No. 127126

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

ILLINOIS ROAD AND TRANSPORTION BUILDERS ASSOCIATION, FEDERATION OF WOMEN CONTRACTORS, ILLINOIS ASSOCIATION OF AGGREGATE PRODUCERS, ASSOCIATED GENERAL CONTRACTORS OF ILLINOIS, ILLINOIS ASPHALT PAVEMENT ASSOCIATION, ILLINOIS READY MIXED CONCRETE ASSOCIATION, GREAT LAKES CONSTRUCTION ASSOCIATION, AMERICAN COUNCIL OF ENGINEERING COMPANIES (ILLINOIS CHAPTER), CHICAGOLAND ASSOCIATED GENERAL CONTRACTORS, UNDERGROUND CONTRACTORS ASSOCIATION OF ILLINOIS, and ILLINOIS CONCRETE PIPE ASSOCIATION, **Plaintiff-Appellants,** **v.** **COUNTY OF COOK, a body politic and corporate,** **Defendant-Appellee.**	**Appeal from the Illinois Appellate Court, First District, No. 1-19-0396** **There heard on appeal from the Circuit Court of Cook County, County Department, Chancery Division** **No. 2018 CH 02992** **Hon. Peter Flynn, Judge Presiding**

APPELLEE COOK COUNTY'S REPLY IN SUPPORT OF REQUEST FOR CROSS-RELIEF

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ARGUMENT

I. Plaintiffs' "Economic Injury" Is Conjectural and Insufficient to Establish Standing.

In their response to Cook County's request for cross-relief, plaintiffs do not – and cannot – show that their members have a "distinct and palpable" injury that would give plaintiffs associational standing. *Greer v. Ill. Housing Dev. Auth.*, 122 Ill. 2d 462, 492-92 (1988). As the County explained in its request for cross-relief, Article XI, Section 11 (the "Amendment") simply does not require that funds governed by the Amendment be spent on construction – the industry in which the members of each plaintiff association operate.

In distinguishing the federal cases cited by the appellate court (County's Resp. at 43-44), the County is not, as plaintiffs assert, invoking the wrong test. Rather, the County is asserting that this case is factually distinguishable from cases in which the plaintiffs could show, beyond conjecture or speculation, that they would be adversely impacted by the challenged action. That is not the case here. Here, the Amendment allows for many types of transportation expenditures besides infrastructure improvements. It is merely plaintiffs' hope that if enough millions are redirected away from the County's intended priorities, some of those funds would be spent on infrastructure.

Plaintiffs call it "deeply implausible" that the County could spend the revenue from the taxes at issue on transportation purposes that have nothing to do with road construction. (Reply 19). But they cannot give a reason why.

Plaintiffs can only assert that the County has infrastructure needs, citing Cook County's own 2040 Long Range Transportation Plan, which says as much. (*Id*. (citing C 51-55)). But the Transportation Plan reflects the County's *pre-existing* commitment to address its infrastructure needs. So does each of the County's annual budgets from every

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year since the Amendment was passed. Given that the County already planned to make the infrastructure investments set forth in the Transportation Plan, it hardly stands to reason that if plaintiffs succeed in diverting hundreds of millions of dollars away from predetermined non-transportation priorities, those funds will be directed toward infrastructure, as opposed to the many other transportation-related expenditures permitted in the Amendment.

Plaintiffs' call for more County dollars to be earmarked for transportation does not amount to an injury in fact. If forced to devote to transportation the entire amount of revenue yielded from the six challenged ordinances in the years since the Amendment was passed in 2016, the County would be as likely to devote it to permissible law enforcement purposes, debt servicing, and/or fleet maintenance and development, as it would be to pay for road-building. Art. IX, § 11(b)-(c). And going forward, the County would, like any rational government, shift its revenue plan to sources that would allow it to fund its predetermined priorities, rather than face an annual glut of transportation revenue that exceeds its predetermined transportation needs. Moreover, even if additional County funds were spent on infrastructure, it would not mean that any of the plaintiffs' members would receive additional business. *See, e.g., I.C.S. Illinois, Inc. v. Waste Mgmt. of Ill., Inc.*, 503 Ill. App. 3d 211, 233-34 (1st Dist. 2010) (no standing where contractor's purported injury was too speculative); *People v. M.I.* (In re M.I.), 2011 IL App (1st) 100865, ¶ 61 (no standing where damage is speculative).

II. Plaintiffs Do Not – And Cannot – Adequately Allege Taxpayer Standing.

Plaintiffs do not and cannot adequately plead taxpayer standing. *Illinois Ass'n of Realtors v. Stermer*, 2014 IL App (4th) 130079, ¶ 29. A plaintiff who claims taxpayer

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standing must affirmatively allege an "equitable ownership of funds depleted by misappropriation," and failure to do so renders the complaint "fatally defective." *Id*. In other words, for the "distinct and palpable" injury necessary for taxpayer standing, a taxpayer must be on the hook for replacing the revenue that is lost. That is because "[t]axpayer standing is based 'upon the taxpayers' ownership of [public] funds and their liability to replenish the public treasury for the deficiency caused by such misappropriation. The misuse of these funds for illegal or unconstitutional purposes is a damage which entitles them to sue.'" *Id*. (citing *Barco Manuf. Co. v. Wright*, 10 Ill. 2d 157, 160 (1956)).

Plaintiffs call it "at least a fair inference…that their members who are Cook County taxpayers will be liable to replenish the treasury for the County's misappropriation of transportation funds, because the County's dire transportation needs cannot go unmet forever." (Reply at 20). Of course, this makes no sense. First, Cook County is not "misappropriating" any taxpayer dollars. Rather, Cook County is, by plaintiffs' own admission (C 58-62), using revenue from the six tax ordinances to pay for *legal* expenditures, such as the County's hospital system and law enforcement system. This is fatal to Plaintiffs' assertion of taxpayer standing.

Second, as discussed above, the County is already meeting the County's transportation needs. Just because the County is not spending as much as on transportation (particularly, transportation infrastructure) as plaintiffs would like it to spend does not mean that there is some revenue hole that will later need to be filled by taxpayers. There is no support in the record – or anywhere else – for such an assertion.

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CONCLUSION

The plaintiff groups lobbied hard for the Amendment. The Amendment's legislative framers made clear that it was meant only to tie the General Assembly's hands from undoing its earlier acts directing specific funds to transportation, thus depriving itself of the authority that this Court held it had in *A.B.A.T.E. of Illinois v. Quinn*, 2011 IL 110611. The framers created legislative history to establish the intent to exclude home rule revenue to which no statutory restriction applied. The General Assembly then told voters that the Amendment would not alter home rule powers. But after enactment, plaintiffs sought an interpretation far broader than the framers' explicit. Plaintiffs no doubt believe their broad interpretation would garner hundreds of millions, if not billions, more in transportation infrastructure spending. Those same billions would be diverted away from home rule entities' other priorities, such as public safety, public health, and education. But just as, on the merits, the Amendment does not mean what the plaintiffs want it to mean, the Amendment also does not require spending on transportation infrastructure. Thus, notwithstanding their zealous advocacy for the Amendment, and their overly broad interpretation of it, plaintiffs do not have an economic interest in the County's revenues that would amount to an injury in fact sufficient to vest them with standing.

For the foregoing reasons and those stated in its Appellee Brief and Request for Cross-Relief, Defendant-Appellee County of Cook respectfully requests that the Court reverse the appellate court's opinion on standing, or in the alternative, affirm the appellate court's opinion and the circuit court's dismissal of plaintiffs' complaint on the merits, and award any other relief that this Court deems appropriate.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5 pages.

/s/ Amy Crawford
Amy Crawford

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NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

ILLINOIS ROAD AND TRANSPORTATION BUILDERS ASSOCIATION, et al. *Plaintiffs-Appellants*, v. COUNTY OF COOK, *Defendant-Appellee*.	)	No. 127126

The undersigned, being first duly sworn, deposes and states that on November 10, 2021, there was electronically filed and served upon the Clerk of the above court the Appellee's Reply Brief in Support of Request for Cross-Relief. On November 10, 2021, service of the Brief will be accomplished by email as well as electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that thirteen copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Amy Crawford
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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Amy Crawford
Amy Crawford

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