2018 IL App (4th) 180005-U

NO. 4-18-0005

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 17, 2018
Carla Bender
4th District Appellate
Court, IL

SPRINGFIELD RIGHT TO LIFE; LAKE COUNTY RIGHT TO LIFE COMMITTEE, INC.; KNOX COUNTY RIGHT TO LIFE, NFP; MORGAN COUNTY RIGHT TO LIFE, INC., NFP; HENRY COUNTY RIGHT TO LIFE, INC.; CLINTON COUNTY CITIZENS FOR LIFE; RIGHT TO LIFE OF ADAMS COUNTY, INC.; FAITH AND FREEDOM FAMILY MINISTRY, NFP; PRO-LIFE ACTION LEAGUE, INC.; DIOCESE OF SPRINGFIELD-IN-ILLINOIS; ILLINOIS RIGHT TO LIFE ACTION; ILLINOIS FEDERATION FOR RIGHT TO LIFE, on Behalf of Certain of Their Illinois Taxpayer Members; REP. BARBARA WHEELER; SEN. DAN McCONCHIE; REP. MARK BATINICK; SEN. KYLE McCARTER; REP. STEVE REICK; SEN. PAUL SCHIMPF; REP. KEITH WHEELER; SEN. DALE FOWLER; REP. CHARLIE MEIER; SEN. SAM McCANN; REP. JEANNE IVES; and SEN. NEIL ANDERSON, as Illinois Taxpayers, Plaintiffs-Appellants, v. FELICIA NORWOOD, Director of the Department of Healthcare and Family Services; MICHAEL HOFFMAN, Acting Director of the Department of Central Management Services; MICHAEL FRERICHS, Treasurer of the State of Illinois; and SUSANA MENDOZA, Comptroller of the State of Illinois, Defendants-Appellees.	)	Appeal from Circuit Court of Sangamon County No. 17MR1032 Honorable Jennifer M. Ascher, Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) the circuit court lacked jurisdiction under the political-question doctrine, to determine whether the General Assembly failed to appropriate funds and adopt a revenue estimate to cover the cost of services under HB 40; and (2) the implementation of HB 40 on January 1, 2018, was not improper because the bill passed both houses of the General Assembly by May 10, 2017.

¶ 2 In December 2017, plaintiffs, pro-life organizations representing Illinois taxpayer members and members of the Illinois legislature, asserting their rights as taxpayers, filed a two-count amended complaint against defendants, state officials sued in their official capacities, challenging the funding and effective date of House Bill 40 (HB 40) (100th Ill. Gen. Assem., House Bill 40, 2017 Sess.). HB 40 reversed the prohibition on funding elective abortions by the State's Medicaid and employee health insurance programs and mandated coverage by Medicaid for all "reproductive health care that is otherwise legal." In their complaint, plaintiffs alleged the Illinois General Assembly did not appropriate funds or adopt a revenue estimate to cover the cost of services under HB 40, as required by the Illinois Constitution (constitution) (Ill. Const. 1970, art. VIII, § 2(b)) (count I), and that HB 40 should have become effective June 1, 2018, not January 1, 2018 (count II). Plaintiffs also sought injunctive relief from the circuit court.

¶ 3 Subsequently, defendants moved to dismiss the complaint. The circuit court granted defendants' combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2016)). The court dismissed count I, holding the question of the constitutionality of the payments pursuant to HB 40 was a political question for which it lacked jurisdiction to consider. See 735 ILCS 5/2-619(a)(9) (West 2016). Accordingly, the court indicated it could not mandate the process on the estimate of revenues or the appropriation of those revenues. As to count II, the court ordered dismissal after concluding HB 40 properly became effective January 1, 2018. See 735 ILCS 5/2-615 (West 2016). The court

also denied plaintiffs' motion for a temporary restraining order and preliminary injunction, which sought to foreclose defendants from implementing HB 40 beginning January 1, 2018.

¶ 4 Plaintiffs appeal, arguing the circuit court erred by dismissing their complaint. Specifically, plaintiffs argue (1) the General Assembly's failure to appropriate funds and adopt a revenue estimate to cover the cost of services under HB 40 did not present a nonjusticiable political question, and (2) the implementation of HB 40 before June 1, 2018, was improper because the bill did not pass both houses of the General Assembly until September 25, 2017, after the withdrawal of a motion to reconsider. We affirm.

¶ 5 I. BACKGROUND

¶ 6 A. HB 40

¶ 7 Before outlining the facts pertinent to our decision, a brief overview of HB 40 is helpful to understand the parties' contentions. HB 40 amended the Illinois Public Aid Code (305 ILCS 5/5-5, 5-8, 5-9, 6-1 (West 2016)), requiring the Illinois Department of Healthcare and Family Services (Department) to reimburse service providers for the cost of reproductive healthcare, including abortion services, for women eligible for Medicaid. See Pub. Act 100-0538 (eff. Jan. 1, 2018) (amending 305 ILCS 5/5-5, 5-8, 5-9, 6-1). HB 40 also amended the State Employees Group Insurance Act of 1971 (5 ILCS 375/6, 6.1 (West 2016)), removing language that prohibited noncontributory employee health insurance plans administered by the Illinois Department of Central Management Services from covering elective abortions. See Pub. Act 100-0538 (eff. Jan. 1, 2018) (amending 5 ILCS 375/6, 6.1). Noncontributory health insurance plans are available to state retirees, annuitants, and retirees' survivors.

¶ 8 B. Legislative History

¶ 9 On April 25, 2017, the Illinois House of Representatives passed HB 40 by a simple majority vote. On May 10, 2017, the Illinois Senate passed HB 40 also by a simple majority vote. Subsequently, Senator Don Harmon filed a motion to reconsider the vote. The senate took no action on the motion and Senator Harmon withdrew the motion on September 25, 2017. The Governor signed HB 40 on September 28, 2017.

¶ 10 C. Procedural History

¶ 11 On December 6, 2017, plaintiffs filed a complaint seeking to restrain and enjoin the disbursement of public funds for services covered under HB 40. Later, the circuit court granted plaintiffs leave to file their verified amended complaint, the operative complaint here, which made no substantive changes to the nature of their claims.

¶ 12 In count I of the complaint, plaintiffs alleged the disbursement of public funds in furtherance of HB 40 violated article VIII, section 2(b) of the constitution (Ill. Const. 1970, art. VIII, § 2(b)) because the General Assembly did not appropriate funds or adopt a revenue estimate to support services covered under HB 40. In count II, plaintiffs alleged the implementation of HB 40 before June 1, 2018, was improper because the bill did not pass both houses of the General Assembly until September 25, 2017, after the withdrawal of Senator Harmon's motion to reconsider. Plaintiffs asserted the implementation of HB 40 prior to June 1, 2018, violated article IV, section 10 of the constitution (Ill. Const. 1970, art. IV, § 10) and section 2 of the Effective Date of Laws Act (5 ILCS 75/2 (West 2016)), because bills passed after May 31 do not become effective until June 1 of the next calendar year unless a three-fifths majority of each house of the General Assembly provides for an earlier date.

¶ 13 Plaintiffs also filed a motion for a temporary restraining order and preliminary injunction requesting that the circuit court enjoin the disbursement of funds for services covered by HB 40 during the pendency of this lawsuit.

¶ 14 On December 15, 2017, defendants moved to dismiss count I of plaintiffs' complaint, asserting the political-question doctrine prohibited the circuit court from deciding whether the General Assembly adopted a revenue estimate to support appropriations for services covered by HB 40. Defendants also moved to dismiss count II, arguing the senate passed HB 40 on May 10, 2017, despite the pendency of a motion to reconsider in the senate until September 25, 2017. Therefore, HB 40 became effective January 1, 2018.

¶ 15 On December 28, 2017, the circuit court granted defendants' combined motion to dismiss pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2016)). The court dismissed count I of plaintiffs' complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619(a)(9) (West 2016)), concluding it lacked jurisdiction, under the political-question doctrine, to interpret or enforce the appropriations and revenue-estimate requirements under article VIII, section 2(b) of the constitution (Ill. Const. 1970, art. VIII, § 2(b)). The court maintained it was unable to address this issue without violating the separation of powers between the judiciary and the legislature. Thus, the court declined to address the merits of count I. The court dismissed count II of plaintiffs' complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)). The court found HB 40 passed the house on April 25, 2017, and the senate on May 10, 2017; and concluded HB 40 became effective January 1, 2018. The court held the filing of a motion to reconsider and withdrawal of that motion without taking any action on the motion "cannot be deemed a final legislative act changing the effective date of the law." See 5 ILCS

75/3 (West 2016). The court also denied plaintiffs' motion for a temporary restraining order and preliminary injunction.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, plaintiffs argue the circuit court erred by dismissing their two-count amended complaint. Specifically, plaintiffs argue (1) the circuit court erred in dismissing plaintiffs' claim that expenditures for HB 40 violate the revenue-estimate and appropriations requirements of the constitution (Ill. Const. 1970, art. VIII, § 2(b)); and (2) the circuit court erred in dismissing plaintiffs' claim that implementing HB 40 prior to June 1, 2018, violates the constitution (Ill. Const. 1970, art. IV, § 10), and the Effective Date of Laws Act (5 ILCS 75/2 (West 2016)). Finally, plaintiffs seek injunctive relief from this court. We address these issues in turn.

¶ 19 A. Standard of Review

¶ 20 Defendants moved to dismiss plaintiffs' amended complaint under section 2-619.1 of the Code, which allows a party to file a motion combining a section 2-619 motion to dismiss with a section 2-615 motion to dismiss. 735 ILCS 5/2-619.1 (West 2016). "A section 2-615 motion to dismiss tests the legal sufficiency of a complaint." *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31, 976 N.E.2d 318. "A section 2-619 motion to dismiss admits the sufficiency of the complaint, but asserts a defense outside the complaint that defeats it." *Id.* We review *de novo* the circuit court's ruling dismissing plaintiffs' complaint pursuant to both section 2-619 and section 2-615 of the Code. See *Id.*

¶ 21 B. The Budget Process

¶ 22 1. *Revenue Estimates and Appropriations*

¶ 23 Under the constitution, the governor prepares and submits to the General Assembly a budget that sets forth an estimate of the funds available and the expected expenditures for the following fiscal year. Ill. Const. 1970, art. VIII, § 2(a). Once the governor submits the proposed budget to the General Assembly (30 ILCS 105/13.4 (West 2016)), the General Assembly enacts appropriations for the expenditure of public funds. Ill. Const. 1970, art. VIII, § 2(b). In exercising this power, the constitution requires that the General Assembly appropriate within funds estimated by the General Assembly. Ill. Const. 1970, art. VIII, § 2(b). Art. VIII, section 2(b) of the constitution provides as follows:

> "The General Assembly by law shall make appropriations for all expenditures of public funds by the State. Appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year." Ill. Const. 1970, art. VIII, § 2(b).

¶ 24 Once the General Assembly passes appropriations legislation, the governor reviews the bill and either approves or vetoes the bill in its entirety or approves the bill with reductions or vetoes of specific line item appropriations. Ill. Const. 1970, art. IV, § 9(a), (b), (d). The General Assembly may override the reductions or vetoes. Ill. Const. 1970, art. IV, § 9(c), (d).

¶ 25 2. *Fiscal Year 2018 Budget*

¶ 26 In July 2017, both houses of the General Assembly passed Senate Bill 6, the principal appropriations legislation for the 2018 fiscal year. 100th Ill. Gen. Assem., Senate Bill 6, 2017 Sess.; see Pub. Act 100-0021 (eff. Jul. 6, 2017). The bill included $34.39 billion in appropriations from general funds, including $7 billion in appropriations from general funds to the Department. Pub. Act 100-0021, Art. 91 (eff. Jul. 6, 2017). The Governor vetoed the bill.

However, both houses of the General Assembly overrode the veto. 100th Ill. Gen. Assem., Senate Bill 6, 2017 Sess. Senate Bill 6, enacted as Public Act 100-0021, became effective July 6, 2017. See Pub. Act 100-0021 (eff. Jul. 6, 2017).

¶ 27 Prior to the enactment of Public Act 100-0021, three publically available revenue estimates came before the General Assembly. On April 25, 2017, Representative Keith Wheeler filed House Joint Resolution 49 containing a $33.9 billion general funds revenue estimate prepared and submitted to the General Assembly by the Commission on Government Forecasting and Accountability (COGFA). 100th Ill. Gen. Assem., House Joint Resolution 49, 2017 Sess. Representative Wheeler also filed House Joint Resolution 50 containing a general funds revenue estimate of $34.40 billion based on the estimate prepared by the Governor's Office of Management and Budget (GOMB). 100th Ill. Gen. Assem., House Joint Resolution 50, 2017 Sess. The house did not vote on either resolution. On May 23, 2017, the senate approved Senate Joint Resolution 42 containing a general funds revenue estimate of $37.51 billion. 100th Ill. Gen. Assem., Senate Joint Resolution 42, 2017 Sess. The house did not vote on the resolution.

¶ 28 Plaintiffs argue Public Act 100-0021 did not account for the new services covered under HB 40 and that the appropriation of funds in furtherance of HB 40 violated article VIII, section 2(b) of the constitution (Ill. Const. 1970, art. VIII, § 2(b)) and the COGFA Act (25 ILCS 155/4(a) (West 2016)), because the General Assembly did not adopt a revenue estimate that covered the costs of services under HB 40. Plaintiffs contend the General Assembly failed to adopt a revenue estimate by joint resolution of the house and senate as codified in the COGFA Act. 25 ILCS 155/4(a) (West 2016).

¶ 29 Defendants argue that the General Assembly took into account the costs of services under HB 40 when it enacted Public Act 100-0021. However, defendants assert the

circuit court lacked jurisdiction under the political-question doctrine to determine whether the General Assembly adopted a revenue estimate to support appropriations for services covered by HB 40. We agree with defendants.

¶ 30 Before we turn to the political-question doctrine, we note a problem in the way plaintiffs couch their arguments before this court. Plaintiffs assert they simply want to know if the General Assembly complied with the revenue-estimate and appropriations requirements of the constitution. However, absent from the constitution is any language imposing an obligation on the General Assembly to develop a revenue estimate. Plaintiffs argue the language of the COGFA Act, read in conjunction with the constitution, imposes such a duty. However, the constitution and the COGFA Act are separate. We are reluctant to read the language of the COGFA Act into the constitution. Thus, we consider ourselves faced with three questions regarding count I of plaintiffs' amended complaint. The three questions are: (1) Did the political-question doctrine prevent the circuit court from determining if the General Assembly estimated revenue under the constitution? (2) Did the political-question doctrine prevent the circuit court from determining if the General Assembly properly appropriated funds to cover the cost of HB 40 under the constitution? and (3) Did the political-question doctrine prevent the circuit court from determining if the General Assembly, in violation of the COGFA Act, failed to estimate revenues and improperly appropriated funds to cover the costs of HB 40? Before answering these questions, we first explain the political-question doctrine.

¶ 31 C. Political-Question Doctrine

¶ 32 The circuit court has subject-matter jurisdiction over a claim "if the matter brought before the court by the plaintiff or petitioner is justiciable." (Internal quotation marks omitted.) *In re M.W.*, 232 Ill. 2d 408, 424, 905 N.E.2d 757, 769 (2009). The political-question

doctrine "holds that certain questions, deemed political in nature, are not justiciable." *Moore v. Grafton Township Board of Trustees*, 2011 IL App (2d) 110499, ¶ 5, 955 N.E.2d 1222. The doctrine "derives from the principle of separation of powers." *Id.* The function of the doctrine "is to ensure that the judiciary does not exercise the powers of another branch of government." *Id.*

¶ 33 The separation of powers forms the basis of the political-question doctrine outlined in the seminal case *Baker v. Carr*, 369 U.S. 186 (1962). Illinois courts have adopted the reasoning in *Baker v. Carr*. See *Central Austin Neighborhood Ass'n v. City of Chicago*, 2013 IL App (1st) 123041, ¶ 18, 1 N.E.3d 976 (citing *Kluk v. Lang*, 125 Ill. 2d 306, 322, 531 N.E.2d 790, 797 (1988)). *Baker* explained the dominant considerations for determining whether a case presents a political question are "the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination." *Baker*, 369 U.S. at 210 (quoting *Coleman v. Miller*, 307 U.S. 433, 454-55 (1939)). *Baker* identified six characteristics of cases that are inappropriate for judicial review under the political-question doctrine:

> "Prominent on the surface of any case held to involve a political question is found [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or

[6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Baker*, 369 U.S. at 217.

The presence of any one factor is sufficient to determine the issue is nonjusticiable. *Baker*, 369 U.S. at 217.

¶ 34 The circuit court, in considering the *Baker* factors, concluded that the question of the constitutionality of the payments pursuant to HB 40 was a political question it lacked jurisdiction to determine. However, as we stated, we believe our analysis requires us to divide the inquiry into three questions.

¶ 35 1. Revenue Estimation Under the Constitution

¶ 36 As to the first question, did the political-question doctrine prevent the circuit court from determining if the General Assembly estimated revenue under the constitution, our answer is no. We reach this conclusion because we find the constitution lacks a requirement of a revenue estimate.

¶ 37 While the language of the constitution certainly seems to anticipate some estimate, absent is language imposing an obligation on the General Assembly to develop a revenue estimate. Plaintiffs argue that reading the language of the COGFA Act in conjunction with the constitution imposes such a duty. In reading the language of the COGFA Act into the constitution, plaintiffs skip an important step. Without a constitutional requirement of an estimate, there can be no legitimate probe into whether the General Assembly complied with that nonexistent requirement. As to this issue, plaintiffs failed to state a cause of action. Thus, although not the basis indicated by the circuit court, section 2-615 of the Code (735 ILCS 5/2-615) (West 2016)), supports the court's decision to dismiss on this issue. It is well settled that we may affirm on any basis supported by the record. *Suchy v. City of Geneva*, 2014 IL App (2d)

130367, ¶ 19, 8 N.E.3d 565 (citing *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 97, 658 N.E.2d 450, 457 (1995)).

¶ 38 2. Appropriating Funds Under the Constitution

¶ 39 As to the second question, did the political-question doctrine prevent the circuit court from determining if the General Assembly properly appropriated funds to cover the cost of HB 40 as required by the constitution, we find it did. Under the constitution, the General Assembly is to refrain from appropriating funds in excess of those estimated by the General Assembly to be available during that year.

¶ 40 The second *Baker* factor articulates that "a lack of judicially discoverable and manageable standards for resolving" an issue supports the conclusion that an issue is a nonjusticiable political question. *Baker*, 369 U.S. at 217. By its plain terms, the constitution requires only that the General Assembly refrain from appropriating funds in excess of the amount estimated by the General Assembly. Here, the constitution fails to provide discoverable and manageable standards illustrating how a court is to go about determining whether the General Assembly did in fact refrain from appropriating funds in excess of funds estimated by the General Assembly. Ill. Const. 1970, art. VIII, § 2(b). Plaintiffs also fail to point to any such standards.

¶ 41 The nature of the budgeting process in this state also leads us to find an absence of discoverable and manageable standards. The constitution does not require the General Assembly to itemize funds and appropriate for specific services. Ill. Const. 1970, art. VIII, § 2(b). Rather, "a single general purpose is sufficient to include every appropriate expenditure required, although there may be many items." *In re Application of Rosewell*, 159 Ill. 2d 393, 416, 639 N.E.2d 559, 569 (1994) (quoting *People ex rel. Sweet v. Central Illinois Public*

Service Co., 48 Ill. 2d 145, 149, 268 N.E.2d 404, 406 (1971)). The agency for whose use the funds have been appropriated has the discretion to spend or not to spend within the parameters set by the legislature. The "discretion to spend or not to spend within the parameters set by the legislature rests with the agency for whose use the funds have been appropriated." *American Federation of State, County, and Municipal Employees v. Ryan*, 332 Ill. App. 3d 965, 968, 773 N.E.2d 1196, 1199 (2002). Once the General Assembly appropriated funds for the 2018 fiscal year, the Department had discretion to determine how to spend the funds within the parameters set by the General Assembly. The Department had discretion to allocate more funds toward services covered under HB 40, and allocate fewer funds to other department expenses.

¶ 42 The General Assembly received the Department's 1.8 million cost estimate for HB 40 before it made appropriations to the Department for the 2018 fiscal year. 100th Ill. Gen. Assem., House Bill 40, 2017 Sess. ("The estimated annual cost for abortion services resulting from House Bill 40 is approximately $1.8 million, which would be 100% [General Revenue Fund] funded."). HB 40 came before both houses of the General Assembly prior to the enactment of the appropriations legislation. See 100th Ill. Gen. Assem., House Bill 40, 2017 Sess.; Pub. Act 100-0021, Art. 91 (eff. Jul. 6, 2017).

¶ 43 Equipped with this information, the General Assembly appropriated $7 billion in general funds to the Department for the 2018 fiscal year. Pub. Act 100-0021, Art. 91 (eff. Jul. 6, 2017). Under the constitution, the General Assembly must simply refrain from appropriating beyond funds estimated by the General Assembly to be available during the year. There exists no requirement that the General Assembly itemize appropriations for specific services. In this circumstance, the circuit court had no way to determine if the General Assembly properly appropriated funds specifically to cover services under HB 40.

¶ 44 In light of the absence of judicially discoverable and manageable standards, we find the political-question doctrine prevented the circuit court from determining if the General Assembly properly appropriated funds to cover the cost of HB 40.

¶ 45 3. Revenue Estimation and Appropriating Funds Under COGFA

¶ 46 Now, we turn to the third question: did the political-question doctrine prevent the circuit court from determining if the General Assembly, in violation of the COGFA Act, failed to estimate revenues and improperly appropriated funds to cover the costs of HB 40? We answer this question in the affirmative.

¶ 47 Plaintiffs assert the COGFA Act requires the General Assembly to adopt a revenue estimate by joint resolution of the house and senate. Specifically, where section 4(a) of the COGFA Act provides:

> "The Commission shall publish, at the convening of each regular session of the General Assembly, a report on the estimated income of the State from all applicable revenue sources for the next ensuing fiscal year and of any other funds estimated to be available for such fiscal year. The Commission, in its discretion, may consult with the Governor's Office of Management and Budget in preparing the report. On the third Wednesday in March after the session convenes, the Commission shall issue a revised and updated set of revenue figures reflecting the latest available information. *The House and Senate by joint resolution shall adopt or modify such estimates as may be appropriate.* The joint resolution shall constitute the General Assembly's estimate, under paragraph (b) of Section 2 of Article VIII of the Constitution, of the funds estimated to be available during the next fiscal year." (Emphasis added.) 25 ILCS 155/4(a) (West 2016).

¶ 48 Based on the language in section 4(a) of the COGFA Act, plaintiffs assert the General Assembly failed to adopt a revenue estimate for the 2018 appropriations legislation by joint resolution. While defendants concede the house and the senate failed to adopt a revenue estimate by joint resolution, they maintain that the COGFA Act lacks a judicially enforceable revenue-estimate requirement.

¶ 49 The fifth *Baker* factor asserts that a political question exists where there is "an unusual need for unquestioning adherence to a political decision already made." *Baker*, 369 U.S. at 217. Here, we recognize an unusual need for adherence to a political decision because adopting plaintiffs' position would have effectively invalidated the entire 2018 appropriations from general funds. When we consider the posture of this case and the potential impact on the citizens of Illinois, the circuit court found itself in an unusual predicament. Public Act 100-0021 enacted $34 billion in appropriations from general funds to all branches of state government and all of the state agencies for the 2018 fiscal year. Pub. Act 100-0021, Art. 91 (eff. Jul. 6, 2017). Invalidating Public Act 100-0021 for the General Assembly's alleged failure to adopt a joint resolution regarding a revenue estimate for the 2018 budget invalidates all $34 billion in general funds appropriations, not just appropriations for services provided under HB 40. As stated at oral argument, we are unaware of any way to parse out certain appropriations and leave others intact. The consequences to the operation of state government would be severe, especially since the state's governmental branches and agencies have relied on the appropriations since July 2017. Thus, we conclude this claim presented a nonjusticiable political question.

¶ 50 Although we conclude plaintiffs' COGFA Act-based claim presents a political question, in the alternative we find the language of the COGFA Act directory. It is the

mandatory or directory question that determines what happens if a party fails to comply with a statutory directive. *People v. Delvillar*, 235 Ill. 2d 507, 516, 922 N.E.2d 330, 335-36 (2009). When resolving the mandatory or directory question, a statute is mandatory where the legislature imposes specific consequences in the event of noncompliance. *Id*. at 514. On the other hand, a statute is directory where "no particular consequence flows from non[]compliance." *Id.* at 515. In determining whether a statutory provision is mandatory or directory, courts look to the statute's language to determine the intent of the legislature. *People v. Robinson*, 217 Ill. 2d 43, 54, 838 N.E.2d 930, 936 (2005). "Accordingly, when the statute expressly prescribes a consequence for failure to obey a statutory provision, that is very strong evidence the legislature intended that consequence to be mandatory." *Id*.

¶ 51 Section 4(a) of the COGFA Act does not contain any consequences for the General Assembly's failure to adopt a revenue estimate by joint resolution. 25 ILCS 155/4(a) (West 2016). Therefore, because the COGFA Act does not state that legislative appropriations are invalid if there is a failure to comply with section 4(a) or that legislative appropriations are valid only if the General Assembly follows section 4(a), we conclude the statutory provision is directory.

¶ 52 Accordingly, as to count I of the amended complaint, we affirm the circuit court's judgment. Before leaving this issue, we are constrained to note that we find the General Assembly's failure to comply with section 4(a) of the COGFA Act problematic. Thus, we strongly encourage the General Assembly to follow legislation it saw fit to enact. Now, we turn our attention to the motion to dismiss count II of plaintiffs' amended complaint.

¶ 53 D. Effective Date

¶ 54 HB 40 became effective January 1, 2018. Plaintiffs argue HB 40 should not have become effective until June 1, 2018, because the bill did not pass both houses of the General Assembly until September 25, 2017, after the withdrawal of a motion to reconsider. Defendants disagree and argue the circuit court correctly found the effective date to be January 1, 2018, because the bill passed both houses of the General Assembly by May 10, 2017. We agree with defendants.

¶ 55 The constitution directs the General Assembly to "provide by law for a uniform effective date for laws passed prior to June 1 of a calendar year," and further provides that bills "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." Ill. Const. 1970, art. IV, § 10.

¶ 56 Implementing the constitutional mandate, the Effective Date of Laws Act provides that "[a] bill passed prior to June 1 of a calendar year that does not provide for an effective date in the terms of the bill shall become effective on January 1 of the following year ***." 5 ILCS 75/1(a) (West 2016).

¶ 57 "For purposes of determining the effective dates of laws, a bill is 'passed' at the time of its final legislative action prior to presentation to the Governor pursuant to paragraph (a) of Section 9 of Article IV of the Constitution." 5 ILCS 75/3 (West 2016). Specifically, the Illinois Supreme Court defined "the time when a bill is passed as the time of the last legislative act necessary so that the bill would become law upon its acceptance by the governor without further action by the legislature." *People ex rel. Klinger v. Howlett*, 50 Ill. 2d 242, 247, 278 N.E.2d 84, 87 (1972) (citing *Board of Education of School District No. 41 v. Morgan*, 316 Ill. 143, 151, 147 N.E. 34, 38 (1925)). One of the overarching concerns "is to afford the public

adequate notice of the contents of the enactment." *City of Springfield v. Allphin*, 74 Ill. 2d 117, 130, 384 N.E.2d 310, 315 (1978).

¶ 58 Plaintiffs argue the filing and subsequent withdrawal of a motion to reconsider in the senate delayed HB 40's date of passage until September 25, 2017, requiring the effective date to be June 1, 2018. Plaintiffs assert the implementation of HB 40 prior to June 1, 2018, violates article IV, section 10 of the constitution (Ill. Const. 1970, art. IV, § 10) and section 2 of the Effective Date of Laws Act (5 ILCS 75/2 (West 2016)), because bills passed after May 31 do not become effective until June 1 of the next calendar year unless a three-fifths majority of the General Assembly provides for an earlier date. We do not find plaintiffs' argument persuasive where the filing and withdrawal of the motion to reconsider did not constitute a final legislative action.

¶ 59 Our case is analogous to *Allphin* where the Illinois Supreme Court determined the General Assembly's override of the Governor's veto of a bill did not affect the bill's effective date because "the override of a simple nonamendatory veto does not involve any additional 'legislative act.' " 74 Ill. 2d at 129. In *Allphin*, the court held that "the original language of the bill remains intact, and no additional time need lapse to assure that the public has adequate notice of that language." *Id*. Here, Senator Harmon filing a motion to reconsider then subsequently withdrawing the motion without any action occurring on the motion did not constitute an additional legislative act. Similar to the nonamendatory veto in *Allphin*, the filing and withdrawing of a motion to reconsider did not change the contents of HB 40 and the public had notice of the bill's contents since its passage on May 10, 2017.

¶ 60 The facts here are distinguishable from *Klinger*, where an amendatory veto constituted a final legislative act changing the passage date of the bill because the General

Assembly had to approve the Governor's new recommendations. *Klinger*, 50 Ill. 2d at 247-48. Here, after Senator Harmon withdrew the motion to reconsider, HB 40 went to the Governor who signed into law the exact contents previously passed by the house on April 25, 2017, and by the senate on May 10, 2017. Unlike an amendatory veto, the filing and withdrawing of a motion to reconsider had no effect on the contents of the enactment or the public's notice. See *Allphin*, 74 Ill. 2d at 130.

¶ 61 *Mulligan v. Joliet Regional Port District*, 123 Ill. 2d 303, 313, 527 N.E.2d 1264, 1269 (1988), also supports our finding that HB 40 passed on May 10, 2017. The Illinois Supreme Court in *Mulligan*, identified four circumstances under which a bill is deemed passed: "(1) passage on the third reading in the second house; (2) concurring in or receding from an amendment; (3) adoption of a conference committee report; or (4) acceptance of the Governor's specific recommendations for change pursuant to his amendatory veto power." (Emphasis omitted.) *Mulligan*, 123 Ill. 2d at 313.

¶ 62 The filing and withdrawal of a motion to reconsider without a vote is not one of *Mulligan*'s enumerated legislative acts constituting passage of a bill. See *Id*. Therefore, the withdrawal of the motion to reconsider on September 25, 2017, did not change the passage date of HB 40. Rather, HB 40 passed on May 10, 2017, after the third reading in the senate. See *Id*.

¶ 63 Plaintiffs argue the rules in Mason's Manual of Legislative Procedure (Mason's Manual) support their argument that the filing of the motion to reconsider suspended passage of HB 40 until September 25, 2017, when Senator Harmon withdrew the motion to reconsider and the bill moved out of the senate. See Mason's Manual of Legislative Procedure § 467(1), 737(5) (2010). However, plaintiffs provide little evidence on how the rules in Mason's Manual support their argument. The senate adopted the parliamentary rules in Mason's Manual, provided the

rules are consistent with Senate Rules. 100th Ill. Gen. Assem., Senate R. 12-2. Assuming *arguendo* that the rules in Mason's Manual apply here, any conflict between Mason's Manual and the Effective Date of Laws Act, is resolved in favor of the statute. See *Matthews v. Will County Department of Public Aid*, 152 Ill. App. 3d 400, 402, 504 N.E.2d 529, 531 (1987) (where an administrative rule and a statute are in conflict, the statute controls.).

¶ 64 Plaintiffs also argue that HB 40 passed on September 25, 2017, because otherwise the General Assembly failed to comply with the presentment clause of the constitution. See Ill. Const. 1970, art. IV, § 9(a). The presentment clause states, "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." Ill. Const. art. IV, § 9(a).

¶ 65 As stated above, to determine the effective date of a bill, we look to whether the bill passed prior to June 1. See Ill. Const. 1970, art. IV, § 10. To determine whether a bill violates the presentment clause, we look to whether the General Assembly presented the bill to the governor within 30 days of passage. Ill. Const. 1970, art. IV, § 9(a). Here, we find HB 40 passed on May 10, 2017, making the effective date January 1, 2018. While plaintiffs are correct that the General Assembly failed to present HB 40 to the Governor within 30 days of May 10, 2017, we note that given the unique procedural posture in this case, a bill's passage date for presentment clause purposes may not be the same as the passage date for purposes of determining a bill's effective date. Ultimately, we need not decide this issue because plaintiff fails to persuade us that any assumed lack of compliance with the presentment clause invalidates the bill.

¶ 66 Even where the General Assembly fails to present a bill to the governor within 30 days, we find that failure has no affect on the bill's validity. During the 1970 Illinois

Constitutional Convention, the delegates considered and rejected a proposal that provided a bill not presented to the governor within 30 days "shall be regarded as having failed of passage." 3 Record of Proceeding, Sixth Illinois Constitutional Convention 1345 (statements of President Witwer) (hereafter Proceedings). Even if the General Assembly fails to timely present the bill, "the presumption [is] that the bill remains alive." Proceedings 1344 (statements of Delegate Davis). The remedy for a violation of the presentment clause would be judicial enforcement, not invalidating the bill. Ill. Const. 1970, art. IV, § 9(a). Therefore, even if the General Assembly failed to comply with the presentment clause, the bill remained valid.

¶ 67 Based on article IV, section 10 of the constitution and section 1(a) of the Effective Date of Laws Act, we find that HB 40 became effective January 1, 2018, because HB 40 passed both houses of the General Assembly before June 1, 2017. We agree with the circuit court that the filing of a motion to reconsider and withdrawal of that motion did not constitute a final legislative act changing the passage date of the bill. Therefore, implementing HB 40 prior to June 1, 2018, did not violate article IV, section 10 of the constitution or section 2 of the Effective Date of Laws Act.

¶ 68 III. CONCLUSION

¶ 69 For the reasons stated, we affirm the circuit court's judgment and decline to enter a preliminary injunction enjoining the enforcement of HB 40.

¶ 70 Affirmed.