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SUPREME COURT
CHICAGO**

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No. 111801

**IN THE
SUPREME COURT OF ILLINOIS**

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

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

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

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

Honorable)
LAWRENCE O'GARA,)
Judge Presiding)

**PLAINTIFFS-RESPONDENTS TAXPAYERS' RESPONSE TO
DEFENDANTS-PETITIONERS STATE PARTIES' AMENDED MOTION
FOR A STAY OF ENFORCEMENT OF THE APPELLATE COURT'S JUDGMENT**

Plaintiffs-Respondents Taxpayers W. Rockwell Wirtz, an Illinois citizen and taxpayer,
and Wirtz Beverage Illinois, LLC, an Illinois limited liability company and taxpayer
(collectively, "Plaintiffs"), for their Response to Defendant-Petitioners State Parties' Request
for a Stay of Enforcement of the Appellate Court's January 26, 2011 Judgment declaring Public

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**CHICAGO
SUPREME COURT CLERK**

Acts 96-34, 96-35, 96-37, and 96-38 (collectively, the "Acts") unconstitutional and invalid because they violated the Single Subject Rule of the Illinois Constitution, state as follows:

1. This case involves matters of great constitutional importance. As shown by Plaintiffs' complaint, the matter is brought because constitutional violations at issue are causing improper expenditure of public monies. The State Parties have now raised concerns that certain public projects are underway and that the ruling in the appellate court on the legislation at issue might impact the current financing of those projects and that the State Parties intend to seek further review of the appellate court decision with this Court.

2. The State Parties further advised Plaintiffs they intended to seek a stay and asked whether Plaintiffs would agree not to oppose a stay pending a review from this Court. All agree significant factors to be considered when matters are subject to further review is maintenance of the status quo and balancing harms pending appeal.

3. Plaintiffs, considering the circumstances described by the State Parties, informed the State Parties, prior to seeing a draft of the Motion, that they in principal did not oppose a stay pending review and asked to see the Motion. However, after receiving a draft of the Motion from the State Parties, Plaintiffs informed the State Parties that they could not agree to the arguments and position made therein, that Plaintiffs disagreed with certain descriptions, representations, and interpretations of legal authorities made by the State Parties therein, and that Plaintiffs further disagreed with the State Parties' injection of unrelated matter in the arguments made in the Motion.

4. For instance, Plaintiffs challenge below and here is to Public Acts 96-34, 96-35, 96-37, and 96-38. Plaintiffs did *not* challenge Public Act 96-36, as seems to be indicated in the Motion. *See id.* at 1. Moreover, there are other arguments made by the State Parties in their Motion concerning the merits of the case that Plaintiffs contend are erroneous and not properly made within a Motion for Stay. The State Parties, however, opted and insisted on keeping certain matters in their Motion for Stay, which resulted in Plaintiffs having to advise the State Parties that Plaintiffs could not state they were unopposed to the State Parties' Motion as presented. Plaintiffs made clear they were not allowing the State Parties to indicate in their Motion that the Motion as stated was unopposed. Plaintiffs have received a Motion for Stay filed January 27, 2010, and an Amended Motion For Stay filed January 28, 2010. The Amended Motion continues with the same arguments and representations that prevent the Plaintiffs from agreeing to it as unopposed.

5. Rather than further argue here in a Response about the erroneous arguments and representations in the Motion and Amended Motion, Plaintiffs believes it is more appropriate to address the merits of the appellate court opinion and the constitutional nature of the Acts in briefs associated with the review of the opinion.

6. Relative to the request for stay and considerations of the status quo and balancing of harms, the challenge to the Acts at issue has been pending for 18 months and should not be a surprise, but allowing the State Parties some breathing time pending review to address alternative financing for the state projects seems to serve the public interest, and to accommodate the preservation of the status quo pending review. Therefore, Plaintiffs do not

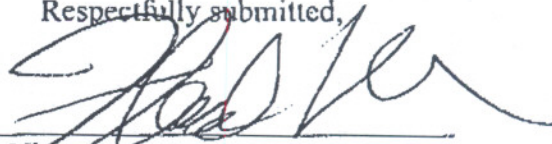
object to a stay of the appellate court's January 26, 2011 opinion and judgment.

CONCLUSION

For the foregoing reasons, this Court should enter such orders as it deems just and proper.

January 28, 2010

Respectfully submitted,



Sam Vinson
Floyd D. Perkins
Claudette Miller
Seth A. Horvath
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Attorneys for Plaintiffs-Respondents Taxpayers

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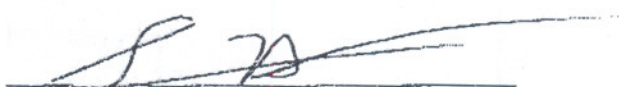
NOTICE OF FILING

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

PLEASE TAKE NOTICE that on January 28, 2011, the undersigned caused to be filed with the Clerk of the Supreme Court of Illinois, Satellite Office, 160 North LaSalle Street, 20th Floor, Chicago, Illinois 60601, an original and one copy of the accompanying **Plaintiffs-Respondents Taxpayers' Response to Defendants-Petitioners State Parties' Motion for a Stay of Enforcement of the Appellate Court's Judgment.**

Dated: January 28, 2011

Respectfully submitted,



Sam Vinson
Floyd D. Perkins
Claudette P. Miller
Seth A. Horvath
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AMENDED NOTICE OF FILING

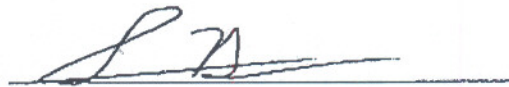
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Attn: Richard Huszagh, Assistant Attorney General

Hon. Steven M. Ravid, Clerk
Illinois Appellate Court, First District
160 N. LaSalle St. Room S1400
Chicago, Illinois 60601

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Dated: January 28, 2011

Respectfully submitted,



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Telephone: (312) 977-4400
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Attorneys for Plaintiffs-Respondents Taxpayers

AMENDED CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, the undersigned, an attorney, certifies that, on January 28, 2011, at or before the hour of 5:00 p.m., he caused true and correct copies of the following:

- (1) **Plaintiffs-Respondents Taxpayers' Response to Defendants-Petitioners State Parties' Amended Motion for a Stay of Enforcement of the Appellate Court's Judgment;**
- (2) **Notice of Filing;** and
- (3) **Amended Notice of Filing**


to be served on:

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

by causing true and correct copies of the same to be: (1) placed in a properly sealed envelope addressed to the counsel listed above and deposited in the United States mail at 70 West Madison Street, Chicago, Illinois 60602, with proper postage pre-paid; and (2) delivered to the counsel listed above by electronic mail; and on:

Hon. Steven M. Ravid, Clerk
Illinois Appellate Court, First District
160 N. LaSalle St. Room S1400
Chicago, Illinois 60601

by causing true and correct copies of the same to be placed in a properly sealed envelope addressed to the individual listed above and deposited in the United States mail at 70 West Madison Street, Chicago, Illinois 60602, with proper postage pre-paid.


Seth A. Horvath