

INTRODUCTION AND SUMMARY OF GROUNDS FOR MOTION

1. As described in the Petition and in the State Parties' January 28, 2011 amended motion for a stay (Docket No. 111801) (the "Amended Motion for Stay"), the appellate court's decision significantly affects the State's ongoing capital projects, operations, and finances, including substantial new revenues created by Public Act 96-34 and billions of dollars of current and future capital projects throughout the State. The public interest therefore would be served by accelerating the Court's ruling on the Petition, as well as briefing, argument and a final decision in this appeal. Extending the Court's February 1, 2011 stay of the appellate court's judgment until this Court's final disposition of this matter likewise will serve the public interest by avoiding a significant, and potentially unnecessary, disruption of the State's capital projects, operations and finances. Moreover, accelerating the docket in this appeal will limit that stay to the shortest period necessary to address that concern.

FACTUAL BACKGROUND

2. This litigation involves a taxpayer standing challenge to Public Acts 96-34, 96-35, 96-37, and 96-38, which, along with Public Act 96-36 (collectively the "Capital Projects Acts"), all took effect immediately after being signed into law on the same day in July 2009. (A 37; 2009 Ill. Laws 631-32, 770, 784, 936, 1010.)¹ The Capital Projects Acts collectively authorize capital projects under, provide revenues, increase bond financing authorization limits, and appropriate funds with respect to a \$31 billion capital development program and related spending throughout the State of Illinois. These

¹ References to the Supporting Record begin with the letter "A."

capital projects include construction and improvement of public schools, hospitals, community health centers, early childhood facilities, libraries, parks, and roads. (2009 Ill. Laws 774-75, 784-94, 807-09).

3. As detailed more fully in the Petition (at 2-4), Public Act 96-34 establishes revenue for those projects, including increased taxes on the wholesale sale of alcoholic beverages and increased fees and fines under the Vehicle Code (2009 Ill. Laws 571-88); Public Act 96-37 authorizes new capital projects (e.g., hospitals, community health centers, and early childhood facilities) (2009 Ill. Laws 784-809); and Public Act 96-36 increases the bond authorization limits for financing the construction of existing categories of capital projects (e.g., rail and mass transit facilities, airport facilities, highways, roads and bridges) (2009 Ill. Laws 774-75). Public Act 96-36 also provides for the new bond proceeds to be used to fund these projects and directs that the corresponding bonds be repaid out of the newly created “Capital Projects Fund” with the revenue sources specified in Public Act 96-34. (2009 Ill. Laws 770-71.) (The proposed complaint in this case did not challenge the validity of Public Act 96-36.) Public Act 96-35 appropriated funds for these capital projects for the fiscal year ending on June 30, 2010. (2009 Ill. Laws 632-770.)

4. In light of the Capital Projects Acts’ common purpose, Public Act 95-35 provides that it does not “take effect” unless Public Act 96-34 “becomes law” (2009 Ill. Laws 770); Public Act 96-37 likewise provides that some of its provisions do not take effect unless Public Act 96-34 “becomes law” (2009 Ill. Laws 825, 836, 850, 853, 856, 859, 862, 868, 871, 896, 899); and similar language is contained in parts of Public Act

96–38, which amends certain provisions in the other Capital Projects Acts (2009 Ill. Laws 936, 953, 963, 976, 998, 1003, 1006).

5. The circuit court denied the petition by the proposed plaintiffs (“Plaintiffs”) for leave to pursue this suit pursuant to Section 11–303 of the Code of Civil Procedure, 735 ILCS 5/11–303 (2008). (A 34, 35, 37.) On January 26, 2011, the appellate court reversed, holding that Public Act 96–34 violates the Single Subject Clause of the Illinois Constitution (Ill. Const. art. IV, § 8(d)) and is “void in its entirety.” (A 37, 52–53.) The appellate court further held that, in light of this ruling and the provisions in Public Acts 96–35, 96–37 and 96–38 making those Acts (or parts of them) “contingent” on Public Act 96–34 becoming law, those Acts also are invalid. (A 37, 53.) The appellate court did not rule on Plaintiffs’ other constitutional challenges to Public Act 96–34 or any of their constitutional challenges to Public Acts 96–35, 96–37 and 96–38. (A 53.)

6. On January 27, 2011, the day after the appellate court’s decision, the State Parties filed in this Court a motion for a stay of the appellate court’s decision pending further proceedings, and the following day they filed the Amended Motion for Stay, accompanied by a Rule 361 Supporting Record.

7. This Court’s February 1, 2011 order allowed the State Parties’ Amended Motion for Stay and granted a “stay of enforcement of the Appellate Court’s judgment in case Nos. 1-09-3163 and 1-10-0344, W. Rockwell Wirtz et al. v. Hon. Patrick Quinn et al., pending filing and disposition of petition for leave to appeal.” (A 61.)

8. Instead of waiting the full time permitted by the Court’s Rules to file the Petition, on February 14, 2011, the State Parties filed and served by mail the Petition

(which the Court received on February 16, 2011). The Petition seeks review “as of right” pursuant to Rule 317 of the appellate court’s ruling that Public Act 96–34 is unconstitutional under the Single Subject Clause. The Petition also seeks review of the appellate court’s holding that Public Acts 96–35, 96–37 and 96–38 are invalid, as well as of the appellate court’s failure to sustain these Acts against Plaintiffs’ Single Subject Clause challenges to them.

DISCUSSION

9. For the following reasons, the Court should accelerate the proceedings in this appeal and further continue the stay of the appellate court’s decision during the course of those proceedings.

Rule 311(b) Request to Accelerate Proceedings

10. It is in the interest of everyone concerned — the State Parties, Plaintiffs, the state government generally, and the public — that this Court resolve this appeal as expeditiously as reasonably practical. The State Parties therefore respectfully request, pursuant to Supreme Court Rule 311(b), that the Court accelerate its docket in this matter, specifically including:

- an expedited ruling on the Petition, and (if the Court allows the Petition);
- accelerated briefing (e.g., with the State Parties’ Brief due by March 21, 2011, Plaintiffs’ brief due 35 days later, on April 25, 2011; and the State Parties’ Reply Brief due by May 2, 2011;
- oral argument during the first week of the May 2011 term; and
- a decision on the merits as soon thereafter as reasonably practical.

11. Outside of the child custody context, Rule 311(b) governs an “accelerated docket” in a reviewing court. The State Parties recognize that a request for relief under that rule, while not unprecedented, asks the Court to make an exception to its normal procedures for handling cases, and that those procedures facilitate the Court’s ability to fulfill its responsibilities in an efficient, orderly and fair manner. The State Parties nonetheless submit that this case is particularly appropriate for exercise of the Court’s authority under Rule 311(b).

12. Among other things, Public Act 96–34 generates an average of about \$10 million a month in additional taxes on alcoholic beverages, in addition to increased taxes on sales of other goods (A 62-63), and more than \$20 million a month in increased fees under the Vehicle Code (A 64-67). The State also pays on average \$17.5 million monthly out of the Capital Projects Fund from revenues established by Public Act 96–34 to service the debt on Capital Projects Bonds authorized by the Capital Projects Acts to pay for projects authorized by those Acts (A 68-70). Without those revenues established by Public Act 96–34, that debt service would have to come from other sources, including the State’s General Revenue Fund. (A 68-69.)

13. Prompt resolution of this appeal will end the uncertainty created by the appellate court’s ruling, including the impact of that ruling on the new revenues established by Public Act 96–34, the new projects authorized by Public Act 96–37, and the appropriations in Public Act 96–35. That ruling not only puts in doubt the *ultimate* validity of these revenues, projects, and appropriations, but also substantially complicates the *current* preparation of next year’s budget due to the lack of firm knowledge

whether the revenues established by PA 96–34 will be forthcoming and whether funding for the projects authorized in Public Act 96–37, as well as payment of debt service on the bonds authorized in Public Act 96–36, will come from those revenues or instead will come from other sources, including the General Revenue Fund.

14. The budget process for the next fiscal year, which commences on July 1, 2011, has already begun. The Governor has submitted his budget proposal to the General Assembly, including a description of all projected receipts and expenditures, pursuant to Article VII, Section 2 of the Illinois Constitution, and the General Assembly has convened hearings to discuss the upcoming fiscal year. If the General Assembly does not pass the relevant laws to implement this budget by May 31, 2011, those laws cannot take effect by the start of the fiscal year absent the vote of a three-fifths majority of the House and of the Senate. Ill. Const. art. IV, § 10. And without a budget (or some other interim, short-term action) before July 1, 2011, the State’s ability to operate is very limited. Formulating this budget is necessarily complicated by uncertainty over the validity of the revenues created by Public Act 96–34 and of the expenditures and other provisions specified in Public Acts 96–35, 96–37 and 96–38 — all of which are affected by the appellate court’s decision. Accordingly, a prompt, definitive ruling by this Court on the issues raised in the State Parties’ Petition, including whether Public Act 96–34 violates the Single Subject Clause and thereby invalidates Public Acts 96–35, 96–37 and 96–38, will facilitate the shared responsibility of the General Assembly and the Governor to enact timely legislation consistent with the Illinois Constitution to ensure the State’s ongoing operations without disruption for the fiscal year beginning July 1, 2011.

15. In addition, expedited review of the appellate court's ruling will advance the ultimate distribution — to the State or to the plaintiffs — of the more than \$100 million in higher alcoholic beverage taxes established by Public Act 96–34 that are now being held in protest funds in the parallel suits contesting those taxes. (See A 54-60.)

Continued Stay of Appellate Court's Judgment

16. The relevant circumstances also justify a continuation of the stay granted by the Court's February 1, 2011 Order until the Court's final disposition of this matter. As the State Parties explained in their Amended Motion for Stay, having the appellate court's decision take immediate effect pending this Court's review of that decision would threaten critical capital projects and greatly affect state operations and finances. Not only would the revenue-creating provisions of Public Act 96–34 be subject to sudden suspension, risking an irretrievable loss of tens of millions of dollars each month in state revenues, but the various capital projects authorized by Public Act 96–37 would also be potentially subject to cessation, with all the disruption, inefficiency and unemployment that would cause.² In addition, debt service for the bonds already issued under the authority of the Capital Projects Acts would have to be paid from a different revenue source, putting a further strain on state finances. (A 68-69.) Conversely, no material prejudice to the parties would result from continuing the stay during the Court's resolution of this appeal. (A 54-60.)

² As outlined in the Governor's budget address, the capital projects have created more than 140,000 short-term and permanent jobs to date and are projected to create or preserve more than 400,000 jobs over the life of the program. See http://www2.illinois.gov/budget/Documents/FY%202012/FY12_Budget_Speech.pdf.

17. Whether to stay an appealable order is discretionary. *Stacke v. Bates*, 138 Ill. 2d 295, 301 (1990). A stay is most commonly granted to preserve the status quo pending review. See, e.g., *JoJan Corp. v. Brent*, 307 Ill. App. 3d 496, 509 (1st Dist. 1999). Relevant factors in the analysis include the likelihood of success on appeal, the balance of hardships, and the public interest, and the ultimate determination involves balancing the relevant interests. *Stacke*, 138 Ill. 2d at 302-09. A party seeking a stay need not show a probability of success, but only “a substantial case” on the merits, and must further show that the balancing of equitable factors weighs in favor of granting the stay. *Id.* at 308-09. In the present case, all factors weigh in favor of continuing the stay to preserve the status quo until this Court’s final disposition of the State Parties’ appeal.

18. The State Parties have a substantial case on the merits. In *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341, 347-56 (1999), this Court upheld against a Single Subject Clause challenge the State’s budget implementation act for fiscal year 1996, which contained a wide variety of statutory provisions creating and amending state programs and revenues in multiple acts. The State Parties argued below that the Capital Projects Acts were similarly related to a permissible single subject — the “capital projects initiative” — that is narrower in scope than implementation of a full year’s budget. (State Parties’ Br. at 28-33.) That argument clearly presents a substantial case on the merits.

19. The public interest and the balance of equities — which involves weighing the potential harm to the State Parties and to the public from erroneously denying a stay against the potential harm to Plaintiffs from erroneously granting a stay — also weigh

heavily in favor of a stay. Cf. *cf. Kanter & Eisenberg v. Madison Assoc.*, 116 Ill. 2d 506, 510 (1987) (stating that, on motions for temporary injunction, “the aim of the analysis must be to minimize the risk of choosing wrongly”). Staying the appellate court’s judgment should cause no material prejudice to Plaintiffs because, in separate litigation presenting the same claims, the additional taxes imposed on them by Public Act 96–34 are being deposited in a protest fund, and if the appellate court’s judgment is ultimately affirmed and controls the outcome of these other suits, Plaintiffs’ rights are fully protected. (A 54-60.)

20. On the other hand, denying a continued stay if the appellate court’s judgment is ultimately reversed will cause immediate and significant hardship to the State Parties and similar injury to the public interest. A reviewing court’s judgment is generally deemed effective immediately, even before the mandate issues. *PSL Realty Co. v. Granite Inv. Co.*, 86 Ill. 2d 291, 304-05 (1981). Giving immediate effect to the appellate court’s decision in this case would jeopardize critical capital projects and adversely affect state operations and finances. The consequences would include suddenly suspending the revenue-creating provisions of Public Act 96–34, risking the annual loss of hundreds of millions of dollars in state revenues, and potentially halting many, if not all, of the various capital projects authorized by Public Act 96–37 where they stand. In addition, debt service for the bonds already issued under the authority of the Capital Projects Acts would have to come from a different revenue source, further straining state finances. These factors were presented in the Amended Motion for Stay, which the Court granted, and no more recent facts warrant a different result now. Thus,

the relevant factors support continuing the Court's stay of the appellate court's judgment until the Court finally disposes of this appeal.

WHEREFORE, the State Parties respectfully pray for entry of an order:

(1) accelerating the docket in this case pursuant to Supreme Court Rule 311(b), including an expedited ruling on the State Parties' Petition and accelerated briefing, argument and decision, as further described above (at 5, par. 10); and

(2) continuing, during further proceedings in this Court, the stay of enforcement of the appellate court's judgment granted by the Court's February 1, 2011 order.

Respectfully submitted,

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February 18, 2011

No. 111903

IN THE
SUPREME COURT OF ILLINOIS

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
)	
v.)	There on Appeal from the Circuit Court of
)	Cook County, Illinois, County Department,
)	Law Division, No. 09 CH 30136
HON. PATRICK QUINN, in his official)	(Transferred to Law Division)
capacity as Governor of the State of)	
Illinois, <i>et al.</i> ,)	Honorable
)	LAWRENCE O’GARA,
Respondents-Petitioners.)	Judge Presiding

ORDER

This cause having come before the Court on the motion of Illinois Governor Patrick Quinn, *et al.* (the “State Parties”) for (1) acceleration of the docket in this case pursuant to Supreme Court Rule 311(b), and (2) continuation of the stay of enforcement of the appellate court’s judgment granted by this Court on February 1, 2011 until the Court finally disposes of this appeal; proper notice having been served, and the Court being fully advised in the premises:

It is hereby Ordered:

1. The motion for an accelerated docket is Allowed / Denied, and further proceedings in this appeal will proceed as follows:

The Court will expedite its ruling on the State Parties’ Petition for Appeal as of Right Under Rule 317 or, Alternatively, as a Matter of Discretion Under Rule 315 (the “Petition”), and, if the Court allows the Petition;

Briefing shall proceed as follows: State Parties’ Brief due by March 21, 2011, Plaintiffs’ brief due by April 25, 2011; and State Parties’ Reply Brief due by May 2, 2011;

The Court will schedule oral argument during the first week of its May 2011 term;

2. The motion to continue the stay of enforcement of the appellate court’s judgment until final disposition of this appeal is Allowed / Denied.

Justice

Certificate of Filing & Service by Delivery

The undersigned, an attorney, certifies that on February 18, 2011, he caused the foregoing Motion for Accelerated Docket and for Continued Stay of Appellate Court Judgment to be filed by hand with the Clerk of the Supreme Court of Illinois, Satellite Office, 160 North LaSalle Street, 20th Floor, Chicago, Illinois, 60601, and copies thereof to be personally delivered to:

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