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**

BRIEF OF APPELLEE COOK COUNTY. CROSS-RELIEF REQUESTED.

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NATURE OF THE CASE

This case is about whether home rule governments like Cook County will continue to have the authority to spend their home rule tax revenue according to the priorities set by their duly elected governments, a prerogative explicitly protected by the Illinois Constitution. Plaintiffs, a group of associations representing various producers, suppliers, and contractors associated with transportation construction projects, brought this lawsuit asserting that Article IX, Section 11 of the Illinois Constitution (the "Amendment"), takes all revenue from local taxes touching on transportation out of the hands of local governments – even if the tax is imposed pursuant to a home rule entity's constitutional authority to tax, or is imposed pursuant to a statute that does not limit how the revenue should be spent. Plaintiffs urge an interpretation of the Amendment that far exceeds the Amendment's purpose, which was to prevent further "sweeps" of dedicated state transportation funds into general revenue funds. *See A.B.A.T.E. of Illinois v. Quinn*, 2011 IL 110611. Plaintiffs' interpretation is in direct conflict with legislators' assertions about the Amendment's scope in legislative debates. It is also in direct conflict with the explanation of the Amendment that was printed on the ballot to inform voters' decision-making in the ballot box.

The circuit court granted Defendant Cook County's ("County") 2-619.1 motion to dismiss, and the appellate court affirmed. These courts found that the plain language of the Amendment favored the position that the County's taxes are excluded. Going further, both courts found sufficient ambiguity in the Amendment to look at extrinsic evidence – detailed legislative history establishing that the Amendment was not to impact revenues from home rule taxes, and a ballot summary assuring voters that home rule powers would

not be altered. The circuit court concluded that the complaint should be dismissed for the additional reason that plaintiffs lack standing, although the appellate court disagreed on this point before proceeding to affirm the circuit court on the merits.

The questions whether Defendant's motion to dismiss was properly granted based on standing or constitutional interpretation issues are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether Article IX, Section 11 of the Illinois Constitution restricts revenues raised by home rule units of government pursuant to their inherent authority or pursuant to statutes that do not restrict the use of the proceeds.

2. Whether plaintiffs have standing to challenge the County's decisions to allocate tax revenues based on their claims that the County's spending decisions violate the Amendment.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Illinois Constitution, Article IX, Section 11:

Transportation Funds

> (a) No moneys, including bond proceeds, derived from taxes, fees, excises, or license taxes relating to registration, title, or operation or use of vehicles, or related to the use of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, airports, or to fuels used for propelling vehicles, or derived from taxes, fees, excises, or license taxes relating to any other transportation infrastructure or transportation operation, shall be expended for purposes other than as provided in subsections (b) and (c).
>
> (b) Transportation funds may be expended for the following: the costs of administering laws related to vehicles and transportation, including statutory refunds and adjustments provided in those laws; payment of highway obligations; costs for construction, reconstruction, maintenance, repair, and betterment of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, airports, or other forms of transportation; and other statutory highway purposes. Transportation funds may also be expended for the State or local share of highway

funds to match federal aid highway funds, and expenses of grade separation of highways and railroad crossings, including protection of at-grade highways and railroad crossings, and, with respect to local governments, other transportation purposes as authorized by law.

(c) The costs of administering laws related to vehicles and transportation shall be limited to direct program expenses related to the following: the enforcement of traffic, railroad, and motor carrier laws; the safety of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, or airports; and the construction, reconstruction, improvement, repair, maintenance, operation, and administration of highways, under any related provisions of law or any purpose related or incident to, including grade separation of highways and railroad crossings. The limitations to the costs of administering laws related to vehicles and transportation under this subsection (c) shall also include direct program expenses related to workers' compensation claims for death or injury of employees of the State's transportation agency; the acquisition of land and the erection of buildings for highway purposes, including the acquisition of highway rights-of-way or for investigations to determine the reasonable anticipated future highway needs; and the making of surveys, plans, specifications, and estimates for the construction and maintenance of flight strips and highways. The expenses related to the construction and maintenance of flight strips and highways under this subsection (c) are for the purpose of providing access to military and naval reservations, defense-industries, defense-industry sites, and sources of raw materials, including the replacement of existing highways and highway connections shut off from general use at military and naval reservations, defense-industries, and defense-industry sites, or the purchase of rights-of-way.

(d) None of the revenues described in subsection (a) of this Section shall, by transfer, offset, or otherwise, be diverted to any purpose other than those described in subsections (b) and (c) of this Section.

(e) If the General Assembly appropriates funds for a mode of transportation not described in this Section, the General Assembly must provide for a dedicated source of funding.

(f) Federal funds may be spent for any purposes authorized by federal law.

Illinois Constitution, Article VII, Section 6(a):

Powers of Home Rule Units

(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than

> 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

Illinois Constitution, Article XIV, Section 2(b):

Amendments By General Assembly

> (b) Amendments proposed by the General Assembly shall be published with explanations, as provided by law, at least one month preceding the vote thereon by the electors. The vote on the proposed amendment or amendments shall be on a separate ballot. A proposed amendment shall become effective as the amendment provides if approved by either three-fifths of those voting on the question or a majority of those voting in the election.

The Illinois Constitutional Amendment Act, Section 2, 5 ILCS 20/2:

> Sec. 2. The General Assembly in submitting an amendment to the Constitution to the electors, or the proponents of an amendment to Article IV of the Constitution submitted by petition, shall prepare a brief explanation of such amendment, a brief argument in favor of the same, and the form in which such amendment will appear on the separate ballot as provided by Section 16-6 of the Election Code, as amended. The minority of the General Assembly, or if there is no minority, anyone designated by the General Assembly shall prepare a brief argument against such amendment. * * * * The explanation, the arguments for and against each constitutional amendment, and the form in which the amendment will appear on the separate ballot shall be filed in the office of the Secretary of State with the proposed amendment. At least one month before the next election of members of the General Assembly, following the passage of the proposed amendment, the Secretary of State shall publish the amendment, in full in 8 point type, or the equivalent thereto, in at least one secular newspaper of general circulation in every county in this State in which a newspaper is published. In counties in which 2 or more newspapers are published, the Secretary of State shall cause such amendment to be published in 2 newspapers. In counties having a population of 500,000 or more, such amendment shall be published in not less than 6 newspapers of general circulation. After the first publication, the publication of such amendment shall be repeated once each week for 2 consecutive weeks. * * * * In addition to the notice hereby required to be published, the Secretary of State shall also cause the existing form of the constitutional provision

> proposed to be amended, the proposed amendment, the explanation of the same, the arguments for and against the same, and the form in which such amendment will appear on the separate ballot, to be published in pamphlet form in 8 point type or the equivalent thereto; and the Secretary of State shall mail such pamphlet to every mailing address in the State, addressed to the attention of the Postal Patron. He shall also maintain a reasonable supply of such pamphlets so as to make them available to any person requesting one.

The Illinois Constitutional Amendment Act, Section 4, 5 ILCS 20/4:

> Sec. 4. At the election, the proposed amendment and explanation shall be printed upon the separate ballot in accordance with the provisions of Section 16-6 of "An Act concerning elections," approved May 11, 1943, as amended.

STATEMENT OF FACTS

On November 8, 2016, Illinois voters adopted the Amendment to the state revenue article of the Illinois Constitution. Prior to enactment, the legislative debates on House Joint Resolution Constitutional Amendment 36, which set forth the Amendment's proposed language, made clear that the Amendment was intended to overrule the Illinois Supreme Court case of *A.B.A.T.E. of Illinois v. Quinn*, 2011 IL 110611, which upheld the General Assembly's right to devote funds that were statutorily dedicated to transportation purposes to non-transportation-related purposes by "sweeping" the money from the dedicated fund into the general fund. C 501-02 (Senator Haine, lead Senate sponsor: "[T]his amendment is intended to overrule the Illinois Supreme Court 2011 case A.B.A.T.E. of Illinois versus Quinn, which upheld the State's authority to repurpose and spend monies raised through motor vehicle tax – registration fees on non-transportation purposes."); *see also* C 494-95 (comments of Reps. Phelps and Sandack).

The sponsors in both houses agreed that the language of the Amendment was ambiguous. C 497, 505. The Senate debate included this extensive colloquy between the bill's sponsor and then-Senator Raoul:

SENATOR RAOUL:

As mentioned, this – *this language is very ambiguous to me*, so I just want to ask these questions. Senator Haine, *Cook County imposes several taxes that provide revenue for public safety operations, including, but not limited to, the criminal court system, the County Jail, Cook County Sheriff, the Cook County State's Attorney, the office of the Chief Judge of Cook County. These taxes are imposed by virtue of Cook County's home-rule taxing authority under the Illinois Constitution. Specifically, Cook County imposes the Wheel Tax, New Motor Vehicle Tax, Motor Fuel Taxes, the Use Tax, the Non-Retailer Vehicle Transaction Tax, and the Non-Retailer Use Tax.* Again, revenues from these taxes are used to pay for Cook County's public safety operations, including workers' compensation claims for affected public safety employees. *Am I correct that under this constitutional amendment, Cook County could continue to spend the monies – from these taxes on its public safety operations?*

PRESIDING OFFICER: (SENATOR LINK)

Senator Haine.

SENATOR HAINE:

The answer is yes for four reasons. First, as I explained earlier, this proposed constitutional amendment is intended to be on a par with Article VI [sic] (VII), Section 6 of the Constitution and current home rule power. *The proposed constitutional amendment is not intended to eliminate, restrict, or apply to current constitutional and statutory authority that home – rule units have – have relative to taxes, spending, and public safety functions*. Secondly, since the Cook County's Use Tax and Non-Retailer Use Tax are general taxes on all tangible personal property just like the State sales tax, those taxes are not covered by this constitutional amendment, as I've explained earlier. Thirdly, as I stated earlier, it is a valid transportation purpose to spend monies under this amendment on the enforcement of traffic, railroad, and motor carrier laws. As a result, Cook County can continue to spend monies from these public safety operations at – as it is today.

* * *

Finally, I draw your attention to page 2, lines 13-14 of the constitutional amendment. Here the amendment provides that transportation funds may be expended "with respect to local governments, other transportation purposes as authorized by law." The key phrase is "authorized by law."

* * *

> *This phrase, "as authorized by law", includes local governments' current use as authorized by current law* – for instance, critical public safety functions as police departments, jail operations and courts. *This provision is intended to be construed broadly so as not to interfere in any way with local governments' current authority and practices*. The language permits the General Assembly to determine, with respect to local governments, what are other proper transportation purposes by statute. It is also permitting home-rule units to determine what are other proper transportation purposes as well by virtue of their home-rule taxing power under Article VII, Section 6 of the Constitution. Given that Cook County and the City of Chicago as well as other home-rule units have the home-rule power to impose taxes that you listed, this language provides a further basis allowing the home-rule units to spend these monies on public safety.

C 510-513, Senate Transcript (emphasis added).

After the amendment language was passed, the General Assembly drafted the ballot summary to present to voters. The Illinois Constitution requires that "Amendments proposed by the General Assembly shall be published with explanations, as provided by law, at least one month preceding the vote thereon by the electors." *See* Ill. Const. art. XIV, § 2(b). The Illinois Constitutional Amendment Act, *see* 5 ILCS 20/2, provides that the General Assembly, or the amendment's proponents, "shall prepare a brief explanation of such amendment, a brief argument in favor of the same, and the form in which such amendment shall appear on the separate ballot" for the amendment. *Id*. Members of the General Assembly opposed to the amendment, or the General Assembly's designee, "shall prepare a brief argument against such amendment." *Id*. These items are all then filed with the Secretary of State, who is charged with creating a pamphlet containing the proposed amendment, the explanation, the arguments for and against, and the form in which the amendment will appear on the ballot. *Id*. The Secretary of State then must mail the pamphlet "to every mailing address in the state[.]" *Id*. The explanation of the amendment is also "printed upon the separate ballot" along with the amendment. 5 ILCS 20/4.

In keeping with Article XIV, § 2(b) and the Illinois Constitutional Amendment Act, the General Assembly caused a ballot summary of the Amendment to be published by the Secretary of State. C 477-484. The General Assembly's explanation of the amendment reads, in part, as follows:

> This new Section is a limitation on the power of the General Assembly or a unit of local government to use, divert, or transfer transportation funds for a purpose other than transportation. *It does not, and is not intended to, impact or change the way in which the State and local governments use sales taxes, including the sales and excise tax on motor fuel, or alter home rule powers granted under this Constitution*. It does not seek to change the way in which the State funds programs administered by the Illinois Secretary of State, Illinois Department of Transportation, and operations by the Illinois State Police directly dedicated to the safety of roads, or entities or programs funded by units of local government. Further, the Section does not impact the expenditure of federal funds, which may be spent for any purpose authorized by federal law.

C 480-481 (emphasis added). This explanation was provided by mail to voters and printed on the ballot. 5 ILCS 20/2, 5 ILCS 20/4.

On March 6, 2018, plaintiffs, a group of associations representing various producers, suppliers, and contractors associated with transportation construction projects, filed a one-count, 131-paragraph complaint against the County of Cook (the "County"). C 43-65. Plaintiffs purported to "enforce the [Amendment]" (Ill. Const. art. IX, § 11), which they alleged "prohibits local governments, such as defendant Cook County . . . from diverting revenue derived from taxes and fees on transportation to non-transportation purposes." C 43, opening paragraph.

Specifically, the complaint alleged "on information and belief" that the County violated the Amendment by allocating revenues derived from several of its tax ordinances to non-transportation purposes, *i.e.*, depositing the revenues into its Public Safety Fund. C 62, ¶ 115. These taxes include the County's: (1) Use Tax Ordinance; (2) Retail Sale of

Gasoline and Diesel Fuel Tax Ordinance; (3) New Motor Vehicle and Trailer Excise Tax Ordinance; (4) Use Tax for Non-Retailer Transfers of Motor Vehicles Ordinance; (5) Wheel Tax Ordinance; and (6) Parking Lot and Garage Operations Tax Ordinance. C 43, ¶¶ 1, 2 (hereinafter the "Tax Ordinances"). The County's Use Tax is imposed pursuant to 55 ILCS 5/5-1008, the "Home Rule County Use Tax Law," which permits the County to impose a use tax and neither restricts the use of the proceeds nor references transportation in any way. The other five taxes are imposed pursuant to Cook County's constitutional authority as a home rule unit to impose taxes. Ill. Const. art. VII, § 6(a). Together, in the County's fiscal year 2017, the Tax Ordinances were estimated to total over $247 million. C 59-61.

Plaintiffs sought a declaratory judgment that the County's alleged "diversion" of revenues derived from the Tax Ordinances was unconstitutional; an order enjoining the County from spending any revenues from the Tax Ordinances for any purpose other than those provided in subsections (b) and (c) of the Amendment; a mandate that the County restore all allegedly "diverted" revenue; and an order requiring the County to provide plaintiffs with a line-item accounting of how it allocated or appropriated revenue derived from the Tax Ordinances. C 64-65.

Plaintiffs' complaint contained lengthy allegations and attached voluminous exhibits to support their assertions that the County's transportation infrastructure is allegedly failing and that the County is ill-prepared to modernize its transportation to meet the future needs. C 51-55. Much of what plaintiffs cited as "support" comes from the County's pre-existing plans to upgrade the County's transportation infrastructure. C 67-115. The complaint also made numerous policy prescriptions regarding the County's use

of revenue collected from the Tax Ordinances levied pursuant to its home-rule authority. C 51-55.

Setting factual disputes and policy disagreements aside, the County's motion to dismiss asserted that the only relevant question is whether the Amendment applies to the Tax Ordinances identified in the complaint. On February 22, 2019, the circuit court granted the County's 2-619.1 motion to dismiss because: (1) the plaintiffs lacked associational standing because their individual members lacked standing in their own right, and (2) that plaintiffs failed to allege a cause of action upon which relief could be granted because the Amendment does not apply to the County taxes cited in the complaint. C 391-408. Plaintiffs filed a timely appeal.

On March 3, 2021, the appellate court affirmed the judgment of the circuit court that the complaint was properly dismissed for failure to state a claim for a constitutional violation. A-51, ¶ 167. As to plaintiffs' standing, however, the appellate court disagreed with the circuit court, finding that plaintiffs had sufficiently established associational standing, and declining to address their alternative claim of taxpayer standing. A-15, ¶ 56.

In reaching its decision on the merits, the appellate court first determined that it found the County's interpretation more compelling but concluded that the interpretations of both parties were reasonable enough to deem the Amendment ambiguous. A-34, ¶ 124, A-35, ¶ 125. Following that determination, the appellate court reviewed the extrinsic evidence – the legislative history and ballot summary – and concluded that "all of the extrinsic information that might inform [it] of the Amendment's intent points to the same conclusion," specifically that "[t]he County spends the revenue from each of [the Tax Ordinances] pursuant to its home-rule spending power, not in accordance with a statute.

The Amendment thus does not restrict, or govern in any way, the spending of these taxes." A-51, ¶ 167.

ARGUMENT

I. The Lower Courts Correctly Concluded That the Amendment Does Not Apply to the Taxes at Issue in this Case.

In affirming the circuit court's dismissal of plaintiffs' complaint pursuant to Section 2-615, the appellate court correctly held that the Amendment "does not restrict, or govern in any way, the spending of" revenue from each of the Tax Ordinances that are the subject of the complaint. A-51, ¶ 167. In reaching this decision, the appellate court reasoned that the County spends the revenue from these taxes "pursuant to its home-rule spending power, not in accordance with a statute," thereby exempting it from the mandate of the Amendment. *Id*.

Yet plaintiffs continue to insist that the Amendment's restrictions on the use of transportation funds includes *all* government revenues relating to transportation, even those raised pursuant to home rule authority, and even those to which no statute directs how funds must be spent. Plaintiffs ask this Court to find – against the well-founded reasoning of the two lower courts and in contravention of explicit legislative history to the contrary – that subsection (a) of the Amendment applies even to taxes imposed by home-rule entities under their constitutional taxing power. Plaintiffs can only get to this outcome by urging the Court to read subsection (a) of the Amendment in narrow isolation and to put blinders on against the overall picture – blinders to the Amendment's overall import, blinders to the stated intent of the bill's sponsors, and blinders to what Illinois voters were told about the limits of the Amendment's impact.

As the lower courts recognized, plaintiffs' interpretation of subsection (a) fails as a matter of statutory construction. It fails because the language of the Amendment as a whole can only sensibly and logically be read to apply exclusively to state-imposed tax revenues, not revenues imposed by authority of a home rule unit of government. The language of the Amendment, which refers to "statutory purposes" and "laws" – not "ordinances" – indicates the intent to encompass only statutorily-derived revenue, not revenue derived by operation of a local unit's home rule authority. *See Illinois State Toll Highway Auth. v. Am. Nat'l Bank & Trust Co. of Chicago*, 162 Ill. 2d 181, 200 (1994) ("as provided by law" means as prescribed or provided by the General Assembly, as "specifically authorized by statute").

In addition, to the extent the text of the Amendment could possibly be given plaintiffs' unsound interpretation, the appellate court correctly concluded that the Amendment is ambiguous. The extrinsic evidence – the legislative history and the explanations of the Amendment sent to the voters – overwhelmingly shows that there was no intent to reach local taxes to which no statute directs the proceeds. A decision otherwise would throw the viability of the entire Amendment into question, as that would mean voter confusion contributed to its passage.

A. The Appellate and Circuit Courts Correctly Held That the Amendment Applies Only to Revenues Spent in Accordance with an Act of the General Assembly.

Plaintiffs assert that the Amendment applies to revenues raised from local taxes and fees enacted pursuant to a local unit's use of its home rule power, or pursuant to statutory authorization, where the statute does not direct the use of the proceeds. C 58-60, ¶¶ 79-97. However, the lower courts correctly concluded that the best interpretation of the

Amendment's language is that it applies only to funds dedicated *by statute* (*i.e.*, by act of the General Assembly) to transportation purposes.

As the appellate court correctly observed, there are three ways in which home-rule units may receive non-federal revenue:

> (1) revenues from taxes imposed by the State, which are distributed to units of local government, the spending of which is typically dictated by statute; (2) revenues from taxes the home-rule unit, itself, imposes, but by virtue of statutory authorization, that may or may not contain a statutory mandate on how that tax revenue may be spent; and (3) revenues from taxes imposed by the home-rule unit by its own constitutional taxing authority, not a statute, which typically does not involve any statutory mandate on how that tax revenue may be *spent*, either.

A-21, ¶ 79 (emphasis in original).

The Tax Ordinances at issue – the Cook County Home Rule County Use Tax Ordinance, Retail Sale of Gasoline and Diesel Fuel Tax Ordinance, New Motor Vehicle and Trailer Excise Tax Ordinance, Home Rule Use Tax Ordinance for Non-Retailer Transfers of Motor Vehicles, Wheel Tax on Vehicles Ordinance, and the Parking Lot and Garage Operations Tax Ordinance – are all either imposed pursuant to Cook County's home-rule authority or, in the case of the Use Tax, pursuant to a statute that does not restrict the use of the proceeds. *See* Cook County, Ill. Code § 74-270 *et seq.* (Cook County Use Tax; *and see also* 55 ILCS 5/5-1008 ("Home Rule County Use Tax Law," which permits the County to impose a use tax and does not restrict the use of the proceeds)); § 74-470 *et seq.*; § 74-230 *et seq.*; § 74-595 *et seq.*; § 74-550 *et seq.*; and § 74-510 *et seq.*; *see also* Ill. Const. art. VII, § 6(a) (home-rule units have power to tax).

The appellate court was correct. The court read the provisions of the Amendment as a whole, as it was required to do under principles of statutory construction. A-23, ¶ 86

("[O]f course, we don't isolate passages in our interpretation; we read the Amendment as a whole.") (citing *People ex rel. Chicago Bar Ass'n v. State Bd. of Elections*, 136 Ill. 2d 513, 527 (1990)). The court correctly observed that the entirety of the Amendment reflects an intent to encompass only state-earmarked transportation revenues.

Yet plaintiffs contend that the appellate court's interpretation was erroneous. Plaintiffs assert that the appellate court should not have considered subsection (a) in light of subsections (b), (c), and (e), and that (a) is in no way "cabined" by the other provisions. Pl. Br., pp. 18-26. Plaintiffs essentially urge the Court to look at subsection (a) in a vacuum, apart from the overall import of the Amendment as a whole – not to mention, apart from the legislative debates in which the bill's sponsor asserted that the Amendment was *not* intended to apply to home-rule taxes. But reading the Amendment's provisions as a whole is not the same as writing in "'restrictions and limitations that the drafters did not express and the citizens of Illinois did not approve.'" *See id.*, p. 13 (citing *Kanerva v. Weems*, 2014 IL 115811, ¶41).

Indeed, "a constitutional provision must be construed, if possible, in a manner *consistent with other provisions relevant to the same subject matter*." *Rock v. Thompson*, 85 Ill. 2d 410, 429 (1981) (emphasis added) (citing *People ex rel. Nauert v. Smith*, 327 Ill. 11 (1927). Accordingly, it is appropriate to consider the various subsections of the Amendment together to properly ascertain its meaning.

Subsection (a), upon which plaintiffs rely to the exclusion of the provisions around it, states as follows:

> No moneys, including bond proceeds, derived from taxes, fees, excises, or license taxes relating to registration, title, or operation or use of vehicles, or related to the use of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, airports, or to fuels used for propelling vehicles, or

> derived from taxes, fees, excises, or license taxes relating to any other transportation infrastructure or transportation operation, shall be expended for purposes other than as provided in subsections (b) and (c).

Ill. Const. art. IX, § 11(a).

Subsection (b) states that "[t]ransportation funds" (presumably, the "moneys" referred to in paragraph (a)), "may be expended for the following: the costs of administering *laws* related to vehicles and transportation . . . *and other statutory highway purposes . . . and, with respect to local government, other transportation purposes, as authorized by law*." *See* Ill. Const. art. IX, § 11(b) (emphasis added). Subsection (c) states that "[t]he costs of administering *laws* related to vehicles and transportation . . . shall be limited to direct program expenses related to the following . . .." *Id.*, § 11(c) (emphasis added). Subsection (e) states that "if the *General Assembly* appropriates funds for a mode of transportation not described in this Section, the *General Assembly* must provide for a dedicated source of funding." *Id.*, § 11(e) (emphasis added).

As the appellate court's in-depth analysis demonstrated (A-24–30, ¶¶ 87-107), the Amendment's various references to "laws" and derivations of the word "statute" refer to acts of the General Assembly. Ill. Const. art. IV, §§ 8-9; *Burritt v. Comm'rs of State Contracts*, 120 Ill. 322 (1887) (defining the word "law" to mean the acts of the General Assembly, in which is vested the legislative power of the sovereign); *Ill. State Toll Highway Auth.*, 162 Ill. 2d at 200 (the phrase "as provided by law" means as prescribed or provided by the General Assembly).

Conversely, as the appellate court observed, municipalities and Cook County, as a home-rule county, "do not pass laws or statutes – they adopt ordinances." A-24, ¶ 89. The Amendment is notably devoid of any reference to ordinances. "[I]n subsection (b)'s first sentence, [its framers] specified enactments of the General Assembly without ever *once*

mentioning ordinances or enactments of home-rule units." A-28, ¶ 101 (emphasis in original). The court closely analyzed each word of subsections (b) and (c) and concluded that the funds referred to in subsection (a) could only be used for "*statutory* purposes." A-28, ¶ 102 (emphasis in original). The phrase "authorized by law," the court correctly held, "only makes sense one way": it must refer to when state and local governments are "*following the spending dictates of a statute*" (A-30, ¶ 107 (emphasis in original)), not when local governments are spending their own funds pursuant to their home rule spending authority.

Subsection (e) is as telling as subsections (b) and (c). Subsection (e) attempts to prevent any future use of the transportation revenues discussed in the amendment by anyone down the line who might wish to use those revenues for a "mode of transportation" not discussed in the Amendment. Thus, any future proponents of bicycle paths, ferries, or perhaps flying cars would have to find their own source of revenue elsewhere. In crafting this carve-out, the Amendment's forward-thinking framers wrote that "[i]f the ***General Assembly*** appropriates funds for a mode of transportation not described in this Section, the ***General Assembly*** must provide for a dedicated source of funding." Ill. Const. art. IX, § 11(e) (emphasis added). If the Amendment's framers had intended to include home rule transportation taxes within the Amendment's scope to begin with, surely they would have sought to tie the hands of future local legislators just as they tied the hands of future General Assembly members. *See* A-31, ¶ 109 (noting that if the Amendment's drafters intended to include home rule taxes, they "seriously whiffed" by not including home rule entities). The far more logical conclusion is that the Amendment was only intended to cover state-authorized revenues to begin with.

Although not a focus of the appellate court, it must be noted that the rest of the Constitution is replete with examples of the 1970 framers' view that "laws" are distinct from "ordinances." *See* Ill. Const. art. VII, § 4(a) (county chief executive officer "shall have those duties and powers provided by law and those provided by county ordinance"); Ill. Const. art. VII, § 4(c) (counties may elect or appoint certain other officers "as provided by law or by county ordinance"); Ill. Const. art. VII, § 4(d) (county officers not only "shall have those duties, powers and functions provided by law and those provided by county ordinance[,]" but shall also "have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance"); Ill. Const. art. VII, § 9(a) (local governments may collect fees "as provided by law and by ordinance"); Ill. Const. art. VII, § 10(a) (units of local government may contract with any other unit of government "in any manner not prohibited by law or by ordinance[,]" and likewise may contract with private persons or entities "in any manner not prohibited by law or by ordinance"); Ill. Const. art. VIII, § 1(b) (the State, local governments and school districts "shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance."); Ill. Const. art. XIV, § 10 ("All laws, ordinances, regulations and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force[.]"). Similarly, the General Assembly specifically uses the word "ordinance" when it intends to reference the enactments of local governments. *See, e.g.*, 35 ILCS 516/40; 35 ILCS 200/21-95; 50 ILCS 315/2; 410 ILCS 625/2; 720 ILCS 5/33E-6; 5 ILCS 220/3.5; 625 ILCS 5/18b-110; 705 ILCS 405/5-120; 720 ILCS 5/33-7.

In contrast, as the appellate court noted (A-25, ¶ 91), the only mention of the word "statute" in the Constitution before the Amendment is in Article V, Section 11, which

provides that if the Governor reassigns executive agencies in a way that "would contravene a statute," the Governor's order "shall be delivered to the General Assembly." Ill. Const. art. V, § 11. "This can only mean a law passed by the General Assembly, the body that creates and circumscribes the power of executive agencies by law." *Id.*, citing *Granite City Div. of Nat'l Steel Co. v. Ill. Pollution Control Bd.*, 155 Ill. 2d 149, 171 (1993) (executive agencies are creatures of statute that confines that agency's authority). Thus, reading the provisions of the Amendment together, as well as in the context of the Constitution as a whole, as the Court must, *see Rock*, 85 Ill. 2d at 429, leads to the conclusion that the Amendment was not intended to include revenue raised by local governments using their exercise of home rule power by way of an ordinance.

Plaintiffs' interpretation is also untenable because it would mean that the Amendment could radically diminish Illinois' constitutional home rule article without even making any mention of home-rule authority. The Illinois Supreme Court has long held that "constitutional provision[s] relied on must receive a rational construction, and not one that would lead to . . . an unnecessary and absurd result." *Abington v. Cabeen*, 106 Ill. 200, 209 (1883). Indeed, the appellate court found it significant that "the Amendment contains no express *inclusion* of home-rule spending powers within its scope," but went so far as to make frequent reference to "statutes" and "laws." A-33, ¶¶ 118, 120 (emphasis in original).

It is axiomatic that a fundamental power and function pertaining to the government and affairs of a home rule unit is deciding how to spend its money. *See Pechous v. Slawko*, 64 Ill. 2d 576, 591 (1976); *Independent Voters of Ill. Independent Precinct Organization v. Ahmad*, 2014 IL App (1st) 123629, ¶ 54 (2014); *Rajterowski v. City of Sycamore*, 405 Ill. App. 3d 1086, 1115 (2d Dist. 2010). If the drafters intended the broad application of

the Amendment that plaintiffs propose – disrupting the County's budget by diverting hundreds of millions of dollars each year from other needed services – they should have amended Section 6 of Article VII, in which home-rule powers are granted. The appellate court noted that "[r]ight there," in Article VII, Section 6(a), "a reference could have been made to the Amendment being an additional restriction on home-rule power, along with others contained in that 'section.'" A-31–32, ¶ 112.

Of course, the County is not asserting that, as a general matter, a given constitutional provision could not restrict another constitutional provision. Rather, the County asserts that the fundamental home-rule power to spend local funds in a way that the government believes best serves the "public health, safety, morals and welfare," *see* Ill. Const. art. VII, § 6(a), should only be alterable by more than implication – by something more than plaintiffs' ultra-broad reading of the Amendment's subsection (a). If the drafters had intended to preempt home-rule power to spend revenue, the Amendment would and should have specifically stated as such – just as statutes are required to do. *See* Ill. Const. art. VII, § (6)(i); 5 ILCS 70/7.

Nevertheless, plaintiffs contend that subsection (b), (c), and (e) are unrelated to the purpose of subsection (a) and thus, any references to "statutes" and "laws" therein would have no limitation upon the "funds" described in subsection (a). In support, plaintiffs cite to *Ill. Bell Telephone Co. v. Ill. Commerce Comm'n* and related cases where the courts rejected statutory interpretation that read limitations into other provisions that were not there. 362 Ill. App. 3d 652, 660-61 (2005); *see also Gutraj v. Bd. of Trustees of Police Pension Fund of Vill. of Grayslake,* 2013 IL App (2d) 121163, ¶¶ 14-15.

Plaintiffs are mistaken. The interpretation embraced by both the circuit and appellate courts, does not, as plaintiffs assert, "delete inconvenient language and insert convenient language to yield the court's preferred meaning." *Borden v. United States*, No. 19-5410, 2021 U.S. LEXIS 2990, at *25 (U.S. June 10, 2021). By reading the Amendment's provisions as a whole, the lower courts have neither deleted nor inserted any language into subsection (a). Subsection (a) of the Amendment would have little meaning without the other provisions. The designation of funds as "transportation-related" in subsection (a) is meaningless without the mandates in subsections (b) and (c), which dictate appropriate expenditures of the funds. *See* Ill. Const. art. IX, §§ 11(a)-(c); *see also Abington*, 106 Ill. at 209 (rejecting an interpretation of a constitutional provision that would engender an unnecessary and absurd result). Thus, the only reasonable – and correct – interpretation of the Amendment is the County's, namely, that the "moneys" identified in subsection (a) must be expended upon the purposes set forth in paragraphs (b) and (c) only as directed by *statute*. To conclude otherwise would render the absurd result that *any funds*, regardless of their source, must be sequestered for transportation-related purposes only without due regard to the limitations set forth in subsections (b) and (c) and the absence of any language expressly limiting the powers of home-rule entities.

Finally, the County must address the first of three instances in which plaintiffs seek to take out of context the County's assertions below and contort them into some type of purported concession that would support plaintiffs' position. Although the County made no such concessions, they would be irrelevant anyway because this appeal involves *de novo* review of the appellate court's legal interpretation of the Amendment in favor of the

County. In other words, while the County conceded nothing, there was no factual or legal point for the County to waive.

Yet plaintiffs seize (Pl. Br., p. 45) upon a moment in the oral argument on the County's motion to dismiss when the circuit court challenged the County's counsel with plaintiffs' argument that resort to legislative history is inappropriate. The County's counsel acknowledged the obvious – that subsection (a) does not explicitly state that "it applies only when a statute directs that certain monies be expended for transportation purposes[.]" R. 19. The County's counsel stated, "[A]dmittedly, I can't in good conscience say that the amendment actually says that" but noted that the Amendment "suggests it, but doesn't come out and outright say it. I think that it's ambiguous." *Id*. County counsel was merely observing – correctly – that although subsection (a) does not contain limiting language, the language of the Amendment as a whole strongly suggests that the only transportation funds contemplated are those raised pursuant to state authority. This is exactly what the circuit court and the appellate court both held.

Counsel for plaintiffs misconstrue counsel's quote, asserting, "The County moved to dismiss the complaint but admitted that it 'can't in good conscience say' that its arguments find support in the Amendment's language." The County finds ample support for its interpretation in the Amendment's language. C 440-442; C 249-250. So did the circuit court. C 418, 421-423. So did the appellate court – at extraordinary length – reaching, in its words, the "almost inescapable" conclusion that the plain language means what the County asserts it means. A-34, ¶ 121. Plaintiffs' eleventh-hour attempt to twist the County's assertions should be wholly rejected.

The appellate court conducted an extremely rigorous analysis of the Amendment's language and concluded that it could only sensibly be interpreted to mean "that the Amendment covers only those revenues spent in accordance with state law, which would *exclude* transportation-related revenues spent pursuant to home-rule power." A-34, ¶ 121 (emphasis in original). The opinion of the appellate court should be affirmed.

B. To the Extent the Amendment Could Be Interpreted as Plaintiffs Suggest, It Is Ambiguous, and the Extrinsic Evidence Uniformly Supports the County and the Lower Courts' Interpretation.

The appellate court concluded that "while [it] prefer[red] the County's take" and "find[s] the plaintiff's interpretation less convincing" (A-34-35, ¶¶ 124-125), the Amendment allowed for two competing, reasonable interpretations and was therefore ambiguous. *See Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11; *Home Star Bank & Financial Services v. Emergency Care & Health Organization, Ltd.*, 2014 IL 115526, ¶ 24 ("an enactment is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses."). In light of that ambiguity, the appellate court appropriately considered both the legislative debates and the ballot summary provided to the voters of Illinois regarding the Amendment. *See Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, ¶ 35 (when constitutional language is ambiguous, resort to extrinsic aids, such as "the drafting history of the provision," are appropriate (internal quotation marks omitted)).

Once again taking the County's assertions below out of context, plaintiffs seize upon the County's affirmations of the Amendment's plainness as a concession by the County that the Amendment means what plaintiffs say it means. Pl. Br. at 10 ("The parties, by contrast [with the appellate court], had agreed that the Amendment is unambiguous.").

But of course, it is meaningless that the parties agreed that the Amendment is unambiguous, if they disagree on what the plain language of the Amendment (supposedly unambiguously) means.

Generally, "the rules of statutory construction apply to the construction of constitutional provisions." *People ex rel. Chicago Bar Ass'n v. State Bd. of Elections*, 136 Ill. 2d 513, 526 (1990). In all cases of statutory construction, the court's goal is to ascertain and give effect to the intent of the General Assembly. *Maddux v. Blagojevich*, 233 Ill. 2d 508, 513 (2009). While the enacted language may, in some cases, be the best evidence of that intent, it is equally important that the court also consider the "purpose behind the legislation and the evils sought to be remedied, as well as the consequences that would result from construing it one way or the other . . ." *Id.*

Accordingly, the Amendment's meaning should not be determined solely upon stringent rules of construction. *See People ex rel. Chicago Bar Ass'n v. State Bd. of Elections*, 136 Ill. 2d 513, 527 ("In the construction of a constitution courts should not indulge in speculation apart from the spirit of the document, or apply so strict a construction as to exclude its real object and intent."). "In seeking such intention courts are to consider the language used, the object to be attained, or the evil to be remedied. This may involve more than the literal meaning of the words." *Rock v. Thompson*, 85 Ill. 2d 410, 427 (1981) (quoting *Peabody v. Russel*, 301 Ill. 439, 442-42 (1922)). In fact, "[r]ules of construction are not rules of law to be uniformly followed in all instances but are merely aids in construction which yield to the overriding purpose of all rules of statutory construction which is to find the intention of the legislature." *See Pioneer Processing, Inc. v. Ill. Environmental Protection Agency*, 111 Ill. App. 3d 414, 421 (4th Dist. 1982) (citing

Freeman Coal Mining Corp. v. Ruff, 85 Ill. App. 2d 145 (4th Dist. 1967)). "[I]f after consulting the language of a provision, doubt remains as to its meaning, it is appropriate to ascertain the meaning they attached to the provision." *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1, 13 (1996).

Although plaintiffs' interpretation of the Amendment is not supported by the language of the Amendment or its purpose, to the extent it is colorable, it necessarily means the Amendment is ambiguous, and thus, review of extrinsic evidence is appropriate.

1. The Legislative Debates Support the County's Position That the Amendment Was Not Intended to Apply to Home-Rule Units of Government.

"[W]hen faced with a constitutional provision whose meaning is thought to be uncertain, the accepted practice for ascertaining such intent is to consult the debates of the relevant constitutional convention." *Thakkar v. Wilson Enterprises, Inc.*, 120 Ill. App. 3d 878, 881 (1st Dist. 1983) (citing *People ex rel. Keenan v. McGuane*, 13 Ill. 2d 520, 527 (1958)). As the appellate court agreed, a review of the legislative debates regarding the Amendment further undermines the plaintiffs' interpretation.

The debates establish that the purpose of the Amendment was to address the recurring problem of the General Assembly "sweeping" transportation-related funds into other, non-transportation-related funds, as was the subject of the Illinois Supreme Court's decision in *A.B.A.T.E. of Illinois v. Quinn*, 2011 IL 110611. C 501-02 (Senator Haine, lead Senate sponsor: "[T]his amendment is intended to overrule the Illinois Supreme Court 2011 case A.B.A.T.E. of Illinois versus Quinn, which upheld the State's authority to repurpose and spend monies raised through motor vehicle tax – registration fees on non-transportation purposes."); *see also* C 494-95 (comments of Reps. Phelps and Sandack). In *A.B.A.T.E.*, the Court held that although the General Assembly set up the Cycle Riders Safety Training

Fund as a "trust fund outside of the State treasury," nothing precluded "'a later General Assembly from using the funds a different way or abolishing the fund altogether.'" *Id.* ¶¶ 7, 25 (quoting *Dep't of Public Welfare v. Haas*, 15 Ill. 2d 204, 215 (1958). Thus, the legislative history demonstrates the General Assembly's intent to impose a barrier to future sweeps, ensuring that funds statutorily dedicated to transportation-related purposes be spent only on such purposes.

Going further, numerous legislators found the Amendment to be "ambiguous" and sought to clarify the Amendment's intent. C 497 (comments of Rep. Fortner (". . . I agree that the language use [in the Amendment] is ambiguous") and Rep. Phelps, in agreement ("Yes, I do, as do my colleagues, cosponsors of the Constitutional Amendment,")); C 497, 499 (comments of Rep. Phelps ("Thank you for your questions to clarify this matter for purposes of legislative intent)" and Rep. Fortner ("Well, thank you, again, so much for those clarifications and making sure that we all understand what we're voting on,")); C 505 (comments of Senator McConnaughay (with Senator Haine in agreement) ("I read in – the language in the constitutional amendment and I agree that the language used is ambiguous,")); C 510 (comments of Senator Raoul, ("this language is very ambiguous to me")); *see also* C 504-506, 509-510, 514.

The debates clearly establish that the Amendment was not intended to apply to "moneys raised by state and local sales taxes on the sale of motor fuel." *See* C 496-97; C 504-505. More importantly, the debates unequivocally establish that the Amendment was not intended to apply to the ordinances at issue in this lawsuit, was not intended to interfere *in any way* with home rule powers, as expressed in Article VII, Section 6 of the Illinois Constitution, and does not require local governments to track individual classes of public

safety expenditures. The extensive colloquy between Senator Raoul and Senator Haine, the lead sponsor, could not be clearer. Senator Raoul referenced virtually all of the Tax Ordinances in this case: "the Wheel Tax, New Motor Vehicle Tax, Motor Fuel Taxes, the Use Tax, the Non-Retailer Vehicle Transaction Tax, and the Non-Retailer Use Tax." C 510. He asked, "Am I correct that under this constitutional amendment, Cook County could continue to spend the monies from—from these taxes on its public safety operations?" *Id*. Senator Haine replied, "The answer is yes[.]" *Id*. In explaining why, Senator Haine noted:

> * * *
>
> SENATOR HAINE:
>
> The answer is yes for four reasons. First, as I explained earlier, this proposed constitutional amendment is intended to be on a par with Article VI [sic] (VII), Section 6 of the Constitution and current home rule power. *The proposed constitutional amendment is not intended to eliminate, restrict, or apply to current constitutional and statutory authority that home – rule units have – have relative to taxes, spending, and public safety functions*. Secondly, since the Cook County's Use Tax and Non-Retailer Use Tax are general taxes on all tangible personal property just like the State sales tax, those taxes are not covered by this constitutional amendment, as I've explained earlier. Thirdly, as I stated earlier, it is a valid transportation purpose to spend monies under this amendment on the enforcement of traffic, railroad, and motor carrier laws. As a result, Cook County can continue to spend monies from these public safety operations at – as it is today.
>
> * * *
>
> Finally, I draw your attention to page 2, lines 13-14 of the constitutional amendment. Here the amendment provides that transportation funds may be expended "with respect to local governments, other transportation purposes as authorized by law." The key phrase is "authorized by law."
>
> *This phrase, "as authorized by law", includes local governments' current use as authorized by current law* – for instance, critical public safety functions as police departments, jail operations and courts. *This provision is intended to be construed broadly so as not to interfere in any way with local governments' current authority and practices*. The language permits the General Assembly to determine, with respect to local governments, what

> are other proper transportation purposes by statute. It is also permitting home-rule units to determine what are other proper transportation purposes as well by virtue of their home-rule taxing power under Article VII, Section 6 of the Constitution. Given that Cook County and the City of Chicago as well as other home-rule units have the home-rule power to impose taxes that you listed, this language provides a further basis allowing the home-rule units to spend these monies on public safety.

C 511-513, Senate Transcript (emphasis added).

The foregoing exchange affirms the County's position that the Amendment was not intended to alter or affect the County's ability to devote revenues derived from the Tax Ordinances at issue in the complaint to whatever priorities it deems appropriate. The appellate court agreed, stating that the exchange between Senators Raoul and Haine "supports the notion that the drafters of the Amendment did *not* intend to sequester transportation-related tax revenues that Cook County spends pursuant to its home-rule authority." A-43, ¶ 142 (emphasis in original). In fact, the appellate court found it particularly notable that in asking his clarifying question, Senator Raoul "mentioned nearly every single tax that is the subject of the complaint here . . . and the sponsor's answer was clear: the Amendment did *not* preempt Cook County's constitutional home-rule authority to spend those revenues as it sees fit." *Id*. (emphasis in original).

Plaintiffs overstate the significance of the appellate court's remarks about the veracity of some of the legislator's statements ("[the appellate court] would quibble with one thing the senator said," (A-37-38, ¶ 134) and "there was a lot to that exchange, not all of it striking us as entirely accurate" (A-43, ¶ 142)). First, as to the appellate court's comment that it would "quibble with one thing the senator said," this was made in reference to the senator's statement that the Amendment was designed to "overrule" the *A.B.A.T.E.* decision. *See* A-37-38, ¶ 134. The appellate court disagreed that the Amendment overruled

the *A.B.A.T.E.* decision, stating instead that "the Amendment simply imposed a constitutional limitation on the General Assembly's power" to amend any statute and sweep funds at will. *Id*. Accordingly, these comments do not in any way affect the appellate court's interpretation of the Amendment or its consideration of the legislative debates. Second, as to the appellate court's comment that not all of the exchange between Senators Raoul and Haine struck it "as entirely accurate," the court did not expand upon its assessment nor give any indication as to what it was referencing. More importantly, immediately following that statement, the appellate court noted that the "important and unmistakable takeaway" was that the colloquy supported the County's interpretation. A-42, ¶ 142.

Therefore, the legislative debates support the County's interpretation that the Amendment does not apply to a home-rule unit's spending of revenue pursuant to its home-rule spending power.

2. The Ballot Summary Provided to Voters Clearly Stated That the Amendment Did Not Apply to Home-Rule Units of Government.

In addition to the legislative debates, the appellate court also properly considered the Amendment's ballot summary that was sent to all Illinois voters and printed on the ballot. The court noted that this explanation of the Amendment "should have prominent importance." A-43-44, ¶ 145. "After all, the General Assembly didn't put this Amendment into the Constitution – it just put it on the ballot. The citizens of this State adopted this Amendment by their vote . . . [s]o it seems only fair and appropriate that we consider what the people of Illinois were told about this Amendment before they cast their vote." *Id*. After reviewing the ballot summary provided to the voters, the appellate court correctly

concluded that it further affirms the County's interpretation of the Amendment as not applying to home-rule units of government.

The ballot summary explained the Amendment to voters in this way:

> This new Section is a limitation on the power of the General Assembly or a unit of local government to use, divert, or transfer transportation funds for a purpose other than transportation. *It does not, and is not intended to, impact or change the way in which the State and local governments use sales taxes, including the sales and excise tax on motor fuel, or alter home rule powers granted under this Constitution*. It does not seek to change the way in which the State funds programs administered by the Illinois Secretary of State, Illinois Department of Transportation, and operations by the Illinois State Police directly dedicated to the safety of roads, or entities or programs funded by units of local government. Further, the Section does not impact the expenditure of federal funds, which may be spent for any purpose authorized by federal law.

C 480-481 (emphasis added).

Thus, voters were told that the Amendment would not impact sales taxes and would not impact home rule taxes. As the appellate court concluded, "the very specific language that the Amendment is not intended to 'alter home rule powers granted under this Constitution'…quite explicitly carves out an exception to" the summary's explanation that "transportation funds may be used by the State or local governments only for the following purposes." A-45, ¶ 147. No reasonable Cook County voter could have read the explanation and believed that the Tax Ordinances would be impacted by the Amendment.

It is ironic that plaintiffs cite *Kanerva v. Weems* for the proposition that the Constitution cannot be rewritten "to include restrictions and limitations that the drafters did not express *and the citizens of Illinois did not approve*." Pl. Br. 13 (citing 2014 IL 115811, ¶14) (emphasis added). It is *plaintiffs*' reading of the Amendment which the citizens of Illinois cannot be said to have approved. Should this Court reverse the appellate court's holding and find that plaintiffs' interpretation is correct, it would greatly alter the

home rule powers granted under Article VII, Section 6(a). It would also impact sales taxes such as the County Use Tax. That would mean that the ballot summary was false and that Illinois voters were misled. That would violate Article XIV, Section 2(b)'s requirement that constitutional amendments be published with explanations so that voters can be informed, not misled.

The case law makes clear that a provision should always be interpreted in a manner that makes it valid, if possible. *City of Chicago v. Holland*, 206 Ill. 2d 480, 488 (2003) ("This court has a duty to construe a statute in a manner that upholds its validity and constitutionality if such a construction is reasonably possible."). However, the case law makes equally clear that if required notices contain material misstatements or omissions, they must be struck down. *See, e.g., Walgenbach v. Chicago and N'wn Railway Co.*, 91 Ill. App. 3d 49, 52 (2d Dist. 1980); *Haggard v. Fay*, 255 Ill. 85, 90 (1912) (invalidating tax levied for the purpose of constructing a town hall where the required notice of public meeting was "confusing and misleading"); *Samour, Inc. v. Bd. of Election Comm'rs*, 224 Ill. 2d 530, 540 (2007) (although form of ballot passed muster because it substantially complied with statutory requisites, failure to do so would have rendered the election "void"); *Brooks v. Bd. of Election Comm'rs of the City of Chicago*, 334 Ill. App. 3d 472, 476 (1st Dist. 2002) (same, stating that "courts consider whether the deviation in the ballot was misleading or confusing to the voters").

Plaintiffs have no effective response to the ballot summary. They argue that the phrase "not intended to . . . alter home rule powers granted under the Constitution" is little more than an aside – meant only to convey that the Amendment was "not intended to generally alter home rule powers by changing the balance of power between the State and

home rule units or by modifying the Local Government Article's general provisions on the powers of home rule units." Pl. Br., p. 40. This argument fails. As the appellate court aptly reasoned, "[n]obody reading the Amendment (or the ballot summary) would have thought it was so dramatic as to 'change the constitution's general formulation of home rule powers,' any more than it would have been read to change the general formulation of the General Assembly's powers." A-46, ¶ 150.

Lastly, plaintiffs point out that the ballot summary states that the Amendment "is a limitation on the power of the General Assembly or a unit of local government to use, divert, or transfer transportation funds for a purpose other than transportation." C 481. But this is not inconsistent with the County's interpretation of the Amendment. The Amendment *is* a limitation on the power of units of local government to spend for other purposes those funds that a statute dedicates to transportation purposes. But it is not more.

To give the Amendment the ultra-broad reading that plaintiffs urge would be to completely ignore what voters were told about how the Amendment would and would not apply to local taxes. Not only would that be impermissibly undemocratic, but it would also be unconstitutional. The appellate court should be affirmed.

3. Plaintiffs' Attempt to Generate After-The-Fact Legislative History Fails.

It is astonishing to see how many times plaintiffs refer to the intent of the Amendment's "drafters" (Pl. Br., pp. 17-18, 20-2, 23-28, 30, 36), yet beg the Court not to look at the ***actual evidence of legislative intent***. Given the dispute between the parties about what the drafters intended, it would be not only appropriate, but mandatory and crucial, to consult statements of their intent. An amendment to the Illinois Constitution can only be "submitted to the electors of this State for adoption or rejection" after they are

"proposed by joint resolution in either house of the General Assembly." 5 ILCS 20/1. Thus, it is relevant to know what General Assembly members believed they were supporting ***at the time***. *See e.g. Covalt v. Carey Canada, Inc.*, 860 F.2d 1434, 1438-39 (7th Cir. 1988) ("Legislative history is valuable only to the extent it reveals the background of the law and the assumptions shared by those who wrote and voted on the bills. It is a contemporaneous record that helps a court reconstruct the meaning of our always-ambiguous language.").

Yet, to try to generate a more favorable record, plaintiffs have enlisted multiple members of the General Assembly to draft amicus briefs asserting that they had every intent for the Amendment to apply to home-rule taxes and fees. This is a preposterous attempt to create legislative history after the fact and outside the record before this Court of last resort. *See Covalt*, 860 F.2d at 1438-39 ("Legislative history generated in the course of litigation has even less utility, for it may be designed to mislead, to put an advocate's slant on things."); *see also Johnson v. Allstate Ins. Co.*, No. 07-cv-0781, 2010 U.S. Dist. LEXIS 97519, *7 (S.D. Ill. September 17, 2010) ("After the fact utterances of the circumstances of the enactment, enforcement and interpretation of statutes and regulations are 'subsequent legislative history,' which 'is not helpful as a guide to understanding a law' because the utterances 'may be nothing but wishful thinking, and unless they are uttered as part of the process of enacting a later law . . . they are of no account.'" (citing *Covalt*, 860 F.2d at 1438)).

Astonishingly, Representative Durkin's brief asserts that he "never expected or imagined that [the Amendment] would later be interpreted to exempt transportation funds that are spent under home rule authority[.]" Durkin and Spann Amicus, p. 2.

Representative Hoffman makes a similar claim. Hoffman Amicus Br., p. 2. These assertions are completely disingenuous in light of the fact that ***both representatives voted to approve the language of the ballot summary***, which stated that the Amendment "***does not, and is not intended to…alter home rule powers granted under this Constitution.***" *See* Def. Appx. A-1-10**,** 99th Ill. Gen. Assem., House Joint Resolution 154, Def. Appx. A-11, House Roll Call, 99th Ill. Gen. Assem., House Joint Resolution 154 (May 31, 2016) (reflecting the votes of Reps. Durkin and Hoffman). As the appellate court stated, "[t]here is no way to take plaintiffs' interpretation" – and thus, these representatives' *post hoc* assertions – "as doing anything *but* 'alter[ing] home rule powers.'" A-45. ¶ 148 (emphasis in original). The submissions of these amici only underscore the weakness of plaintiffs' position.

4. The Transportation Funding Protection Act of 2019 Supports the County's Interpretation.

Plaintiffs place undue emphasis on the Transportation Funding Protection Act, suggesting it provides some value in interpreting the Amendment. Naturally, the Act, passed in 2019, cannot alter the language or legal force of the Amendment, passed in 2016. But even if it could provide some interpretive help, the Act merely refers back to the Amendment, creating a circularity that does not assist plaintiffs' interpretation.

On June 28, 2019, Senate Bill 1939 (P.A. 101-0032) was enacted as the "Transportation Funding Protection Act" (the "Act"). 30 ILCS 178/5-10. The Act reads, in relevant part:

> (a) It is known that transportation funding is generated by several transportation fees outlined in Section 2 of the Motor Fuel Tax Act, Section 5-1035.1 of the Counties Code, Section 8-11-2.3 of the Illinois Municipal Code, and Sections 3-805, 3-806, 3-815, 3-818, 3-819, 3-821, and 6-118 of the Illinois Vehicle Code.

> (b) The proceeds of the funds described in this Act and all other funds described in Section 11 of Article IX of the Illinois Constitution are dedicated to transportation purposes and shall not, by transfer, offset, or otherwise, be diverted by any local government, including, without limitation, any home rule unit of government, to any purpose other than transportation purposes. This Act is declarative of existing law.

Id. As such, the Act prohibits local governments, including home rule units of government, from diverting the funds derived from the above-enumerated statutes as well as "all other funds described in [the Amendment]" to any purpose other than transportation purposes.

Plaintiffs assert that the Act offers interpretive guidance to the Amendment because subsection (b) states that the funds described in the Amendment cannot be used by "any home rule government [for] any purpose other than transportation purposes." Although a statute enacted three years after the Amendment cannot be considered "extrinsic evidence," as plaintiffs suggest (Pl. Br. 42), *see Farwell Constr. Co. v. Ticktin*, 84 Ill. App. 3d 791, 796 (1st Dist. 1980) (where language is deemed ambiguous, courts may consider extrinsic evidence as to ***prior and contemporaneous*** transactions and facts to determine parties' intent), the passage of the Act tends to support the County's interpretation of the Amendment, not plaintiffs'.

The Act simply does not say what plaintiffs wish it would say. The Act merely points back to "all other funds described in Section 11 of Article IX of the Illinois Constitution." 30 ILCS 178/5-10(b). As such, plaintiffs' argument is circular: whatever revenue home rule entities the Act preempts from using for non-transportation purposes is the exact same revenue that is subject to subsection (a) of the Amendment – but nothing in the Act offers insight into the scope of the Amendment. Indeed, the phrase "[t]his Act is declarative of existing law" merely affirms that it is declarative of the existing provisions of the Amendment – not adding more. Once again, the circuit and appellate courts correctly

decided that subsection (a) only deals with state-regulated transportation revenue. Accordingly, the Act is completely consistent with the County's – and the courts' – interpretation of the Amendment.

Moreover, the Act does not go further and preempt home rule authority in the realm of transportation revenues. As an act of the General Assembly, it would need to contain the mandatory language specifically preempting home-rule powers. *See* 5 ILCS 70/7 (West 2018); Ill. Const. art. VII, § 6(i) ("Home rule units may exercise and perform concurrently with the state any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive."). As the appellate court astutely noted, "the reason it doesn't preempt home-rule power is that it's only referring to a home-rule unit's spending of tax proceeds *pursuant to statute*, where home-rule powers do not come into play." A-49, ¶ 158 (emphasis in original). "If this legislation were intended to restrict the home-rule power to spend, the preemption language would be required…. Its absence speaks volumes." *Id*. (citing Ill. Const. art. VII, § 6(i); *Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, ¶ 36; and 5 ILCS 70/7 (West 2018).

Indeed, that absence is more suggestive of the fact that County and the lower courts' interpretation of the Amendment accurately reflects the intent of the General Assembly – in 2016 just as in 2019. By the June 28, 2019 passage of the Act, plaintiffs had already filed their complaint, the circuit court had already granted the County's motion to dismiss, plaintiffs had filed their notice of appeal, and this Court had denied plaintiffs' motion for direct appeal. Thus, plaintiffs' disagreement with the County's – and the circuit court's – interpretation of the Amendment was well-known in the months and years before the Act

was passed. Surely had the General Assembly intended to "fix" the court's supposedly "erroneous" interpretation, it would have provided explicitly for preemption in the Act. Again, the absence of such language "speaks volumes." A-49, ¶ 158.

Yet once again taking the County's assertions out of context, plaintiffs latch onto comments made by the County's attorney during oral argument before the appellate court as support for their erroneous position. *See* Pl. Br., p. 43 (citing transcript in which counsel for Cook County stated, "[y]es, the Transportation Funding Act preempted home rule of [sic] units of government from deviating out of any of these statutes . . ."). Quite obviously from the context, counsel meant that the Act stops home rule entities from spending revenues from the state statutes referenced in the Act for non-transportation purposes. The County's counsel clearly did not say and did not mean that the Act preempts home rule entities from controlling the spending of tax revenues to which no state statute speaks.

Just as disingenuously, plaintiffs claim that the County "never argued in its appellate brief that the Act did not preempt home rule power." Pl. Br., p. 43. Not so. *See* Def. Appx. A-13-14 (County's Appellate Br. at 21-22). But this is irrelevant anyway. The appellate court noted that the Act does not contain the express preemption language required by 5 ILCS 70/7 and does not preempt home rule power. A-49, ¶ 158. Again, the logical reason for this is that the Act was only ever intended to include the state-directed revenue covered by the Amendment.

II. The Appellate Court Erroneously Held That Plaintiffs Have Standing.

The County cross-appeals the appellate court's holding that plaintiffs have standing to pursue this action. A complaint may be dismissed pursuant to Section 2-619 of the Code of Civil Procedure where "the claim asserted against defendant is barred by other

affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9). Lack of standing is one such affirmative matter that completely negates the cause of action. *Chicago Title & Trust Co. v. Weiss*, 238 Ill. App. 3d 921, 925 (2d Dist. 1992).

The doctrine of standing exists to ensure that courts decide actual specific controversies and not abstract or moot questions. In keeping with that principle, a party generally may not complain about an error that does not prejudicially affect that party. *Lincoln Title Co. v. Nomanbhoy Family Ltd. Partners*, 2013 IL App (3d) 120999, ¶ 17. Generally, to have standing to bring suit in Illinois, a party must have some injury in fact to a legally cognizable interest. *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). Specifically, the claimed injury, whether actual or threatened, must be: (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492-93 (1988). In an action for declaratory relief, there must be an actual controversy between adverse parties, with the party requesting the declaration possessing some *personal* claim, status, or right which is capable of being affected by the grant of such relief. *Id.* Here, plaintiffs cannot meet the standing requirements either for associational standing or for taxpayer standing.

A. The Plaintiffs' Lack Associational Standing Because None of the Individual Members Have Standing to Sue in Their Own Right.

The appellate court erred in holding that plaintiffs have associational standing to bring this action on behalf of their members because plaintiffs' individual members lack standing. Plaintiffs have not identified any "distinct and palpable" injury. At its most specific, the complaint alleges that plaintiffs' members are being harmed because the

County's purportedly unlawful diversion of funds "is depriving the plaintiffs' members of opportunities to work to improve the County's failing transportation infrastructure." C 51, ¶ 50. However, there are many steps of attenuation between victory in this case and any given member of the plaintiff associations receiving business. These attenuations include that home rule entities can proportionally reduce their transportation-related revenues to keep transportation spending flat; that home rule entities can spend transportation-related revenues on many activities that have nothing to do with construction; and that even if there is increased discretionary spending on transportation-related construction, such spending may not flow to plaintiffs' members. Accordingly, the circuit court correctly granted Cook County's motion to dismiss based on lack of standing, pursuant to section 2-619(a)(9) of the Code of Civil Procedure. *See* 735 ILCS 5/2-619(a)(9).

The doctrine of associational standing, as set forth in *Hunt v. Washington State Apple Advertising Comm'n,* 432 U.S. 333 (1977) and first adopted in Illinois in *Int'l Union of Operating Eng'rs, Local 148 v. Ill. Dep't. of Empl. Sec.*, 215 Ill. 2d 37, 47 (2005), grants standing to an association on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt,* 432 U.S. at 343. Accordingly, associational standing still requires the associational plaintiffs to allege "'that [their] members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action.'" *Int'l Union,* 215 Ill. 2d at 46 (quoting *Warth v. Seldin,* 422 U.S. 490, 511 (1975)). "[A] party generally may not complain about an error that does not prejudicially affect that party." *Lincoln Title Co.*, 2013 Ill. App. (3d) 120999. Here,

however, plaintiffs' members lack a cognizable interest to establish standing to sue in their own right.

If the Court were to rule in favor of plaintiffs, it would mean only that certain local taxes and fees will be required to be spent on transportation. It would not, however, mean that the plaintiffs' members would benefit. In fact, there are many steps of attenuation between the claimed injury and plaintiffs' members alleged interest.

1. Rational Governments Would Reconfigure Revenue Sources to Allow Them to Fund Government According to Their Predetermined Priorities.

First, it is far from a guarantee that imposing the Amendment's "lockbox" on the home rule taxes would generate more funds for transportation projects. Any rational home rule unit facing an adverse ruling in this case, having already determined its budget priorities according to its policy preferences and its citizenry's needs, would simply reconfigure its tax levies and fees to provide more revenue from unrestricted sources and less from transportation-related taxes and fees. Imagine a home rule unit that yielded half of its revenue from so-called "transportation-related" taxes and fees. No such government would sit idly by as vast amounts of revenue were sucked away from predetermined priorities such as public safety, public health, public housing, waste management, water and sewer infrastructure, and parks and recreational opportunities for its residents, in favor of transportation infrastructure. Rather, the home-rule unit would alter its mix of revenue, perhaps even adding new sources of revenue, in order to maintain funding of its predetermined priorities. Thus, it is conjecture for plaintiffs to contend that a victory for them would lead to increased spending on purposes allowed under the Amendment, and in light of the Amendment's ambiguity, any existing revenue generated since its passage could not be reallocated back to transportation infrastructure projects.

2. Funds Sequestered by The Amendment Could Easily Be Spent in Ways That Would Not Impact Plaintiffs.

The Amendment allows for spending on all manners of transportation-related projects. The permissible expenditures under the Amendment are so broad that there is no way of knowing whether any funds would be spent on projects that the plaintiffs' members would even be suited to bid on. Notably, the plaintiffs' members' interests all lie in the ***construction industry***:

- "firms who ***design, build and maintain Illinois' highways, transit systems, railways, and aviation systems***" (Plaintiff Illinois Road and Transportation Builders Association, C 45, ¶ 7 (emphasis added));
- "women-owned businesses and women executives in the ***construction industry***" (Plaintiff Federation of Women Contractors, C 46, ¶ 13 (emphasis added));
- "***produce[rs]*** [of] more than 90% of Illinois' ***aggregate and industrial minerals***," "[m]ost of [which] is utilized in road construction" (Plaintiff Illinois Association of Aggregate Producers, C 46, ¶ 16 (emphasis added));
- "***highway, heavy, and utility contractors***" (Plaintiff Associated General Contractors of Illinois, C 47, ¶ 20 (emphasis added));
- "***hot mix asphalt producers*** and affiliated companies" (Plaintiff Illinois Asphalt Pavement Association, C 47, ¶ 23 (emphasis added));
- "Illinois ready mixed ***concrete producers, suppliers and contractors***" (Illinois Ready Mixed Concrete Association, C 48, ¶ 27 (emphasis added)).
- "200 firms in 27 work categories in the ***construction industry***" (Plaintiff Great Lakes Construction Association, C 49, ¶ 32 (emphasis added));

- "Illinois consulting engineer firms…many of whom perform work related to ***transportation infrastructure design and construction***" (Plaintiff American Council of Engineering Companies, Illinois Chapter, C 49, ¶ 36 (emphasis added));
- "leading contractors and suppliers in the Chicago area, [who] serve as a leading voice of the Chicagoland ***construction industry***" (Chicagoland Associated General Contractors, C 50, ¶ 41 (emphasis added));
- "200 contractors and associate member companies in the ***sewer, water, utility, and underground industries***" (Underground Contractors Association of Illinois, C 50, ¶ 44 (emphasis added));
- "concrete pipe producers and affiliated companies serving the ***Illinois sewer and culvert market***" (Illinois Concrete Pipe Association, C 51, ¶ 47 (emphasis added)).

But permissible expenditures under the Amendment extend far afield from construction, ranging from law enforcement and fleet acquisition to workers' compensation and debt servicing. They include:

- "the costs of administering laws related to vehicles and transportations," Art. IX, § 11(b) including:
  - "the enforcement of traffic, railroad, and motor carrier laws," Art. IX, § 11(c) – which would reasonably be interpreted to include police patrol budgets, for example;

  - "the safety of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, or airports," Art. IX, § 11(c) – which must be read to include sheriff and police patrols as well as fleet improvements; and
  - "direct program expenses related to workers' compensation claims for death or other injury of employees of the State's transportation agency," Art. IX, § 11(c);
- "payment of highway obligations," Art. IX, § 11(b), even if those obligations were previously incurred, not prospectively incurred for new projects;
- "costs for…betterment of…mass transit…or other forms of transportation," Art. IX, § 11(b), which might include a new fleet of buses, train cars, or even bicycles and scooters – rather than a single new road, bridge, or sidewalk.

The Amendment does not mandate that a single dollar of transportation-related revenues be used to fund construction of roads, highways, and bridges. It is illogical and incorrect, therefore, to conclude that the construction industry would have a legally cognizable stake in whether home rule entities can continue to spend transportation-related taxes and fees on their own predetermined priorities or, in the alternative, on a broad menu of transportation-related expenditures that ***may not have anything to do with construction***. Rightly, then, plaintiffs do not – and cannot – allege that revenues sequestered under the Amendment will be spent specifically on the types of expenditures that would generate revenue for plaintiffs' members.

In this way, this case is distinguishable from *United States Women's Chamber of Commerce v. United States Small Business Administration***,** the unpublished federal district court case cited by plaintiffs, and plaintiffs' reliance upon it is misplaced. No. 1:04-cv-

01889, 2005 U.S. Dist. LEXIS 32497 (D.D.C. November 30, 2005) ("*SBA*"). First, as a preliminary matter, although federal district court decisions may be considered persuasive authority, they are not binding on Illinois courts. *People ex rel. Ryan v. World Church of the Creator*, 198 Ill. 2d 115, 127 (2001); *People v. Stansberry*, 47 Ill. 2d 541, 545 (1971). Second, and more importantly, *SBA* is easily distinguishable from the present case. In *SBA*, the members of the plaintiff association that brought suit had "*submitted unsuccessful bids* on numerous contracts that [had] been awarded by various federal agencies" and "*lost contracts* conducted without the [aid of the federal program]." 2005 U.S. Dist. LEXIS 32497, *32-33, 37 (emphasis added). But here, plaintiffs allege that no contracts were even being offered in the first place. While the County does not dispute that a plaintiff who *loses* a contract due to government misconduct during the bidding process has standing to challenge that alleged misconduct, the plaintiffs do not claim that they lost any contracts during bidding. Rather, they claim that, because not enough tax revenues were spent on transportation, there were too few contracts upon which they could even bid in the first place.

Hunt, also cited by plaintiffs, is distinguishable for the same reasons as *SBA* – namely, because the plaintiffs in that case alleged actual, concrete, non-speculative injuries. Specifically, Washington State's apple advertising commission complained that North Carolina's protectionist labeling law forced every Washington grower and dealer who shipped to North Carolina to incur extra costs by having to redact labels on preprinted containers and stop using the containers altogether. 432 U.S. at 343. Because there was nothing hypothetical or conjectural about the members' injuries, the U.S. Supreme Court held that those injuries were "direct and sufficient to establish the requisite 'case or

controversy' between [the litigants]." *Id*. at 344. Not so here, where plaintiffs can show no losses, but merely point to the absence of the economic windfall they perhaps hoped for.

The appellate court also cites to an additional three federal cases – *West Virginia Ass'n of Community Health Centers, Inc. v. Heckler*, *National Ass'n of Neighborhood Health Centers, Inc. v. Mathews*, and *American Iron & Steel Institute v. Occupational Safety & Health Administration* – which are all federal cases and likewise not entitled to precedential weight for the case at bar. Even so, these cases are also factually distinguishable because the allegedly misappropriated funds at issue were directly earmarked to fund programs to benefit organizations and/or individuals such as the plaintiffs in those cases.

In *West Virginia Ass'n of Community Health Centers, Inc. v. Heckler*, the federal block grants at issue were specifically designed to provide financial assistance to support states' delivery of health care services to impoverished communities through health centers such as the plaintiffs' members. 734 F. 2d 1570 (D.C. Cir. 1984). Thus, the plaintiff members, as the health centers that would be providing the health care to populations in need, were precisely the intended beneficiaries of proper appropriation of the federal grant money. *Id.* Similarly, in *Nat'l Ass'n of Neighborhood Health Centers, Inc. v. Mathews*, the plaintiff health centers challenged the allegedly impermissible transfer of federal funding pursuant to the Hill-Burton Act from outpatient facilities to hospital and public health facilities. 551 F. 2d 321 (D.C. Cir. 1976). Again, the plaintiff health centers, as outpatient facilities, were the specific type of organization designed to directly benefit from the proper allocation of the federal funding at issue. *Id.* Finally, in *Am. Iron & Steel Inst.*

v. OSHA, the plaintiff doctors challenged a law enabling non-physician licensed health care professionals to perform medical evaluation services under OSHA. 182 F. 3d 1261 (11th Cir. 1999). As physician licensed health care professionals, the plaintiff doctors were the precise group of plaintiffs who would suffer economic loss if the challenged law were to stand. *Id*. Here, however, the Amendment was *not* explicitly designed to provide funding to plaintiffs' members; it was designed to ensure that funds dedicated to transportation be spent on transportation. Again, even if the funds at issue in this case were required to be spent only for transportation-related expenses, there is no guarantee that the County would commence any new transportation projects or that the plaintiffs would be entitled to, or would receive, any benefits.

3. None of Plaintiffs' Members Can Show That They Would Have Won a Bid on Any Project.

Finally, even assuming Cook County were to end up spending transportation-related revenues on construction projects, none of plaintiffs' members can show that they would have won a bid on any such project. In fact, there is simply no way of knowing whether any of plaintiffs' members would have won any potential contracts offered by the County.

Although absolute certainty is not required for standing, the appellate court incorrectly held that the member plaintiffs' injuries were fairly traceable to the County's conduct where they were "denied the chance to bid on construction projects that inevitably would have come, and would continue to come in the future, if the County followed its (alleged) constitutional mandate and kept transportation dollars in a pot dedicated only for transportation." A-13, ¶ 50. Contrary to the appellate court's opinion, this is exactly the

kind of "highly attenuated chain of possibilities" that does not support standing. (A-5, ¶ 20 (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013)).

In *I.C.S. Illinois, Inc. v. Waste Management of Illinois, Inc.*, the court held that "[a] subcontractor suffers a legally cognizable injury sufficient to support standing when it shows that it bid for the contract and would have won the contract but for the alleged violation of the bidding procedures." 403 Ill. App. 3d 211, 224-225 (1st Dist. 2010). Thus, "a plaintiff cannot establish standing to challenge the result of a bidding competition without establishing that he would have been successful but for defendants' conduct. Without such an allegation, a subcontractor would be hard put to claim to have suffered an injury. It is all the more difficult to recognize an injury to a legally cognizable interest that is distinct and palpable if plaintiff does not allege that he, at the very least, actively entered into the competitive fray." *Id*. at 225. In alleging associational standing, as plaintiffs do in the instant case (*see* Pl. Br. 14), they must show that "[their] members would otherwise having standing to sue in their own right." *Int'l Union*, 215 Ill. 2d at 47.

Unlike here, in *I.C.S. Illinois*, there was not just a hope or a wish for some future project – there was a specific contract, and the primary contractor was in place. Plaintiffs in that case alleged that the subcontractors were fraudulently certified as minority business enterprises, and that this fraud "diverted city funds" and deprived true minority-owned businesses of the opportunity to receive the economic benefits of the city contract. Yet the *I.C.S.* plaintiffs lacked standing because it was not adequate to assert that they were "deprived of the opportunity to bid." So too here, plaintiffs' allegations that the County's use of funds deprived their members of the opportunity to bid on future construction contracts is insufficient. Plaintiffs' complaint here is that funds were never even allocated

to projects on which they *could* have bid in the first place, such that they *might* have been bidders if more money were available for transportation-related projects, and if they *had* bid, they *might* have won. These allegations are generalized and conclusory at best and fail to show either that their members are "suffering harm due to the county's ongoing violations of the [Amendment]" or that the alleged harms would be remedied by the requested relief. C 45, ¶ 9; C 46, ¶ 14; C 47, ¶¶ 18, 22; C 48, ¶¶ 26, 30; C 49, ¶¶ 34, 38; C 50, ¶¶ 42, 46; C 51; ¶ 49. Plaintiffs have suffered no loss, and any speculative injury is not substantially likely to be prevented or redressed by the grant of the requested relief.

B. Plaintiffs' Likewise Lack Standing as Taxpayers.

Although the appellate court declined to consider whether plaintiffs had standing as taxpayers, the County maintains that the plaintiffs do not. "Taxpayer standing is a narrow doctrine permitting a taxpayer the ability to challenge the misappropriation of public funds." *Illinois Ass'n of Realtors v. Stermer*, 2014 IL App (4th) 130079, ¶ 29. "This right of the taxpayer to sue is founded upon the proposition of his equitable ownership of such funds and of his liability to replenish the treasury in case of misappropriation. *[The] complaint must establish this situation, otherwise it is fatally defective*." *Golden v. City of Flora*, 408 Ill. 129, 131 (1951) (emphasis added); *see also Stermer*, 2014 IL App (4th) 130079, ¶ 29 (stating that a plaintiff who claims taxpayer standing must affirmatively allege an "equitable ownership of funds depleted by misappropriation" and that failure to do so renders the complaint "fatally defective"). "[A] simple allegation of taxpayer status is insufficient to assert a taxpayer suit." *Village of Leland ex rel. Brouwer v. Leland Community School Dist.*, 183 Ill. App. 3d 876, 879 (3d Dist. 1989). The taxpayer must

also tie allegations of illegal appropriations and expenditures to some financial injury resulting from the misappropriation. *Id*.

Again, the plaintiffs make nothing more than conclusory allegations that they have taxpayer standing. They fail to allege that they have equitable ownership of funds depleted by misappropriation or allege that they will have a responsibility to replenish the treasury because of the alleged misappropriations. Nor do they tie these alleged illegal appropriations to any concrete financial injury in fact. Therefore, plaintiffs also lack standing as taxpayers.

CONCLUSION

The appellate court erred in holding that plaintiffs have standing. A whisper of a chance of an opportunity to make money on a hypothetical future transportation construction project, when transportation construction is not required by the Amendment, is not a distinct or palpable injury sufficient to confer standing upon plaintiffs' members, and thus not upon plaintiffs.

On the merits, as the appellate and circuit courts held, the most sensible interpretation of the plain language of the "Safe Roads Amendment" is that it applies only to revenues which the State has designated for transportation purposes. This is supported by reading the provisions of the Amendment as a whole, and in context with the Constitution as a whole. Even so, the amendment is ambiguous enough that it is only appropriate to take into account the legislative history and the ballot summary that leaves no doubt about what the General Assembly intended, and what was told to voters. The Court should not don blinders in giving subsection (a) of the Amendment its broadest

possible reading, to the exclusion of the vast weight of intrinsic and extrinsic evidence supporting the County's interpretation.

For the foregoing reasons, Defendant-Appellee/Cross-Appellant 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.

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 49 pages.

/s/ Amy Crawford
Amy Crawford

APPENDIX

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HOUSE JOINT RESOLUTION

WHEREAS, The 99th General Assembly of the State of Illinois has submitted House Joint Resolution Constitutional Amendment 36, a proposition to amend the Illinois Constitution, to the voters of Illinois at the November 2016 general election; and

WHEREAS, The Illinois Constitution Amendment Act requires the General Assembly to prepare a brief explanation of the proposed amendment, a brief argument in favor of the amendment, a brief argument against the amendment, and the form in which the amendment will appear on the ballot, and also requires the information to be published and distributed to the electorate; therefore, be it

RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-NINTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE SENATE CONCURRING HEREIN, that the proposed new Section 11 of Article IX shall be published as follows:

"ARTICLE IX

REVENUE

SECTION 11. TRANSPORTATION FUNDS

(a) No moneys, including bond proceeds, derived from taxes, fees, excises, or license taxes relating to registration,

title, or operation or use of vehicles, or related to the use of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, airports, or to fuels used for propelling vehicles, or derived from taxes, fees, excises, or license taxes relating to any other transportation infrastructure or transportation operation, shall be expended for purposes other than as provided in subsections (b) and (c).

(b) Transportation funds may be expended for the following: the costs of administering laws related to vehicles and transportation, including statutory refunds and adjustments provided in those laws; payment of highway obligations; costs for construction, reconstruction, maintenance, repair, and betterment of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, airports, or other forms of transportation; and other statutory highway purposes. Transportation funds may also be expended for the State or local share of highway funds to match federal aid highway funds, and expenses of grade separation of highways and railroad crossings, including protection of at-grade highways and railroad crossings, and, with respect to local governments, other transportation purposes as authorized by law.

(c) The costs of administering laws related to vehicles and transportation shall be limited to direct program expenses related to the following: the enforcement of traffic, railroad, and motor carrier laws; the safety of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, or

airports; and the construction, reconstruction, improvement, repair, maintenance, operation, and administration of highways, under any related provisions of law or any purpose related or incident to, including grade separation of highways and railroad crossings. The limitations to the costs of administering laws related to vehicles and transportation under this subsection (c) shall also include direct program expenses related to workers' compensation claims for death or injury of employees of the State's transportation agency; the acquisition of land and the erection of buildings for highway purposes, including the acquisition of highway rights-of-way or for investigations to determine the reasonable anticipated future highway needs; and the making of surveys, plans, specifications, and estimates for the construction and maintenance of flight strips and highways. The expenses related to the construction and maintenance of flight strips and highways under this subsection (c) are for the purpose of providing access to military and naval reservations, defense-industries, defense-industry sites, and sources of raw materials, including the replacement of existing highways and highway connections shut off from general use at military and naval reservations, defense-industries, and defense-industry sites, or the purchase of rights-of-way.

(d) None of the revenues described in subsection (a) of this Section shall, by transfer, offset, or otherwise, be diverted to any purpose other than those described in

subsections (b) and (c) of this Section.

(e) If the General Assembly appropriates funds for a mode of transportation not described in this Section, the General Assembly must provide for a dedicated source of funding.

(f) Federal funds may be spent for any purposes authorized by federal law."; and be it further

RESOLVED, That a brief explanation of the proposed amendment, a brief argument in favor of the amendment, a brief argument against the amendment, and the form in which the amendment will appear on the ballot shall be published and distributed as follows:

PROPOSED AMENDMENT

TO ADD SECTION 11 TO ARTICLE IX

OF THE ILLINOIS CONSTITUTION

That will be submitted to the voters

November 8, 2016

This pamphlet includes

EXPLANATION OF THE PROPOSED AMENDMENT

ARGUMENTS IN FAVOR OF THE AMENDMENT

ARGUMENTS AGAINST THE AMENDMENT

FORM OF BALLOT

To the Electors of the State of Illinois:

The Illinois Constitution establishes a structure for government and laws. There are three ways to initiate change to the Illinois Constitution: (1) a constitutional convention may propose changes to any part; (2) the General Assembly may propose changes to any part; or (3) a petition initiative may propose amendments limited to structural and procedural subjects contained in the Legislative Article. The people of Illinois must approve any changes to the Constitution before they become effective. The purpose of this document is to inform you of proposed changes to the Illinois Constitution and provide you with a brief explanation and a summary of the arguments in favor of and in opposition to the proposed amendment.

EXPLANATION

The proposed amendment adds a new Section to the Revenue Article of the Illinois Constitution that provides revenue generated from transportation related taxes and fees (referred to as "transportation funds") shall be used exclusively for transportation related purposes. Transportation related taxes and fees include motor fuel taxes, vehicle registration fees, and other taxes and user fees dedicated to public highways, roads, streets, bridges, mass transit (buses and rail), ports,

or airports.

Under the proposed amendment, transportation funds may be used by the State or local governments only for the following purposes: (1) costs related to administering transportation and vehicle laws, including public safety purposes and the payment of obligations such as bonds; (2) the State or local share necessary to secure federal funds or for local government transportation purposes as authorized by law; (3) the construction, reconstruction, improvement, repair, maintenance, and operation of highways, mass transit, and railroad crossings; (4) expenses related to workers' compensation claims for death or injury of transportation agency employees; and (5) to purchase land for building highways or buildings for to be used for highway purposes.

This new Section is a limitation on the power of the General Assembly or a unit of local government to use, divert, or transfer transportation funds for a purpose other than transportation. It does not, and is not intended to, impact or change the way in which the State and local governments use sales taxes, including the sales and excise tax on motor fuel, or alter home rule powers granted under this Constitution. It does not seek to change the way in which the State funds programs administered by the Illinois Secretary of State, Illinois Department of Transportation, and operations by the

Illinois State Police directly dedicated to the safety of roads, or entities or programs funded by units of local government. Further, the Section does not impact the expenditure of federal funds, which may be spent for any purpose authorized by federal law.

Arguments In Favor of the Proposed Amendment

Historically, the State and units of local government have used portions of revenue from transportation funds for other purposes. Approval of this amendment will ensure that transportation funds are used only for transportation purposes. This limitation provides a dedicated source of funding for projects that will increase the quality of Illinois' roads, bridges, bridge and road safety inspections, and mass transit. Improving the quality of our roads and highways will help reduce accidents and damage to vehicles caused by road conditions or hazards.

Arguments Against the Proposed Amendment

Approval of the proposed amendment unnecessarily limits the power of the State and local governments to appropriate public revenues for the general welfare of all Illinoisans in order to protect funding for one particular purpose - transportation. Our elected officials should be asked to prioritize the use of

public funds, but this amendment would restrict their ability to spend funds as the elected officials and taxpayers deem fit. As a result, elected officials may be asked to reduce funding for other priorities, such as education or social service programs.

FORM OF BALLOT

Proposed Amendment to the 1970 Illinois Constitution

Explanation of Amendment

The proposed amendment adds a new section to the Revenue Article of the Illinois Constitution. The proposed amendment provides that no moneys derived from taxes, fees, excises, or license taxes, relating to registration, titles, operation, or use of vehicles or public highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, or airports, or motor fuels, including bond proceeds, shall be expended for other than costs of administering laws related to vehicles and transportation, costs for construction, reconstruction, maintenance, repair, and betterment of public highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, airports, or other forms of transportation, and other statutory highway purposes, including the State or local share to match federal aid highway funds. You are asked to decide whether the proposed amendment should become part of the

Illinois Constitution.

YES For the proposed addition

NO of the Illinois Constitution.

NO. 3

STATE OF ILLINOIS
NINETY-NINTH
GENERAL ASSEMBLY
HOUSE ROLL CALL
HOUSE JOINT RESOLUTION 154
TRANSPORTATION FUNDS-ARGUMENTS
ADOPTED

May 31, 2016

114 YEAS 0 NAYS 1 PRESENT

Y	Acevedo	A	Davis,Monique	Y	Jones	Y	Sandack
Y	Ammons	Y	Davis,William	Y	Kay	Y	Scherer
Y	Andersson	Y	DeLuca	Y	Kifowit	Y	Sente
Y	Andrade	Y	Demmer	Y	Lang	Y	Sims
Y	Anthony	Y	Drury	Y	Leitch	Y	Skoog
Y	Arroyo	Y	Dunkin	Y	Lilly	Y	Smiddy
Y	Batinick	Y	Durkin	Y	Manley	Y	Sommer
Y	Beiser	Y	Evans	Y	Martwick	Y	Sosnowski
Y	Bellock	Y	Feigenholtz	Y	Mayfield	Y	Soto
Y	Bennett	Y	Fine	Y	McAsey	Y	Stewart
Y	Bourne	Y	Flowers	Y	McAuliffe	Y	Sullivan
Y	Bradley	Y	Ford	Y	McDermed	Y	Tabares
Y	Brady	Y	Fortner	Y	McSweeney	Y	Thapedi
Y	Breen	Y	Franks	Y	Meier	NV	Tryon
Y	Brown	Y	Frese	Y	Mitchell,Bill	Y	Turner
Y	Bryant	Y	Gabel	Y	Mitchell,Christian	Y	Unes
Y	Burke,Daniel	Y	Gordon-Booth	Y	Moeller	Y	Verschoore
Y	Burke,Kelly	Y	Guzzardi	Y	Moffitt	Y	Wallace
Y	Butler	Y	Hammond	Y	Morrison	Y	Walsh
Y	Cabello	Y	Harper	Y	Moylan	Y	Wehrli
Y	Cassidy	Y	Harris,David	Y	Mussman	Y	Welch
NV	Cavaletto	Y	Harris,Gregory	Y	Nekritz	Y	Wheeler,Barbara
Y	Chapa LaVia	Y	Hays	Y	Phelps	Y	Wheeler,Keith
Y	Cloonen	Y	Hernandez	Y	Phillips	Y	Williams
Y	Conroy	Y	Hoffman	Y	Pritchard	Y	Willis
Y	Costello	Y	Hurley	Y	Reaves-Harris	Y	Winger
Y	Crespo	Y	Ives	Y	Reis	Y	Yingling
Y	Currie	Y	Jackson	Y	Riley	Y	Zalewski
Y	D'Amico	Y	Jesiel	Y	Rita	Y	Mr. Speaker
P	Davidsmeyer	Y	Jimenez				

NO. 66

State of Illinois
99th General Assembly
Senate Vote

House Joint Resolution No. 154
RESOLUTION
THIRD READING

May 31, 2016

57 YEAS 0 NAYS 0 PRESENT

Y Althoff	Y Forby	Y Martinez	Y Raoul
Y Anderson	Y Haine	Y McCann	Y Rezin
Y Barickman	Y Harmon	Y McCarter	Y Righter
Y Bennett	Y Harris	NV McConchie	Y Rose
Y Bertino-Tarrant	Y Hastings	Y McConnaughay	Y Sandoval
Y Biss	Y Holmes	Y McGuire	Y Silverstein
NV Bivins	Y Hunter	Y Morrison	Y Stadelman
Y Brady	Y Hutchinson	Y Mulroe	Y Steans
Y Bush	Y Jones, E.	Y Muñoz	Y Sullivan
Y Clayborne	Y Koehler	Y Murphy, L.	Y Syverson
Y Collins	Y Landek	Y Murphy, M.	Y Trotter
Y Connelly	Y Lightford	Y Noland	Y Van Pelt
Y Cullerton, T.	Y Link	Y Nybo	Y Weaver
Y Cunningham	Y Luechtefeld	Y Oberweis	Y Mr. President
Y Delgado	Y Manar	Y Radogno	

> (b) The proceeds of the funds described in this Act and all other funds described in Section 11 of Article IX of the Illinois Constitution are dedicated to transportation purposes and shall not, by transfer, offset, or otherwise, be diverted by any local government, including, without limitation, any home rule unit of government, to any purpose other than transportation purposes. This Act is declarative of existing law.

The Act amends each of the above-enumerated statutes to provide for the deposit by the Illinois Department of Revenue of certain of the revenues generated or authorized by such statutes into certain transportation-related special purpose funds. The Act also prohibits local governments, including home rule units of government, from diverting the funds derived from the above-enumerated statutes as well as "all other funds described in [the Amendment]" to any purpose other than transportation purposes.

Plaintiffs' contention, in their Motion for Leave to Cite Supplemental Authority (which was granted by this Court) that the Act "moots" the basis of the trial court's dismissal order because "the [Amendment's] terms apply to home rule units of government," is false. The Act is completely consistent with the County's interpretation of the Amendment that the State and local governments must use transportation-related "moneys" in accordance with the strictures of an applicable statute. As argued above, the Act's reference to "funds described in [the Amendment]" applies to moneys that "may be expended" for "the costs of administering *laws*" (that is, statutes) related to transportation and "other *statutory* highway purposes." Neither the Act nor

the Amendment requires the County to use the revenues derived from the ordinances identified in the Complaint for "transportation" purposes.

Accordingly, this Court should affirm the trial court's dismissal of Plaintiffs' Complaint because Plaintiffs have not alleged that the County has violated any statute.

B. Plaintiffs' interpretation of the Amendment is only partially based on the Amendment's plain language and leads to absurd and unjust results.

Plaintiffs' interpretation of the Amendment focuses almost exclusively upon the language requiring moneys that are related to transportation to be used for transportation purposes and ignores the language in Section (b) providing that those moneys may be used for "the costs of administering laws." Plaintiffs' interpretation of the Amendment therefore means that *any* tax now or hereafter levied by the State or *any* of Illinois' more than 8,000 units of local government that has *any* arguable relationship to "transportation" must be *forever* dedicated to the purposes specified in paragraphs (b) and (c) of the Amendment, at least, until the Amendment is modified or repealed, if ever. This interpretation creates an unexpressed conflict with and radically diminishes Illinois' constitutional home rule article which the Amendment makes no mention of and which the ballot summary submitted to the voters clearly states the Amendment is "not intended to alter." (C 481) Plaintiffs' interpretation would also invite lawsuits like this one by transportation contractors and the like with an appetite for more construction contracts who will demand a "line-item accounting" of how the government

No. 127126

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

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

The undersigned, being first duly sworn, deposes and states that on October 13, 2021, there was electronically filed and served upon the Clerk of the above court the Brief and Appendix of the Appellee (Cross Relief Requested). On October 13, 2021, service of the Brief will be accomplished by email and 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
Amy Crawford

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