

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)

09 CH 30136

AUG 25 2009
DOKUMI BROWN
CLERK OF CIRCUIT COURT

NOTICE OF FILING PETITION AND RULE 19 NOTICE

To: See attached Certificate of Service

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

August 25, 2009

Claudette P. Miller

Sam Vinson
F. Thomas Hecht
Floyd D. Perkins
Claudette Miller
Ungaretti & Harris LLP - 34355


Chicago, Illinois 60602


Attorneys for Petitioner-Plaintiffs

CERTIFICATE OF SERVICE

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

Counsel for All Defendants

Office of the Attorney General (VIA E-MAIL AND MESSENGER)
Roger Flahaven, Assistant Attorney General (rflahaven@atg.state.il.us)
Gary Griffin, Assistant Attorney General (ggriffin@atg.state.il.us)
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100 W. Randolph St.
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Claudette P. Miller

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
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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,)	
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)	No.
)	
Petitioner-Plaintiffs,)	Honorable Circuit Judge Courtroom
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)	
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.)	

**PETITION FOR LEAVE TO FILE VERIFIED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Petitioners and Plaintiffs W. Rockwell Wirtz, an Illinois citizen and taxpayer, and Wirtz Beverage Illinois LLC, an Illinois limited liability company and taxpayer (collectively, "Petitioner-Plaintiffs"), by their attorneys Ungaretti & Harris LLP, and pursuant to Section 11-303 of the Illinois Code of Civil Procedure, 735 ILCS 5/11-303, and Rule 19 of the

Illinois Supreme Court, petition this Court for leave to file the attached Verified Complaint for Declaratory and Injunctive Relief against Defendants The Honorable Patrick Quinn, Governor of the State of Illinois; Daniel W. Hynes, the Comptroller of the State of Illinois; Alexi Giannoulis, the Treasurer of the State of Illinois; the Illinois Department of Revenue and its Director Brian Hamer; the Illinois Gaming Board and its members Hon. Aaron Jaffe, Charles Gardner, Rev. Eugene Winkler, Joe Moore, Jr., Hon. James E. Sullivan; and the Illinois Lottery and its Acting Superintendent Jodie Winnett. In support of their Petition, Petitioner-Plaintiffs state as follows:

ARGUMENT

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

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

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

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

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

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

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

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

e. Separation of Powers/ Veto Power/ Presentment Clause/Effective Date of Laws. The main substantive bill contains language tying its effectiveness to the appropriation bill that funds program projects and vice versa. Thus, if one of the bills does not become law the other "does not take effect at all". This unprecedented "tied bill" arrangement ignores a fundamental Constitutional requirement that controls the primary function of the Legislative Branch of government --passage of bills. The General Assembly is obligated by the Presentment Clause to present a passed bill to the Governor whereupon "[i]f the Governor approves the bill he shall sign it and it shall become law." Under this "tied bill" arrangement, however, the Governor must sign both bills to get either. Vetoing one renders his approval of the other nugatory. The arrangement also violates the Constitution's provision on the effective date of laws, which requires that the General Assembly adopt a uniform effective date for laws passed prior to June 1 and establishes its own mandatory effective date for bills passed after May 31. Here, the General Assembly has tried to provide for its own effectiveness schedule for two bills passed after May 31.

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

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

August 25, 2009

Respectfully submitted,



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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
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**W. Rockwell Wirtz, on Behalf of and
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Limited Liability Company,**

Plaintiffs,

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**Hon. Patrick Quinn, in his official
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Illinois; Daniel W. Hynes, in his
official capacity as Comptroller of
the State of Illinois; Alexi
Giannoulis, in his official capacity
as the Treasurer of the State of
Illinois; The Illinois Department of
Capital and its Director Brian
Hamer; The Illinois Gaming Board
and its members Hon. Aaron Jaffe,
Charles Gardner, Rev. Eugene
Winkler, Joe Moore, Jr. and Hon.
James E. Sullivan in their official
capacities; the Illinois Lottery and
its Superintendent Jodie Winnett;**

Defendants.

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 Giannoulis, the Treasurer of the State of Illinois; the Illinois Department

of Revenue and its Director Brian Hamer; the Illinois Gaming Board and its members Hon. Aaron Jaffe, Charles Gardner, Rev. Eugene Winkler, Joe Moore, Jr., Hon. James E. Sullivan; and the Illinois Lottery and its Acting Superintendent Jodie Winnett, state as follows:

INTRODUCTION

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

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

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

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

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

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

e. Separation of Powers/Veto Power/Presentment Clause/Effective Date of Laws. The main substantive bill contains language tying its effectiveness to the appropriation bill that funds program projects and vice versa. Thus, if one of the bills does not become law the other “does not take effect at all”. This unprecedented “tied bill” arrangement ignores a fundamental Constitutional requirement that controls the primary function of the Legislative Branch of government --passage of bills. The General Assembly is obligated by the Presentment Clause to present a passed bill to the Governor whereupon “[i]f the Governor approves the bill he shall sign it and it shall become law.” Under this “tied bill” arrangement, however, the Governor must sign both bills to get either. Vetoing one renders his approval of the other nugatory. The arrangement also violates the Constitution’s provision on the effective date of laws, which requires that the General Assembly adopt a uniform effective date for laws passed prior to June 1 and establishes its own mandatory effective date for bills passed after May 31. Here, the General Assembly has tried to provide for its own effectiveness schedule for two bills passed after May 31.

ALLEGATIONS

Plaintiffs

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

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

Defendants

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

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

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

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

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

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

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

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

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

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

Jurisdiction and Venue

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

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

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

Right To Declaratory And Injunctive Relief

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

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

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

Relevant Provisions Of The Illinois Constitution

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

[b]ills, except bills for appropriation and for the codification, revision or rearrangement of laws, shall be confined to one subject. Appropriation bills shall be limited to the subject of appropriation.

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

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

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

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

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

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

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

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

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

that:

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

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

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

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

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

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

The Challenged Legislation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT II

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT IV

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

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

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

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

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

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

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

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

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

COUNT V
(Illinois Constitution: Single Subject)
All Bills

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

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

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

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

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

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

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

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

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

80. The General Assembly is obligated under the Constitution to present a passed bill to the Governor whereupon “[i]f the Governor approves the bill he shall sign it and it shall become law.” See Article IV, Section 9(a), *supra*. Under this tying arrangement, however, the Governor must sign both bills to get either. Vetoing one renders his approval of the other nugatory. The arrangement also violates the Constitutional provision governing the effective date of laws, which requires that the General Assembly adopt a uniform effective date for laws passed prior to June 1 and establishes its own mandatory effective date schedule for bills passed after May 31. See Article IV,

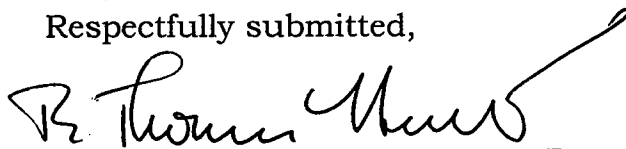
Section 10, *supra*. Here, the General Assembly has tried to provide its own effectiveness schedule for two bills passed after May 31.

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

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

August 25, 2009

Respectfully submitted,



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Attorneys for Plaintiffs

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

**W. Rockwell Wirtz, on Behalf of
and for the Benefit of the
Taxpayers of the State of Illinois,
and Wirtz Beverage Illinois, LLC,**

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**

VERIFICATION BY CERTIFICATION OF W. ROCKWELL WIRTZ

W. Rockwell Wirtz certifies and states as follows:

1. I am over the age of eighteen (18) and of sound mind and competent to testify. I have personal knowledge of the facts set forth below and submit this Verification by Certification based on my own personal knowledge, information and belief.

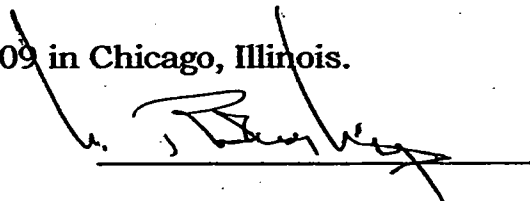
2. I am an Illinois resident, citizen and taxpayer. I am a Manager of Wirtz Beverage Illinois, LLC, an Illinois limited liability company in good standing in the State of Illinois with its principal place of business in Cook County, Illinois.

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

