resolve reasonable doubts in favor of a statute's constitutionality. *Dabbs*, 239 Ill. 2d at 291; *Napleton*, 229 Ill. 2d at 306-07.

B. 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-rolling.” *Johnson v. Edgar*, 176 Ill. 2d 499, 514-15 (1997); see also *People v. Sypien*, 198 Ill. 2d 334, 338 (2001). The single subject rule “does not impose an onerous restriction on the legislature’s actions,” *Johnson*, 176 Ill. 2d at 515, and the legislature must “go very far to cross the line to a violation” of the rule. *Id.*

Courts addressing a single subject challenge to a legislative enactment undertake a two-part inquiry — first, to “determine whether the act, on its face, involves a legitimate single subject,” and second, to “discern whether the various provisions within an act all relate to the proper subject at issue.” *People v. Bocclair*, 202 Ill. 2d 89, 109 (2002); see also *Sypien*, 198 Ill. 2d at 339. In the first part of this inquiry, “courts must liberally construe the term ‘subject’ in favor of upholding the legislation.” *Bocclair*, 202 Ill. 2d at 108; see also *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341, 352 (1999); *Cutinello v. Whitley*, 161 Ill. 2d 409, 423 (1994). The rule is “not intended to handicap the legislature by requiring it to make unnecessarily restrictive laws.” *Cutinello*, 161 Ill. 2d at 423. Moreover, whether an act’s subject is valid depends on the content of its substantive

provisions, not its title. *Boclair*, 202 Ill. 2d at 109; see also *People v. Olender*, 222 Ill. 2d 123, 140 (2005).

The second requirement of the single subject rule is satisfied if all of the law's provisions relate to the same subject, in the sense that they "have a natural and logical connection to the single subject" embodied in the law. *Boclair*, 202 Ill. 2d at 109; see also *Arangold*, 187 Ill. 2d at 352. Such a connection extends to "all matters germane to a general subject, including the means reasonably necessary or appropriate to the accomplishment of a legislative purpose." *Arangold*, 187 Ill. 2d at 354 (citations and internal quotation marks omitted); see also *People ex rel. Gibbons v. Clark*, 296 Ill. 46, 58-59 (1921) (holding that, to satisfy single subject rule, a law's provisions must be "in some reasonable sense auxiliary to the object in view"). "There is no additional requirement that the individual provisions be related to each other." *Boclair*, 202 Ill. 2d at 109; see also *Arangold*, 187 Ill. 2d at 356. Nor is compliance with the rule dependent on the number of provisions in the enactment, its length, or the fact that it amends a number of acts already in effect. *Arangold*, 187 Ill. 2d at 352.

C. Public Act 96-34 Satisfies the Single Subject Rule.

The appellate court's holding that Public Act 96-34 violates the Single Subject Clause is wrong. The appellate court not only misstated the relevant legal standard, but also disregarded the State Parties' argument that the General Assembly' 2009 "capital projects initiative" was a permissible single subject of legislative action, and that all of Public Act 96-34's provisions had a natural and logical connection to that subject.

The appellate court fundamentally misstated the relevant legal standard in a manner that had the effect of requiring that all of the provisions of a bill be *related to each other*, rather than being related to a single subject. Thus, the appellate court stated: “The legislature violates the single subject rule when ‘it includes within one bill unrelated provisions that by no fair interpretation have any legitimate *relation to one another*.’” (A 9-10, quoting *People v. Reedy*, 186 Ill. 2d 1, 9 (1999) (emphasis added).) In *Arangold*, however, the Court expressly disapproved the view that the Single Subject Clause requires that all parts of a legislative enactment “be *related to each other*.” 187 Ill. 2d at 354-56 (emphasis added); see also *Boclair*, 202 Ill. 2d at 109.

The appellate court compounded this bedrock error when it looked exclusively at whether the provisions of Public Act 96–34 related to the subject of “revenue” (A 13-15) and entirely disregarded the State Parties’ position, which they presented in substantial detail in their brief and at oral argument, that the “capital projects initiative” was a permissible single subject for Public Act 96–34 (and for the rest of the Capital Projects Acts), and that all of the provisions of Public Act 96–34 had a natural and logical connection to this subject. (State Parties’ App. Br. at 29-32; see also *id.* at 21-28, 33-34.)⁶

⁶ Plaintiffs’ suggestion that this position was entirely new on appeal (see PLA Answer at 1-2) is not only legally irrelevant, see *Boclair*, 202 Ill. 2d at 109, but also belied by their own statement in the circuit court that the State Parties defended the validity of Public Act 96–34 “by claiming that [its] subject (and that of all the other challenged legislation, as well) is ‘the 2009 Capital Program’” (C 1069).

Properly evaluated, Public Act 96–34 survives constitutional scrutiny under the Single Subject Clause. The Act reflects a legislative effort related to a proper subject, i.e., the 2009 capital projects initiative, and all of its provisions have a natural and logical connection to that subject.⁷

1. The Capital Projects Initiative Is a Proper Single Subject.

Public Act 96–34 readily satisfies the first prong of single subject analysis, requiring that a legislative enactment involve a legitimate single subject. Here, that subject is the 2009 capital program.

While the Court has held that the subject of an Act may not be so broad that it deprives the Single Subject Clause of any meaning, *Boclair*, 202 Ill. 2d at 109, it also has emphasized that “courts must liberally construe the term ‘subject’ in favor of upholding the legislation,” *id.* at 108. Faithful to these principles, *Arangold* held that the constitutional limit on permissible subjects of legislation was not exceeded by Public Act 89–21, whose subject was “implementation of the state budget for the 1996 fiscal year.” 187 Ill. 2d at 356; see also *Valstad v. Cipriano*, 357 Ill. App. 3d 905, 921 (4th Dist. 2005) (rejecting single subject challenge to Public Act 93–32, the budget implementation act for fiscal year 2004). These holdings in *Arangold* and *Valstad* control the analysis here.

⁷ The appellate court also attached significance to the fact that House Bill 255, which became Public Act 96–34, originally related only to inheritance taxes. (A 10-12.) But House Bill 255 did not progressively “grow” through the gradual addition of new provisions over time, as the appellate court suggested. (A 12.) Instead, as is true with many bills, it was changed by an amendment that replaced everything after the enacting clause. (A 10.) Nothing in this Court’s single subject jurisprudence finds this circumstance constitutionally significant.

The legitimate subject of Public Act 96–34, and of the other challenged Acts — including Public Act 96–37, whose title is “the FY2010 Budget Implementation (Capital) Act” (2009 Ill. Laws 784) — is implementing the 2009 capital program that the General Assembly adopted in the face of the serious economic conditions then affecting the State. If, as *Arangold* and *Valstad* held, implementing the budget for an entire fiscal year represents a valid single subject for a legislative enactment, then the 2009 capital program does so even more easily.

Arangold described in detail the various provisions of Public Act 89–21, including:

- Amending the Illinois Public Aid Code, along with related provisions of the Tobacco Tax Act and the State Prompt Payment Act, to abolish the interim assistance program for persons awaiting a determination of their eligibility for federal supplemental security income payments; to freeze Medicaid reimbursement rates; to allow the Department of Public Aid to determine criteria for adjustable payments to hospitals; and to change the payment of assessments by hospitals and developmentally disabled care providers.
- Amending the Children and Family Services Act, along with relevant parts of the Juvenile Court Act, the Abused and Neglected Child Reporting Act, the Adoption Act, and the Child Care Act, to postpone the requirement that DCFS provide family preservation services; to bar DCFS from assuming responsibility for any minor over the age of 13 charged with a criminal offense; to permit DCFS to set up certain savings accounts; and to permit DCFS to place a child with a relative.
- Amending the Illinois Act on the Aging, the Disabled Persons Rehabilitation Act, the Nursing Home Care Act, and the Probate Act to require screening of persons seeking admission to nursing homes to determine their need for services and to assign responsibility for screening, and to enable the State to seek reimbursement from a person’s estate for certain public assistance provided during the person’s life.
- Amending the State Employees Group Insurance Act to provide the Department of Central Management Services with information about the

Teachers Retirement System (“TRS”) program, changing the definition of a “TRS dependent beneficiary,” and making changes relating to eligibility, premiums, interest, contributions, and payment of administrative costs in the Teachers Retirement Fund.

- Amending the Civil Administrative Code to require certain state automobile liability claims to be paid from the Road Fund.
- Amending the Illinois Pension Code to increase minimum retirement annuities and benefits payable.
- Amending the School Code to establish a school technology program, and to authorize the Illinois Board of Education to provide resources, including matching grants, for the program.
- Amending the Riverboat Gambling Act to require the periodic transfer of funds into the Education Assistance Fund.

187 Ill. 2d at 347-50. Describing Public Act 89–21’s subject as “implementation of the state budget for the 1996 fiscal year,” *id.* at 352, the Court not only rejected the argument that this subject was “so overly broad” that it could not properly be considered a single subject, *id.* at 351, but also held that all of the foregoing substantive provisions had a natural and logical connection to that single subject, *id.* at 354.

On the first issue, the Court distinguished two cases: *Johnson*, which rejected the position that a bill’s provisions involving “the diverse subjects of . . . child sex offenders, employer eavesdropping, and environmental impact fees imposed on the sale of fuel” all related to the subject of “public safety,” and *Reedy*, which rejected an attempt to characterize “the two entirely different subjects of the criminal justice system and hospital liens” as both relating to the subject “governmental matters.” *Id.* at 353-54. To accept the idea that those “obviously discordant provisions” in those cases “were related because of some

tortured connection to such a broad and vague category,” *Arangold* explained, would essentially render the single subject requirement “meaningless.” *Id.* at 353. By contrast, Public Act 89–21 did not present that danger, the Court concluded, because the General Assembly’s purpose was to implement the State’s budget, and it “therefore included within that enactment all the means reasonably necessary to accomplish its purpose,” which “is entirely permissible under the single subject rule.” *Id.* at 354; see also *Valstad*, 357 Ill. App. 3d at 921-22.

The appellate court’s decision in this case cannot be squared with *Arangold*. In its refusal to accept (or even acknowledge) the State Parties’ position that the 2009 capital program was a proper subject of legislative action, the appellate court seemingly took the view that implementing the State’s budget for a full fiscal year represents a *sui generis* exception to the Single Subject Clause. Thus, the appellate court’s opinion, without mentioning the State Parties’ argument that the proper subject of Public Act 96–34 was the 2009 capital program, simply stated, without elaboration: “Public Act 96–34 does not involve the single subject of implementation of the state budget.” (A 16.)⁸

The distinction the appellate court seemingly adopted — between bills to implement an annual budget and all other nonappropriation bills — finds no

⁸ At oral argument, when the State Parties’ counsel relied on *Arangold* and *Valstad* to support their position that the proper single subject of Public Act 96–34 and the other challenged Acts was the legislature’s “capital projects initiative,” the Justice who wrote the appellate court’s decision responded: “That was a budget. A budget will contain hundreds of different projects. . . . This is not a budget bill, is it?” (PLA Answer at A 10; see also *id.* at A 11.) The State Parties’ counsel disputed that bills to implement the budget for a full fiscal year benefit from a special exception to the Single Subject Clause, but the same Justice indicated his disagreement with that position (*id.* at A 11).

support in the text of the Illinois Constitution or in any decision of this Court. The text of the Single Subject Clause makes an exception only for “bills for appropriation and for the codification, revision or rearrangement of laws.” Ill. Const. art. IV, § 8(d). No exception is included for bills to *implement* an appropriation bill — whether the appropriation covers a full fiscal year or has a smaller scope. Moreover, *Arangold* describes the legislative practice of drafting a single bill to include all of the provisions to implement a full year’s budget as having commenced well after adoption of the 1970 Constitution. 187 Ill. 2d at 347 (“The General Assembly has enacted a state budget implementation bill or bills every year since 1991.”). It follows, therefore, that if implementing a legislative undertaking as broad as an entire year’s budget represents a constitutionally valid subject, as *Arangold* held, then the smaller undertaking of implementing a capital program — including authorizing the relevant projects and providing revenues, financing, and appropriations for those projects — also represents a constitutionally valid subject. The appellate court’s contrary ruling on this point was in error.

2. All Provisions in Public Act 96–34 Have a Natural and Logical Connection to the Capital Projects Initiative.

The appellate court also erred by failing to hold that all of Public Act 96–34’s provisions have a natural and logical connection to the subject of implementing the 2009 capital program. Relying heavily on *People v. Olender*, 222 Ill. 2d 123, 140 (2005), the appellate court ruled that “not all of the provisions of Public Act 96–34 have a natural and logical connection to the single subject of *revenue to the state.*” (A 15, emphasis added.) But because the appellate ignored the State Parties’ argument that all of Public Act 96–34’s provisions properly

relate to the subject of the *2009 capital program*, its opinion provides no meaningful guidance on that issue, which is central to the present appeal. And a careful analysis of that issue confirms that Public Act 96–34 also meets the second prong of single subject analysis.

Although Plaintiffs have pointed to several provisions in Public Act 96–34 to support their claim of a single subject violation, the common feature of these arguments is that they focus on a single provision in isolation, out of context from the rest of the Act, and then assert that it is unrelated to the Act’s subject. But that myopic focus improperly disregards the relevant connections between those provisions and the overall subject of the Act.

The proper perspective is illustrated in *Arangold*, which, as noted above, held that all of the provisions in Public Act 89–21, while widely varied in their individual terms, properly related to the subject of implementing the State’s budget for fiscal year 1996. 187 Ill. 2d at 354. Likewise, in *Valstad* the appellate court rejected a similar attack on Public Act 93–32, which implemented the 2004 fiscal year budget. 357 Ill. App. 3d at 921. Of particular relevance is *Valstad*’s analysis of two challenged provisions: one requiring sellers of new and used tires to notify the EPA of that activity, and another expanding the definition of vanity license plates. 357 Ill. App. 3d at 921. Upholding the law, the court held:

[S]ection 55 of the Act not only requires tire sellers to notify the Illinois EPA of that activity; it also increases the preexisting fee for tire sales, clarifies that the fee applies to the sale of used tires as well as new tires, and imposes a temporary, additional 50-cent fee on tire sales Assuring that tire sellers notify the agency of such sales clearly enhances the collection of fees for those sales.

In addition, section 3–405.1(a) of the Illinois Vehicle Code expands the definition of what types of license plates qualify as vanity plates. . . . Because the state collects a higher fee for vanity plates . . . , an increase in the number of licenses that qualify increases the state’s revenues.

We thus conclude that these two provisions are not “inconsistent with, or foreign to,” the general subject of Public Act 93–32.

Id. at 921-22 (citations omitted); cf. *Cutinello*, 161 Ill. 2d at 424 (rejecting contention that Public Act 86–16 violated single subject rule because its provisions “deal[t] with financing as well as transportation”); *Geja’s Café v. Metropolitan Pier & Exposition Auth.*, 153 Ill. 2d 239, 250 (1992) (holding that multiple provisions in act authorizing McCormick Place expansion properly related to that subject). The same approach warrants a similar conclusion here.

As described above (at 5-7), Public Act 96–34 not only establishes revenue sources for the Capital Projects specified in Public Acts 96–36 and 96–37, but also creates the Capital Projects Fund in the state treasury as part of the structure for financing these projects. Both aspects of the Act clearly relate to the 2009 capital program. Plaintiffs nonetheless complain that other provisions in Public Act 96–34 do not relate to the same subject as the rest of the Act, and that it therefore violates the single subject rule. These arguments are not well taken.

Plaintiffs specifically object to Section 950, which exempts the Underground Storage Tank Fund (the “UST Fund”) from “sweeps” into the other state funds at the Governor’s direction pursuant to Section 8h of the State Finance Act, 30 ILCS 105/8h (2008). That objection misses the mark. Among the appropriations included in Public Act 96–35 as part of the capital program was \$55 million

in EPA-approved payments from the UST Fund for remediation and other work concerning leaking underground storage tanks. (See above at 5.) Preventing gubernatorial sweeps from the UST Fund for other purposes therefore helps ensure the presence of the necessary revenues to support those payments. The same exclusion from sweeps protects the newly created Capital Projects Fund, which is used to pay for the Capital Projects (including servicing the debt issued to provide funds for those projects). (2009 Ill. Laws 491.) Both exclusions are fully consistent with the single subject rule.

The same conclusion applies with respect to Plaintiffs' complaints about Section 905 of Public Act 96-34, which ends annual transfers of \$245.2 million from the Road Fund to pay for operations of the State Police and the Secretary of State, and, at the same time, provides that just under \$245.2 million will go each year from the Capital Projects Fund to the General Revenue Fund. (2009 Ill. Laws 491, 494-96.) The clear thrust of these provisions in Section 905 is to secure revenues in the Road Fund for capital projects (including servicing "Series A" Transportation Bonds used to pay for construction projects on state roads and highways, see 30 ILCS 330/15(a) (2008)), while at the same time providing alternate funding for the continued operations of the State Police and the Secretary of State that were formerly paid out of the Road Fund. (See 2009 Ill. Laws 1518, 1537-38.) The net result is the equivalent of having this amount in new revenues from Public Act 96-34 go directly into the Road Fund, which is used to service debt issued to pay for transportation construction projects. Plaintiffs' contention that such new revenues "have been used primarily for General

Revenue purposes,” are available “for any kind of general purpose expenditure,” and are directed by statute to be used “for ordinary expenses” (PLA Answer at 5-6), thus presents an incomplete and inaccurate view of Public Act 96–34.

Plaintiffs also direct single subject challenges at Sections 805, 935, and 955 of Public Act 96–34. Again, however, none of these sections is foreign to the subject of the 2009 capital program. Section 805 requires the Governor to report on the status of Capital Projects, including, for each project, “[t]he amount and source of funds . . . appropriated,” “[t]he amount of expenditures to date . . . and estimated amount of total State expenditures and proposed schedule of future State expenditures,” and “[a] timeline for completion.” (2009 Ill. Laws 479-80.) Such ongoing accounting for the projects is simply good governance, ensuring that the projects are timely completed, that the relevant funds are properly spent, and that completion issues are promptly and adequately addressed.

Section 935 authorizes a study of the “effect of the Lottery on Illinois families.” (2009 Ill. Laws 563.) Because Public Act 96–34 authorizes private day-to-day management of the state lottery and provides that increased lottery revenues (above the prior baseline, adjusted for inflation) shall be devoted to the Capital Projects, it stands to reason that the General Assembly would want to know whether, and to what extent, the lottery may be affecting the cohesion and economic stability of families in the State. This study therefore relates not only to an important revenue source for these projects (which privatizing the daily management operations was intended to increase), but also to the appropriateness of relying on that revenue source for capital projects the General Assembly

considered important for the State's benefit.

Finally, Section 955, in addition to increasing vehicle registration fees, made modest upward revisions in the vehicle weights for bridges and highways in the State, increased the fines for violations of these limits, and required the additional revenue to go into the Capital Projects Fund. (2009 Ill. Laws 578, 580, 582, 584, 588, 601, 604-06, 613-14, 617-21.) These provisions, including the weight limit increases, have a logical relation to the capital projects initiative embodied in the Capital Projects Acts. A natural effect of the work to construct and repair roads and bridges is to permit heavier loads on them. At the same time, Public Act 96-34 increased the fines for violating these limits and directed that these fines, along with the increased registration fees, be used for this work. Thus, the revised weight limits are an integral part of the construction program, both supporting, and supported by, the related provisions of Public Act 96-34. That is entirely consistent with the single subject rule. See *Arangold*, 187 Ill. 2d at 352-56; *Cutinello*, 161 Ill. 2d at 423-24; *Valstad*, 357 Ill. App. 3d at 920-22.

In short, all of the provisions of Public Act 96-34 have a proper connection to the Act's legitimate subject of implementing the 2009 capital projects initiative. The appellate court's contrary holding therefore should be reversed.

III. Public Acts 96-35, 96-37, and 96-38 Also Comply With the Single Subject Clause.

There is also no merit to Plaintiff's *individual* single subject challenges to Public Acts 96-37 and 96-38, or to their *collective* challenge to Public Acts 96-34, 96-35, 96-37, and 96-38 on the theory that they comprise "one bill" that violates the Single Subject Clause.

A. Public Act 96–37 Satisfies the Single Subject Rule.

As detailed above (at 4), Public Act 96–37 authorized a number of capital projects as part of the 2009 capital program. This program was a legitimate single subject of legislative action, and all of Public Act 96–37’s provisions have a natural and logical connection to that subject. Public Act 96–37 therefore complies with the Single Subject Clause.

In the appellate court, Plaintiffs maintained that Public Act 96–37 does not satisfy the requirement that a bill have a proper single subject. (Pl. App. Br. at 32-35.) Specifically, Plaintiffs argued that this requirement prohibits a bill that “creates entirely new acts” or “launches wholly new programs,” and that even in the “unique setting of budget implementation,” the General Assembly may only make “changes to existing programs.” (Pl. App. Br. at 31-33.) The budget implementation act upheld in *Arangold* (Public Act 89–21) satisfied these criteria, Plaintiffs argued, because “[e]very section of that act amended an existing act and started with a phrase stating it was amending an act.” (*Id.* at 33-34.) The only exception in Public Act 89–21, Plaintiffs maintained, was one they said the Court “recognized . . . was a *de facto* amendment even though it took the mechanical route of repeal and reenactment [of an Act] with changes.” (*Id.* at 33-34.) Public Act 96–37 does not meet this strict test, Plaintiffs argued, because it is not an actual budget implementation bill, and because it “creates new program after new program.” (*Id.* at 33-35.)

This argument by Plaintiffs — which attempts to force a strained, narrow interpretation of *Arangold* and the Court’s single subject jurisprudence — is

unconvincing. As discussed above (at 19), the Illinois Constitution does not recognize a unique “budget implementation” exception to the Single Subject Clause. There is therefore no sound basis to conclude that the 2009 capital program automatically constitutes an improper legislative subject because it fails to meet some strict, artificial definition of implementing a single fiscal year’s budget, or because it creates “new acts” or initiates “new programs,” as opposed to amending existing acts or programs.

Arangold is again instructive. There, the Court initially observed that a bill’s compliance with the Single Subject Clause does not depend on the number of its provisions, its length, or the fact that it amends a number of acts already in effect. 187 Ill. 2d at 352. Reaffirming the well-established two-part test, the Court then specifically rejected the attempt to impose a new requirement: that all of an act’s provisions “be related to each other.” *Id.* at 354-56. The contrived new requirements that Plaintiffs propose here — that an act not create “new acts” or initiate “new programs” — deserve the same fate. The relevant issue here is whether a statewide capital program constitutes a legitimate single subject for legislative action, or instead is so broad that accepting it would deprive the Single Subject Clause of all meaning. The answer, as described above, is that the 2009 capital projects initiative is a valid single subject. Public Act 96–37 therefore should be upheld against Plaintiffs’ single subject claim.

In further support of their argument that Public Act 96–37 does not qualify as a budget implementation bill, Plaintiffs pointed to its provision relating to car rental companies’ disclosures in their rental agreements, which Plaintiffs said had

“nothing to do with implementation of the State budget.” (Pl. App. Br. at 33.) The more pertinent question is whether this provision validly relates to the 2009 capital program, and on that question Plaintiffs’ argument fails.

The revenue sources for the Capital Projects contained in Public Act 96–34 include new and increased vehicle registration fees. (2009 Ill. Laws 582, 601, 604-06, 613-14, 617-21.) Public Act 96–37 simply provides that car rental companies may pass through the cost of these fees and charges to their rental customers and that, if they do so, they must disclose them in their rental agreements. (2009 Ill. Laws 815-16.) This provision thus represents a “means reasonably necessary or appropriate to the accomplishment of [the Act’s] legislative purpose.” *Arangold*, 187 Ill. 2d at 352 (citation and internal quotation marks omitted); see also *Valstad*, 357 Ill. App. 3d at 921-22.

B. Public Act 96–38 Complies With the Single Subject Rule.

Plaintiffs’ claim that Public Act 96–38 violates the single subject rule likewise is without merit, as all of that Act’s provisions relate to the capital program initiated by the Capital Projects Acts. In the appellate court, Plaintiffs complained in particular about two provisions in Public Act 96–38: one amending the video gaming law to specify that the statutorily prescribed 50/50 split of profits between licensed terminal operators and local establishments applies “notwithstanding any agreement to the contrary,” and another amending the Illinois residency requirement to apply not just to licensed distributors and terminal operators, but also to any “person with a substantial interest in a licensed distributor or terminal operator.” (Pl. App. Br. at 35-36; 2009 Ill. Laws

998-99.) Plaintiffs maintained that neither of these provisions is related to revenue. Their focus is both misdirected and too narrow.

The subject of the 2009 capital program properly encompasses financing for the projects this program authorized, including material aspects of the laws providing necessary revenues for those projects. In *Cutinello*, the Court addressed the contention that Public Act 86-16 violated the single subject rule because its provisions “deal[t] with financing as well as transportation.” 161 Ill. 2d at 424. Finding this contention unconvincing, the Court stated:

In enacting a bill, the legislature may provide the means necessary to accomplish the legislative purpose. Transportation systems rely heavily on taxation, and other financing mechanisms, to maintain their operations. Thus, financing provisions are reasonably necessary to the accomplishment of the legislative purpose.

Id. This holding conforms to the principle that provisions in an act that further the purpose encompassed by its single subject are not foreign to that subject. See also *Valstad*, 357 Ill. App. 3d at 920-22. The contested provisions in Public Act 96-38 likewise conform to that principle.

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, for which it provides funding, and the amendments to it in Public Act 96-38 likewise relate to that initiative. Under the Single Subject Clause, an Act may amend another Act. *Arangold*, 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. *Cutinello*, 161 Ill. 2d at 423-24; *Valstad*, 357 Ill. App. 3d at 920-22; see also *Geja's Café*, 153 Ill. 2d at 256-58. Thus, both aspects of Public Act 96-38 to which Plaintiffs object readily satisfy the requirement that they have a natural and logical connection to the bill's subject.

C. Public Acts 96-34, 96-35, 96-37, and 96-38 Do Not, Taken Together, Violate the Single Subject Rule.

Plaintiffs also argued below that, taken together, Public Acts 96-34, 96-35, 96-37, and 96-38, violate the single subject rule because they are interdependent, in the sense that the General Assembly made the effectiveness of some of them, or specific provisions in them, dependent on whether another bill "becomes law." (A 29, 41, 55-57.) Plaintiffs offered 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, Plaintiffs argued:

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.

(Pl. App. Br. at 36, emphasis added.) The flaw in this argument is that, as Plaintiffs acknowledged below, all of the Acts do relate to the capital program. (A 28.) 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 institutional particularities of the legislative process may partially explain why this legislation took the form of different bills, each focused primarily on a different aspect of the capital program (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.

IV. The Appellate Court Wrongly Declared Public Acts 96–35, 96–37, and 96–38 Invalid If Public Act 96–34 Is Unconstitutional.

In the alternative, even if the appellate court correctly held that Public Act 96–34 violates the Single Subject Clause, that court nonetheless erred by further holding that Public Acts 96–35, 96–37, and 96–38 are automatically invalid. The appellate court provided no explanation for this ruling beyond stating:

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

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

First, this aspect of the appellate court’s decision was not based on any argument made by Plaintiffs, and it was therefore improper. See *People v. Hunt*, 234 Ill. 2d 49, 56 (2009) (holding that it was error for appellate court *sua sponte* to address “issues not considered by the trial court and never argued by the

parties”). Plaintiffs’ Complaint contested only the *constitutionality* of Public Acts 96–35, 96–37, and 96–38 on various grounds, but did not allege any other basis for challenging the validity of these Acts. (A 28-29, 42-57.) And the appellate court was clear that it was not considering those constitutional challenges to these Acts. (A 18.) Accordingly, it should not have *sua sponte* declared them invalid on some other basis that Plaintiffs did not advance.

Second, it is not the case that, as the appellate court stated, *all* of the provisions of Public Acts 96–35, 96–37, and 96–38 were “contingent upon the enactment of Public Act 96–34.” (A 18.) To the contrary, only *some* of the provisions in Public Acts 96–37 and 96–38 stated that they would not take effect unless House Bill 255 (enacted as Public Act 96–34) “becomes law.” (See above at 8.)

Third, the appellate court misinterpreted the legislative intent of this language, which conditioned the effectiveness of the affected provisions on whether the other Acts were *enacted* (as they were), not whether they were ultimately *sustained* against potential future constitutional challenges. It is well established that the legislature may direct an act to take effect only upon fulfillment of a future contingency. *People ex rel. Thompson v. Barnett*, 344 Ill. 62, 72 (1931); *Rogers v. Desiderio*, 274 Ill. App. 3d 446, 449 (3rd Dist. 1995). Here, when the General Assembly used the “becomes law” clauses in the Capital Projects Acts, it clearly intended to establish such conditions based on the passage of House Bill 255.

The best indicator of the meaning of statutory text is the language used, read in the context of the entire act. *People v. Trainor*, 196 Ill. 2d 318, 332

(2001). In this case, the language used — referring in each case to whether House Bill 255 “becomes law” — plainly indicates that the drafters were specifically concerned with whether that bill was enacted by the constitutionally prescribed process, including passage by the House and Senate. See Ill. Const. art. IV, § 8(c) (“No bill shall *become a law* without the concurrence of a majority of the members elected to each house.”) (emphasis added).

This conclusion is reinforced by the General Assembly’s specific inclusion of severability clauses in a number of provisions of the Capital Projects Acts. (See 2009 Ill. Laws 836, 871, 1003, 1006.) The well-recognized purpose of such clauses is to address the possibility of a future judicial determination that part of an enactment is unconstitutional. See *Northern Ill. Home Builders Ass’n, Inc. v. County of DuPage*, 165 Ill. 2d 25, 48 (1995); see also 5 ILCS 70/1.31 (2008). Thus, the inclusion of severability clauses in the Capital Projects Acts to deal with that possibility strongly indicates that the “becomes law” clauses in the same Acts had a different purpose — namely, to provide that the affected provisions should not take effect and be implemented unless House Bill 255 (now Public Act 96–34) was also enacted.

Fourth, in its conclusory ruling declaring Public Acts 96–35, 96–37, and 96–38 invalid, the appellate court failed to consider the scope of its decision, including its temporal effect. This creates needless confusion and uncertainty, especially because plaintiff Wirtz Beverage Illinois complained about having to pay the higher taxes on alcoholic beverages imposed by Public Act 96–34 but made no complaints of any similar injury from any of the other Acts it challenged.

(A 30, 50.) Yet the appellate court's ruling on the validity of Public Acts 96-35, 96-37, and 96-38 easily could affect tens of thousands of other persons.

At a minimum, it is difficult to know what to make of the appellate court's ruling with respect to Public Act 96-35, which contained appropriations for the Capital Projects during the fiscal year that concluded in June 2010, more than seven months ago. Nor is it clear what effect this ruling may have on the General Assembly's similar appropriations for the current fiscal year and subsequent fiscal years. At a minimum, those issues should be resolved only in a case that properly presents them.

In *Perlstein v. Wolk*, 218 Ill. 2d 448, 454-67 (2006), the Court clarified that even when a statute is declared invalid, equitable considerations control whether that ruling should have or be given fully retroactive effect — with the statute being treated as “void *ab initio*” — in all circumstances, or instead may be given more limited effect, such that, for example, interim actions taken in reliance on the statute's presumed validity are protected. See also *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 285-86 (2009) (exercising Court's “inherent power to conclude that a decision will not apply retroactively, but only prospectively”). At a minimum, therefore, if this Court does conclude that Public Act 96-34 is unconstitutional and that, as a result, Public Acts 96-35, 96-37, and 96-38 are invalid, the Court should qualify its ruling so that it does not affect the validity of good faith actions already taken pursuant to any of those Acts, including, without limitation, expenditures authorized by Public Act 96-35 that were actually made in fiscal year 2010.

CONCLUSION

For the foregoing reasons, the appellate court's decision — which held that Public Act 96-34 violates the Single Subject Clause, failed to hold that Public Acts 96-35, 96-37, and 96-38 satisfy the Single Subject Clause, and held that the unconstitutionality of Public Act 96-34 renders Public Acts 96-35, 96-37, and 96-38 invalid — should be reversed. In the alternative, the Court should limit the scope of the appellate court's ruling invalidating Public Acts 96-34, 96-35, 96-37, and 96-38 so that it does not affect the validity of good faith actions already taken pursuant to those Acts.

Respectfully submitted,

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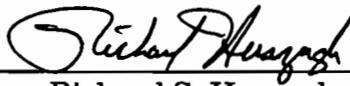
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March 21, 2011

Counsel for Respondents-Appellants.

Rule 341(c) Certificate of Compliance

I certify that this Brief conforms to the form and length requirements of Supreme Court Rules 341(a) and (b), as modified by Rules 315 and 317. The length of this Brief, excluding the cover, table of points and authorities, this certificate of compliance, the certificate of filing and service, and the appendix, is 34 pages.



Richard S. Huszagh

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NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

THIRD DIVISION
January 26, 2011

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

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,)

v.)

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 Treasurer of the State)
of Illinois; THE DEPARTMENT OF REVENUE;)
BRIAN HAMER, Director of Revenue; THE)
ILLINOIS GAMING BOARD; AARON JAFFE,)
CHARLES GARDNER, EUGENE WINKLER,)
JOE MOORE, JR., and JAMES E. SULLIVAN,)
as Members of the Illinois Gaming Board; THE)
ILLINOIS LOTTERY; and JODIE WINNETT,)
Superintendent of the Lottery,)

Defendants-Appellees.)

Appeal from the
Circuit Court of
Cook County.

Honorable
Lawrence O'Gara,
Presiding Judge.

PRESIDING JUSTICE QUINN delivered the judgment of the court, with opinion.

Justices Neville and Steele concurred in the judgment and opinion.

OPINION

Plaintiffs, W. Rockwell Wirtz and Wirtz Beverage Illinois, LLC, on behalf of all taxpayers situated in the State of Illinois, brought this suit pursuant to section 11-303 of the

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

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

I. BACKGROUND

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

A. Public Act 96-34

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

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

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

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

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

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

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

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

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

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

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

Public Act 96-38 (the Trailer Bill) is titled "AN ACT concerning government," and is a trailer bill to Public Act 96-34. The Trailer Bill amends certain provisions of Public Act 96-34, if and only if Public Act 96-34 becomes law. Contingent upon Public Act 96-34 becoming law, the Trailer Bill changes the effective date for the increase in taxes on candy, certain beverages, and grooming and hygiene products to September 1, 2009 (rather than August 1, 2009). Contingent upon Public Act 96-34 becoming law, the Trailer Bill amends the Video Gaming Act by: (1) making changes concerning the residency requirements for licensing; (2) clarifying that the 50% split of the after-tax profits from a video gaming terminal is mandatory "notwithstanding any agreement to the contrary" between the licensed establishment and the video gambling operator; and (3) adding a severability clause.

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

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

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

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

E. Trial Court Proceedings

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

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

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

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

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

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

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

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

II. ANALYSIS

A. Standard of Review

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

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

B. Single Subject Rule

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

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

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

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

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

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

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

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

Reedy, 186 Ill. 2d at 9.

C. Public Act 96-34

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

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

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

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

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

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

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

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

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

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

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'governmental matters' is not compelling." *Reedy*, 186 Ill. 2d at 12.

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

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

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

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

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

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

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

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

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

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

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

In *Johnson*, our supreme court explained:

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

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

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

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

III. CONCLUSION

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

Judgment reversed.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY 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,

Plaintiffs,

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
Giannoulis, in his official
capacity as the Treasurer of the
State of Illinois; The Illinois
Department of Capital 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;

Defendants.

09CH30136

No.

Honorable
Circuit Judge
Courtroom 25 2009

CLERK OF CIRCUIT COURT

NOTICE OF FILING PETITION AND RULE 19 NOTICE

To: See attached Certificate of Service

PLEASE TAKE NOTICE that on August 25, 2009 we filed with the Clerk of the Circuit Court of Cook County, in the Richard J. Daley Center, Chicago, Illinois the attached Petition for Leave to File and Verified Complaint for Declaratory and Injunctive Relief, a copy of which is attached and hereby served upon you.

C

August 25, 2009

Claudette P. Miller

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C

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that he/she caused the foregoing Notice of Filing Petition and Rule 19 Notice and Petition for Leave to File Verified Complaint for Declaratory and Injunctive Relief to be served on the following on August 25, 2009 by delivering true and correct copies thereof (in the manner indicated) to:

Counsel for All Defendants

Office of the Attorney General (VIA E-MAIL AND MESSENGER)
Roger Flahaven, Assistant Attorney General (rflahaven@atg.state.il.us)
Gary Griffin, Assistant Attorney General (ggriffin@atg.state.il.us)
Thomas Ioppollo, Assistant Attorney General (tioppollo@atg.state.il.us)
100 W. Randolph St.
Chicago, Illinois 60606



Claudette P. Miller

C 21 B

Illinois Supreme Court, petition this Court for leave to file the attached Verified Complaint for Declaratory and Injunctive Relief against Defendants The Honorable Patrick Quinn, Governor of the State of Illinois; Daniel W. Hynes, the Comptroller of the State of Illinois; Alexi Giannoulis, 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., Hon. James E. Sullivan; and the Illinois Lottery and its Acting Superintendent Jodie Winnett. In support of their Petition, Petitioner-Plaintiffs state as follows:

ARGUMENT

1. Petitioner-Plaintiffs, concerned Illinois citizens and taxpayers, petition this Court for leave to file the attached Verified Complaint for Declaratory and Injunctive Relief (the "Complaint"). The Complaint seeks, pursuant to Section 11-303 of the Illinois Code of Civil Procedure, 735 ILCS 5/11-303 and the common-law, to enjoin the unlawful disbursement of public monies by the Defendant public officials and to enjoin the imposition of unlawful taxes, rules and programs found in challenged legislation.

2. In the final days of the Spring 2009 legislative session, the Illinois General Assembly passed four pieces of legislation - three substantive bills and one appropriation bill essentially comprising what some have called the 2009 capital program - which Governor Quinn

recently signed into law. The attached Complaint challenges the constitutionality of this legislation and seeks (i) declaratory judgments that the challenged legislation violates the Illinois Constitution and is unlawful, and (ii) injunctions to stop the use of state funds and resources in the operation, administration and regulation of the programs created in the unconstitutional legislation.

3. The challenged legislation purports to expand gambling, by making video poker and other video gaming lawful in thousands of sites across Illinois. It privatizes the state lottery, selling its revenue stream into private hands. It imposes non-uniform, disparate taxes on beer, wine and spirits. It improperly combines numerous unrelated matters into a single legislative scheme. All of which violates the Illinois Constitution in multiple ways. The violations include:

a. Public Funds for Public Purposes. The lottery and video gaming programs violate the requirement that public funds be used only for public purposes. Both the lottery and, because of its central communication system, video gaming, participate in interstate commerce. Because both programs are essentially privately run, they violate federal gaming laws. And, while the Internet lottery sales program is made expressly contingent upon clarification from the United States Department of Justice that such sales are legal and despite the fact that the General Assembly was aware of an advisory opinion by the Justice Department stating that a privately controlled state lottery would violate federal gaming laws, there is no requirement whatsoever for consulting with Justice as to video gaming and the lawfulness of a program essentially allowing the equivalent of 60 new casinos.

b. Single Subject. The legislation violates the Single Subject Rule which requires that a bill be confined to one subject in order to foster thoughtful debate and stop the corrosive practice of "logrolling". Each of the substantive bills contains nongermane provisions. The Single Subject Rule also is violated by the way the General Assembly tied the effectiveness of the bills as a whole and of certain provisions together.

c. Substantive Law in an Appropriation Bill: The appropriation bill violates the requirement that an appropriation bill be confined to the subject of appropriation because it contains substantive law.

d. Uniformity Clause. The legislation violates the Uniformity Clause which mandates uniform taxation and prohibits irrational tax classifications. It imposes arbitrary, widely disproportionate new taxes on beer, wine and spirits that are not based on real and substantial differences, comparable to taxing menthol and non-menthol cigarettes at different rates.

e. Separation of Powers/ Veto Power/ Presentment Clause/Effective Date of Laws. The main substantive bill contains language tying its effectiveness to the appropriation bill that funds program projects and vice versa. Thus, if one of the bills does not become law the other "does not take effect at all". This unprecedented "tied bill" arrangement 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 Constitution's provision on the effective date of laws, which requires that the General Assembly adopt a uniform effective date for laws passed prior to June 1 and establishes its own mandatory effective date for bills passed after May 31. Here, the General Assembly has tried to provide for its own effectiveness schedule for two bills passed after May 31.

4. The Complaint seeks to restrain and enjoin the disbursement of public funds for the programs created by the challenged legislation. Absent an order from this Court permitting the matter to proceed, Petitioner- Plaintiffs will have no recourse.

WHEREFORE, for the foregoing reasons, Petitioner-Plaintiffs respectfully request that this Court grant this Petition and grant them leave to file the attached Verified Complaint for Declaratory and Injunctive Relief and setting the return date.

August 25, 2009

Respectfully submitted,



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Attorneys for Petitioner-Plaintiffs

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY 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,**

Plaintiffs,

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
Capital 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;**

Defendants.

No.

Honorable
Circuit Judge
Courtroom

**VERIFIED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs W. Rockwell Wirtz, an Illinois citizen and taxpayer, and Wirtz Beverage Illinois, LLC, an Illinois limited liability company and taxpayer (collectively, "Plaintiffs"), by their attorneys Ungaretti & Harris LLP, for their Verified Complaint against Defendants The Honorable Patrick Quinn, Governor of the State of Illinois; Daniel W. Hynes, the Comptroller of the State of Illinois; Alexi Giannoulias, 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., Hon. James E. Sullivan; and the Illinois Lottery and its Acting Superintendent Jodie Winnett, state as follows:

INTRODUCTION

1. This action challenges the constitutionality of four pieces of legislation - three substantive bills and one appropriation bill essentially comprising the 2009 capital program - passed by the General Assembly on the last day of the legislative session and signed into law by Governor Quinn. Plaintiffs, Illinois citizens and taxpayers, seek (i) declaratory judgments that the challenged legislation violates the Illinois Constitution, and (ii) injunctions to stop the use of state funds and resources in the operation, administration and regulation of the programs in the unconstitutional legislation.

2. The challenged legislation violates the Illinois Constitution and the duties and limitations it imposes on both the legislative and executive branches of government in multiple ways.

a. Public Funds for Public Purposes. The lottery and video gaming programs violate the requirement that public funds be used only for public purposes. Both the lottery and, because of its central communication system, video gaming, participate in interstate commerce. Because both programs are essentially privately run, they violate federal gaming laws. And, while the Internet lottery sales program is made expressly contingent upon clarification from the United States Department of Justice that such sales are legal and despite the fact that the General Assembly was aware of an advisory opinion by the Justice Department stating that a privately controlled state lottery would violate federal gaming laws, there is no requirement whatsoever for consulting with Justice as to video gaming and the lawfulness of a program essentially allowing the equivalent of 60 new casinos.

b. Single Subject. The legislation violates the Single Subject Rule which requires that a bill be confined to one subject in order to foster thoughtful debate and stop the corrosive practice of "logrolling". Each of the substantive bills contains nongermane provisions. The Single Subject Rule also is violated by the way the General Assembly tied the effectiveness of the bills as a whole and of certain provisions together.

c. Substantive Law in an Appropriation Bill: The appropriation bill violates the requirement that an appropriation bill be confined to the subject of appropriation because it contains substantive law.

d. Uniformity Clause. The legislation violates the Uniformity Clause which mandates uniform taxation and prohibits irrational tax classifications. It imposes arbitrary, widely disproportionate new taxes on beer, wine and spirits that are not based on real and substantial differences, comparable to taxing menthol and non-menthol cigarettes at different rates.

e. Separation of Powers/Veto Power/Presentment Clause/Effective Date of Laws. The main substantive bill contains language tying its effectiveness to the appropriation bill that funds program projects and vice versa. Thus, if one of the bills does not become law the other "does not take effect at all". This unprecedented "tied bill" arrangement 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 Constitution's provision on the effective date of laws, which requires that the General Assembly adopt a uniform effective date for laws passed prior to June 1 and establishes its own mandatory effective date for bills passed after May 31. Here, the General Assembly has tried to provide for its own effectiveness schedule for two bills passed after May 31.

ALLEGATIONS

Plaintiffs

3. Plaintiff W. Rockwell Wirtz is a citizen and taxpayer of the State of Illinois and a resident of Cook County, Illinois. He is also a Manager of Wirtz Beverage Illinois, LLC. A copy of his Verification by Certification is attached.

4. Plaintiff Wirtz Beverage Illinois, LLC is an Illinois limited liability company and taxpayer with its principal place of business in Cook County, Illinois. Wirtz Beverage Illinois, LLC is licensed as a wholesaler and an importing distributor of wine and spirits under the Liquor Control Act and is required to collect and pay to the Illinois Department of Revenue the increased liquor taxes in the legislation challenged here amending the Liquor Control Act.

Defendants

5. Defendant Pat Quinn is the Governor and the Chief Executive Officer of the State of Illinois. He is sued in his official capacity.

6. Defendant Daniel W. Hynes is the Comptroller of the State of Illinois. He is sued in his official capacity and solely to enjoin his disbursement of funds. Pursuant to Article V, Section 17 of the Illinois Constitution and the State Comptroller Act, 15 ILCS 405, the Comptroller is authorized to order payments into and out of funds held by the State Treasurer.

7. Defendant Alexi Giannoulis is the Treasurer of the State of Illinois. He is sued in his official capacity and solely to enjoin his disbursement of funds. Pursuant to Article V, Section 18 of the Illinois Constitution, the Treasurer has the duty to make disbursement upon order of the Comptroller.

8. Defendant the Illinois Department of Revenue is a State agency whose regional office is at 100 W. Randolph Street, Chicago, Illinois. Its duties include overseeing, implementing, managing, regulating and collecting the taxes imposed in the challenged legislation.

9. Defendant Brian Hamer is the Director of the Department of

Revenue and resides in Chicago, Illinois. He is sued in his official capacity.

10. Defendant the Illinois Gaming Board is a department within the Department of Revenue whose regional office is at 160 North LaSalle Street, Chicago, Illinois. Its duties include implementing, managing and regulating the video gaming program created in the challenged legislation.

11. Defendants Hon. Aaron Jaffe, Charles Gardner, Rev. Eugene Winkler, Joe Moore, Jr., Hon. James E. Sullivan are members of the Illinois Gaming Board and are sued in their official capacities.

12. Defendant the Illinois Lottery is a State agency whose regional office is at 100 West Randolph Street, Chicago, Illinois. Its duties include regulating the existing lottery and its privatization in the challenged legislation.

13. Defendant Jodie Winnett is the Acting Supervisor of the Illinois Lottery and resides in Chicago, Illinois. She is sued in her official capacity.

Jurisdiction and Venue

14. This lawsuit seeks, among other things, declarations that Public Acts 96-34, 96-35, 96-37 and 96-38 violate provisions of the Illinois Constitution and injunctions prohibiting the disbursement of public funds thereon pursuant to the equitable powers of this Court and pursuant to 735 ILCS 5/11-301, *et seq.*, which provides for actions for private citizens to enjoin and restrain the disbursement of public funds. This Court has jurisdiction over the subject matter under Article VI, §9 of the Illinois Constitution. This Court also has jurisdiction over the actual controversy between the parties pursuant to Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS

5/2-701. This Court has personal jurisdiction over Defendants pursuant to the Code of Civil Procedure, 735 ILCS 2-209(a)(1), (b)(2), and (c).

15. Venue is proper under Sections 2-101 and 2-103 of the Code of Civil Procedure, 735 ILCS 5/2-101 and 2-103, because the acts from which this cause of action arose, or a substantial part thereof, took place in Cook County, Illinois and because Defendants have offices there.

Right To Declaratory And Injunctive Relief

16. There is an actual, existing controversy present in this action in that Defendants will be charged with enforcing, regulating and expending public funds on the unconstitutional laws at issue here.

17. Plaintiffs have clearly ascertainable rights in need of protection. Sections 11-301 and 11-303 of the Illinois Code of Civil Procedure, 735 ILCS 5/11-301, 5/11-303, as well as common-law principles, permit taxpayers to sue to enjoin the unlawful disbursement of public monies by public officials and the imposition of unlawful taxes.

18. Plaintiffs suffer and will continue to suffer irreparable harm as a result of the unlawful and unconstitutional actions set forth above. If left undeterred, there is no adequate remedy at law that will properly compensate Plaintiffs for the injuries they have sustained.

Relevant Provisions Of The Illinois Constitution

19. Article IV, Section 8(d), the Single Subject Rule, provides that:

[b]ills, 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.

20. Article VIII, Sections 1(a) and (b) provide that:

- (a) Public funds ... shall be used only for public purposes.
- (b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.

21. Article IX, Section 2, the Uniformity Clause, provides that:

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly.

22. Article II, Section 1, the Separation of Powers provision, provides:

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

23. Article IV, Section 1 describes the legislative power:

The legislative power is vested in a General Assembly consisting of a Senate and a House of Representatives, elected by the electors from 59 Legislative Districts and 118 Representative Districts.

24. Article IV, Section 9, the Veto Procedure, provides in relevant part

that:

(a) Every bill passed by the General Assembly shall be presented to the Governor within 30 calendar days after its passage. The foregoing requirement shall be judicially enforceable. If the Governor approves the bill, he shall sign it and it shall become law.

(b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law ...

(d) The Governor may reduce or veto any item of the appropriation in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill ...

(e) The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bill shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated

Section 10 governs the effective date of laws, providing that:

The General Assembly shall provide by law for a uniform effective date for laws passed prior to June 1 of a calendar year. The General Assembly may provide for a different effectiveness date in any law passed prior to June 1. A bill passed after May 31 shall not become effective prior to June 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date.

The Challenged Legislation

The Omnibus Bill (P.A. 96-34, formerly, HB255)

25. On July 13, 2009, Governor Quinn signed into law HB255, "AN ACT concerning revenue" (the "Omnibus Bill"). A copy of the Omnibus Bill is attached as Exhibit A and incorporated here by reference.¹

¹ For the Court's convenience, the voluminous bills attached as exhibits have been bates-stamped; citations to the bates-stamped pages are included.

26. Video Gaming. Article 5 of the Omnibus Bill is the Video Gaming Act. See *id.*, Ex. A, Section 1 at A-1. It provides, among other things, that every video gaming terminal:

shall be linked by a central communications system to provide auditing program information as approved by the Board. In no event may the communications system approved by the Board limit participation to only one manufacturer of video gaming terminals by either the cost in implementing the necessary program modifications to communicate or the inability to communicate with the central communications system.

Id., Section 15(15) at A-6. It further provides for the licensing of establishments hosting such facilities and regulates manufacturers, distributors, terminal operators and others. *Id.*, Sections 5, 15, 25, 30 at A1-19. Licenses are for the most part limited to Illinois residents. *Id.*, Section 25(f) at A-9. The games are conducted on the site of the licensees. *Id.*, Sections 25(c) and (e) at A7-8. No provision prohibits a terminal operator from altering the terms of play by changing the software. *Id.*, Section 15(9) at A-5. The terminal operator may choose the pay out of a machine above 80%. *Id.*, Section 15(2) at A-4. It also amends the Riverboat Gambling Act to assign administration and enforcement of video gaming to the Illinois Gaming Board, *id.*, Section 940 at A-172, and amends the Criminal Code to provide that gaming under the Video Gaming Act is not illegal gambling under Illinois law. *Id.*, Section 960 at A-276.

27. Lottery. The Omnibus Bill amends the Illinois Lottery law to, among other things, provide that going forward the lottery will be managed and

operated by a private manager pursuant to a contract giving that private manager significant powers and responsibilities and very substantial financial benefits in the form of a share of the lottery revenues. See Exhibit A at Article 900, Section 900 at A-21-39. It also amends the Criminal Code to provide that lotteries conducted by a private manager are not illegal gambling under Illinois law. *Id.*, Section 960 at A-274-275.²

28. Liquor Tax. The Omnibus Bill amends Section 8-1 of the Illinois Liquor Control Act effective August 1, 2009 to impose an additional gallonage tax on various types of liquor. Because of the additional tax, the amounts of tax per gallon to be paid by the distributor are increased as follows: (a) on beer, from \$0.185 to \$0.231; (b) on wine, from \$0.73 to \$1.39; and (c) on spirits, from \$4.50 to \$8.55. See Exhibit A at Article 990, Section 945 at A-179-180. This is a roughly 22% increase in the tax on beer -- and a 90% increase in the tax on wines and spirits. The Omnibus Bill and its legislative history do not offer any coherent rationale for the increase overall. Similarly, they offer no justification for the vastly disproportionate increase in the tax on wine and spirits as compared to beer. See *id.* The Omnibus Bill further provides that "[a]ll of the proceeds of the additional tax ... shall be deposited into the Capital Projects Fund." *Id.* at A-183.

² The Omnibus Bill also creates a pilot program for the Internet sale of lottery tickets but makes implementation of that program contingent upon a request to the Department of Justice for clarification that such sales are legal. See *id.*, Section 900 at A-24-26. There is no such requirement for video gaming -- despite the fact that other jurisdictions have held video games are lotteries in violation of federal criminal gambling laws.

29. Candy Tax. Candy had been taxed as food at retail at 1% and exempt from the 6.25% tax generally applicable to food for consumption off premises. The Omnibus Bill, however, amends the Use Tax Act, The Service Use Tax Act, the Service Occupation Tax Act and the Retailers Occupation Tax Act effective August 1, 2009 to remove that exemption from all candy except for that containing flour or requiring refrigeration. Thus, after August 1, 2009, while candy containing flour or requiring refrigeration would continue to be taxed at 1% all other kinds would be subject to the higher tax. See Exhibit A at Article 900, Sections 910, 915, 920 and 925 at A-513, 80-82, 99-101 and 120-122.

30. Other. The Omnibus Bill's effectiveness is entirely contingent upon the Appropriation Bill, discussed below, becoming law, providing that it "does not take effect at all unless House Bill 312 of the 96th General Assembly, as amended, becomes law." See Exhibit A at Article 9999, Section 9999 at A-280. The Omnibus Bill also contains provisions relating to other subjects, such as:

- Article 800, titled the "Capital Spending Accountability Law," requires the Governor to provide a report each quarter on each State capital project. See *id.*, Sections 801 and 805 at A-19-20.
- Section 935 amends the University of Illinois Act to task the University, subject to appropriation, to conduct a study and give a report on the effects of purchasing lottery tickets on Illinois families. *Id.* at A-165.
- Section 905 amends the State Finance Act to prohibit the use of Road Funds for the State police. *Id.*, at A-46.

- Section 950 amends the Environmental Protection Act to provide that the Leaking Underground Storage Tank ("LUST") Fund is not subject to administrative charges. *Id.*, at A-186
- Section 955 amends the Illinois Vehicle Code and contains provisions for increases in vehicle weights for bridges and highways. *Id.*, at A-227-228, 233, 235-236, 242-243 and 249-250.

The BIMP (P.A. 96-37, formerly, HB2424)

31. On July 13, 2009, Governor Quinn signed into law HB2424, "AN ACT concerning government," the FY2010 Budget Implementation (Capital) Act (the "BIMP"). A copy of the BIMP is attached as Exhibit B and incorporated here by reference.

32. Lottery and Video Gaming Corrections, Linked to Omnibus Bill. Contingent upon the Omnibus Bill becoming law, Exhibit B, Article 60 at Sections 60-5 and 60-10 at B-73 and 93, the BIMP makes changes to the lottery provisions in the Omnibus Bill including those pertaining to the private manager for the lottery, *id.* at B103-116, and to the central communications system for the video gaming program. *Id.* at B-79. The BIMP also adds a new Section 85 to the Video Gaming Act making its provisions severable pursuant to Section 1.31 of the Statute on Statutes. *See id.*, Section 85 at B-9.³

33. Liquor Tax Clarification; Linked to Omnibus Bill. Contingent upon the Omnibus Bill becoming law, the BIMP adds language clarifying that, though the proceeds of the new liquor tax are to be deposited into the Capitol Projects Fund, the existing liquor tax amounts are to be deposited into the

³ As discussed in Count II below, the new video gaming and lottery programs violate federal gambling law. These amendments likely were an attempt to cure this.

General Revenue Fund. See *id.*, Section 60-35. It also makes the additional tax severable under Section 1.31 of the Statute on Statutes. *Id.* at B-152

34. Candy Tax Exemption Changed; Linked to Omnibus Bill.

Contingent upon the Omnibus Bill becoming law, Exhibit B at B-116, the BIMP also exempts candy sold hot from vending machines from the higher tax. *Id.*, Sections 60-15, 60-20, 60-25 and 60-30 at B-120-121, 125, 131-132 and 136 and 152.

35. Other. The BIMP contains other provisions, including:

- A provision that amends the River Edge Redevelopment Zone Act to provide that the Department may certify one pilot river edge redevelopment zone in Elgin in 2009. Exhibit B, Article 65 at B-201.
- Minority set asides. *Id.*, Article 60, Section 60-10 at B-107 (requiring that the private management agreement for the lottery contain a provision encouraging 25% of the contracts for goods and services entered into by the private manager to be awarded to minority or woman owned businesses), Article 35 at B-45-50 (establishing in an article titled State Construction Minority and Female Building Trades Act a goal of having 20% and 10% of the apprenticeships on certain stimulus construction projects go to minorities and women, respectively)
- provisions amending the General Obligation Bond Act, *id.* at Article 30, Section 30-10 at B-30, and tying the effectiveness of the amendment to the enactment of another bill, HB2400. *Id.*, Section 30-11 at B-37.
- provisions creating an urban weatherization program, *id.*, Article 40 at B50-56
- provisions providing for special pension benefit increases despite general rules against such increases, *id.*, Article 85 at B-247,
- provisions authorizing Capital Development Board grants to not-for-profit hospitals, *id.* at Article 5, Section 5-5 at B1-6

- provisions amending the Vehicle Code to mandate a financial disclosure in rental car contracts for consumers, *id.* at Article 45, Section 45-5 at B56-58, and
- provisions adding Gaming Board peace officers. *Id.*, Article 85, Section 85-20, 85-25 at B-230, 233, 261-162.

The Trailer Bill (P.A. 96-38, formerly, SB349)

36. On July 13, 2009, Governor Quinn signed into law SB349, "AN ACT concerning government," a trailer bill to the Omnibus Bill (the "Trailer Bill").⁴ A copy of the Trailer Bill is attached as Exhibit C and incorporated here by reference.

37. Candy and Liquor Taxes Deferred; Linked to Omnibus Bill. Conditioned upon the Omnibus Bill becoming law, the Trailer Bill changes from August 1, 2009 to September 1, 2009 the effective date for the new taxes on candy, see Exhibit C at Sections 5, 10, 15 and 20 at C-1, 4, 29, 33, 48, 52, 61, 69, 73, 96, and liquor. *Id.*, Section 30 at C-117-118.

38. More Video Gaming Amendments; Linked to Omnibus Bill. Conditioned upon the Omnibus Bill becoming law and taking effect, see Exhibit C at C-107, Section 25 of the Trailer Bill amends the Video Gaming Act by (i) changing Section 25 and adding a new Section 26 to change the residency requirements for licensing, see *id.*, at C-110 and 112, (ii) changing Section 25(c) to clarify that the 50% split of the after-tax profits from a video gaming terminal is mandatory "notwithstanding any agreement to the contrary" between the licensed establishment and the video gambling terminal operator,

⁴ A "trailer bill" is a bill passed to correct errors, deficiencies or problems in an earlier bill.

id. at C-108-109, and (iii) adding a new section 85 making the provisions of the Video Gaming Act severable under Section 1.31 of the Statute on Statutes. *Id.* at C-117.

The Appropriation Bill (P.A. 96-35, formerly, HB312)

39. On July 13, 2009, Governor Quinn signed into law HB312, "AN ACT making appropriation" (the "Appropriation Bill"). A copy of the Appropriation Bill is attached as Exhibit D and incorporated here by reference.

40. Substantive Provisions. In addition to appropriations, the Appropriation Bill contains substantive provisions, including:

- an article making its effectiveness entirely contingent upon the Omnibus Bill becoming law, providing that it "does not take effect at all unless House Bill 255 of the 96th General Assembly, as amended, becomes law." See Exhibit D at Article 140, Section 99 at D-254-255.
- A provision that "[n]o contract shall be entered into or obligation incurred for any expenditures from appropriation in Sections 5 or 10 of this Article until after the purposes and amounts have been approved in writing by the Governor. See *id.*, Article 5, Section 15 at D-2.
- provisions creating a new grant program for the Environmental Protection Agency for wastewater compliance, but only where "[t]hese grants are limited to projects for which the local government provides at least 30% of the project cost. There is an approved compliance plan, and there is an enforceable compliance schedule prior to grant award." *Id.*, Article 100, Section 30.
- provisions including the phrase "as approximated below" or similar language. See Article 50, Sections 20, 30 35 at D-62, 64 and 66.
- Provisions authorizing improvements at higher education facilities, for which there is no authorization in substantive law. *Id.*, Article 61, Section 5 at D-135.

COUNT I
(Illinois Constitution: Single Subject)
Omnibus Bill, BIMP, Trailer Bill

41. Plaintiffs incorporate by reference the allegations of Paragraphs 1-40, above.

42. The Illinois Constitution requires that bills (other than appropriations or codifications) be confined to a single subject. See Article IV, Section 8(d), above. The purpose of the Single Subject Rule is to prohibit "logrolling" and the corrosive stitching together of multiple interests in order to obtain enactment of other legislative desires. The 1970 Constitutional Convention included Section 8(d) to ensure a better legislative and democratic outcome to the deliberative process. Single subject statutes facilitate focused argument and consideration of the merits.

43. The Omnibus Bill violates the Single Subject Rule, as it contains provisions relating to multiple unrelated and nongermane subjects, including the provisions noted above: governing video gaming; amending the Illinois Lottery Law to privatize its operation; amending the Illinois Liquor Control Act to impose an additional and disproportionate gallonage tax on liquor; amending various acts to increase the tax on candy, increasing bridge and road weight standards; amending the Environmental Protection Act to provide that the LUST Fund is not subject to administrative charges; authorizing a study by the University of Illinois of the impact of lottery sales on Illinois families; and making its effectiveness entirely contingent upon the separate Appropriation Bill becoming law.

44. The BIMP violates the Single Subject Rule, as well. It includes provisions: aimed to correct the federal criminal gambling law violations in the Omnibus Bill, creating minority set aside programs, amending the General Obligation Bond Act, creating an urban weatherization program, providing pension benefit increases, authorizing Capital Development Board grants to not-for-profit hospitals, mandating a financial disclosure for consumers in rental car contracts and adding Gaming Board peace officers.

45. The Trailer Bill, too, violates the Single Subject Rule. It contains provisions deferring the liquor and candy taxes and amending the video gaming program to change the residency requirements and mandate after-tax profit sharing percentages -- all of which are contingent on the Omnibus Bill becoming law.

46. The compendium of programs and subjects in these bills is precisely what the Single Subject Rule was designed to prevent. They are amalgams of interests stitched together solely for the purpose of obtaining legislative support for items no single one of which could withstand the scrutiny of standing alone. The fact that these bills have very general titles -- the Omnibus Bill is "AN ACT concerning revenue" while both the BIMP and the Trailer Bill are titled "AN ACT concerning government" -- will not save them, as the Illinois Supreme Court has recognized. *See, e.g., People v. Olender*, 222 Ill. 2d 123, 854 N.E.2d 593 (2005).

47. Article VIII, Section 1 of the Illinois Constitution provides that:

- (a) Public funds ... shall be used only for public purposes.

- (b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.

48. The new programs and taxes created and regulations required and new standards established by the Omnibus Bill, the BIMP and the Trailer Bill will require considerable expenditures of state funds to operate, control, manage and regulate. If the expenditures are not enjoined, public funds will be used to organize, license and regulate illegal video gaming, to establish and run the illegally privatized lottery and to implement and enforce compliance with the additional, non-uniform liquor taxes. Defendants each are directed by the bills to approve, authorize and direct expenditures in support of the bills. Moreover, Defendants must enact rules under the APA for the implementation of each of the provisions in the bills. Because these bills violate the Single Subject rule of the Illinois Constitution, any such expenditures are unlawful. Unlawful expenditures are not for public purposes, and therefore the expenditure of funds on them violates Article VIII of the Illinois Constitution.

WHEREFORE, Plaintiffs respectfully request that this Court enter an order granting them the following relief:

- A. A declaratory judgment that the Omnibus Bill violates the Single Subject Rule in Article IV, Section 8(d) of the Illinois Constitution.
- B. A declaratory judgment that any expenditures of State funds in furtherance of the Omnibus Bill are unlawful and precluded under Article VIII of the Illinois Constitution because the Bill violates the Single Subject Rule;

- C. A temporary, preliminary or permanent injunction enjoining Defendants from disbursing public funds on the Omnibus Bill;
- D. A declaratory judgment that the BIMP violates the Single Subject Rule in Article IV, Section 8(d) of the Illinois Constitution;
- E. A declaratory judgment that any expenditures of State funds in furtherance of the BIMP are unlawful and precluded by the Single Subject Rule in Article VIII of the Illinois Constitution;
- F. A temporary, preliminary or permanent injunction enjoining Defendants from disbursing public funds on the BIMP;
- G. A declaratory judgment that the Trailer Bill violates the Single Subject Rule in Article IV, Section 8(d) of the Illinois Constitution;
- H. A declaratory judgment that any expenditures of State funds in furtherance of the Trailer Bill are unlawful and precluded by the Single Subject Rule in Article VIII of the Illinois Constitution;
- I. A temporary, preliminary or permanent injunction enjoining Defendants from disbursing public funds on the Trailer Bill; and
- J. Such other and further relief as this Court deems necessary and proper.

COUNT II

**(Illinois Constitution: Spending Public Funds on Illegal Video Gaming and Lottery Programs)
Omnibus Bill, BIMP, Trailer Bill**

49. Plaintiffs incorporate by reference the allegations of Paragraphs 1-48, above.

50. The Illinois lottery involves the use of interstate telecommunication lines and therefore operates in and participates in interstate commerce. 18

U.S.C. §1953(a) prohibits transmission in interstate commerce of information pertaining to "numbers, policy, bolita, or similar game." The United States Supreme Court has held that lotteries and lottery-like games fall within the reach of Section §1953(a). *See, e.g., U.S. v. Fabrizio*, 385 U.S. 263, 269 (1966).

51. Lotteries conducted by a State acting under authority of state law, however, are exempt from the prohibitions of 18 U.S.C. §1953(a). *See* 18 U.S.C. §1307(a)(1) and (2); 18 U.S.C. §1953(b)(4). As recognized in a 2008 advisory opinion from the Department of Justice titled "Scope of Exemption Under Federal Lottery Statutes for Lotteries Conducted By a State Under the Authority of Law," in order for a State lottery to remain lawful, the State must exercise actual control over all significant business decisions and retain all but a *de minimis* share of the profits. A copy of the Opinion is attached as Exhibit E and incorporated here by reference.

52. Despite the fact that the General Assembly was aware of the 2008 Department of Justice opinion, the Omnibus Bill grants plenary control of the Illinois Lottery to a private manager. The private manager's "total management control" of the Lottery, includes:

- The right to use equipment and other assets used in the operation of the Lottery.
- The rights and obligations under contracts with retailers with retailers and vendors.
- The implementation of a comprehensive security program.
- The implementation of a comprehensive system of internal audits.

- The implementation of a program to curb compulsive gambling.
- A system for determining (i) the type of lottery games, (ii) the method of selecting winning tickets, (iii) the manner of payment of prizes to holders of winning tickets, (iv) the frequency of drawings of winning tickets, (v) the method to be used in selling tickets, (vi) a system for verifying the validity of tickets claimed to be winning tickets, (vii) the basis upon which retailer commissions are established by the manager, and (viii) minimum payouts.

53. Furthermore, the Omnibus Bill grants the private manager compensation that goes far beyond *de minimis*. It provides that the management contract shall include:

A provision providing the private manager with a percentage of Lottery ticket or share sales or related proceeds in consideration for managing the Lottery, including terms that may provide the private manager with an increase in compensation if Lottery Capitals grow by a specified percentage in a given year.

The proceeds that will accrue to the private manager are estimated to be worth millions of dollars per year.

54. The private management scheme for the lottery is not contingent upon any kind of advisory opinion or approval by the federal government or other authority (unlike the Internet lottery sales pilot program).

55. By changing it to one largely controlled by and very lucrative for private parties, the Omnibus Bill creates a lottery that is not exempt from and therefore is prohibited by federal criminal gambling laws.

56. The BIMP and the Trailer Bill, as noted above, make small adjustments to the private management of the lottery program in the Omnibus

Bill. However, they don't cure the fact that it violates 18 USC §1953(a). As set forth in Count I, above, both bills violate the Single Subject Rule and are unconstitutional. Even were that not the case, the BIMP and Trailer Bill do not change the reality that a private manager largely will control the operation and conduct of the lottery and will reap sizeable financial rewards.

57. The video gaming program is illegal for essentially the same reasons. Because of the mandated use of a central communication system to provide centralized tallying and auditing information, video gaming will participate in interstate commerce. 18 U.S.C. §1953(a) prohibits transmission in interstate commerce of any record used in a "numbers, policy, bolita, or similar game." The United States Supreme Court has held that lotteries and lottery-like games fall within the reach of Section 1953(a). Video gaming, as other jurisdictions have concluded, is for all intents and purposes a lottery. There is no real element of skill. The machines are programmed to pay out a maximum percentage on each dollar wagered based on an optimum play model and "must theoretically pay out a mathematically demonstrable percentage during the expected lifetime of the machine of all amounts played, which must not be less than 80%." A player using the best possible mathematical strategy will, on average, realize a return no greater than the pre-set percentage.

58. Video gaming moreover will be a lottery under *de facto* private control. Though it will be taxed by the State and is to be licensed and (ostensibly at least) regulated by the Illinois Gaming Board, for practical purposes the ownership, control and profits of video gaming will be in private hands. Video gaming will be conducted on the premises of private licensees, not the State; the terminals are not State-owned; the terms of play can be altered by the terminal operators; the after-tax "take" is significant and evenly split between the terminal operator and the licensed establishment.

59. Substantial public expenditures will be required to operate, maintain and regulate the new lottery and video gaming programs contemplated by the challenged legislation. Defendants Quinn, Winnett, the Illinois Gaming Board and the Illinois Lottery will be required to deploy state resources and approve and direct significant expenditures by the State to support them.

60. Article VIII of the Illinois Constitution provides that public funds may only be used for public purposes and that "the State ... shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance." See *id.*, Sections 1(a) and (b).

61. The lottery and video gaming programs contemplated by the challenged legislation violate federal gambling laws. Expenditures on them therefore are unlawful and not for a public purpose and violate the Illinois Constitution.

WHEREFORE, Plaintiffs respectfully request that this Court enter an order granting them the following relief:

- A. A declaratory judgment that the provisions of the Omnibus Bill, BIMP and Trailer Bill providing for the Video Gaming Act and amending the Illinois Lottery Law to provide for a private manager are in violation of federal law criminal law and are illegal gambling;
- B. A declaratory judgment that any use of public resources or expenditure of State funds on the illegal lottery and video gaming programs pursuant to the unlawful legislation is in violation of Article VIII of the Illinois Constitution;
- C. A temporary, preliminary or permanent injunction enjoining Defendants from disbursing public funds on the illegal lottery and video gaming programs; and
- D. Such other and further relief as this Court deems necessary and proper.

COUNT III

**(Illinois Constitution: Uniformity Clause - Liquor)⁵
Omnibus Bill, BIMP, Trailer Bill**

62. Plaintiffs incorporate by reference the allegations of Paragraphs 1-61, above.

63. Plaintiff Wirtz Beverage Illinois, LLC must collect and pay the additional tax on wine and spirits authorized by the Omnibus Bill, the BIMP and the Trailer Bill.

⁵ The liquor taxes take effect August 1, 2009 in the Omnibus Bill and September 1, 2009 in the Trailer Bill. Plaintiffs will pay the taxes under protest and notify the Treasurer and follow the procedures set forth in the State Officers and Employees Money Disposition Act, 30 ILCS 230/1, *et seq.* (the "Protest Act"). Plaintiffs then will, within the statutory period, seek leave from the Court to amend their complaint to add a Protest Act count and file a motion for a preliminary injunction enjoining the transfer of the funds paid under protest.

64. Article IX, Section 2 of the Illinois Constitution, *supra*, provides that for purposes of taxation, any law classifying the objects of a tax must be reasonable and tax uniformly. To survive scrutiny under the Uniformity clause, a tax classification (i) must be based on a real and substantial difference and (ii) bear some reasonable relationship to the object of the legislation or to a public policy.

65. The amendments to the Liquor Control Act in these bills meet neither test.

66. These bills increase the tax on beer by 22% and nearly double the tax on wine and spirits (a 90% increase), yet there is no rationale expressed to explain the increases. Moreover, there is no expressed or sustainable rationale whatsoever for the huge difference in the gallonage taxes as between the categories of beer, wine and spirits. The tax increase for beer pales in comparison to the draconian increase for wine and spirits: the tax on the alcohol in spirits is 462.66% higher and the tax on the alcohol in wine is 429.81% higher than the tax on the alcohol in beer.

67. The liquor gallonage tax is a revenue raising measure, as the Supreme Court has recognized. *Federated Distributors, Inc. v. Johnson*, 125 Ill. 2d 1 (1988). Taxing identical products at different rates fails the "real and substantial difference test" imposed by the Uniformity Clause. In the Omnibus Bill and the BIMP, the gallonage tax is two taxes. One is the prior existing tax, which continues to be paid into the State's General Revenue Fund. The other is the additional new tax imposed by the Omnibus Bill, BIMP and Trailer Bill,

which is to be paid into the Capital Projects Fund to fund the capital program. As a result, two things are happening. One, identical products are being taxed differently per gallon: under the existing tax, beer is taxed at \$.185 while under the new tax it is taxed at \$.046; under the existing tax, wine is taxed at \$.73 while under the new tax it is taxed at \$.66; and, under the existing tax, spirits are taxed at \$4.50 while under the new tax they are taxed at \$4.05. Two, the per gallon additional tax on wine and spirits is wildly disproportionate to the per gallon additional tax on beer.

68. The tax increase is unreasonable as a general matter. It is neither necessary for nor appropriate to any public purpose. It strikes out at a small group of business enterprises without justification or principle.

69. There is nothing in these bills or their legislative history that attempts to justify the disproportionate and historically unprecedented tax differential increases. The Liquor Control Act cites "temperance" as a general rationale, but is silent as to any rationale for differential increases between beer, wine and spirits. The legislative record is entirely barren on the issue.

WHEREFORE, Plaintiffs respectfully request that this Court enter an order granting them the following relief:

- A. A declaratory judgment that the amendments to the Illinois Liquor Control Act imposing an additional tax on beer and on wine and spirits and in vastly disproportionate amounts in the Omnibus Bill, BIMP and Trailer Bill violate the Uniformity Clause in Article IX of the Illinois Constitution;

- B. A temporary, preliminary or permanent injunction enjoining Defendants from disbursing public funds collected as an additional tax imposed on beer and on wine and spirits pursuant to amendments to the Illinois Liquor Control Act in the Omnibus Bill, BIMP and Trailer Bill;
- C. A temporary, preliminary or permanent injunction enjoining Defendants to establish a separate escrowed State account for all the additional tax imposed on beer and on wine and spirits pursuant to amendments to the Illinois Liquor Control Act in the Omnibus Bill, BIMP and Trailer Bill; and
- D. Such other and further relief as this Court deems necessary and proper.

COUNT IV

**(Illinois Constitution: Substantive Language in Appropriation Bill)
The Appropriation Bill**

70. Plaintiffs incorporate by reference the allegations of Paragraphs 1-69, above:

71. The Illinois Constitution requires both substantive law authority and appropriation authority to expend public funds. Article VIII, Section 1 (b) and Section 2 (b).

72. The Illinois Constitution further requires that appropriation bills be limited to the subject of appropriation. See Article IV, Section 8(d), above.

73. It is established law that an appropriation is "the setting apart from public revenue of a certain sum for a specific object." *Board of Trustees v. Burris*, 118 Ill. 2d 465, 477 (1987).

73. The Appropriation Bill violates the Constitution because, as set forth above, it contains substantive law provisions. For instance, it contains a provision stating that its effectiveness is contingent upon the Omnibus Bill

becoming law. The Omnibus Bill is not an appropriation bill and contains numerous substantive law provisions, such as the provisions discussed above amending the Liquor Control Act, the Lottery Law and the Criminal Code, to name but a few. The Appropriation Bill also, as set forth above, includes provisions establishing new substantive requirements to be met prior to expenditure, failing to set aside a precise sum for an identifiable purpose, imposing new obligations on cities in order to qualify for funds and requiring higher education facilities to satisfy IEMA standards for funding

WHEREFORE, Plaintiffs respectfully request that this Court enter an order granting them the following relief:

- A. A declaratory judgment that the Appropriation Bill violates Article IV, Section 8 of the Illinois Constitution;
- B. A declaratory judgment that any expenditures of State funds in furtherance of the Appropriation Bill are unlawful and precluded by Article VIII of the Illinois Constitution;
- C. A temporary, preliminary or permanent injunction enjoining Defendants from disbursing public funds pursuant to the Appropriation Bill; and
- D. Such other and further relief as this Court deems necessary and proper.

COUNT V
(Illinois Constitution: Single Subject)
All Bills

74. Plaintiffs incorporate by reference the allegations of Paragraphs 1-73, above.

75. As noted above, the Omnibus Bill and the Appropriation Bill are expressly linked and their effectiveness inextricably intertwined. Further, the effectiveness of various provisions of the BIMP and the Trailer Bill making amendments to provisions in the Omnibus Bill are expressly conditioned upon the Omnibus Bill becoming law.

76. In effect, the General Assembly sent the Governor a package of legislation and he could either "take it or leave it" but could not pick and choose among the pieces or alter their provisions. Tying the effectiveness of the legislation together in this fashion in essence made them one bill and that bill violates the Single Subject Rule.

WHEREFORE, Plaintiffs respectfully request that this Court enter an order granting them the following relief:

- A. A declaratory judgment that the tying of the challenged legislation amounts to a violation of the Single Subject clause of the Illinois Constitution;
- B. A temporary, preliminary or permanent injunction enjoining Defendants from using State resources or disbursing public funds on the challenged legislation; and
- C. Such other and further relief as this Court deems necessary and proper.

COUNT VI
(Illinois Constitution: Separation of Powers, Veto Power, Presentment Clause, Effective Date of Laws)
Omnibus Bill and Appropriation Bill

77. Plaintiffs incorporate by reference the allegations of Paragraphs 1-76, above.

78. As noted above, the effectiveness of the Omnibus Bill and the Appropriation Bill are inextricably intertwined. In essence, the General Assembly sent the Governor the two pieces of legislation and he could either "take it or leave it" but could not pick and choose among the pieces or alter their provisions.

79. Tying the legislation together in this fashion represents an unconstitutional effort by the legislative branch of the government, the General Assembly, to control or deprive another branch of the government, the Executive, of its veto powers.

80. The General Assembly is obligated under the Constitution 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." See Article IV, Section 9(a), *supra*. Under this tying 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 Constitutional provision governing the effective date of laws, which requires that the General Assembly adopt a uniform effective date for laws passed prior to June 1 and establishes its own mandatory effective date schedule for bills passed after May 31. See Article IV,

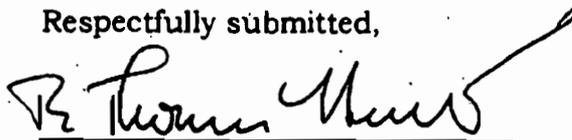
Section 10, *supra*. Here, the General Assembly has tried to provide its own effectiveness schedule for two bills passed after May 31.

WHEREFORE, Plaintiffs respectfully request that this Court enter an order granting them the following relief:

- A. A declaratory judgment that the tying of the Omnibus Bill and Appropriation Bill amounts to a violation of the Separation of Powers and/or Veto Power and/or Presentment Clause and/or Effective Date of Laws provisions of the Illinois Constitution,
- B. A temporary, preliminary or permanent injunction enjoining Defendants from using State resources or disbursing public funds on the challenged legislation; and
- C. Such other and further relief as this Court deems necessary and proper.

August 25, 2009

Respectfully submitted,



Sam Vinson
F. Thomas Hecht
Floyd D. Perkins
Claudette Miller
Ungaretti & Harris LLP - 34355
70 West Madison
Suite 3400
Chicago, Illinois 60602
(312)977-4400

Attorneys for Plaintiffs

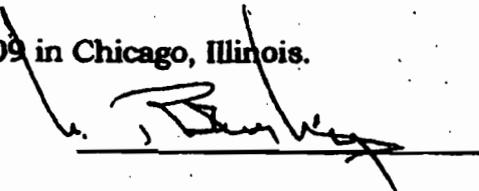
2. I am an Illinois resident, citizen and taxpayer. I am a Manager of Wirtz Beverage Illinois, LLC, an Illinois limited liability company in good standing in the State of Illinois with its principal place of business in Cook County, Illinois.

3. Wirtz Beverage Illinois, LLC is licensed by the State of Illinois as a wholesaler and importing distributor of wine and spirits under the Illinois Liquor Control Act (the "Act") and is required to collect and pay to the Illinois Department of Revenue the gallonage tax on wine and spirits set forth in the Act and in the legislation challenged in the Verified Complaint for Declaratory and Injunctive Relief ("Complaint") to which this Verification is attached.

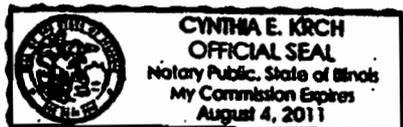
4. I further verify and certify as true the following paragraphs of the Complaint, which are incorporated here for verification as though fully set forth herein: Paragraphs 3-13, 25-40.

I, the undersigned, under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, certify that the statements set forth in this Verification by Certification are true and correct, except as to matters therein stated to be on information and belief, and as to such matters I certify as aforesaid that I verily believe the same to be true.

Executed this 20th day of August, 2009 in Chicago, Illinois.


W. Rockwell Wirtz





AN ACT concerning revenue.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

ARTICLE 5.

Section 1. Short title. This Article may be cited as the Video Gaming Act. Any references in this Article to "this Act" mean this Article.

Section 5. Definitions. As used in this Act:

"Board" means the Illinois Gaming Board.

"Credit" means 5, 10, or 25 cents either won or purchased by a player.

"Distributor" means an individual, partnership, or corporation licensed under this Act to buy, sell, lease, or distribute video gaming terminals or major components or parts of video gaming terminals to or from terminal operators.

"Terminal operator" means an individual, partnership or corporation that is licensed under this Act and that owns, services, and maintains video gaming terminals for placement in licensed establishments, licensed fraternal establishments, or licensed veterans establishments.

"Licensed technician" means an individual who is licensed under this Act to repair, service, and maintain video gaming

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT (WORKERS DIVISION)
(TRANSFERRED TO LAW DIVISION, TAX AND MISCELLANEOUS FEES)

WIRTZ et al

Petition Plaintiffs,

v.

QUINN et al

Respondents Defendants

No. 09 CH 30136

Transferred to Law Division

ORDER

THIS MATTER HAVING COME BEFORE THE COURT for hearing on Petition for Leave to File Verified Complaint, counsel having appeared and argued and the Court being fully advised in the premises

IT IS HEREBY ORDERED THAT:

1. For reasons stated by the Court on the record the Petition for Leave to File Verified Complaint is denied and
2. The case management status on October 27, 2009 is stricken.

Judge Lawrence O'Gara

OCT 20 2009

Circuit Court-1859

Case No.: UNLAWFUL EMPLOY 34355

Name: CLAUDETTE P. MILLER

Case for: PETITIONER

Address: 70 WEST MADISON SUITE 300

City/State/Zip: CHICAGO IL 60602

Telephone: (312) 977 4390

ENTERED:

Judge

Judge's No.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

WIRTZ et al

Plaintiffs,

v.

GUINN et al,

Defendants.

No. 09 CH 30136

ORDER

THIS MATTER HAVING COME BEFORE THE COURT on Plaintiffs' Motion for Reconsideration, counsel having appeared and argued, and the Court being fully advised in the premises

IT IS HEREBY ORDERED THAT:

1. The motion for reconsideration is denied and
2. This is a final and appealable order.

Atty. No.: UNBARETTI & HARRIS LLP 34355

Name: CLAUDETTE P. MILLER

Atty. for: PLAINTIFFS

Address: 70 WEST MADISON SUITE 3400

City/State/Zip: CHICAGO IL 60602

Telephone: (312) 977 4390

ENTERED:

Dated:

Judge

Judge Lawrence O'Connell
 JAN 29 2010
 Circuit Court, 10th No.

No. 111903

IN THE
SUPREME COURT OF ILLINOIS

W. ROCKWELL WIRTZ, etc., et al.,)	
)	
Respondents,)	
)	
vs.	)	Motion for accelerated docket
)	
PATRICK QUINN, etc., et al.,)	
)	
Petitioners.)	

ORDER

This cause coming to be heard on the motion of the petitioners the Honorable Patrick Quinn, et al., a response having been filed by the respondents W. Rockwell Wirtz, etc., et al., and the Court being fully advised in the premises;

IT IS ORDERED that the motion for accelerated docket is allowed. The petition for leave to appeal is allowed. The petitioners-appellants shall file an appellants' brief on or before March 21, 2011. The respondents-appellees shall file an appellees' brief on or before April 25, 2011. The reply brief shall be due on or before May 2, 2011. The parties shall be notified of a date for oral argument.

Order entered by the Court.

FILED

MAR 3 - 2011

SUPREME COURT
CLERK

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- C 1059 Group Exhibit B – State of Illinois Ninety-Sixth General Assembly House Roll Call, House Bill 255; State of Illinois 96th General Assembly Senate Vote, House Bill 255; State of Illinois Ninety-Sixth General Assembly House Roll Call, House Bill 312; State of Illinois 96th General Assembly Senate Vote, House Bill 312
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- C 1101 Notice of Filing for Petitioner-Plaintiffs’ Reply to the Attorney General’s Opposition/Motion to Dismiss Their Petition for Leave to File Verified Complaint for Declaratory and Injunctive Relief, filed September 16, 2009
- C 1104 Order, entered September 24, 2009
- C 1105 Additional Authority in Support of Memorandum of Law in Opposition to Petition for Leave to File Complaint for Declaratory and Injunctive Relief, filed October 1, 2009
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- C 1150 Exhibit A – Relevant Provisions of the Illinois Constitution
- C 1152 Group Exhibit B – Letter dated September 21, 2009; Letter dated September 21, 2009; Notice of Payment Under Protest; Letter dated September 21, 2009; Notice of Payment Under Protest
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- C 1161 Plaintiffs’ Opposition to the Attorney General’s Additional Authority in Support of Its Opposition to Petition for Leave to File Verified Complaint, filed October 6, 2009

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1	Transcript of October 7, 2009 Proceedings Before the Honorable Lawrence O'Gara

SUPPLEMENTAL RECORD

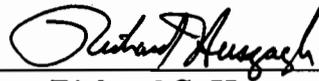
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- C 102 Notice of Filing for Request for Preparation of Record on Appeal,
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- C 104 Exhibit 1 – Notice of Appeal

Certificate of Filing and Service

The undersigned, an attorney, certifies that on March 21, 2011, he caused the foregoing Brief of Appellants to be filed by mail with the Clerk of the Supreme Court of Illinois, and three copies thereof to be served by personal delivery to:

Sam Vinson
Floyd D. Perkins
Claudette Miller
Ungaretti & Harris LLP
70 West Madison, Suite 3400
Chicago, Illinois 60602



Richard S. Huszagh