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No. 111801

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IN THE
SUPREME COURT OF ILLINOIS

CLERK
SUPREME COURT
CHICAGO

W. ROCKWELL WIRTZ, <i>et al.</i> ,)	On Petition for Appeal from
	)	the Appellate Court of Illinois,
	)	First Judicial District
Petitioners-Respondents,	)	Nos. 1-09-3163 & 1-10-0344
)	
	)	There on Appeal from the Circuit
v.	)	Court of Cook County, Illinois,
	)	County Department, Law Division,
	)	Tax and Miscellaneous Remedies
HON. PATRICK QUINN, in his	)	Section No. 09 CH 30136
official capacity as Governor of the	)	(Transferred to Law Division)
State of Illinois, <i>et al.</i> ,)	
	)	Honorable
	)	LAWRENCE O'GARA,
Respondents-Petitioners.	)	Judge Presiding

SUPPORTING RECORD

LISA MADIGAN
Attorney General
State of Illinois

MICHAEL A. SCODRO
Solicitor General

100 W. Randolph St., 12th Floor
Chicago, Illinois 60601
(312) 814-3312

RICHARD S. HUSZAGH
Assistant Attorney General
100 W. Randolph St., 12th Floor
Chicago, Illinois 60601
(312) 814-2587

Counsel for Respondents-Petitioners.

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**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
Giannoulas, 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 Giannoulas, 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.

²The 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,

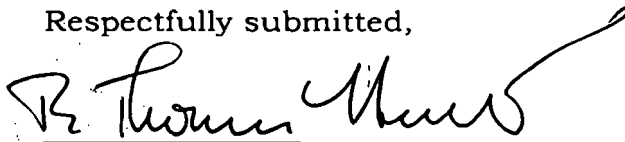
Section 10, *supra*. Here, the General Assembly has tried to provide its own effectiveness schedule for two bills passed after May 31.

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

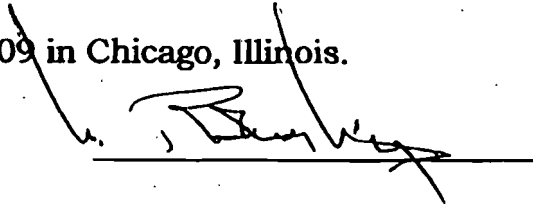
2. I am an Illinois resident, citizen and taxpayer. I am a Manager of Wirtz Beverage Illinois, LLC, an Illinois limited liability company in good standing in the State of Illinois with its principal place of business in Cook County, Illinois.

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.

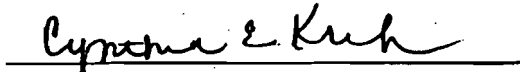
4. I further verify and certify as true the following paragraphs of the Complaint, which are incorporated here for verification as though fully set forth herein: Paragraphs 3-13, 25-40.

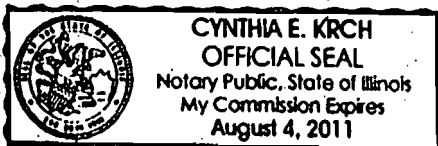
I, the undersigned, under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, certify that the statements set forth in this Verification by Certification are true and correct, except as to matters therein stated to be on information and belief, and as to such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





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

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.: UNGARETTI FHM 03 34355

Name: CLAUDETTE P. MILLER

Case for: PETITIONER

Address: 70 WEST MADISON SUITE 3000

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.: UNGARETTI & HARRIS LLP 34355

Name: CLAUDETTE P. MILLER

ENTERED:

Atty. for: PLAINTIFFS

Dated:

Address: 70 WEST MADISON SUITE 3400

City/State/Zip: CHICAGO IL 60602

Telephone: (312) 977 4390

Judge

Judge Lawrence O'Garra
 JAN 29 2010
 Circuit Court, 1859 No.

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.

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 Café*, 153 Ill. 2d at 256-58. Unlike *Geja's Café*, not all of the provisions in Public Act 96-34 bear a natural and logical connection to a single subject (*i.e.* revenue to the state). In *Arangold I*, our supreme court held that the legislation at issue (Public Act 89-21) embraced the single subject of implementation of the state budget for the 1996 fiscal year, which was adopted on the same day as the actual state budget (Public Act 89-22). *Arangold I*, 187 Ill. 2d at 346-47, 352. Here, Public Act 96-34 does not involve the single subject of implementation of the state budget. Our supreme court considered the holdings in *Arangold I* and *Geja's Café* in *Cervantes*, where the court held that Public Act 88-680 (the Safe Neighborhoods Act) was unconstitutional as being violative of the single subject rule. *Cervantes*, 189 Ill. 2d at 94, 98.

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

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

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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.

AFFIDAVIT OF PETER GOLDSMITH

State of Illinois)
) ss
County of Cook)

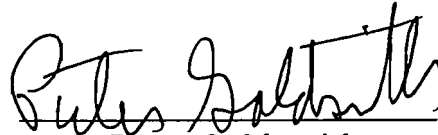
1. I am an assistant attorney general in the Revenue Litigation Bureau of the Illinois Attorney General’s Office.

2. I am one of the attorneys assigned to represent the defendants in the following tax protest cases (the “Protest Money Cases”) filed in the Circuit Court of Cook County, in which the plaintiffs are challenging the constitutionality of Public Acts 96–34, 96–35, 96–37 and 96–38 on the basis, among others, that these Public Acts violate the “single subject” clause of the Illinois Constitution:

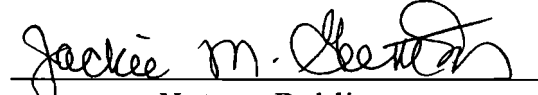
- Wirtz Beverage Illinois, LLC v. Hon. Patrick Quinn, in his official capacity as Governor of the State of Illinois, et al. (No. 09 L 51244);
- Wirtz Beverage Illinois Belleville, LLC v. Hon. Patrick Quinn, in his official capacity as Governor of the State of Illinois, et al. (No. 2009 L 51392).

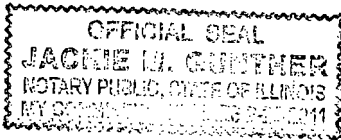
3. The Protest Money Cases have been consolidated in the circuit court (along with a similar case filed by an unrelated plaintiff, Southern Wine & Spirits of Illinois, Inc.), and in each case the court has entered a preliminary injunction in accordance with 30 ILCS 230/2a (2008) directing that the disputed taxes paid by the plaintiffs under protest, consisting of the increased wholesale taxes on wine and distilled spirits imposed by Public Act 96–34, be

deposited and held in a protest fund pending disposition of the plaintiffs' claims.


Peter Goldsmith

Subscribed and Sworn before me
this 27th day of January, 2011


Notary Public



AFFIDAVIT OF JESSICA OLIVE

State of Illinois)
) ss
County of Cook)

1. I am an Assistant Accounting Manager in the Office of Illinois State Treasurer Dan Rutherford.

2. Among my responsibilities are the supervision and administration by the Treasurer of protest money funds established by court order pursuant to Section 2a of the State Officers and Employees Money Disposition Act, 30 ILCS 230/2a (2008) (the "Protest Monies Act"). In this capacity, I am familiar with the protest funds established in consolidated Case Nos. 2009 L 51244 and 2009 L 51392 pending in the Circuit Court of Cook County (the "Wirtz Cases").

3. On a regular basis, the Treasurer receives from the Department of Revenue the taxes paid under protest in connection with the Wirtz Cases, which are then deposited and accounted for by the Treasurer in the Protest Fund created in accordance with the Protest Monies Act. Attached to this affidavit is a copy of the Department of Revenue's latest report of the disputed taxes paid under protest in connection with the Wirtz Cases (and in a similar case), showing the Department's receipts of such taxes as of January 26, 2011.

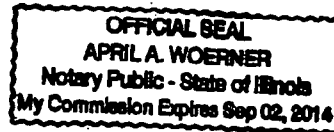
4. In connection with these receipts, the Treasurer is presently holding in the Protest Fund the following amounts for each of the Wirtz Cases:

- Case No. 2009 L 51244: \$ 53,647,714.37
- Case No. 2009 L 51392: \$ 3,999,233.85

Jessica Olive
Jessica Olive

Subscribed and Sworn before me
this 27th day of January, 2011

April A. Woerner
Notary Public



Illinois Department of Revenue
Miscellaneous Taxes
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IBT #	Taxpayer Name	APE	Return Type	Tax	Batch #	Protest Amount
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2009-09-30	EFR Return	LIQ	200928507163007	\$166,240.73
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2009-10-31	EFR Return	LIQ	200930907163000	\$218,200.41
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2009-11-30	EFR Return	LIQ	200933607162000	\$236,696.58
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2009-12-31	EFR Return	LIQ	201001107162001	\$344,075.20
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2010-01-31	EFR Return	LIQ	201003507162000	\$191,136.54
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2010-02-28	EFR Return	LIQ	201006207162000	\$196,478.86
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2010-03-31	EFR Return	LIQ	201009107162000	\$264,064.89
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2010-04-30	EFR Return	LIQ	201012507162002	\$266,387.83
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2010-05-31	EFR Return	LIQ	201015307162000	\$245,340.54
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2010-06-30	EFR Return	LIQ	201018707164001	\$315,378.97
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2010-07-31	EFR Return	LIQ	201021407162000	\$208,295.82
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2010-08-31	EFR Return	LIQ	201024307162000	\$228,824.45
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2010-09-30	EFR Return	LIQ	201027707162000	\$232,722.17
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2010-10-31	EFR Return	LIQ	201030607163001	\$283,250.77
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2010-11-30	EFR Return	LIQ	201033607162000	\$284,939.84
32238665	WIRTZ BEVERAGE ILLINOIS BELLEVILLE LLC	2010-12-31	EFR Return	LIQ	201100607162003	\$317,200.25
IBT Totals						\$3,999,233.85
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2009-09-30	EFR Return	LIQ	200928207162000	\$1,793,431.10
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2009-10-31	EFR Return	LIQ	200931707162006	\$2,530,669.18
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2009-11-30	EFR Return	LIQ	200934807162000	\$2,997,431.37
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2009-12-31	EFR Return	LIQ	201001307162000	\$4,391,242.76
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2010-01-31	EFR Return	LIQ	201004207163000	\$2,160,637.50
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2010-02-28	EFR Return	LIQ	201007007163000	\$2,541,977.09
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2010-03-31	EFR Return	LIQ	201010307162002	\$3,460,350.17
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2010-04-30	EFR Return	LIQ	201013307162000	\$2,928,584.86
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2010-05-31	EFR Return	LIQ	201016107162006	\$3,199,445.86
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2010-06-30	EFR Return	LIQ	201019307162000	\$4,262,648.75
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2010-07-31	EFR Return	LIQ	201022407163001	\$2,920,521.46
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2010-08-31	EFR Return	LIQ	201025707162005	\$3,108,253.31
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2010-09-30	EFR Return	LIQ	201028507162001	\$3,796,750.01
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2010-10-31	EFR Return	LIQ	201031407163001	\$3,324,313.72
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2010-11-30	EFR Return	LIQ	201034407162000	\$3,741,489.36

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IBT #	Taxpayer Name	APE	Return Type	Tax	Batch #	Protest Amount
32914024	SOUTHERN WINE & SPIRITS OF ILLINOIS	2010-12-31	EFR Return	LIQ	201101307162002	\$4,901,732.07
IBT Totals						\$52,059,478.57
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2009-09-30	EFR Amended	LIQ	200928507163002	\$305,318.22
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2009-10-31	EFR Return	LIQ	200931507163002	\$393,153.52
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2009-11-30	EFR Return	LIQ	200934507162003	\$435,476.07
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2009-12-31	EFR Return	LIQ	201001407162000	\$638,131.80
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2010-01-31	EFR Return	LIQ	201004307162002	\$384,129.93
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2010-02-28	EFR Return	LIQ	201007007162003	\$411,841.15
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2010-03-31	EFR Return	LIQ	201009807162003	\$480,333.07
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2010-04-30	EFR Return	LIQ	201013107162006	\$471,463.66
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2010-05-31	EFR Return	LIQ	201016507162004	\$484,182.96
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2010-06-30	EFR Return	LIQ	201019407163000	\$679,350.02
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2010-07-31	EFR Return	LIQ	201022207162004	\$367,705.74
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2010-08-31	EFR Return	LIQ	201025607162002	\$423,776.66
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2010-09-30	EFR Return	LIQ	201028607162005	\$441,017.80
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2010-10-31	EFR Return	LIQ	201031507162003	\$535,497.86
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2010-11-30	EFR Return	LIQ	201034707163006	\$500,498.16
38664372	WIRTZ BEVERAGE ILLINOIS LLC	2010-12-31	EFR Return	LIQ	201101407163004	\$720,534.03
IBT Totals						\$7,672,410.65
38665247	WIRTZ BEVERAGE ILLINOIS	2009-09-30	EFR Amended	LIQ	200928507163003	\$146,237.65
38665247	WIRTZ BEVERAGE ILLINOIS	2009-10-31	EFR Return	LIQ	200931507163001	\$210,545.26
38665247	WIRTZ BEVERAGE ILLINOIS	2009-11-30	EFR Return	LIQ	200934507162002	\$232,900.77
38665247	WIRTZ BEVERAGE ILLINOIS	2009-12-31	EFR Return	LIQ	201001407162002	\$377,408.42
38665247	WIRTZ BEVERAGE ILLINOIS	2010-01-31	EFR Return	LIQ	201004307162003	\$173,128.96
38665247	WIRTZ BEVERAGE ILLINOIS	2010-02-28	EFR Return	LIQ	201007007162002	\$198,579.83
38665247	WIRTZ BEVERAGE ILLINOIS	2010-03-31	EFR Return	LIQ	201009807162005	\$274,162.32
38665247	WIRTZ BEVERAGE ILLINOIS	2010-04-30	EFR Return	LIQ	201013107162005	\$259,830.89
38665247	WIRTZ BEVERAGE ILLINOIS	2010-05-31	EFR Return	LIQ	201016507162005	\$281,119.04
38665247	WIRTZ BEVERAGE ILLINOIS	2010-06-30	EFR Return	LIQ	201019407163002	\$467,680.02
38665247	WIRTZ BEVERAGE ILLINOIS	2010-07-31	EFR Return	LIQ	201022207162003	\$201,059.29
38665247	WIRTZ BEVERAGE ILLINOIS	2010-08-31	EFR Return	LIQ	201025607162000	\$242,877.42
38665247	WIRTZ BEVERAGE ILLINOIS	2010-09-30	EFR Return	LIQ	201028607162006	\$253,084.46

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IBT #	Taxpayer Name	APE	Return Type	Tax	Batch #	Protest Amount
38665247	WIRTZ BEVERAGE ILLINOIS	2010-10-31	EFR Return	LIQ	201031507162002	\$301,977.18
38665247	WIRTZ BEVERAGE ILLINOIS	2010-11-30	EFR Return	LIQ	201034707163008	\$295,786.65
38665247	WIRTZ BEVERAGE ILLINOIS	2010-12-31	EFR Return	LIQ	201101407163002	\$402,242.10
IBT Totals						\$4,318,620.26
38665263	WIRTZ BEVERAGE ILLINOIS	2009-09-30	EFR Amended	LIQ	200928507163001	\$1,374,447.05
38665263	WIRTZ BEVERAGE ILLINOIS	2009-10-31	EFR Return	LIQ	200931607162000	\$1,889,796.73
38665263	WIRTZ BEVERAGE ILLINOIS	2009-11-30	EFR Return	LIQ	200934507162004	\$2,282,753.02
38665263	WIRTZ BEVERAGE ILLINOIS	2009-12-31	EFR Return	LIQ	201001407162001	\$3,801,575.23
38665263	WIRTZ BEVERAGE ILLINOIS	2010-01-31	EFR Return	LIQ	201004307162001	\$1,546,061.00
38665263	WIRTZ BEVERAGE ILLINOIS	2010-02-28	EFR Return	LIQ	201007007162001	\$1,954,394.01
38665263	WIRTZ BEVERAGE ILLINOIS	2010-03-31	EFR Return	LIQ	201009807162004	\$2,635,751.11
38665263	WIRTZ BEVERAGE ILLINOIS	2010-04-30	EFR Return	LIQ	201013107162004	\$2,375,265.18
38665263	WIRTZ BEVERAGE ILLINOIS	2010-05-31	EFR Return	LIQ	201016507162000	\$2,390,811.25
38665263	WIRTZ BEVERAGE ILLINOIS	2010-06-30	EFR Return	LIQ	201019407163001	\$4,385,231.14
38665263	WIRTZ BEVERAGE ILLINOIS	2010-07-31	EFR Return	LIQ	201022207162002	\$1,909,694.19
38665263	WIRTZ BEVERAGE ILLINOIS	2010-08-31	EFR Return	LIQ	201025607162001	\$2,396,637.81
38665263	WIRTZ BEVERAGE ILLINOIS	2010-09-30	EFR Return	LIQ	201028607162004	\$2,556,442.23
38665263	WIRTZ BEVERAGE ILLINOIS	2010-10-31	EFR Return	LIQ	201031507162004	\$2,833,873.54
38665263	WIRTZ BEVERAGE ILLINOIS	2010-11-30	EFR Return	LIQ	201034707163007	\$2,975,380.51
38665263	WIRTZ BEVERAGE ILLINOIS	2010-12-31	EFR Return	LIQ	201101707162000	\$4,348,569.46
IBT Totals						\$41,656,683.46
Tax Totals						\$109,706,426.79
Report Totals						\$109,706,426.79

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