No. 127126

In the

Supreme Court of Illinois

ILLINOIS ROAD AND TRANSPORTATION 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,

Plaintiffs-Appellants,

v.

COUNTY OF COOK, a body politic and corporate,

Defendant-Appellee.

On Appeal from the Illinois Appellate Court, First Judicial District, No. 1-19-0396.
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 18 CH 02992.
The Honorable **Peter Flynn**, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFFS-APPELLANTS

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NATURE OF THE CASE

This is an action to enforce the Transportation Taxes and Fees Lockbox Amendment, popularly known as the "Safe Roads Amendment," which appears at Article IX, § 11 of the Illinois Constitution. The plaintiffs are a coalition of non-profit associations representing businesses in every sector of the transportation infrastructure construction and design industry. The plaintiffs filed a complaint against Cook County for declaratory and injunctive relief. They seek to enjoin the County from continuing to divert revenues generated by six transportation taxes to purposes other than transportation in violation of the Safe Roads Amendment. Those transportation taxes generate hundreds of millions of dollars in revenue each year. The plaintiffs alleged that their members are economically harmed by the unconstitutional diversion of those transportation funds.

The circuit court of Cook County dismissed the plaintiffs' complaint with prejudice. The circuit court found, under section 2-619 of the Code of Civil Procedure, that the plaintiffs lacked standing. The circuit court additionally found, under section 2-615 of the Code of Civil Procedure, that the Safe Roads Amendment imposes no obligations on Cook County.

The appellate court affirmed that dismissal order, but for different reasons. The appellate court found that the plaintiffs have associational standing to assert their claims for declaratory and injunctive relief. The appellate court also agreed with the plaintiffs that subsection (a) of the Safe Roads Amendment, which describes the funds that the Amendment restricts, is broad enough to encompass the Cook County transportation tax revenues that are at issue in this lawsuit. The appellate court concluded, however, that "various references" elsewhere in the Amendment suggested that those funds do not fall

within the Amendment's scope because they are spent pursuant to the County's home rule authority. In so ruling, the appellate court held that the Safe Roads Amendment is ambiguous, and it relied on extrinsic evidence to create an unwritten exemption to the Amendment for transportation funds that home rule units of government spend pursuant to their home rule authority. All parties to this litigation, by contrast, agree that the Amendment's terms are unambiguous.

There is no jury verdict. A question is raised on the pleadings, as stated immediately below.

ISSUE PRESENTED

Do the Safe Roads Amendment's restrictions on the use of "transportation funds" include "transportation funds" that are spent under home rule authority?

STATEMENT OF JURISDICTION

This Court has jurisdiction under Supreme Court Rule 315. This Court allowed the plaintiffs' petition for leave to appeal on May 26, 2021.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This appeal concerns the Transportation Taxes and Fees Lockbox Amendment, popularly known as the "Safe Roads Amendment," which appears at Article IX, § 11 of the Illinois Constitution. The Safe Roads Amendment was approved by the voters of the State of Illinois on November 8, 2016, and it states as follows:

> 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.

Ill. Const., art. IX, § 11.

This case also involves the Transportation Funding Protection Act, which was passed in June 2019 by over a three-fifths majority of the General Assembly and states as follows:

> (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.

See 30 ILCS 178/5-10.

STATEMENT OF FACTS

I. The Safe Roads Amendment was adopted to prohibit the diversion of transportation funds to purposes other than transportation.

On November 8, 2016, Illinois voters approved an amendment to the Illinois Constitution that requires revenue generated from transportation-related taxes and fees to be used exclusively for transportation purposes.

The Safe Roads Amendment won "the support of nearly 80% of those who voted on the question" in the 2016 General Election. A-3, ¶ 6. The Amendment provides that "[n]o moneys . . . derived from taxes, fees, excises, or license taxes relating to" any

transportation infrastructure or transportation operation shall be expended for purposes other than the transportation purposes specified in the Amendment. See Ill. Const., art. IX, § 11(a). The Amendment contains a list of authorized transportation purposes for which transportation funds may be spent. *Id*., § 11(b). The list includes such things as the "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 . . . ." *Id*. The Amendment adds that, "with respect to local governments," transportation funds may also be spent for "other transportation purposes as authorized by law." *Id*. Furthermore, "[n]one of the revenues" described "shall, by transfer, offset, or otherwise, be diverted to any purpose other than those described in" the Amendment. *Id*., § 11(d).

II. The plaintiffs challenged Cook County's diversion of transportation tax revenue to non-transportation purposes.

Cook County's transportation infrastructure is crumbling: on an estimated aggregate basis, 39% of the County's roads are in "Fair" or "Poor" condition; nearly half of the County's bridges are structurally deficient, functionally obsolete, or both; and the County is littered with "transit deserts" that have high demand for, but no access to, high-quality transit. C 53–54.

The plaintiffs, a coalition of non-profit associations representing businesses in the transportation infrastructure construction and design industry, sued Cook County for declaratory and injunctive relief to enforce the Safe Roads Amendment and to end the County's diversion of transportation tax revenue to non-transportation purposes. C 43. The complaint identified six transportation taxes that the County collects and spends on purposes other than transportation: (i) the Cook County Home Rule County Use Tax;

(ii) the Cook County Retail Sale of Gasoline and Diesel Fuel Tax; (iii) the Cook County New Motor Vehicle and Trailer Excise Tax; (iv) the Cook County Home Rule Use Tax for Non-Retailer Transfers of Motor Vehicles; (v) the Cook County Wheel Tax on Motor Vehicles; and (vi) the Cook County Parking Lot and Garage Operations Tax. C 44. The plaintiffs alleged that they had standing to sue because their members, contracting firms in the public transportation construction and design industry, suffer economic harm as a result of the County's diversion of transportation tax revenue. C 51.

III. 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 filed a section 2-619.1 motion to dismiss the complaint on two grounds. First, the County argued, under section 2-619 of the Code of Civil Procedure, that the plaintiffs lacked standing. C 439–40. Second, the County argued, under section 2-615 of the Code of Civil Procedure, that the Safe Roads Amendment does not impose any obligations on the County or other home rule units of government. C 440–51.

The County asserted that the Safe Roads Amendment merely allows the General Assembly to earmark funds for transportation purposes by statute, and that the Safe Roads Amendment has no application at all unless and until the General Assembly earmarks funds for such purposes. *Id*. At the hearing on the County's motion to dismiss, the County's attorney admitted: "Well, you know, my interpretation of the amendment, that it applies only when a statute directs that certain monies be expended for transportation purposes, admittedly, I can't in good conscience say that the amendment actually says that." R 19.

IV. The circuit court dismissed the complaint, finding that the Amendment imposed no obligations on home rule units of government.

The circuit court granted the County's motion to dismiss. C 391–408. The circuit

court first ruled that the plaintiffs lacked standing to sue and that disputes concerning the Safe Roads Amendment are not justiciable. C 393–99. The circuit court next adopted the County's interpretation of the Safe Roads Amendment. The circuit court ruled that: (a) the Safe Roads Amendment does not apply to home rule units of government such as Cook County, because the Amendment appears in the Revenue Article of the Constitution instead of section 6 of the Local Government Article; (b) the Safe Roads Amendment merely allows the General Assembly to statutorily earmark funds for transportation purposes; and (c) the General Assembly or the Cook County Board, not a court, is the appropriate forum for disputes over tax revenue. C 399–408.

V. The appellate court affirmed the circuit court's dismissal order, finding that the Safe Roads Amendment does not apply to tax revenue that is spent under home rule authority.

Disagreeing with the circuit court, the appellate court found that the plaintiffs had standing and that the dispute was justiciable. A-13–17, ¶¶ 49–62. In fact, the appellate court found, "it would defy logic and fundamental fairness to deny plaintiffs standing" in light of the economic harm that the County's diversion of transportation tax revenue causes to contractors in the transportation construction and design industry, including the plaintiffs' members. A-14, ¶ 51. The appellate court also found "no barriers to justiciability" because the resolution of this dispute required the circuit court only to "decide what the law is and enter judgment accordingly." A-17, ¶¶ 61–62. Yet the appellate court affirmed the circuit court's dismissal order, "albeit for different reasons" than those stated by the circuit court. A-2, ¶ 4.

The appellate court began its analysis of the Safe Roads Amendment with subsection (a), the subsection that defines which taxes and fees fall within the Amendment's scope. Again, that subsection states:

> 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).

See Ill. Const., art. IX, § 11(a).

The appellate court recognized that a "reading of subsection (a) of the Amendment, alone, would support plaintiffs' argument" that the Amendment applies to the Cook County transportation taxes that were identified in the complaint. A-22, ¶ 84. Subsection (a)'s "language is broad[,]" the appellate court observed. A-23, ¶ 85. "It contains no limitation on the types of 'taxes, fees, excises, or license taxes' to which the Amendment applies. It contains no language or term of art that we would associate exclusively with acts of the General Assembly. It makes no attempt to differentiate between taxes and fees generated by operation of a statute versus those generated by operation of a municipal ordinance." *Id*. (internal citation omitted). Later in its opinion, the appellate court recognized that subsection (a) "speaks in the broadest terms about revenue sources, favoring plaintiffs' interpretation." A-34, ¶ 121.

The appellate court recognized that nothing in the Amendment states that tax revenues spent under home rule authority are exempt from the Amendment's scope. A-33, ¶ 118. The appellate court further acknowledged the plaintiffs' argument that "if the intent

of the framers were to altogether exclude home-rule spending powers from the Amendment, a few words would have done the trick." A-35, ¶ 124.

But the appellate court found that subsection (a) of the Amendment is "cabined" by subsections (b), (c) and (e) of the Amendment (A-34, ¶ 121), which address different subjects:

- ***Subsection (b)*** identifies permitted uses for transportation funds that fall within the scope of subsection (a). It explains that such revenue may be "expended for" a list of specified transportation purposes "and, with respect to local governments, other transportation purposes as authorized by law." See Ill. Const., art. IX, § 11(b).
- ***Subsection (c)***, in turn, defines and limits one of the transportation purposes specified in subsection (b)—the "costs of administering laws related to vehicles and transportation . . . ." *Id*., § 11(c).
- ***Subsection (e)***, meanwhile, 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).

Although subsection (a) defines which taxes are subject to the Amendment and the other subsections address different subjects, the appellate court found that "various references" in those other subsections to the word "laws" and the word "statutory" suggest "an intent to only sequester revenues spent pursuant to statute." A-26, ¶ 94. The appellate court noted, for example, that subsection (b)'s list of permitted transportation purposes included, among other things, "statutory refunds" and "statutory highway purposes." A-25–26, ¶ 93 (emphasis omitted). The appellate court did not dispute that subsection (b)'s list of permitted transportation expenditures also identifies transportation purposes that are

not modified by the words "statutory" or "laws." See Ill. Const., art. IX, § 11(b) (including "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").

The appellate court noted that the Amendment's drafters "made no mention of statutes or ordinances" in subsection (a) "and, by their absence, suggested a scope broad enough to encompass both." A-28, ¶ 101. Yet the appellate court found that the appearance of the words "statutory" and "laws" elsewhere in the Amendment indicated that the drafters meant to implicitly exclude tax revenues spent under home rule authority. A-28–35, ¶¶ 101–25. The appellate court conceded, however, that the plaintiffs' interpretation was "not altogether unreasonable" in light of subsection (a)'s "breadth . . . ." A-34, ¶ 124.

The appellate court concluded that the Amendment was ambiguous. A-35, ¶ 125. The parties, by contrast, had agreed that the Amendment is unambiguous. See A-54–59 (County's description of the Amendment as "plain").

Because it found the Safe Roads Amendment to be ambiguous, the appellate court considered evidence of the Amendment's legislative history, including transcripts of debates in the General Assembly, although "not all" of that evidence struck the appellate court "as entirely accurate . . . ." A-43, ¶ 142. The appellate court also used a voter's guide to interpret the Amendment. A-43–47, ¶¶ 145–54. The voter's guide described the Amendment's intended effect in "broadly worded" terms, it made no distinction between the kinds of transportation tax revenues that were subject to the Amendment's terms, and it spoke of no exemption for home rule units. A-45, ¶ 147. The appellate court noted, however, that the voter's guide stated that the Amendment was not intended to "alter" home

rule powers. *Id*. The appellate court purported to harmonize all this language in the voter's guide by concluding that the Amendment "*will* restrict local-government spending—except when a local government is spending under its 'home rule powers,' as the later phrase qualifies." A-45, ¶ 148 (emphasis in opinion). The appellate court did not claim that this formulation—*i.e.*, that the Amendment would restrict local government spending except when a local government spends money under home rule powers—was expressly stated in the voter's guide or in the Amendment. *Id*.

The appellate court also rejected the plaintiffs' reliance on the Transportation Funding Protection Act (30 ILCS 178/5-10), a statute which was enacted in 2019 and provides that the funds described in the Amendment "shall not . . . be diverted by any local government, including, without limitation, any home rule unit of government, to any purpose other than transportation purposes." A-48–49, ¶¶ 156–60. The appellate court noted that the Act did not contain "language specifically preempting home-rule powers" and thus concluded that the Act referred only "to a home-rule unit's spending of tax proceeds *pursuant to statute.*" A-49, ¶ 158 (emphasis in original).

The appellate court concluded that the Amendment "does not restrict, or govern in any way, the spending of" revenues generated by the Cook County transportation taxes identified in the complaint, because the "County spends the revenue from each of these taxes pursuant to its home-rule spending power, not in accordance with a statute." A-51, ¶ 167. The appellate court thus affirmed the circuit court's dismissal order. *Id*., ¶¶ 167–70.

ARGUMENT

The Safe Roads Amendment was approved by the people of Illinois "to protect funds generated from transportation-related taxes from being spent for any purposes other than transportation-related ones." A-2, ¶ 6. "Roughly sketched," the Safe Roads Amendment "requires that funds collected from transportation-related taxes and fees be spent only for transportation purposes." A-2, ¶ 1.

The issue presented by this appeal is whether the Safe Roads Amendment "covers only those revenues spent in accordance with state law" and thus implicitly "*exclude[s]* transportation-related revenues spent pursuant to home-rule power." A-34, ¶ 121 (emphasis in original). On this critically important issue, the appellate court found that the Safe Roads Amendment is ambiguous. A-35, ¶ 125. Relying on extrinsic evidence of the Amendment's meaning, the appellate court held that the Amendment excludes transportation funds that are spent under home rule powers. A-50–51, ¶¶ 166–67. The appellate court therefore affirmed the circuit court's dismissal of the plaintiffs' complaint for declaratory and injunctive relief against Cook County. A-51, ¶ 167.

The appellate court's interpretation of the Safe Roads Amendment was erroneous. By its terms—which all parties to this lawsuit agree are plain—the Amendment restricts the expenditure of *all* "moneys . . . derived from taxes, fees, excises, or license taxes relating" to specified transportation purposes or relating to "any other transportation infrastructure or transportation operation . . . ." See Ill. Const., art. IX, § 11(a). The appellate court recognized that the "breadth" of this language "gives one pause." A-34, ¶ 124. It "contains no limitation on the types of 'taxes, fees, excises, or license taxes' to which the Amendment applies." A-23, ¶ 85 (internal citation omitted). "It contains no

language or term of art that we would associate exclusively with acts of the General Assembly[,]" and it "makes no attempt to differentiate between taxes and fees generated by operation of a statute versus those generated by operation of a municipal ordinance." *Id*.

Yet, from "various references" elsewhere in the Amendment, the appellate court inferred an exception to the Amendment for transportation taxes and fees that are spent pursuant to home rule authority.[1] A-26, ¶ 94. The appellate court reached this conclusion notwithstanding "the absence of any mention of home-rule units and their powers anywhere in the Amendment." A-31, ¶ 110. In doing so, the appellate court violated a cardinal principle of constitutional interpretation. The Constitution cannot be rewritten "to include restrictions and limitations that the drafters did not express and the citizens of Illinois did not approve." *Kanerva v. Weems*, 2014 IL 115811, ¶ 41.

Like other constitutional provisions that restrict governmental power, the Safe Roads Amendment is "a statement by the people of Illinois, made in the clearest possible terms," that the State and local governments lack a certain power—here, the power to divert transportation tax revenue to purposes other than transportation. *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 76. "This is a restriction the people of Illinois had every right to impose." *Id*. It should be enforced as written.

[1] Because of its focus on the legal authority for *spending* (as opposed to *collecting*) transportation tax revenue, the appellate court's interpretation would apparently exempt from the Amendment's scope at least some home rule transportation taxes, such as the Cook County Home Rule County Use Tax, whose collection is authorized or governed by statute. See 55 ILCS 5/5-1008 (authorizing home rule counties to impose a use tax and describing how its rate may be calculated).

I. The standard of review is *de novo*.

Because the appellate court affirmed the circuit court's dismissal of the complaint under section 2-615 of the Code of Civil Procedure, the standard of review is *de novo.* See *Cochran v. Securitas Sec. Servs. USA, Inc.,* 2017 IL 121200, ¶11 ("Our review of an order granting a section 2-615 motion to dismiss is *de novo*"). The *de novo* standard requires this Court to "perform the same analysis that a trial judge would perform and give no deference to the judge's conclusions or specific rationale." *Waters v. City of Chicago*, 2012 IL App (1st) 100759, ¶ 8.

II. The Safe Roads Amendment prohibits the diversion of transportation funds to non-transportation purposes, and it contains no exemption for transportation funds that are spent under home rule authority.

The appellate court misinterpreted the plain and unambiguous terms of the Safe Roads Amendment. On its face, the Safe Roads Amendment contains no exemption for home rule units of government or, to use the appellate court's formulation, for expenditures of transportation tax revenue pursuant to home rule authority. See generally Ill. Const., art. IX, § 11. The appellate court's opinion should therefore be reversed.

A. The appellate court added a non-existent limitation to subsection (a) of the Safe Roads Amendment.

Where "the language of the Constitution is not ambiguous, it is not permissible to interpret it differently from its plain meaning . . . ." *Neiberger v. McCullough*, 253 Ill. 312, 323–24 (1912). Put another way, when interpreting the Constitution, a court should "first and foremost look to the plain language adopted by the framers[,]" because the plain language of the Constitution is "the most certain route to determining the framers' intent." *Hooker v. Illinois State Bd. of Elections*, 2016 IL 121077, ¶ 47. If the relevant

constitutional language is unambiguous, it should be enforced as written and without resort to extrinsic evidence. *Id.*, ¶ 35.

The constitution's language "should be given its plain and commonly understood meaning unless it is clearly evident that a contrary meaning was intended." *Coal. for Pol. Honesty v. State Bd. of Elections*, 65 Ill. 2d 453, 464 (1976) (adding that anyone "contending that language should not be given its natural meaning understandably has the burden of showing why it should not"). A court's "objective when construing a constitutional provision is to determine and effectuate the common understanding of the citizens who adopted it, and courts will look to the natural and popular meaning of the language used as it was understood when the constitution was adopted." *Kanerva*, 2014 IL 115811, ¶ 36 (internal citations omitted).

Constitutional text cannot be rewritten "to include restrictions and limitations that the drafters did not express and the citizens of Illinois did not approve." *Id.*, ¶ 41. In other words, "courts should not, under the guise of interpretation, add requirements or impose limitations that are inconsistent with the provision's plain meaning." *Cook v. Ill. State Bd. of Elections*, 2016 IL App (4th) 160160, ¶ 18. The United States Supreme Court recently reaffirmed this principle in the context of statutory interpretation, explaining that a "court does not get to delete inconvenient language and insert convenient language to yield the court's preferred meaning." *Borden v. United States*, No. 19-5410, 593 U.S. ___ (2021), 2021 WL 2367312, at * 8 (U.S. June 10, 2021).

The Safe Roads Amendment contains six subsections. Subsection (a) is the provision that explains which taxes and fees fall within the Amendment's scope. See Ill. Const., art. IX, § 11(d) (subsection (a) "describe[s]" the "revenues" that shall not be

"diverted to any purpose" other than the purposes "described in subsections (b) and (c) of this Section").

Subsection (a) 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).

See *id.*, § 11(a). This language is broad, plain and unambiguous: "No moneys, including bond proceeds, derived from taxes, fees, excises, or license taxes relating to" certain types of transportation infrastructure or "relating to any other transportation infrastructure or transportation operation, shall be expended for purposes other than" the transportation purposes specified elsewhere in the Amendment. *Id*. This language is certainly broad enough to encompass the Cook County transportation taxes that are identified in the complaint, and indeed, the County has never disputed that those taxes relate to transportation infrastructure or transportation operations. R 53–55.

The appellate court recognized the breadth of subsection (a). A-23, ¶ 85. On its face, the appellate court recognized, subsection (a) "contains no limitation on the types of 'taxes, fees, excises, or license taxes' to which the Amendment applies," it "contains no language or term of art that we would associate exclusively with acts of the General Assembly," and it "makes no attempt to differentiate between taxes and fees generated by operation of a statute versus those generated by operation of a municipal ordinance." *Id*. (internal citation omitted).

Subsection (a) is so broad, in fact, that the Amendment's drafters found it necessary to state in subsection (f) that "[f]ederal funds may be spent for any purposes authorized by federal law." See Ill. Const., art. IX, § 11(f). This express exemption for federal funds illustrates the breadth of subsection (a), and it also shows that when the drafters wanted to exempt a certain type of tax revenue from the Amendment's scope, they said so expressly. If the drafters had intended to exempt home rule units, home rule taxes, or home rule expenditures from the Amendment's scope, they would have stated such a significant exemption in equally clear and explicit terms. See *White v. Barrett*, 45 Ill. 2d 206, 211 (1970) (*expressio unius est exclusio alterius*). They did not.

The appellate court based its interpretation of the Amendment on a distinction between the different types of legal authority under which transportation funds may be spent: more specifically, a distinction between transportation funds that are spent under home rule authority and transportation funds that are spent under statutory mandates. A-19–22, ¶¶ 70, 73–83. The most fundamental problem with this distinction is that, as even the appellate court recognized, it is entirely absent from subsection (a). A-23, ¶ 85. On its face, subsection (a) does not speak in terms of the legal authority for spending transportation funds. It says "[n]o moneys . . . shall be expended[,]" (Ill. Const., art. IX, § 11(a)), not "[n]o moneys . . . shall be expended *under the mandates of a statute*," or "[n]o moneys, *except those spent pursuant to home rule authority* . . . shall be expended." The framers could have drafted the amendment imagined by the appellate court, but they did not.

The appellate court also speculated that "the broad language in subsection (a)" exists because, "in theory, *any* spending of tax revenue *might* be governed by statute." A-

34, ¶ 122 (emphasis in original). But this is miles away from the Amendment's actual language. Subsection (a) does not speak in terms of spending that is governed by statute, and if the drafters wanted subsection (a) to apply only when spending is controlled by a statute, they certainly could have said so. The clear reason why subsection (a) is broadly worded is that the drafters intended it to be broadly applied. Likewise, the limitation described by the appellate court is not stated in the Amendment because the drafters did not intend it.

B. Subsection (a) of the Safe Roads Amendment is not "cabined" by language used in subsections (b), (c) or (e) of the Amendment.

To justify reading this limitation into subsection (a), the appellate court looked to other provisions of the Amendment, even though subsection (a) is the sole provision that "describe[s]" which funds are restricted by the Amendment. See Ill. Const., art. IX, § 11(d). Other subsections in the Amendment perform other functions: Subsection (b) describes the transportation purposes for which restricted funds may be spent, subsection (c) further defines one of those authorized purposes, and subsection (e) explains what happens if "the General Assembly appropriates funds for a mode of transportation not described" in the Amendment. *Id*., § 11(b), (c), (e).

It has long been recognized that if "the meaning of any particular phrase or section standing alone is clear, courts do not apply any other section or part of an act to create doubt." 2A Sutherland Statutory Construction § 47:2 (7th ed.). Yet the appellate court held that "various references" in subsections (b), (c) and (e) "cabined" the scope of subsection (a). A-26, ¶ 94; A-34, ¶ 121. The appellate court was not referring to a clear or express exemption, such as the exemption for federal funds in subsection (f). Instead, the "various references" consist of the words "laws" and "statutory" in subsection (b),

which identifies the purposes for which restricted transportation funds may be spent, and in subsection (c), which further defines one of those purposes. A-23, ¶ 86 (emphasizing those words in subsection (b)); A-29, ¶ 103 (emphasizing similar words in subsection (c)). For example, subsection (b) refers to "statutory refunds[,]" and subsection (c) defines the "costs of administering laws related to vehicles and transportation." *Id*. Subsection (e), meanwhile, mentions the General Assembly, but only in the course of discussing funding for modes of transportation that are not described in the Amendment. See Ill. Const., art. IX, § 11(e).

None of these words or phrases in subsections (b), (c) or (e) say, or even fairly imply, that the Amendment restricts only funds whose expenditure is governed by statute, or that the Amendment exempts transportation funds that are spent under home rule authority. And none of the words or phrases on which the appellate court relied to infer such a limitation on the Amendment's scope ("laws," "statutory" or "General Assembly") even appear in subsection (a). A-28, ¶ 101 (acknowledging that, in subsection (a), the drafters made "no mention of statutes or ordinances and, by their absence, suggested a scope broad enough to encompass both").

Even assuming for the sake of argument that the words "laws," "statutory" or "General Assembly" suggest a limitation on the Amendment's scope, those limitations cannot somehow be lifted from the subsections in which they appear and grafted onto subsection (a)—the subsection that describes which funds fall within the Amendment's scope. A limitation in one subsection of an enactment cannot be injected into a different subsection that *omits* the limitation, as the appellate court explained in the context of statutory interpretation:

> *Reading a provision in context does not give one a license to disregard the clear language of the provision itself.* Statutes are highly deliberative utterances . . . . Thus, we should normally assume that whenever the legislature intended a limitation, it expressed that limitation; conversely, if the limitation is absent from the text, the legislature presumably did not intend the limitation. The utility of statutes depends on the reader's being able to rely on the plain meaning of the text.
>
> . . . Subsections (d)(1) and (e)(4) demonstrate that the legislature knew how to use the term "basic local exchange service" in conjunction with a discussion of carrier-to-carrier wholesale service. The legislature did not use that term in subsection (g)—an omission one could consider to be significant . . . . Unless an improbably absurd construction results, we should be reluctant to second-guess the plain, unqualified language of a statutory provision, especially if, elsewhere in the statute, the legislature demonstrates an ability to state the qualification.

Ill. Bell Telephone Co. v. Ill. Commerce Comm'n, 362 Ill. App. 3d 652, 660–61 (2005) (emphasis added; internal citations omitted); see also *Gutraj v. Bd. of Trustees of Police Pension Fund of Vill. of Grayslake*, 2013 IL App (2d) 121163, ¶¶ 14–15 (rejecting a litigant's attempt to "infer[]" in certain statutory provisions a "limitation from other parts of the Code[,]" and refusing to "read a limitation into" certain provisions "that is not there"); *Fox Valley Fams. Against Planned Parenthood v. Planned Parenthood of Ill.*, 2018 IL App (2d) 170137, ¶ 20 (same).

When "the legislature uses certain words in one instance and different words in another, it intends different results." *Divane v. Smith*, 332 Ill. App. 3d 548, 553 (2002). Here, the Amendment's drafters omitted the words "laws," "statutory" and "General Assembly" from subsection (a), and the use of those words in other subsections of the same Amendment shows that the drafters knew how to use those words when they wanted to do so. The omission of those words from subsection (a) is therefore meaningful. It shows that, to the extent those words can be deemed to be limiting, the drafters did not want subsection (a) to be limited. This is particularly true where, as here, the drafters clearly

indicated that the function of subsection (a) is to describe the revenues that fall within the Amendment's scope, while other subsections perform different functions. See Ill. Const., art. IX, § 11(a), (b), (c), (e).

Moreover, even if the words "laws," "statutory" or "General Assembly" appeared somewhere in subsection (a)—which they do not—they still would not show that the drafters somehow intended an unexpressed exemption for home rule expenditures. Where those words actually appear, in subsections (b), (c) or (e), they are not used to limit the types of tax expenditures that are subject to the Amendment. They are used instead either to define the types of purposes for which restricted tax revenue may be spent, or to address funding for new modes of transportation. The appellate court simply pointed to the appearance of those words in subsections (b), (c) and (e) without fully considering what function those words perform in the subsections where they appear.

In context, the supposedly limiting words identified by the appellate court express no exemption for the expenditure of tax revenues under home rule authority, nor do they express any other limitation on the scope of transportation funds that are restricted by the Amendment. Instead, those words are used to express the following things:

- "Transportation funds may be expended for[,]" among other transportation purposes, "the costs of administering *laws* related to vehicles and transportation . . . ." See *id.*, § 11(b) (emphasis added); see also *id*., § 11(c).

To be clear, that is just *one* transportation purpose mentioned in subsection (b). Others include the "construction, reconstruction, maintenance, repair, and betterment of highways, roads, streets, bridges, mass transit, intercity passenger rail, ports, airports, or other forms of transportation . . . ." *Id*., § 11(b). None of those other purposes are modified by the word "laws," the word "statutory," or any equivalent modifier. *Id*.

- Among other transportation purposes, transportation funds may be expended for "*statutory* refunds and adjustments provided in those *laws*"—*i.e.*, "laws related to vehicles and transportation . . . ." *Id*. (emphasis added).

That language explains that "statutory refunds" provided in transportation laws (as opposed to other types of refunds) constitute one permitted purpose for spending transportation funds.

- Among other transportation purposes, transportation funds may be expended for "other *statutory* highway purposes." *Id*. (emphasis added).

This language describes one of the transportation purposes that may be subsidized with restricted transportation funds, and the modifier "statutory" distinguishes "statutory highway purposes" from other types of highway purposes.

- Authorized purposes for spending transportation funds include, with respect to local governments, "other transportation purposes *as authorized by law*." *Id*. (emphasis added).

This language states that local governments may spend transportation funds on the transportation purposes specified in subsection (b) or on other transportation purposes "authorized by law." It does not say that transportation funds are exempt from the Amendment if they are spent under home rule authority.

- "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).

This subsection refers to State funding for new modes of transportation that are not mentioned elsewhere in the Amendment; in other words, modes of transportation other than "highways, roads, streets, bridges, mass transit, intercity passenger rail, ports," or "airports . . . ." See *id*., § 11(b). The General Assembly may fund new modes of transportation if it creates a dedicated funding source and thus does not diminish funds

available for the more commonly used modes of transportation that are listed in subsection (b). Again, this subsection does not describe which types of funds are restricted.

In short, when these modifiers appear in subsections (b), (c), or (e), they are not used to limit the types of transportation funds that are subject to the Amendment. They are used instead either to define the types of purposes for which restricted transportation funds may be spent or to address funding for new modes of transportation.

The modifiers singled out by the appellate court also are not used to modify every spending purpose listed in subsection (b). As the appellate court conceded, "only some of the spending purposes listed in subsection (b) are modified by the word 'law' or 'statutory,' leaving open the possibility that the framers omitted those modifiers when describing other purposes because they intended a broader meaning than merely 'statutory' purposes." A-35, ¶ 124. The drafters omitted those modifiers from the other spending purposes discussed in subsection (b) for the simple reason that they did not want those purposes to be so modified. This interpretation is consistent with the principle that courts must ordinarily resist reading words into a statute that do not appear on its face. See *People v. Lewis*, 223 Ill. 2d 393, 402 (2006) ("We will not depart from the plain statutory language by reading into the statute exceptions, limitations, or conditions that the legislature did not express."); *Dean v. United States*, 556 U.S. 568, 572 (2009) ("[W]e ordinarily resist reading words or elements into a statute that do not appear on its face.").

The appellate court rhetorically asked why the Amendment "mention[s] 'laws' and 'statutes' without mentioning 'ordinances' too . . . ." A-28, ¶ 101. But the omission of the word "ordinance" from subsections (b), (c) and (e) has no bearing on the scope of restricted funds. The scope of restricted funds is governed by subsection (a), which uses none of the

terms that the appellate court deemed to be limiting. Subsections (b) and (c) discuss the transportation purposes for which transportation funds may be spent, and the drafters chose not to define those purposes in reference to local ordinances. Many of those purposes are not defined in reference to statutes, either.

The appellate court also suggested that, if subsection (a) encompasses transportation funds that are spent under home rule authority, then the Amendment's drafters "seriously whiffed" by not mentioning home rule units in subsection (e). A-31, ¶ 109. Subsection (e) provides 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." See Ill. Const., art. IX, § 11(e). The appellate court wondered why the drafters would have made the General Assembly solely responsible for providing a dedicated source of funding, since home rule units are "equally able to 'provide a dedicated source of funding'" for new modes of transportation. A-31, ¶ 109.

The appellate court cited no authority for its assertion that home rule units are "equally able" as the State to provide such funding, but even assuming that is true, the drafters may just have wanted or expected the State to take responsibility for funding new modes of transportation instead of leaving that responsibility to local governments. There is nothing absurd about that approach, and nothing about subsection (e) shows that the drafters wanted to exempt home rule expenditures *entirely* from the Amendment's restrictions. If that were the drafters' intent, they would have expressly exempted funds spent under home rule authority, as they expressly exempted federal funds in subsection (f). Or they at least would have drafted subsection (a) more narrowly—for example, by limiting subsection (a) to moneys "expended under the mandates of a statute," or by using

some other combination of the terms that the appellate court deemed to be limiting ("statutory," "laws" or "General Assembly"). None of those supposedly limiting terms were used in subsection (a).

The appellate court concluded that subsection (a) is so broad in scope because the drafters understood "that the limitations in subsections (b), (c), and (e) would cabin that scope." A-34, ¶ 123. What limitations? Subsections (b), (c) and (e) do not limit subsection (a) at all. They do not even address the same subject. In the one instance where the drafters clearly *did* intend to limit the types of funds that are restricted by the Amendment, in subsection (f), they did so in plain and unmistakable language. If the drafters intended another important limitation—here, a wholesale exemption for transportation funds that are spent under home rule authority—they would have used equally plain and unmistakable language. They would not have expected others to cobble together such a limitation from "various references" to the word "statutory" and the word "laws" in subsections of the Amendment that address different subjects.

The appellate court explained its use of supposedly limiting terms from subsections (b), (c) and (e) to limit an entirely different subsection by asserting that subsection (a) should not be "isolate[d.]" A-23, ¶ 86. Rather, the appellate court stated, the Amendment should be read "as a whole." *Id*. Reading the Amendment as a whole, however, does not justify ignoring the breadth of subsection (a), nor can it justify reading limitations into subsection (a) that were not stated in its actual text. See *Ill. Bell Telephone Co.*, 362 Ill. App. 3d at 660 ("Reading a provision in context does not give one a license to disregard the clear language of the provision itself."). No provision in the Amendment states any

limitation that would exempt transportation funds spent by home rule units under their home rule authority.

C. The Amendment makes no distinction between "local governments" that have home rule authority and those that do not, or between transportation funds that are spent under home rule authority and those that are not.

The appellate court placed considerable weight on subsection (b)'s statement that local governments may spend transportation funds either on the transportation purposes specified in that subsection or on "other transportation purposes as authorized by law." See Ill. Const., art. IX, § 11(b). The appellate court found it "telling" that "this language treats home-rule and non-home-rule units the same[,]" as both fall within the category of "local governments . . . ." A-29, ¶ 106.

It is telling, but not for the reason indicated by the appellate court. It shows that the drafters did not intend to treat home rule units any differently from other units of local government. Both are bound by the Amendment, and there is no distinction between transportation funds that are spent under home rule authority versus those spent under other types of legal authority. Because the drafters made no such distinction in the Amendment's text, none can be written into the Amendment now under the guise of interpretation. See *Cook*, 2016 IL App (4th) 160160, ¶ 18 ("[C]ourts should not, under the guise of interpretation, add requirements or impose limitations that are inconsistent with the provision's plain meaning.").

The appellate court pointed out that home rule units "do not always require authorization by law when they spend tax revenue." A-29, ¶ 106. The appellate court rhetorically asked: "If plaintiffs are correct that revenues spent pursuant to traditional home-rule power are included within this scope, what 'authorization by law' should that

home-rule unit consult? If no statute governs its spending, what statute could the home-rule unit possibly consult for authority?" A-30, ¶ 106. The answer is that a home rule unit, like any other local government, will consult subsection (b), which provides a list of authorized transportation purposes for which transportation funds may be spent. No statute needs to be consulted. The General Assembly may enact a statute that adds to subsection (b)'s list of authorized transportation purposes for local governments, and if it does, any local government may consult that statute as well. But that need not happen because subsection (b) already provides a very thorough list of authorized transportation purposes. Additionally, the appellate court overlooked the omission of "authorized by law" from subsection (a), the subsection that describes which funds are restricted.

The appellate court next observed that "when the Amendment did mention 'local governments' . . . it lumped all units of local government together, home-rule and non-home-rule alike." A-33, ¶ 119. That is exactly the point. The Amendment's text shows no intention to treat them differently. It shows that the drafters intended to treat them alike, not that they intended to create a special exemption for funds spent under home rule authority. See *People ex rel. Kempiners v. Draper*, 113 Ill. 2d 318, 320–21 (1986) (a provision of the Municipal Code that granted extraterritorial jurisdiction to "*all* municipalities" did not distinguish between home rule and non-home rule municipalities and therefore was "clearly not tailor-made for defining the jurisdiction of home rule units") (emphasis in original).

The appellate court's interpretation, however, treats home rule units very differently from non-home rule units. Under the appellate court's interpretation, the Amendment restricts *all* transportation fund spending by non-home rule units, but

transportation fund spending by home rule units is totally unrestricted so long as no State statute dictates otherwise. The ultimate outcome in this case is that, in the appellate court's opinion, Cook County is permitted to divert hundreds of millions of dollars in transportation funds each year to non-transportation purposes. Local governments without home rule authority, on the other hand, enjoy no such sweeping exemption from the Amendment's terms. If the drafters wanted to extend such special treatment to home rule units, one would expect them to have said so in the Amendment's text.

The appellate court acknowledged that the Amendment treats home rule and non-home rule units "without distinction," but reasoned that this "makes sense only" if the Amendment's application is limited to "situations where a *statute* governs the local governments' spending of tax revenue, rendering local governments of all kinds, home-rule or not, the same in their subordination to state law." A-33, ¶ 119 (emphasis in original). Contrary to the appellate court's unsupported assertion, there is nothing nonsensical about requiring all units of local government, home rule and non-home rule alike, to comply with a constitutional prohibition on the diversion of transportation funds to non-transportation purposes. Moreover, nothing in the Amendment says that it applies "only in situations where a statute governs the local governments' spending of tax revenue." The drafters never expressed such a significant limitation in the Amendment's text, because no such limitation was ever intended. See *Ill. Bell Telephone Co.*, 362 Ill. App. 3d at 660 (if intended, a limitation normally would have been expressed).

D. The appellate court's interpretation is directly contrary to the Amendment's purpose.

The appellate court also overlooked the purpose that the Amendment is plainly intended to serve. See *Client Follow-Up Co. v. Hynes*, 75 Ill. 2d 208, 216 (1979) ("In

construing the meaning of a constitutional provision, it is appropriate and helpful to examine it in light of the history and condition of the times, and the particular problem which the convention sought to address by incorporating in the document the questioned provision."); *Wolfson v. Avery*, 6 Ill. 2d 78, 88 (1955) (when interpreting a constitutional provision, "it is appropriate to consider the mischief designed to be remedied and the purpose sought to be accomplished by the provision").

The Amendment's purpose is to "require[] that funds collected from transportation-related taxes and fees be spent only for transportation purposes." A-2, ¶ 1. This clear purpose manifests itself in the Amendment's broad text and its paragraphs of specific restrictions on the State and local governments' power to divert transportation funds from transportation purposes. In light of this clear purpose, it would make no sense for the drafters to implicitly exempt transportation funds that are spent under home rule authority. Such an exemption would, in the appellate court's interpretation, cover all transportation tax revenue collected or received by home rule units where no State statute specifically requires that revenue to be spent on transportation, even if the tax's collection is authorized and its rate is governed by a State statute (see, *e.g.*, 55 ILCS 5/5-1008). A-50–51, ¶ 166.

Such an exemption would allow an enormous amount of transportation tax revenue to be spent on purposes other than transportation. For Cook County alone in just one recent fiscal year, the six transportation taxes identified in the complaint generated nearly $250 million in tax revenue. See C 59–61. Exempting these funds from the Amendment's scope certainly would not advance the clear purpose of the Amendment. Such an exemption would severely limit the Amendment's effectiveness in ensuring that taxes paid by Illinois taxpayers on transportation functions are used to build roads, repair bridges, and otherwise

develop or maintain our transportation infrastructure. Illinois voters would surely be surprised to learn now that the Amendment they approved contains such a sweeping exception that appears nowhere in the Amendment's actual language.

It also is not plausible that the drafters would have chosen to express such a consequential limitation only in the most cryptic and oblique way—by wording subsection (a) broadly, and then sprinkling other subsections with such terms as "laws," "statutory" and "General Assembly." When the drafters wanted to exempt something, they used clear and unambiguous language to do so. See Ill. Const., art. IX, § 11(f). If the drafters wanted to exempt all transportation funds collected by home rule units where no State statute governs how those funds are spent, they would have used equally clear and unambiguous language. Drafters normally do not "hide elephants in mouseholes." *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 468 (2001).

The appellate court speculated that the drafters worded subsection (a) broadly "because, *in theory*, any spending of tax revenue might be governed by statute[,]" and that would include, "*in theory*," all spending by home rule units. A-34, ¶ 122 (emphasis added). Given the language, structure and purpose of the Amendment, the far more plausible interpretation is that the drafters worded subsection (a) broadly because they wanted it to be broad. The drafters were not chasing theories. They likely did not contemplate that one day *all* home rule spending would be controlled by statute—a deeply unlikely hypothetical scenario that would constitute a total change in our State's system of local government. The drafters, and the voters who approved the Amendment, simply wanted to prohibit the diversion of transportation tax revenue to purposes other than transportation. That is the

outcome the plaintiffs seek in this case, and it is required by the Amendment's plain and unambiguous language.

For all of these reasons, the appellate court erred in its interpretation of the Safe Roads Amendment. Subsection (a) of the Amendment encompasses the Cook County transportation taxes at issue in this lawsuit, and nothing in the Amendment expresses any exemption that would apply to those taxes. The complaint therefore should not have been dismissed for failure to state a claim, and the appellate court's opinion should be reversed.

III. The Safe Roads Amendment is unambiguous and cannot be modified by extrinsic evidence.

The appellate court erred by using extrinsic evidence to interpret the Amendment's plain and unambiguous language. Furthermore, the extrinsic evidence that the appellate court considered included unreliable comments by a handful of legislators during a debate over whether to place the Amendment on the ballot. The appellate court also misinterpreted the voter's guide to the Amendment and the more recent Transportation Funding Protection Act. The voter's guide and the Transportation Funding Protection Act further demonstrate what the Amendment's plain language already makes clear: the Amendment prohibits the diversion of transportation funds, regardless of whether they are spent under home rule authority.

A. Because the Safe Roads Amendment is plain and unambiguous, extrinsic evidence of its meaning should not be considered.

"The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1749 (2020). Consequently, if constitutional language is plain and unambiguous, it should be interpreted without resort to extrinsic evidence. *Hooker*, 2016 IL 121077, ¶ 35; *Cook*, 2016 IL App (4th) 160160, ¶ 24 (disregarding

arguments based on "historical notes to the 1970 Constitution and public policy" because the relevant constitutional provision "is not ambiguous"). The rule against using extrinsic evidence to interpret unambiguous language applies "perhaps even more" when "construing constitutional provisions" because "the language in question was what was presented to the citizens who voted to approve it." *Maddux v. Blagojevich*, 233 Ill. 2d 508, 527 (2009).

Language "is not ambiguous simply because the parties disagree as to its meaning." *Cook*, 2016 IL App (4th) 160160, ¶ 20. In addition, courts should not "torture ordinary words until they confess to ambiguity." *Hobbs v. Hartford Ins. Co. of the Midwest*, 214 Ill. 2d 11, 31 (2005) (quoting *Western States Ins. Co. v. Wis. Wholesale Tire, Inc.*, 184 F.3d 699, 702 (7th Cir. 1999)). Put another way, courts should not strain to find ambiguity where it does not really exist. *Id*. at 17.

Also, the existence of ambiguity is determined from the face of the constitutional language, not from extrinsic evidence. See *Graham v. Illinois State Toll Highway Auth.*, 182 Ill. 2d 287, 301 (1998) (extrinsic evidence will be considered only if "the meaning of a [constitutional] provision is not clear *from its language*") (emphasis added). Thus, the "purpose of legislative history is to resolve ambiguities, not to create them." *People v. Hill*, 333 Ill. App. 3d 783, 791 (2002).

In this case, the parties agreed that the Amendment's language is "plain" (see A-54–59), and for good reason. The appellate court recognized that, on its face, subsection (a) of the Amendment is broad enough to encompass the taxes at issue in this lawsuit. A-22, ¶ 84; A-23, ¶ 85; A-28, ¶ 101. The appellate court also recognized that the Amendment nowhere expressly exempts the taxes at issue in this lawsuit. A-33, ¶ 118. Accordingly,

there is no ambiguity here. On its face, the Amendment answers the question of whether the taxes at issue in this lawsuit fall within the Amendment's scope. Therefore, no resort to extrinsic evidence is necessary or even appropriate. *Hooker*, 2016 IL 121077, ¶ 35; *Kanerva*, 2014 IL 115811, ¶ 36; cf. *Ingemunson v. Hedges*, 133 Ill. 2d 364, 370 (1990) ("[W]e need not look beyond the language of the constitution" when that language answers the question at hand).

In addition, while subsection (a) is broad, a law is not ambiguous just because it is broad. See *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998); *Haroco, Inc. v. Am. Nat. Bank & Tr. Co. of Chicago*, 747 F.2d 384, 398 (7th Cir. 1984) ("[T]he fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth."), *aff'd*, 473 U.S. 606 (1985).

Nevertheless, the appellate court found that the Amendment was ambiguous (A-35, ¶ 125) and therefore considered extrinsic evidence of the Amendment's meaning, including transcripts of legislative debates and a voter's guide (A-35–49, ¶¶ 127–60). This was erroneous. As all parties agreed in the appellate court, the Amendment is plain. Accordingly, extrinsic evidence of the Amendment's meaning should not be considered. And, even worse, the appellate court relied on extrinsic evidence that is unreliable. The appellate court acknowledged that the Amendment's legislative history was not "entirely accurate . . . ." A-43, ¶ 142. Moreover, even if it merited consideration, which it does not, much of the extrinsic evidence cited by the appellate court actually reinforces what the Amendments' plain language already makes clear: The Amendment restricts transportation funds spent by all local governments, including home rule units of government. This last point is especially clear in the voter's guide, which unambiguously promised Illinois voters

that the Amendment would restrict "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.

B. The appellate court should not have relied on transcripts of legislative debates to interpret the Amendment.

The County pointed to statements in the legislative debates in which a handful of legislators indicated that Cook County transportation taxes, such as those at issue here, would somehow be exempted from the Amendment. A-36–43, ¶¶ 132–43. Yet the appellate court acknowledged that the statements by those few legislators were not "entirely accurate . . . ." A-43, ¶ 142.

That is an understatement. One of the legislators suggested that, due to the appearance of the phrase "other transportation purposes as authorized by law" in subsection (b) of the Amendment, home rule units could spend transportation tax revenue on *any* legal purpose (A-42, ¶ 141 (quoting 99th Ill. Gen. Assem., Senate Proceedings, May 5, 2016, at 69 (remarks of Senator Haine))). The same legislator claimed that the Amendment was not intended "to interfere *in any way* with *local governments'* current authority and practices." *Id*. (emphasis added). But that is the opposite of what the Amendment actually says. The Amendment states that it restricts transportation fund expenditures by "local governments." See Ill. Const., art. IX, § 11(b). The Amendment's Senate sponsor also described a non-existent exception to the Amendment for distributions under the Metropolitan Pier and Exposition Authority Act (C 514–15; 99th Ill. Gen. Assem., Senate Proceedings, May 5, 2016, at 71–72 (remarks of Senator Haine)), which is entirely absent from the Amendment's actual text. Accordingly, the legislators' comments were not a reliable indicator of what the Amendment actually said.

In addition, multiple legislators who commented or asked questions in the legislative debates stated that they found the Amendment "ambiguous" (C 497; 99th Ill. Gen. Assem., House Proceedings, April 22, 2016, at 20 (remarks of Reps. Fortner and Phelps)), or even "very ambiguous" (C 510; 99th Ill. Gen. Assem., Senate Proceedings, May 5, 2016, at 67 (remarks of Senator Raoul)). Surprisingly, those legislators included the Amendment's sponsors, on whose comments the appellate court heavily relied. See C 497; 99th Ill. Gen. Assem., House Proceedings, April 22, 2016, at 20 (remarks of Rep. Phelps, stating that he and his "colleagues, cosponsors of the Constitutional Amendment[,]" found its language ambiguous); C 505; 99th Ill. Gen. Assem., Senate Proceedings, May 5, 2016, at 62 (remarks of Sen. Haine, stating that the Amendment was "somewhat" ambiguous); C 513; 99th Ill. Gen. Assem., Senate Proceedings, May 5, 2016, at 70 (remarks of Sen. Haine, stating that it "is possible that additional clarity on this issue"—*i.e.*, the Amendment's application to home rule units—"would be helpful").

To be clear, the Amendment is not ambiguous, and this Court is under no obligation to defer to legislators on whether the Amendment's language is ambiguous. "Whether an ambiguity exists is a question of law for the court to decide." *State Sec. Ins. Co. v. Burgos*, 145 Ill. 2d 423, 439 (1991); see also *Lake County Bd. of Review v. Property Tax Appeal Bd.*, 192 Ill. App. 3d 605, 618 (1989). But if a legislator admittedly did not understand the Amendment's language and complained that he or she found it ambiguous, that legislator's further commentary on the meaning of that language is entitled to no serious weight. Just as a traveler in a distant land should not heed a translator who admits to not fully understanding the local language, the Court should not feel bound by the views of legislators who admitted that they did not understand the Amendment's language. And

this Court is surely not bound by the views of legislators who claimed to find the Amendment's language ambiguous, yet neither opposed the Amendment on that basis nor proposed any changes to the Amendment's language that would have cured the purported ambiguity.

One legislator suggested that a question-and-answer session in a legislative debate would serve "to clarify" the Amendment. C 505; 99th Ill. Gen. Assem., Senate Proceedings, May 5, 2016, at 62 (remarks of Sen. Haine). But when the voters went to the polls, the Amendment's actual language, not a transcript of comments by legislators, appeared on the ballot. The "meaning of a constitutional provision depends on the common understanding of the citizens who, by ratifying the Constitution, gave it life." *League of Women Voters of Peoria v. Peoria Cty.*, 121 Ill. 2d 236, 243 (1987). As the appellate court remarked, "the General Assembly didn't put this Amendment into the Constitution—it just put it on the ballot." A-43–44, ¶ 145.

Even when the legislative history included accurate statements about the Amendment's purpose, the appellate court overread those statements. The appellate court discussed in great detail comments by legislators to the effect that the Amendment would prohibit sweeps by the General Assembly of State transportation funds—*i.e.*, legislation that drains money from State transportation funds and transfers that money to State funds serving other purposes. A-35–38, ¶¶ 129–34. While the Amendment's drafters clearly intended to end that practice, neither the Amendment's language nor its legislative history suggests that this was the Amendment's *only* purpose. If that were its only purpose, the Amendment would say only that "the General Assembly may not, by legislation, transfer funds from State transportation funds to funds serving other purposes," or words to that

effect. The Amendment would not refer to "local governments" (see Ill. Const., art. IX, § 11(b)), it would not consist of six paragraphs of very specific provisions, and it certainly would not need to expressly exempt federal funds (*id*., § 11(f)).

In the circuit and appellate courts, the County similarly argued that the Amendment only applies to funds that are dedicated to transportation purposes by a State statute. But no language in the Amendment speaks of funds that are "dedicated to transportation purposes by statute," and the County's attorney frankly admitted in the circuit court that this interpretation finds no support in the Amendment's language. See R 19.

Even if the legislative history did not contain the inaccuracies noted above, and even if the legislators who commented on the Amendment's meaning did not simultaneously concede that they were not sure what it meant, the legislative history in this case still would be entitled to no weight because the Amendment's language is plain and unambiguous. Moreover, "as a tool of construction, legislative history renders a narrative of little value[,]" because the "comments of one legislator cannot be deemed reflective of the views of the entire body. Indeed some, if not many, legislators might not have heard the comments or been aware of them when they voted." *Takiff Properties Group Ltd. #2 v. GTI Life, Inc.*, 2018 IL App (1st) 171477, ¶¶ 35, 37 (Hyman, J., concurring). More fundamentally, "[n]either the disclosed nor undisclosed intent of a legislator or lobbyist becomes *law*; only the bill as it reads when passed becomes law." *Town of the City of Bloomington v. Bloomington Township*, 233 Ill. App. 3d 724, 736 (1992) (emphasis in original).

Ultimately, the Amendment's plain and unambiguous language must prevail over any contrary comments by a legislator. See *Vill. of Carpentersville v. Pollution Control*

Bd., 135 Ill. 2d 463, 473 (1990) ("It would be improper for this court to transform statements made during the constitutional convention into constitutional requirements where such statements are not reflected in the language of the constitution."); *People v. Burdunice*, 211 Ill. 2d 264, 270 (2004) ("[A] statute is not interpreted by its sponsor's comments when introducing legislation, nor is it interpreted by the statements of senators or representatives who voted to pass the legislation formulating the statute. Rather, a statute is interpreted by its language, which if certain and unambiguous, must be given effect as written.") (quoting *People v. James*, 246 Ill. App. 3d 939, 948 (1993)).

The appellate court was faced with a comparable issue in *People v. McKinney*, 2012 IL App (1st) 103364. In that case, the appellate court was asked to interpret the Veterans Court Act, which plainly states that it was intended to benefit veterans who "are charged with felony or misdemeanor offenses." See 730 ILCS 167/5. The State asserted, however, that "the legislature intended to limit eligibility for veterans court to those defendants who are eligible for supervision, conditional discharge, or probation." *McKinney*, 2012 IL App (1st) 103364, ¶ 10. The State's argument rested on comments by the Act's House sponsor, Representative Michael Tryon, who had told his colleagues that the Act would "allow for the adjudication of misdemeanor crimes . . . ." *Id.*, ¶ 11 (quoting 96th Ill. Gen. Assem., House Proceedings, Mar. 26, 2010, at 189–92 (remarks of Rep. Tryon)). The appellate court rejected the State's argument, explaining:

> [T]he Veterans Court Act's plain language regarding a defendant's eligibility for veterans court is clear and unambiguous and constitutes the best evidence of legislative intent, and we will not depart from its plain language by reading exceptions, limitations, or conditions into the statute that conflict with that legislative intent. . . . Further, Representative Tryon's comment that the Veterans Court Act only applies to misdemeanor offenses is directly contradicted by the statute's provision that it applies to veterans and servicemembers charged with a misdemeanor *or* felony and is

> inconsistent with its disqualification of only those defendants charged with a crime of violence. Thus, we determine that the statute's legislative history does not make it clear that the legislature intended to limit eligibility for veterans court to those defendants eligible for probation and therefore decline to read such a condition into the statute where it conflicts with the legislative intent evident from its plain language.

Id., ¶ 12 (emphasis in original; internal citations omitted). In short, the plain language is the best evidence of legislative intent. It prevails over any inconsistent comments by legislators, including even the enactment's legislative sponsors.

For all of these reasons, the appellate court erred by relying on the Amendment's legislative history. That legislative history cannot be used to limit or change the meaning of the Amendment's plain language. Doing so would elevate the views of a handful of legislators over the views of the millions of Illinois voters who approved the Amendment based on its plain language.

C. The voter's guide further supports a plain reading of the Amendment's language.

The voter's guide to the Amendment, which was published by the Secretary of State (see 5 ILCS 20/2), further demonstrates that transportation funds spent under home rule authority are restricted by the Amendment. The voter's guide notified Illinois voters that, under the Amendment, "transportation funds may be used by the State or local governments only for" transportation purposes, and 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 480–81. The guide's summary of arguments in favor of the Amendment explained that, "[h]istorically, the State and units of local government have used portions of revenue from transportation funds for other purposes[,]" and when it presented arguments against the Amendment, the

guide summarized the argument that "[a]pproval of the proposed amendment unnecessarily limits the power of the State and local governments . . . ." C 481.

Thus, the voter's guide spoke of "local governments" without distinguishing between those with and without home rule authority, and it spoke of "transportation funds" without further qualification. That is unsurprising, because the Amendment itself states no further qualification.

The appellate court pointed out that an explanation of the Amendment in the voter's guide disclaimed any intention to "alter" home rule powers. A-45, ¶ 147. In context, this remark could only have meant 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. It did not say, and could not reasonably have meant, that home rule units (or, in the appellate court's formulation, funds spent by home rule units that are not controlled by statute) were exempt from the Amendment. That would be a very significant limitation to the Amendment. Any reasonable voter would expect such a limitation to be stated clearly and unambiguously, just as the exemption for federal funds was explained both in the Amendment's text and in the voter's guide. See C 481 ("Further, the Section does not impact the expenditure of federal funds, which may be spent for any purpose authorized by federal law."). The Amendment and the voter's guide could have said, "The Section does not impact the expenditure of funds under home rule authority, which may be spent for any purpose not controlled by a State statute," either in those words or in any reasonable equivalent of them, but they did not.

Indeed, the Safe Roads Amendment does not "alter" home rule powers because home rule units must always comply with generally applicable constitutional limits on governmental power. There can be no dispute, for example, that home rule units are bound by the uniformity clause of the Revenue Article (see, *e.g.*, *DeWoskin v. Loew's Chicago Cinema, Inc.*, 306 Ill. App. 3d 504, 518–25 (1999) (reversing dismissal of uniformity clause (art. IX, § 2) challenge to Cook County Amusement Tax Ordinance)) and by the Pension Protection Clause of the Constitution (see, *e.g.*, *Jones v. Mun. Employees' Annuity & Ben. Fund of Chicago*, 2016 IL 119618, ¶ 1 (invalidating, under art. XIII, § 5 of the Constitution, a statute that diminished the pension benefits of City of Chicago pension system members)). Cook County's home rule powers are not "altered" when the County is required to comply with an across-the-board constitutional restraint on governmental power. *City of Elgin v. Cty. of Cook*, 169 Ill. 2d 53, 63 (1995) (home rule powers are limited by the constitution); *Mulligan v. Dunne*, 61 Ill. 2d 544, 550 (1975) (acknowledging that home rule powers may be "restricted by a constitutional provision").

The appellate court's analysis also overlooks a simple promise in the voter's guide: "Approval of this amendment will ensure that transportation funds are used only for transportation purposes." A-46–47, ¶ 151. The appellate court's interpretation of the Amendment does not square with that unqualified promise to the voters. It leaves a gaping hole in the Amendment that finds no support in the Amendment's text or in the voter's guide, and that hole is evidently wide enough to exempt hundreds of millions of dollars in transportation tax revenue every single year in Cook County's case alone. Nothing in the Amendment's text or in the voter's guide fairly warned the voters that any such exemption

existed. Such an exemption would directly undermine the purpose that the voter's guide says the Amendment was intended to accomplish.

D. The Transportation Funding Protection Act further shows that the Amendment was not intended to exempt transportation funds spent under home rule authority.

Even if it were proper to use extrinsic evidence to interpret the Safe Roads Amendment, which it is not, the appellate court misinterpreted another source of extrinsic evidence: the Transportation Funding Protection Act. In the Act, the General Assembly reiterated, as declarative of existing law, that the Amendment binds home rule units of government (see 30 ILCS 178/5-10(b)). The Act, which was passed by over a three-fifths majority of the General Assembly in June 2019, states as follows:

> (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.

See 30 ILCS 178/5-10 (emphasis added).

The appellate court pointed out that, while it does specifically state that it applies to home rule units, the Transportation Funding Protection Act did not expressly state that it preempts home rule authority. A-49, ¶ 158. "And the reason it doesn't preempt home-rule power," the appellate court reasoned, "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." *Id*. (emphasis in original). Tellingly, however, the County conceded at oral argument in the appellate court that the Act *did* preempt home rule power:

> JUSTICE ELLIS: You think that that statute [*i.e.*, the Transportation Funding Protection Act] preempted home rule?
>
> COUNTY'S ATTORNEY: The statute—yes, the Transportation Funding Act preempted home rule of units of government from deviating out of any of these statutes . . . .

See Oral Argument at 1:21:05–1:21:18, *Illinois Rd. & Transportation Builders Ass'n v. Cty. of Cook*, 2021 IL App (1st) 190396 (No. 1-19-0396), https://www.illinoiscourts.gov /courts/appellate-court/oral-argument-audio/. The County also never argued in its appellate brief that the Act did not preempt home rule power. The County has therefore forfeited any argument to that effect. See Ill. Sup. Ct. R. 341(h)(7).

In addition, there was no need for the Act to expressly preempt home rule authority because the Act was enacted after the Amendment took effect. When the General Assembly passed the Act, the Constitution already prohibited the diversion of transportation funds from transportation purposes. The Act was a recognition by an overwhelming majority of the General Assembly, as "declarative of existing law[,]" that home rule units were already bound by the Amendment. See 30 ILCS 178/5-10(b). In fact, the Illinois General Assembly reaffirmed that the Amendment prohibits diversion of transportation funds, regardless of whether they are spent under home rule authority, by passing the Act in June 2019, just a few months after the circuit court granted the County's motion to dismiss in February 2019. See C 391–408.

The appellate court's interpretation of the Act also fails for a more fundamental reason. It adds a limitation—"pursuant to statute"—that appears nowhere in the Act. "It is a fundamental rule of statutory construction that the plain language of a statute must be

given effect and that courts must not, under the guise of statutory construction, add limitations or requirements which are inconsistent with the plain meaning of that language." *Wal-Mart Stores, Inc. v. Indus. Comm'n*, 324 Ill. App. 3d 961, 968 (2001). The Act refers to the "funds described in this Act *and all other funds* described in" the Safe Roads Amendment, 30 ILCS 178/5-10(b) (emphasis added), not only to funds that are spent under statutory authority.

Also, under the appellate court's circular reasoning, the Transportation Funding Protection Act applies only to transportation funds that are controlled by statute, and yet the Act itself somehow does not count as a statute that controls transportation funding. Rather, under the appellate court's interpretation, the Act accomplishes nothing and still another round of legislation is somehow required before transportation funds spent under home rule authority are, at long last, restricted by the Amendment. Such an interpretation of the Act is unreasonable. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990) (statutory language should not be deemed meaningless). It is far more reasonable to interpret the Act as clarifying that the General Assembly understood the Amendment to bind home rule units of government and to restrict transportation funds spent by home rule units. See 30 ILCS 178/5-10(b) (transportation tax revenue may not be diverted "by any local government, *including, without limitation, any home rule unit of government*" from transportation purposes) (emphasis added). The Act states no exemption for tax revenues spent under home rule authority and no limitation to tax revenues whose expenditure is governed by a State statute. At a minimum, the Act is far more powerful evidence of the General Assembly's intent than the comments of a mere handful of legislators, and it confirms the

General Assembly's understanding that transportation funds spent by home rule units are restricted by the Amendment.

CONCLUSION

The Safe Roads Amendment is plain and unambiguous. It should be enforced as written, and the plaintiffs should be permitted to proceed past the pleading stage of this litigation. Therefore, the plaintiffs respectfully request that this Court reverse the appellate court's opinion and the circuit court's dismissal order, remand this case to the circuit court of Cook County for further proceedings consistent with this Court's opinion, and award any further relief that this Court deems appropriate.

Respectfully submitted,

ILLINOIS ROAD AND TRANSPORTATION 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

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages 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), contains 45 pages.

/s/ John M. Fitzgerald
John M. Fitzgerald

APPENDIX

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2021 IL App (1st) 190396

THIRD DIVISION
March 3, 2021

No. 1-19-0396

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ILLINOIS ROAD AND TRANSPORTATION 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, Plaintiffs-Appellants, v. THE COUNTY OF COOK, a Body Politic and Corporate, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 18 CH 2992 Honorable Peter Flynn, Judge Presiding

JUSTICE ELLIS delivered the judgment of the court, with opinion.
Presiding Justice Howse and Justice Burke concurred in the judgment and opinion.

OPINION

¶ 1 In November 2016, Illinois voters approved an amendment to the Illinois Constitution, adding to the revenue article a new section 11, titled "Transportation Funds" (the Amendment). Roughly sketched, the Amendment requires that funds collected from transportation-related taxes and fees be spent only for transportation purposes.

¶ 2 Plaintiffs, an amalgamation of trade groups and associations that represent a variety of sectors in the transportation planning and construction industry, sued the County of Cook (County), claiming the County violated the Amendment by diverting tax revenues protected by the Amendment to *non*-transportation uses. Plaintiffs identified six different taxes the County imposed related to transportation, all of whose revenues, they say, should have been sequestered and used only for transportation-related purposes. Instead, those moneys were placed into the County's Public Safety Fund for non-transportation purposes to fund the county courts, jails, the sheriff's office, and like items.

¶ 3 The trial court dismissed the complaint, finding that plaintiffs lacked standing to sue and that, in any event, the complaint failed to state a violation of the Amendment.

¶ 4 We disagree as to standing. Plaintiffs have standing to challenge the County's alleged violation of the Amendment. But we agree, albeit for different reasons, that the complaint fails to state a constitutional violation. We thus affirm the trial court's judgment.

¶ 5 BACKGROUND

¶ 6 In the November 2016 general election, voters across Illinois were presented with an initiative to amend the Illinois Constitution to protect funds generated from transportation-related taxes from being spent for any purposes other than transportation-related ones. Passage of the Amendment required approval of either three-fifths of those voting on the question or a majority

of those voting in the election. See Ill. Const. 1970, art. XIV, § 2(b). The Amendment easily cleared that hurdle, garnering the support of nearly 80% of those who voted on the question.

¶ 7 On March 6, 2018, plaintiffs—a group of business and trade associations—filed this suit for declaratory and injunctive relief against the County. The complaint alleged that, "to plug gaps in its budget," the County was diverting "revenue from transportation-related taxes and fees to the County's Public Safety Fund," where it was then spent on non-transportation-related purposes in violation of the Amendment. Plaintiffs identified the following sources of revenue that were unconstitutionally diverted from transportation uses:

(1) the Cook County Home Rule County Use Tax Ordinance (see Cook County Code of Ordinances § 74-270 *et seq.* (adopted Feb. 16, 2011);

(2) the Cook County Retail Sale of Gasoline and Diesel Fuel Tax Ordinance (see *id.*§ 74-470 *et seq.*);

(3) the Cook County New Motor Vehicle and Trailer Excise Tax Ordinance (see *id*. § 74-230 *et seq.*);

(4) the Cook County Home Rule Use Tax Ordinance for Non-Retailer Transfers of Motor Vehicles (see *id*. § 74-595 *et seq.* (adopted Nov. 15, 2011));

(5) the Cook County Wheel Tax on Vehicles Ordinance (see *id.* § 74-550 *et seq.* (adopted May 21, 2020)); and

(6) the Cook County Parking Lot and Garage Operations Tax Ordinance (see *id*. § 74-510 *et seq.* (adopted July 17, 2013)).

¶ 8 For ease of references, we will refer to these taxes listed above, collectively, as the "Cook County Transportation Taxes."

¶ 9 The complaint alleged that, despite the fact that each of these taxes was a "transportation-related tax within the meaning of [the Amendment]," the County was "deposit[ing] all revenue" from the taxes listed above "in the County's Public Safety Fund."

¶ 10 The Public Safety Fund, according to the complaint, funds operations of the County's criminal justice system, including the sheriff's office, the state's attorney, the department of corrections, and the clerk of the circuit court. The complaint alleges that "[t]he Public Safety Fund is not a transportation-related purpose within the meaning of Article IX, Sections 11(b) or (c) of the Illinois Constitution."

¶ 11 The County moved to dismiss the complaint, both for failure to state a claim and on standing and justiciability grounds. The trial court agreed with the County on both points, finding that plaintiffs lacked standing and that the complaint did not state a constitutional violation. The court thus dismissed the complaint. This appeal followed.

¶ 12 ANALYSIS

¶ 13 I

¶ 14 A

¶ 15 Our first question is whether plaintiffs have standing to challenge the County's alleged constitutional violation. A dismissal based on lack of standing is entered pursuant to section 2-619(a)(9) of the Code of Civil Procedure. See 735 ILCS 5/2-619(a)(9) (West 2018); *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999).

¶ 16 A complaint need not allege facts establishing standing. *International Union of Operating Engineers, Local 148 v. Illinois Department of Employment Security*, 215 Ill. 2d 37, 45 (2005). In Illinois, lack of standing is an affirmative defense, placing the burden on the defendant to "plead and prove lack of standing." *Id.* Thus, when "standing is challenged by way of a motion

to dismiss," the usual principles applicable to section 2-619 motions govern: "[A] court must accept as true all well-pleaded facts in the plaintiff's complaint and all inferences that can reasonably be drawn in the plaintiff's favor." *Id.* Appellate review is *de novo*. *Id.*

¶ 17 The standing doctrine assures that parties have a sufficient stake in the outcome of the controversy. *Scachitti v. UBS Financial Services*, 215 Ill. 2d 484, 493 (2005). But "it should not be an obstacle to the litigation of a valid claim." *People v. $1,124,905 U.S. Currency & One 1988 Chevrolet Astro Van*, 177 Ill. 2d 314, 330 (1997). The plaintiff's claimed injury must be "(1) distinct and palpable; (2) fairly traceable to defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief." *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 23 (2004).

¶ 18 Plaintiffs allege two forms of standing. The first is associational standing, as plaintiffs are all nonprofit trade associations representing various aspects of the construction industry.

¶ 19 Associational standing refers to the ability of an association to sue as a representative body on behalf of its members. The doctrine "is firmly established in federal law" and was first adopted in Illinois in *International Union*, 215 Ill. 2d at 48. Our supreme court expressly adopted the test for associational standing from the United States Supreme Court in *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977). See *International Union*, 215 Ill. 2d at 51-52.

¶ 20 In *Hunt*, 432 U.S. at 343, the Supreme Court articulated a three-part test to determine if an association has standing to sue on behalf of its constituent members. An association will have standing to sue 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." *Id.*

¶ 21 The County does not dispute that plaintiffs satisfy *Hunt*'s second and third requirements. We thus confine our analysis to a single question: whether the association plaintiffs have alleged " 'that [their] members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action.' " *International Union*, 215 Ill. 2d at 46 (quoting *Warth v. Seldin*, 422 U.S. 490, 511 (1975)).

¶ 22 Which means that we return full circle to general standing principles. That is to say, have the members of plaintiffs' organizations suffered an injury that is "(1) distinct and palpable; (2) fairly traceable to defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief?" *Wexler*, 211 Ill. 2d at 23. And given the burden of proof on this affirmative defense, the real question is, has the County established that plaintiffs have *not* suffered such an injury?

¶ 23 We will briefly examine each of the plaintiff associations and their claim of injury suffered by their individual members.

¶ 24 Plaintiff Illinois Road and Transportation Builders Association (IRTBA) is a trade association consisting of "more than 350 member firms who design, build, and maintain Illinois' highways, transit systems, railways, and aviation systems." "Many" of its members "are based in Cook County and contract with the County to perform construction work on transportation-related project within the County."

¶ 25 Plaintiff Federation of Women Contractors (FWC) "consists of more than one hundred women and women owned firms working in the construction industry, including general and specialty contractors, subcontractors, architecture and engineering firms, and suppliers

representing every facet and component of construction," the "majority" of which "are based in Cook County."

¶ 26 Plaintiff Illinois Association of Aggregate Producers (IAAP) is a not-for-profit trade association that represents "every sector of Illinois' non-coal aggregate mining industry." IAAP members are responsible for producing "more than 90 percent of Illinois' aggregate and industrial minerals at more than two hundred plants and facilities in seventy counties throughout Illinois, including Cook County." "Most of the aggregate material produced by IAAP members is utilized in road construction, including crushed aggregate in concrete and asphalt pavements and drainage bases under roads, sewers, parking lots, and sidewalks."

¶ 27 Plaintiff Associated General Contractors of Illinois (AGCI) "is one of the largest heavy-highway construction trade associations in Illinois." AGCI "represents highway, heavy, and utility contractors" and "has more than one hundred active, associate, and affiliate members, including members that are based in Cook County and that conduct business with Cook County."

¶ 28 Plaintiff Illinois Asphalt Pavement Association (IAPA) is a trade association with "nearly two hundred members, including sixteen members that produce or supply hot mix asphalt within Cook County and approximately ninety members that supply material, equipment, or services directly to Cook County or to the IAPA's plant mix members working in Cook County."

¶ 29 Plaintiff Illinois Ready Mixed Concrete Association (IRMCA) is a trade association representing "nearly 150" companies, including "multiple firms that supply concrete in Cook County."

¶ 30 Plaintiff Great Lakes Construction Association (GLCA) "represents more than two hundred member firms in twenty-seven work categories in the construction industry," "including approximately one hundred members who are based in Cook County."

¶ 31 Plaintiff American Council of Engineering Companies, Illinois Chapter (ACEC), is a "Statewide association dedicated solely to the interests of Illinois consulting engineering firms."

¶ 32 Plaintiff Chicagoland Associated General Contractors (AGC) is an association of general contractors whose membership includes "more than eighty" firms based in Cook County.

¶ 33 Plaintiff Underground Contractors Association of Illinois (UCA) is a not-for-profit trade association that "represents more than two hundred contractors and associate member companies in the sewer, water, utility, and underground industries throughout Illinois, including in Cook County."

¶ 34 Plaintiff Illinois Concrete Pipe Association (ICPA) is a not-for-profit trade association composed of "concrete pipe producers and affiliated companies serving the Illinois sewer and culvert market, including members based in Cook County."

¶ 35 As to each one of these association plaintiffs, the complaint alleges that its members "are suffering economic harm due to the County's ongoing violations of [the Amendment]"—more specifically, the County's diversion of money that allegedly must be spent for transportation-related purposes but, instead, is being transferred into the County's Public Safety Fund.

¶ 36 The injury the plaintiff members allege is not some " 'generalized grievance common to all members of the public.' " *Alliance for the Great Lakes v. Department of Natural Resources*, 2020 IL App (1st) 182587, ¶ 32 (quoting *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 494 (1988)). Their injury is "distinct and palpable." *Wexler*, 211 Ill. 2d at 23. They are alleging the loss of business opportunity by virtue of a diminution in the number of projects put out to bid in Cook County. Economic harm has long been considered a sufficient injury to confer standing. See *Greer*, 122 Ill. 2d at 493; *International Union*, 215 Ill. 2d at 51 (denial of unemployment benefits was sufficient injury to confer standing on individual union members).

¶ 37 The remaining, interrelated two prongs, whether the members' injuries are "fairly traceable" to the County's allegedly unconstitutional conduct, and whether a ruling in their favor is "substantially likely" to redress their injuries (*Wexler*, 211 Ill. 2d at 23), is where the parties do battle. We say they are interrelated because the case law, as we will see, sometimes considers them in tandem, and for good reason. Sometimes, perhaps often, the same causal link that connects the defendant's misconduct to the plaintiff's injury works likewise in reverse, such that judicial *elimination* of that misconduct would *heal* that injury.

¶ 38 Much of the County's argument against standing, in fact, interweaves the traceability and judicial-redress prongs in a manner that we could summarize in one word—speculation. Plaintiffs can only speculate that, had the transportation money not been diverted, the County would have implemented public transportation projects; they can only speculate that, even if the County had announced such projects, any one of their members would have been awarded the work; they can only speculate that, if they win this lawsuit and force the County to spend all this recovered and future money on transportation projects, they will be awarded any of *that* work.

¶ 39 Plaintiffs' response is that the County is weaponizing its unconstitutional behavior to insulate itself from judicial review: divert transportation funds, thereby fail to fund new transportation projects, and then claim that the firms that would have been eligible to bid on this work lack standing because … they can't point to any projects they lost out on. Under that circular theory, say plaintiffs, nobody could ever challenge the County's alleged unconstitutional diversion of funds. And if anyone would be motivated to force the County to comply with the constitution and sequester transportation tax revenue for transportation purposes, who more so than the firms that would financially profit from the resulting transportation projects?

¶ 40 We agree with plaintiffs' view of standing. To be sure, standing cannot be founded on a "highly attenuated chain of possibilities." *Clapper v. Amnesty International USA*, 568 U.S. 398, 410 (2013). But neither is certainty required. Particularly when the injury to a plaintiff is the loss of opportunity to obtain a benefit due to the government's failure to perform a required act—here, sequestering transportation funds—it is rarely possible to know with any confidence what *might* have happened, had the government performed that act, much less what precisely will happen in the future if the improper conduct is corrected. If such certainty were required, the doctrine of standing would substantially reduce, if not altogether eliminate, entire categories of lawsuits. And, as we explain below, that is not how we read the case law.

¶ 41 For example, in *West Virginia Ass'n of Community Health Centers, Inc. v. Heckler*, 734 F.2d 1570, 1572-73 (D.C. Cir. 1984), the plaintiffs—a hospital association and one of its members—sued the federal government, alleging that its formula for awarding block grants to states under a federal statute "unlawfully deprived the State of West Virginia of monies to which it was entitled," to the tune of nearly $300,000. The governmental defendant claimed the plaintiffs lacked standing, as they "failed to demonstrate that a judicial decision mandating an increase in West Virginia's [block grant] funding would redound to their benefit." *Id.* at 1574. The court flatly rejected that argument, holding that "once appellants demonstrated that they would *qualify* to receive these funds, they need not shoulder the additional burden of demonstrating that they are *certain* to receive funding." (Emphases added.) *Id.* at 1576.

¶ 42 Likewise, in *National Ass'n of Neighborhood Health Centers, Inc. v. Mathews*, 551 F.2d 321, 324 (D.C. Cir. 1976), the plaintiff, a national organization of community health centers, sued to force the Department of Health, Education and Welfare (HEW) to recover money that the department allegedly spent in violation of a federal statute. On appeal, HEW argued that the

plaintiff lacked standing to challenge the allegedly illegal transfers because the plaintiff did not allege " 'that [the] illegal transfer of funds affected any of its members.' " *Id.* at 329. The court rejected that argument:

> "The less that is recovered in the four disputed states, the less will be available to the present applicants, including the [plaintiff] members; *these members are directly hurt by *** the sharp curtailment of their opportunities for funding*. **** While it is not certain that [the plaintiff] members would be funded due to the extra recovery from their claim here, it is probable that the prospect of funding, itself substantial relief, would be enhanced.*" (Emphases added.) *Id.*

¶ 43 The probability that judicial relief would result in an economic benefit was likewise sufficient to support standing in *American Iron & Steel Institute v. Occupational Safety & Health Administration*, 182 F.3d 1261 (11th Cir. 1999). There, the American College of Occupational and Environmental Medicine (hereinafter, Doctors) challenged a regulation promulgated by the defendant, the Occupational Safety and Health Administration (OSHA), that enabled *non*-physician health-care providers to perform federally mandated medical evaluation services that, prior to the enactment of the regulation, could only be performed by physicians. *Id.* at 1266-67. The court held that the Doctors had standing, reasoning that the Doctors suffered an economic injury due to the "loss of patients and income[ ] inflicted by the lack of a requirement that medical evaluations be performed only by physicians" and reasoned that "this injury is redressable through judicial review" of the regulation. *Id.* at 1274 n.10.

¶ 44 Finally, plaintiffs cite *United States Women's Chamber of Commerce v. United States Small Business Administration*, No. 1:04-CV-01889, 2005 WL 3244182 (D.D.C. Nov. 30, 2005). At issue there was a federal law that established a preferential procurement program for women-

owned small businesses (WOSBs). *Id.* at * 1. But first, the Small Business Administration (SBA) was required to conduct a study to identify industries in which WOSBs were underrepresented and then, armed with that information, to propose procedures to implement the program. *Id.* at * 2.

¶ 45 But for four years, the SBA had failed to conduct that study or propose implementation procedures, thus stalling the program's launch. The associational plaintiff, representing WOSBs, sued to compel the SBA to implement the study and issue proposed procedures. The government claimed the plaintiff lacked associational standing. First, said the government, the plaintiff members' injuries could not be fairly traced to the SBA's conduct, because plaintiff could not identify a single member in its association that failed to obtain a government contract because of the lack of the WOSB procurement program. *Id.* at * 8.

¶ 46 The district rejected that argument. To satisfy the traceability prong, the court wrote, the plaintiff need only show that " 'it reasonably could be inferred that' had the defendants conducted the study and adopted the procedures called for by the [federal law] 'there is a substantial probability' that one of its members would have benefitted." *Id.* (quoting *Warth*, 422 U.S. at 504).

¶ 47 The government also claimed the plaintiff members could not show that judicial redress would benefit them, that none of the plaintiff members could show they belonged to an industry eligible for the WOSB preference—because the SBA hadn't yet *identified* which industries were program-eligible. *Id.* The district rejected this "circular reasoning" and agreed with the plaintiff that the government's argument " 'imposes a "catch-22": illegally refusing to implement the mandates of the Act, while claiming that its refusal to implement the Act insulates its actions from review.' " *Id.*

¶ 48 We are persuaded by these federal decisions, cognizant that the very doctrine of associational standing comes from the (obviously federal) United States Supreme Court decision in *Hunt*, 432 U.S. 333. See *International Union*, 215 Ill. 2d at 51-52. Indeed, "to the extent that the State law of standing varies from Federal law, it tends to vary in the direction of greater liberality; State courts are generally more willing than Federal courts to recognize standing on the part of any plaintiff who shows that he is in fact aggrieved by an administrative decision." *Greer*, 122 Ill. 2d at 491; see *Alliance for the Great Lakes*, 2020 IL App (1st) 182587, ¶ 32 ("our supreme court has recognized that Illinois standing law is more liberal than federal law").

¶ 49 In any event, we agree with these decisions that, when association members can demonstrate an opportunity for financial benefits or contracts, the opportunity for which was denied due to the government's improper conduct, and the opportunity for which would be restored if they prevail in this lawsuit, those members have standing.

¶ 50 Here, then, the member plaintiffs' injuries are fairly traceable to the County's conduct in that 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. Likewise, this injury is capable of redress through judicial relief; if plaintiffs prevail in this lawsuit, the County will be required to claw back transportation tax dollars improperly diverted and will be prevented from diverting them going forward. That means a large pot of tax revenue that can only be spent for one purpose—transportation. It is more than substantially probable—it is a near certainty that the County (or for that matter, any government unit), given that money with only one purpose for it, would spend it for that purpose, all to the benefit of the members of the plaintiff associations.

¶ 51 Under these circumstances, it would defy logic and fundamental fairness to deny plaintiffs standing simply because they cannot demonstrate with certainty that they would have received in the past, or will receive in the future, a particular contract—particularly when the reason they cannot demonstrate it is the very (alleged) misconduct of the government at issue in the lawsuit. The *opportunity* to seek that benefit is more than enough to show that these plaintiffs are litigants with skin in the game, with " 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' " (Internal quotation marks omitted.) *Kluk v. Lang*, 125 Ill. 2d 306, 318 (1988) (quoting *Flast v. Cohen*, 392 U.S. 83, 99 (1968)).

¶ 52 We are not moved by the County's citation to *I.C.S. Illinois, Inc. v. Waste Management of Illinois, Inc.*, 403 Ill. App. 3d 211, 231 (2010), on which the circuit court relied to deny standing to plaintiffs here; that case was decided under markedly different circumstances. That lawsuit did not involve a suit for declaratory or injunctive relief against the government, seeking to correct alleged government misconduct that denies financial opportunities to scores of private companies. *I.C.S.* involved a class action brought by private firms against a private contractor, sounding in tort and seeking lost profits for the failure to pick one of the plaintiffs for a sub-contracting job. Those facts, alone, puts *I.C.S.* miles away from this case.

¶ 53 The two named plaintiffs in that purported class action were firms certified by the City of Chicago as a minority business enterprise (MBE) or women-owned business enterprises (WBE) who were thus eligible for procurement preferences with the city. *Id.* at 215. The defendant contractor, Waste Management, procured a contract with the city and, instead of hiring a truly certified MBE or WBE firm for a subcontractor, hired three firms who fraudulently claimed to be

MBE/WBE contractors. *Id.* The plaintiffs did not and could not allege that the subcontracts were let for competitive public bidding; that they would have secured those contracts, had they been so bid; or that they were anything more than private contractors upset that a private firm gave the contract to someone else, while violating city ordinances governing MBE/WBE preferences.

¶ 54 We affirmed the dismissal of the complaint for lack of standing. We held as follows: "a subcontractor has no standing to challenge the award of a contract to a competitor after a bidding process has been completed unless it can show that it would have won the contract but for the defendant's fraud. In the absence of such an allegation, a subcontractor does not suffer an injury to a legally cognizable interest that is distinct and palpable." *Id.* at 231.

¶ 55 *I.C.S.* thus addresses an entirely different situation, concerning a private companies' suit against another private company for monetary damages over a single lost job. The court analyzed numerous "disappointed bidder" cases in reaching its conclusion (see *id.* at 221-31), but ours is not a case involving a disappointed bidder seeking a single contract or damages for lost profits. Ours is an action seeking to declare government conduct unconstitutional and to enjoin that conduct in the future. The concept of "lost opportunities to bid" is relevant to standing in a materially different way here than it is in a tort action over a single construction job.

¶ 56 We thus hold that plaintiffs have established associational standing. As such, we need not consider the alternative claim of taxpayer standing.

¶ 57 B

¶ 58 The circuit court also reasoned that there were justiciability problems with this lawsuit, that deciding this case would embroil the judiciary in policy choices over spending decisions and require judges to decide things better left to legislators. We see no such problem.

¶ 59 We are not being asked to construe constitutional language so ambiguous and ill-suited to judicial determination as what it means for the State to provide for " 'an efficient system of high quality public educational institutions and services.' " (Emphasis omitted.) *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1, 10 (1996) (quoting Ill. Const. 1970, art. X, § 1). That was particularly inappropriate given that, as our supreme court noted, a review of the constitutional convention debates revealed that "the framers of the 1970 Constitution did not intend to formulate any specific definition of 'high quality,' nor did they anticipate that the concept would be defined by the courts." *Id.* at 27. The language of the Amendment before us is complex, as we will see, but far from incapable of judicial determination.

¶ 60 In discussing its justiciability concerns, the circuit court also cited *Glisson*, which involved constitutional language providing that " '[e]ach person has the right to a healthful environment.' " *Glisson*, 188 Ill. 2d at 224 (quoting Ill. Const. 1970, art. XI, § 2). The words in the Amendment before us are not so vague, aspirational, and subject to policy-driven debate as the definition of a "healthful environment." And more to the point, the citation is inapt, in any event. It is true that the supreme court affirmed the dismissal of the complaint in *Glisson*, but not because it was non-justiciable; the court dismissed the complaint for lack of standing because the plaintiff was trying to enforce the right to a "healthful environment" not on his own behalf, but on behalf of two species of fish. *Id.* at 231.

¶ 61 As will be shown, interpreting the Amendment will be no simple chore. But courts interpret difficult language all the time. In the end, this lawsuit makes one simple claim—the Amendment requires the County to sequester all revenues generated from transportation-related taxes and to spend that money only for transportation purposes. We must determine whether the Amendment does or does not do that very thing. It requires no policy judgment, no fiscal

decisions, no embroilment of the judiciary into the everyday affairs of the legislature or a unit of local government. We must merely decide what the law is and enter judgment accordingly.

¶ 62 As we hold that plaintiffs have standing to challenge the County's actions, and we see no barriers to justiciability, we turn now to the merits.

¶ 63 II

¶ 64 The trial court dismissed the complaint for failing to state a claim under section 2-615 of the Code of Civil Procedure. See 735 ILCS 5/2-615 (West 2018). We accept as true all well-pleaded facts and draw all reasonable inferences in favor of the plaintiff. *Doe v. Coe*, 2019 IL 123521, ¶ 20. Our review is *de novo*. *Id.*

¶ 65 Our analysis requires a review of the Amendment. We apply the same principles to the construction of a constitutional provision as we would a statute. *Kanerva v. Weems*, 2014 IL 115811, ¶ 36. Our goal is to determine "the common understanding of the citizens who adopted" the Amendment. *Id.* We do so, first and foremost, by examining the Amendment's language, "the most certain route to determining the framers' intent." *Hooker v. Illinois State Board of Elections*, 2016 IL 121077, ¶ 47. If the language is clear and unambiguous, our inquiry ends, and we give the Amendment its intended effect without resort to extrinsic information. *Id.* ¶ 35.

¶ 66 The Amendment consists of six subsections. The first two subsections command the bulk of the parties' arguments and our analysis, so we start there:

> "(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." (Emphasis added.) Ill. Const. 1970, art. IX, § 11(a), (b).

¶ 67 Subsection (c) provides a further description of the first category of funds described in subsection (b), "the costs of administering laws related to vehicles and transportation." Ill. Const. 1970, art. IX, § 11(c).

¶ 68 Subsection (d) prohibits the diversion of transportation funds "to any purpose other than those described in subsections (b) and (c)." Ill. Const. 1970, art. IX, § 11(d). Subsection (e) envisions future modes of transportation currently unknown and provides 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. 1970, art. IX, § 11(e). Subsection (f) exempts federal funds from the Amendment entirely. Ill. Const. 1970, art. IX, § 11(f).

¶ 69 The County argues that the Amendment "is only applicable to situations involving governments' use of transportation-related monies as specified by an applicable *statute* and is thus inapplicable to the County under the circumstances of the instant case." (Emphasis added.) That is to say, because the Amendment only sequesters revenues whose expenditures are governed by a statute, it does not sequester the revenues from the Cook County Transportation Taxes at issue here, whose expenditures are authorized by home-rule power, not a state law.

¶ 70 Plaintiffs' view is that the Amendment applies to the spending of any transportation-tax-related revenues whatsoever within the State of Illinois, no matter the authority under which that money is spent—statute or local ordinance.

¶ 71 Before we go any further, it would be prudent to outline the various ways that a unit of local government may receive and spend tax revenues.

¶ 72 A

¶ 73 Federal funds aside, a home-rule unit may receive revenues in one of three ways: (1) from State-imposed taxes; (2) from taxes that the General Assembly authorizes the unit of local government to impose itself; or (3) in the specific case of home-rule units, from taxes the home-rule unit generates under its independent constitutional authority to tax. See Ill. Const. 1970, art. VII, § 6(a) (home-rule units have power to tax).

¶ 74 As to the first category, when the State imposes a tax and distributes some of the revenues to units of local government, a statute will typically specify how local governments must spend that money. For example, the State imposes a motor fuel tax and distributes some of that revenue to counties, municipalities, and road districts. See 35 ILCS 505/2, 5, 8 (West 2018). A statute then dictates the purposes for which the relevant unit of local government may spend that revenue. Counties, for example, must spend that motor fuel tax revenue for such purposes as

construction and maintenance of county and State highways, subdivision roads, county garages, grade separations and approaches, and bicycle markings and paths; paying principal and interest on road bonds; and allotting funds for retiring certain construction-related debt, bonds for superhighways, local mass-transit districts, and the like. See generally 605 ILCS 5/5-701 to 5-701.16 (West 2018).

¶ 75 As to the second category, the General Assembly may grant a unit of local government the power to tax an item or transaction that the unit of local government would not otherwise have the power to tax. For non-home rule units, that means *every* tax, as non-home-rule units lack any constitutional authority to tax and only have that taxing power granted them by statute. See Ill. Const. 1970, art. VII, § 7 ("[c]ounties and municipalities which are not home rule units shall have only powers granted to them by law," with exceptions not relevant here). And even home-rule units have limits on their constitutional taxing authority; for example, they may not tax income or occupations unless the General Assembly provides them that power by statute. See Ill. Const. 1970, art. VII, § 6(e). (Or, of course, the home-rule unit may *have* the independent authority to tax, but the General Assembly *preempts* that power and imposes its statutory will. See Ill. Const. 1970, art. VII, § 6(g).)

¶ 76 When the General Assembly provides a unit of local government statutory authority to impose a tax, the legislature may, if it chooses, likewise dictate the purposes for which that tax revenue is spent. For example, non-home-rule municipalities may impose a retailers' occupation tax, but they must spend that tax revenue on "public infrastructure" or "property tax relief" (with one caveat allowing some of them to spend it for general "municipal operations" until the year 2030). See Pub. Act 101-47, § 5 (eff. Jan. 1, 2020) (amending 65 ILCS 5/8-11-1.3). And because the General Assembly always retains the constitutional authority to preempt home-rule powers,

nothing would stop the General Assembly from enacting a statute that authorized a home-rule unit to impose a tax *and* mandating how that tax revenue could be spent.

¶ 77 But that's up to the General Assembly, which could also choose to authorize a home-rule tax but remain *silent* on how the home-rule unit spends that tax revenue. For example, the General Assembly allows home-rule municipalities to impose a retailers' occupation tax, but that statutory grant of authority contains no mandate on how the home-rule unit may spend that money. See 65 ILCS 5/8-11-1 (West 2018). When a home-rule unit is not mandated by statute to spend tax revenue a certain way, it may spend the revenue as it pleases, under its general home-rule power. See *Allen v. County of Cook*, 65 Ill. 2d 281, 288 (1976) ("the manner in which the defendant county appropriates funds *** is a matter 'pertaining to its government and affairs' " within county's home rule powers (quoting Ill. Const. 1970, art. VII, § 6(a))).

¶ 78 The third category of revenues, as mentioned, are revenues specific to a home-rule unit—revenue from taxes a home-rule unit imposes by virtue of its independent constitutional authority to tax. Ill. Const. 1970, art. VII, § 6(a). That is, the home-rule unit does not look to a statute for taxing authorization. Typically, in this situation, the home-rule unit does not look to a statute for *spending* authorization, either; it spends that tax revenue under its general home-rule power to do so. See *Allen*, 65 Ill. 2d at 288. (Theoretically, of course, a statute could mandate a home-rule unit's *spending* of its home-rule-generated tax revenue without tinkering with its *taxing* authority. Plaintiffs claim that happened recently; more on that later.)

¶ 79 To summarize, and putting aside federal funds, as they are not relevant here, a home-rule unit like Cook County may receive revenue from one of three sources: (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.

¶ 80 With that in mind, we turn to the substance of the parties' arguments about the meaning of the Amendment.

¶ 81 B

¶ 82 Plaintiffs' position, again, is that Amendment applies to revenue generated from any transportation-related tax imposed by any government within Illinois, be it the State or a unit of local government like Cook County, regardless of whether a statute or a local home-rule ordinance governs the spending of that tax revenue. In other words, plaintiffs argue that the Amendment covers all three of the revenue sources that we have mentioned immediately above, insofar as those revenues come from transportation-related taxes.

¶ 83 The County, on the other hand, argues that the Amendment applies only to the spending of transportation-related tax revenue that is controlled by a statute—which, they say, excludes the six Cook County Transportation Taxes at issue here.

¶ 84 A reading of subsection (a) of the Amendment, alone, would support plaintiffs' argument. Again, subsection (a) provides:

> "(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)." Ill. Const. 1970, art. IX, § 11(a).

¶ 85 That language is broad. It contains no limitation on the types of "taxes, fees, excises, or license taxes" (*id.*) to which the Amendment applies. It contains no language or term of art that we would associate exclusively with acts of the General Assembly. It makes no attempt to differentiate between taxes and fees generated by operation of a statute versus those generated by operation of a municipal ordinance.

¶ 86 But of course, we don't isolate passages in our interpretation; we read the Amendment as a whole. *People ex rel. Chicago Bar Ass'n v. State Board of Elections*, 136 Ill. 2d 513, 527 (1990). And subsection (b) contains language suggesting that our task is not so simple. Again, that subsection, concerning the purposes for which transportation-related taxes may be spent, reads as follows:

> "(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*." (Emphases added.) Ill. Const. 1970, art. IX, § 11(b).

¶ 87 The County points to language in subsection (b), italicized above, that includes the word "law" or some derivation of the word "statute." As the County correctly notes, those terms refer to acts of the General Assembly.

¶ 88 When the General Assembly passes a bill, that bill becomes a "law." Ill. Const. 1970, art. IV, § 8(b). The phrases "by law" or "authorized by law" refer exclusively to enactments of the General Assembly. See *Illinois State Toll Highway Authority v. American National 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"); *Quinn v. Donnewald*, 107 Ill. 2d 179, 186-87 (1985) (phrase "by law" in 1970 Constitution refers to General Assembly's " 'entire law-making process' " (quoting 3 Record of Proceedings, Sixth Illinois Constitutional Convention 2180 (statements of Delegate Whalen))). Indeed, within the very same revenue article in which the Amendment appears as section IX, section 1, provides that "[t]he General Assembly has the exclusive power to raise revenue *by law* except as limited or otherwise provided in this Constitution." (Emphasis added.) Ill. Const. 1970, art. IX, § 1.

¶ 89 Municipalities and counties, in contrast, do not pass laws—they adopt ordinances. As just one example found in the Constitution, though otherwise not relevant here, the section governing home-rule units within the local government article contains this provision: "If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction." Ill. Const. 1970, art. VII, § 6(c). And when differentiating between acts of the General Assembly and acts of units of local government, the Constitution makes the distinction clear: "County officers shall have those duties, powers and functions provided by law and those provided by county ordinance." Ill. Const. 1970, art. VII, § 4(d). That

sentence would be hopelessly redundant if "by law" and "by county ordinance" were one and the same.

¶ 90 And nobody could seriously claim that the term "statute" refers to an act of a unit of local government; it means a law passed by the General Assembly. Certainly in today's parlance, meaning the phraseology used circa 2016 when the Amendment was adopted, anyone would understand "statute" as applying exclusively to state legislative enactments. The General Assembly refers to its codified public acts as "statutes," and the compilation of them as "[c]ompiled [s]tatutes." 25 ILCS 135/5.04 (West 2018).

¶ 91 The lone reference to a "statute" in the Constitution, before the Amendment in 2016, makes this clear. It appears in article V, the executive article, which lays out the procedure when the governor reorganizes executive agencies in such a way as to contravene a "statute." Ill. Const. 1970, art. V, § 11. That can only mean a law passed by the General Assembly, the body that creates and circumscribes the power of executive agencies by law. See *Granite City Division of National Steel Co. v. Illinois Pollution Control Board*, 155 Ill. 2d 149, 171 (1993) (executive agencies are creatures of statute that confines that agency's authority). Our supreme court interpreted its jurisdiction under the 1870 Constitution to hear cases involving the construction of a "statute" and held that it had no jurisdiction to hear an appeal over the construction of a municipal ordinance, as "an ordinance is not a statute." *Wood v. City of Chicago*, 205 Ill. 70, 72 (1903). We see no indication of a different meaning under the 1970 Constitution.

¶ 92 Simply put, the terms "law" and "statute," within the 1970 Constitution, are synonymous. They both refer exclusively to enactments of the General Assembly.

¶ 93 With that in mind, we examine the first of the two sentences contained in subsection (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*." (Emphases added.) Ill. Const. 1970, art. IX, § 11(b).

¶ 94 A lot to unpack there. But the upshot is that the County says the various references to "laws" and the term "statutory" clearly indicate an intent to only sequester revenues spent pursuant to statute.

¶ 95 Among several examples is the final catch-all phrase "and other statutory highway purposes." *Id.* It is tempting to invoke the familiar rule of construction here that, when a list is given, and an inclusive wrap-up modifier with the term "other" is used, that modifier describes the components of the list that preceded it. See *People v. Davis*, 199 Ill. 2d 130, 138 (2002) ("when a statutory clause specifically describes several classes of persons or things and then includes 'other persons or things,' the 'other' is interpreted as meaning 'other such like' " (quoting *Farley v. Marion Power Shovel Co.*, 60 Ill. 2d 432, 436 (1975))).

¶ 96 If that were the intent of the framers, it would follow that this final clause was intended to modify everything on the list that preceded it—that is, everything on that list was a "statutory highway purpose." And that would obviously support the County's read of the Amendment.

¶ 97 But no canon of construction is absolute; we will not invoke that or any other canon if it yields an illogical result. *People v. Hanna*, 207 Ill. 2d 486, 498 (2003). And while everything on the list preceding that final clause could theoretically be considered a "statutory" purpose, not everything would fall under the definition of a "highway" purpose. Plaintiffs point to language in

the clause preceding the final clause, which includes purposes such as constructing and maintaining "mass transit, intercity passenger rail, ports, [and] airports"—none of which, say plaintiffs, could possibly qualify as "highways."

¶ 98 In determining what a "statutory highway" purpose means, it seems logical enough to consider how the legislature has historically defined it—in a "statute" that governs "highways." The Illinois Highway Code "defines "highway" as "any public way for vehicular travel which has been laid out in pursuance of any law of this State, or of the Territory of Illinois," including "rights of way, bridges, drainage structures, signs, guard rails, protective structures and all other structures and appurtenances necessary or convenient for vehicular traffic." 605 ILCS 5/2-202 (West 2018). And "[a] highway in a rural area may be called a 'road,' while a highway in a municipal area may be called a 'street.' " *Id.*

¶ 99 That definition of "highway" is broad, but not so broad to encompass a port or airport. So plaintiffs are correct. That canon of construction does not apply—not everything on that list in the first sentence is a "statutory highway" purpose.

¶ 100 Indeed, plaintiffs could turn the tables and use that reference to "statutory highway purposes" in their favor. That is, subsection (b)'s first sentence contains a list of four purposes, two of which mention "laws" or "statutory"—indicating enactments of the General Assembly exclusively—but two of which do not. The drafters thus obviously knew how to include those terms when they wished, yet they chose *not* to do so when describing the second and third purposes: "payment of highway obligations" and "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." Ill. Const. 1970, art. IX, § 11(b). The absence of those terms in those clauses, then, might suggest that the drafters specifically

intended *not* to limit the purposes to "statutory" ones and, instead, intended to include purposes contained in local ordinances, too. See *People v. Olsson*, 2011 IL App (2d) 091351, ¶ 9 ("It is a generally accepted canon of construction that the express inclusion of a provision in one part of a statute and its omission in a parallel section is an intentional exclusion from the latter.").

¶ 101 But on the other hand, if plaintiffs are correct and the Amendment restricts revenue spending governed by home-rule ordinance as well as statute, why mention "laws" and "statutes" without mentioning "ordinances," too? Or for that matter, the framers could have mentioned none of them, thereby including *all* of them. After all, that's what they did in subsection (a). They made no mention of statutes or ordinances and, by their absence, suggested a scope broad enough to encompass both. Yet in subsection (b)'s first sentence, they specified enactments of the General Assembly without ever *once* mentioning ordinances or enactments of home-rule units.

¶ 102 And on the subject of those few items that plaintiffs identify in subsection (b) that do not qualify as "highway" purposes—construction and maintenance of "mass transit, intercity passenger rail, ports, [and] airports" (Ill. Const. 1970, art. IX, § 11(b))—we find every reason to believe that, while they may not be highway purposes, the drafters of the Amendment considered them *statutory* purposes. We reach that conclusion by looking at subsection (c) of the Amendment.

¶ 103 That subsection defines one of the purposes expressed in subsection (b), the first one: "the costs of administering laws related to vehicles and transportation, including statutory refunds and adjustments provided in those laws." *Id.* Subsection (c)'s description of that phrase includes the following:

> "*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." (Emphases added.) Ill. Const. 1970, art. IX, § 11(c).

¶ 104 This language includes "the safety of *** mass transit, intercity passenger rail, ports, or airports" (*id.*) within the definition of "laws," meaning statutes.

¶ 105 That takes us to the other sentence in subsection (b), which provides further support for the County's claim that only the spending of revenues governed by statute are sequestered by the Amendment: "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*." (Emphasis added.) Ill. Const. 1970, art. IX, § 11(b).

¶ 106 "Authorized by law," as we have said, means authorized by statute. The reference there to "local governments" includes both home-rule and non-home-rule units, of course. The fact that this language treats home-rule and non-home-rule units the same, both requiring "authoriz[ation] by law," is telling, because home-rule units do not always require authorization by law when they spend tax revenue. As noted at length above, sometimes, a statute authorizes a home-rule unit to impose a tax but does not mandate how that that home-rule unit will spend the tax revenue, as we noted above with an example. See, *e.g.*, 65 ILCS 5/8-11-1 (West 2018)

(allowing home-rule municipalities to impose retailers' occupation tax but not specifying how tax revenues must be spent). And of course, other times, a home-rule unit will impose a tax based on its own constitutional taxing power and will spend that tax revenue under its general home-rule powers, with no statute entering the picture at all. If plaintiffs are correct that revenues spent pursuant to traditional home-rule power are included within this scope, what "authorization by law" should that home-rule unit consult? If no statute governs its spending, what statute could the home-rule unit possibly consult for authority?

¶ 107 This language only makes sense one way: In allowing for "local governments" to spend transportation tax revenues for "other transportation purposes as authorized by law," the Amendment can only be referring to those situations where home-rule and non-home-rule units have the same spending powers—which is when, and only when, *they are following the spending dictates of a statute*. It is nearly impossible to reconcile plaintiffs' position, that all revenue spending is restricted by this Amendment, even that which is *not* governed by statute, with this language in the second sentence of subsection (b).

¶ 108 That subsection aside, the County's interpretation also finds support in the Amendment's subsection (e), providing 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. 1970, art. IX, § 11(e). That provision is obviously intended for future, currently unknown modes of transportation and provides that if the state legislature decides that some new mode of transportation is worthy of state funding, it will have to dedicate a tax or other source of funding to it—which likely will have the effect, under subsection (a), of permanently locking in the protections of the Amendment over *those* revenues, too.

¶ 109 But why only mention the General Assembly and not home-rule units as well? If the Amendment is as broad as plaintiffs say, and the spending of revenue *not* governed by statute is also restricted, why give home-rule units a pass in subsection (e)? A home-rule unit is just as capable of "appropriat[ing] funds" for some new mode of transportation, and equally able to "provide for a dedicated source of funding"—that is, impose a tax and dedicate a revenue stream—as the General Assembly is. Why lock down the General Assembly but give home-rule units a pass? If plaintiffs are correct, and the Amendment intended to restrict a home-rule unit's spending of transportation-related tax revenue not governed by statute but only via home-rule ordinance, the drafters seriously whiffed by omitting home-rule units from the language of subsection (e). The exclusion of any reference to home-rule units in subsection (e) cannot be ignored.

¶ 110 We reach a final point raised by both parties: the absence of any mention of home-rule units and their powers anywhere in the Amendment. As we will see, it cuts both ways.

¶ 111 The County says if the drafters had intended to preempt home-rule power to spend revenue, the Amendment would have been required to specifically *state* that home-rule powers were preempted—much like statutes are required to specifically preempt home-rule power in various contexts. See Ill. Const. 1970, art. VII, § 6(i); 5 ILCS 70/7 (West 2018). Something along these lines: "The provisions of this Section are a denial and limitation of home-rule powers and functions." That is the language the General Assembly uses when it preempts home-rule authority. See, *e.g.*, Pub. Act 101-10, § 15-45 (eff. June 5, 2019) (amending 65 ILCS 5/8-11-1).

¶ 112 Or, says the County, if the framers intended the broad scope that plaintiffs advocate, they should have amended section 6 of the local government article, where home-rule powers are found. See Ill. Const. 1970, art. VII, § 6. The broad language there provides: "*Except as limited*

by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs ***." (Emphasis added.) Ill. Const. 1970, art. VII, § 6(a). Right there, next to the italicized language, or at least somewhere within that "section," a reference could have been made to the Amendment being an additional restriction on home-rule power, along with others contained in that "section."

¶ 113 Plaintiffs respond that constitutional provisions may apply to and restrict home-rule power without using any such language—or without even mentioning home-rule powers. Nobody would dispute, for example, that provisions protecting free speech, the free exercise of religion, or the right to a non-diminished public pension are applicable to home-rule units, even though none of those provisions specifically say they are.

¶ 114 In fact, plaintiffs argue, the absence of any mention of home-rule powers cuts the other way. The drafters of the Amendment knew how to create exemptions—they did that very thing by exempting federal funds from its scope in subsection (f). See Ill. Const. 1970, art. IX, § 11(f). Thus, say plaintiffs, the absence of any mention of home-rule units suggests that no exemption for them was intended.

¶ 115 We would agree with plaintiffs to some extent. We are cited no precedent holding that the applicability of a constitutional provision to a home-rule unit is dependent on language within that provision specifically applying itself to a home-rule unit. And we can think of no reason why some bright-line rule of that nature would make sense.

¶ 116 The rule that *statutes* must expressly indicate a preemption of home-rule powers, while certainly contained in the Statute on Statutes (see 5 ILCS 70/7 (West 2018)), in reality stems not from that source but from the Constitution itself. See Ill. Const. 1970, art. VII, § 6(i) (home-rule units may exercise powers concurrently with State "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" (emphases added)); *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 36.

¶ 117 But the Constitution contains no provision requiring that another *constitutional* provision, even an amendment, contain express language preempting home-rule power to be effective. The express-preemption rule for statutes does not apply to constitutional provisions.

¶ 118 Still, while it is true that the drafters of the Amendment did not contain an express *exemption* for the exercise of home-rule spending power, as it did for the expenditure of federal funds in subsection (f), we do find it significant that the Amendment contains no express *inclusion* of home-rule spending powers within its scope. We say that not as some bright-line rule but based on the specific language of the Amendment, as we have already discussed. After all, in subsections (b) and (c), the framers went to the trouble of specifically mentioning "laws" and "statut[es]" but never ordinances, and then in subsection (e) mentioned future restrictions on "the General Assembly" but not on home-rule units. Ill. Const. 1970, art. IX, § 11(b), (c), (e).

¶ 119 And when the Amendment did mention "local governments" (Ill. Const. 1970, art. IX, § 11(b)), a grand total of one time, it lumped all units of local government together, home-rule and non-home-rule alike. Treating them without distinction, in the context of spending power, makes sense only in situations where a *statute* governs the local governments' spending of tax revenue, rendering local governments of all kinds, home-rule or not, the same in their subordination to state law.

¶ 120 If the framers intended the Amendment to be read as plaintiffs contend, one would think that the framers might have noticed their frequent inclusion of words like "laws" and "statutory," their wholesale exclusion of the words "ordinance" or "home rule," their restriction on the

General Assembly but not home-rule units in subsection (e), and their failure to make any distinction in their discussion of "local governments" between home-rule and non-home-rule units—and make *some* attempt to clarify that home-rule spending powers were being restricted by the Amendment. But they did not.

¶ 121 Where does that leave things? We think the County has the better of the argument. Yes, subsection (a) speaks in the broadest terms about revenue sources, favoring plaintiffs' interpretation. But that language is cabined by the language of subsections (b), (c), and (e), which lead to the almost inescapable conclusion 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.

¶ 122 If the County is right, why the broad language in subsection (a)? We would hazard this reason: The framers wrote subsection (a) so broadly because, in theory, *any* spending of tax revenue *might* be governed by statute. As we explained at the outset, all spending of state-imposed tax revenue is governed by statute, whether spent by the State or distributed to local governments. All spending of tax revenue by non-home rule units is governed by statute. And *some* spending of tax revenue by home-rule units is governed by statute—but all such home-rule spending, in theory, could be. The General Assembly can always preempt a home-rule unit's spending powers.

¶ 123 Viewed in that light, it might have made sense to the framers to draft subsection (a) broadly to account for all the transportation-related taxes imposed at any level of government, understanding that the limitations in subsections (b), (c), and (e) would cabin that scope.

¶ 124 Having said all this, while we find plaintiff's interpretation less convincing, it is not altogether unreasonable. The breadth of subsection (a), alone, gives one pause. Plaintiffs'

position on subsection (b) is not unreasonable, either. While we prefer the County's take, it remains fair to say that only some of the spending purposes listed in subsection (b) are modified by the word "law" or "statutory," leaving open the possibility that the framers omitted those modifiers when describing other purposes because they intended a broader meaning than merely "statutory" purposes. And as plaintiffs argue, if the intent of the framers were to altogether exclude home-rule spending powers from the Amendment, a few words would have done the trick.

¶ 125 In the end, the Amendment is far—light years—from a model of draftsmanship. Language favoring either the County's or the plaintiff's interpretation would have been quite easy to insert. In the face of two competing interpretations, both of which we find reasonable to one degree or another, we deem the language ambiguous. See *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11.

¶ 126 C

¶ 127 In the face of an ambiguous constitutional provision, we consider the legislative debates and the information provided to the voters of Illinois regarding the Amendment. See *Hooker*, 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)). We will also consider recent legislation passed by the General Assembly that both parties have cited. We begin with the legislative debates.

¶ 128 1

¶ 129 First, some brief background. Generally speaking, the General Assembly has always had the authority to move revenue receipts—money—from one state fund to another. That is true even if a statute says that funds may not be transferred—because the General Assembly can

always *amend* that statute and remove the transfer prohibition for that one time (if not permanently). See *A.B.A.T.E. of Illinois, Inc. v. Quinn*, 2011 IL 110611, ¶ 25; *Department of Public Welfare v. Haas*, 15 Ill. 2d 204, 215 (1958) ("The fact that the legislature may provide that amounts, when collected, shall be placed in a certain fund does not ordinarily preclude a later General Assembly from ordering it paid into another fund or from abolishing the fund altogether."). Statutes exist at the whim of the General Assembly to amend as it pleases.

¶ 130 The movement of money from one fund to another is often called a "sweep" of that money. And a principal, if not *the* principal, problem that the supporters of the Amendment sought to address was "sweeps" of transportation-related funds into other, non-transportation-related funds. One example was the subject of a decision of our supreme court, *A.B.A.T.E.*, 2011 IL 110611, ¶ 19, which concerned the General Assembly's sweep of funds out of the Cycle Riders Safety Training Fund and into the General Revenue Fund.

¶ 131 A more common example is a sweep of the Road Fund, which over the years the General Assembly has frequently raided for other purposes. For example, in 2015, the year before the Amendment was placed on the ballot, the General Assembly swept $250 million from the Road Fund, along with $50 million from the State Construction Fund, $50 million from the Motor Fuel Tax Fund, $40 million from the County and Mass Transit District Fund, $10 million from the Grade Crossing Fund, and $9 million from the Public Infrastructure Construction Loan Revolving Fund—all into the General Revenue Fund, a decidedly *non*-transportation-specific fund. See Pub. Act 99-2, § 15 (eff. Mar. 26, 2015) (adding 30 ILCS 105/8.50).

¶ 132 In both the House and the Senate, supporters of the Amendment made prominent mention of the problem of sweeps from transportation-dedicated state funds into the General Revenue Fund or other non-transportation-specific funds. In his opening remarks on the House floor, the

sponsor, Representative Phelps, complained that "Too many times we had funds that have been swept." 99th Ill. Gen. Assem., House Proceedings, April 22, 2016, at 18 (statements of Representative Phelps). He then had this exchange with Representative Sandack:

> "[REPRESENTATIVE] SANDACK: Representative, would this avoid any sweeps in the future if this question is approved by voters?
>
> [REPRESENTATIVE] PHELPS: That's exactly right.
>
> [REPRESENTATIVE] SANDACK: And it would keep segregated sacrosanct tax dollars for improvements to the infrastructure…for infrastructure and infrastructure only?
>
> [REPRESENTATIVE] PHELPS: Absolutely." *Id.* (statements of Representatives Sandack and Phelps).

¶ 133 In his introductory remarks in the Senate, the sponsor, Senator Haine, said this:

> "[M]otor fuel taxes and motor vehicle registration fees are today deposited into the Road Fund and the State Construction Fund to pay for construction projects and debt service on bonds issued for previous construction projects. Under this constitutional amendment, these revenue sources would be protected and can only be spent for transportation purposes. As a result, this 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." 99th Ill. Gen. Assem., Senate Proceedings, May 5, 2016, at 58-59 (statements of Senator Haine).

¶ 134 We would quibble with one thing the senator said: The Amendment did not "overrule" the *A.B.A.T.E.* decision, which merely recognized the General Assembly's constitutional power to amend any statute and thus move money between funds at will. The Amendment simply

imposed a constitutional limitation on the General Assembly's power to do so in the specific context of revenues generated by transportation-related taxes or fees. The General Assembly may still amend statutes and may still move money between funds, but if the revenues were initially generated by a State-imposed transportation-related tax or fee, that money must now be spent for some transportation-related purpose—no matter where the money moves, and no matter who spends it—the State or a unit of local government.

¶ 135 The legislative debates made this clear, if it were not already. For example, this exchange on the floor of the Senate between the Amendment's sponsor, Senator Haine, and Senator McConnaughay (for brevity, we omit from the transcript the statements of the presiding officer directing the conversation from one senator to another):

> "SENATOR MCCONNAUGHAY: *** I read in—the language in the constitutional amendment and I agree the language used is ambiguous. Do you view the language as ambiguous?
>
> ***
>
> SENATOR HAINE: Yes, somewhat, and that's why we're doing these questions to—to clarify this.
>
> ***
>
> SENATOR MCCONNAUGHAY: Senator, you mentioned the—the motor fuel taxes in your introductory remarks and—and last answer. Am I correct that the constitutional amendment also protects the current distribution of monies raised from the State motor fuel tax *that are shared with local governments* as well as transferred to the State Boating Act Fund, Grade Crossing Protection Fund, and Vehicle Inspection Fund?
>
> ***

SENATOR HAINE: Yes, that is correct. The current distribution of monies from the State motor fuel taxes are dedicated to transportation purposes. It is not the intention of this amendment to alter the current distribution of motor fuel tax revenues, including those distributions that are—that currently cover administrative costs." (Emphasis added.) *Id.* at 62-63 (statements of Senators McConnaughay and Haine).[1]

¶ 136 Presumably both parties would agree that this colloquy supports, if nothing else, the notion that the Amendment sequesters revenues from taxes imposed by the State itself, pursuant to state law (as always), and distributed to units of local government—home-rule or otherwise.

¶ 137 And the legislative debates further support the notion that the Amendment is intended to restrict a unit of local government's spending of its own tax revenues, as long as that spending, again, is controlled by statute:

"SENATOR MCCONNAUGHAY: Senator Haine, that leads me to my next question. What about the Regional Transportation Authority's sales tax that is imposed in Cook and the collar counties and the Real Estate Transfer Tax in the City of Chicago that are dedicated to Public Transportation Fund? Are those monies protected by this constitutional amendment?

***

SENATOR HAINE: Yes, Senator McConnaughay. Those monies from the RTA sales tax and that portion of the City of Chicago's Real Estate Transfer Tax that the

[1]A nearly identical exchange took place on the floor of the House with the House sponsor, Representative Phelps. See 99th Gen. Assem., House Proceedings, April 22, 2016, at 20-21 (statements of Representatives Phelps and Fortner).

> Chicago Transit Authority receives are protected by the constitutional amendment." *Id.* at 63 (statements of Senators McConnaughay and Haine).[2]

¶ 138 And the reason those Regional Transportation Authority (RTA) revenues are protected by the Amendment is that the spending of that tax revenue is dictated by *statute*. The RTA, a regional public transportation body, is a unit of local government created by the Regional Transportation Authority Act. See 70 ILCS 3615/1.01, 1.04 (West 2018). That act gives the RTA the authority to impose certain transportation-related taxes and provides that the revenue shall be spent "to carry out any of the powers or purposes of the [RTA]" (*id.* § 4.03(a)), which are then listed in various places throughout the act.

¶ 139 So far, so good. That confirms both parties' (and our) interpretation that the Amendment, if nothing else, "protects" or sequesters revenues from transportation-related taxes that are spent pursuant to statute, either by the State itself or by a unit of local government following the dictates of a statute.

¶ 140 The big question here, of course, is whether the Amendment went further and likewise requires the sequestration of funds that a home-rule unit spends pursuant to its independent constitutional home-rule spending power, not pursuant to statute. On *that* question, the sponsors of the Amendment were emphatic—the Amendment was not intended to preempt home-rule spending powers. The Senate sponsor, Senator Haine, included this in his opening remarks:

> "This proposed constitutional amendment is intended to be on a par with Article VII, Section 6 [the home-rule section] of the Constitution and current home-rule power. This proposed constitutional amendment is not intended to eliminate, restrict, or apply to

[2]Again, a nearly verbatim discussion of the RTA sales tax and Chicago's real estate transfer tax occurred on the House floor. See 99th Gen. Assem., House Proceedings, April 22, 2016, at 21 (statements of Representatives Phelps and Fortner).

current constitutional and statutory authority that home-rule units have relative to taxes, spending, and other public safety functions." 99th Ill. Gen. Assem., Senate Proceedings, May 5, 2016, at 59 (statements of Senator Haine).

¶ 141 The County relies most heavily on a colloquy in the Senate between the sponsor and Senator Raoul (representing a district within the state's two largest home-rule units, the City of Chicago and Cook County):

"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 Cook 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—from these taxes on its public safety operations?

***

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.

* * *

SENATOR HAINE: 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.'

* * *

SENATOR HAINE: 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." *Id.* at 67-70 (statements of Senators Raoul and Haine).

¶ 142 There was a lot to that exchange, not all of it striking us as entirely accurate, but the important and unmistakable takeaway, at least for the County's purposes, is that it 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. Senator Raoul mentioned nearly every single tax that is the subject of the complaint here, asking whether the Amendment prevented the County from spending those tax revenues as it deemed appropriate—that is, for public safety and not transportation—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. It is hard to get more on-the-nose than that.

¶ 143 The legislative debates thus support the interpretation the County advances and which struck us as the more reasonable of the competing interpretations. The Amendment restricts the spending of transportation-related tax revenues when the spending of that revenue is dictated by state law, but it does not impact a home-rule unit's spending of revenue pursuant to its constitutional home-rule spending power.

¶ 144 2

¶ 145 We also consult the explanations of the Amendment that were published and sent to the voters of this State, as required by the Constitution. See Ill. Const. 1970, art. XIV, § 2(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."). This, in our view, should have prominent importance. 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 at the November 2016 general election. So it seems only fair and appropriate that we consider what the people of Illinois were told about this Amendment before they cast their vote.

¶ 146 The ballot summary from the Secretary of State printed the language of the Amendment in full and then provided an explanation of the Amendment as well as arguments for and against its adoption. The ballot summary's "explanation" read as follows:

> "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." (Emphases added.)

¶ 147 By and large, its first two paragraphs merely parrot the language of the Amendment itself. Plaintiffs highlight the phrase, "*transportation funds may be used by the State or local governments only for the following purposes*." No distinction between which kinds of revenues, in other words. Plaintiffs are correct that the language is broadly worded. But the third paragraph goes into specifics, including, of course, the very specific language that the Amendment is not intended to "alter home rule powers granted under this Constitution." That language quite explicitly carves out an exception to the more general statement on which plaintiffs rely.

¶ 148 We can harmonize those two passages under the County's read of the ordinance. The notion that "transportation funds may be used by State or local governments only for the following [transportation-related] purposes" is not inaccurate. The Amendment *will* restrict local-government spending—except when a local government is spending under its "home rule powers," as the later phrase qualifies.

¶ 149 We cannot, on the other hand, harmonize this language under plaintiffs' read of the Amendment. There is no way to take plaintiffs' interpretation as doing anything *but* "alter[ing] home rule powers." Plaintiffs say we are wrong, that this language about not altering home-rule powers is just a "passing comment" that "means only that the amendment was not intended to change the constitution's general formulation of home rule powers or to change the constitution's allocation of authority between the State government and home rule units of government."

¶ 150 That can't be. Nobody 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. And in fact, under the County's interpretation, the Amendment does *not* "change the constitution's allocation of authority between the State government and home rule units of government." While plaintiffs are correct that the Amendment does not say "that home rule units would be exempt from the amendment or excused from complying with it," that's because home-rule units are not "exempt" *entirely* from this Amendment. If they are receiving funds from the State or dictated in any other way by the State as to how to spend transportation-related tax revenues, they are restricted by the Amendment. It is only when a home-rule unit is exercising its own home-rule spending authority that the Amendment does not apply.

¶ 151 The ballot summary's "arguments in favor of the proposed amendment" told the voters this:

> "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."

¶ 152 We find nothing in that language inconsistent with our interpretation, nor anything that remotely suggests that home-rule units' ability to exercise their home-rule spending power as they see fit is impacted by the Amendment. Nor do we find anything inconsistent in the published "arguments against the proposed amendment" sent to the voters:

> "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."

¶ 153 This language is broadly worded but can easily fit within the County's interpretation. The State and, to a significant degree, local governments *are* "restrict[ed]" in how they spend certain forms of revenue under the Amendment. And the results of that restriction are just as described; officials will not be able to spend those funds on other priorities.

¶ 154 We do not find the ballot summary inconsistent with the County's interpretation. We would, on the other hand, find it hard to square the ballot summary with plaintiff's broader interpretation.

¶ 155 3

¶ 156 Though we find the legislative debates and the Secretary of State's published explanations consistent with the County's (and our preferred) interpretation of the Amendment, we comment on one other item called to our attention by both parties and capable of judicial notice, in any event—recent legislation passed by the General Assembly on this topic. In 2019, the General Assembly adopted Public Act 101-32, which among other things created the "Transportation Funding Protection Act." See Pub. Act 101-32 (eff. June 28, 2019) (adding 30 ILCS 178/5-10). The substantive law reads in its entirety as follows:

> "(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.*

¶ 157 This act is consistent with the County's interpretation of the Amendment. For one thing, the taxes and fees listed in subsection (a) are obviously all statutorily authorized—the statutes are mentioned right there in the language—and thus carry with them statutorily dedicated purposes for which the revenues may be spent. And the reference to "other funds described in" the Amendment is a reference to revenues generated pursuant to laws like the one the legislators mentioned in debate, the Regional Transportation Authority Act, a statute that authorize non-

home-rule unit taxes and prescribes how those revenue may be spent by that unit, the RTA. See 70 ILCS 3615/1.01, 1.04, 4.03, 4.03.1 (West 2018).

¶ 158 For another thing, this legislation does not preempt home-rule authority, because it does not contain the requisite language specifically preempting home-rule powers. See 5 ILCS 70/7 (West 2018). And 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. If this legislation were intended to restrict the home-rule power to spend, the preemption language would be required. See Ill. Const. 1970, art. VII, § 6(i); *Palm*, 2013 IL 110505, ¶ 36; 5 ILCS 70/7 (West 2018). Its absence speaks volumes.

¶ 159 Thus, subsection (b)'s reference to home-rule units of local government is simply a recognition, consistent with the County's read of the Amendment, that home-rule units spending transportation tax revenues under *statutory* authority (not their own independent constitutional authority) must spend the money on transportation purposes. That is why the language in the act indicates that its provisions are "declarative of existing law"—that is, declarative of what the Amendment already says. Pub. Act 101-32 (eff. June 28, 2019) (adding 30 ILCS 178/5-10(b)).

¶ 160 In sum, all of the extrinsic information that might inform us of the Amendment's intent points to the same conclusion that struck us as the most reasonable as well: The Amendment protects from diversion those revenues from transportation-related taxes whose expenditure is authorized by statute. The Amendment does not sequester revenues from transportation-related taxes spent by home-rule units pursuant to their independent constitutional spending power.

¶ 161 D

¶ 162 Plaintiffs complain that our interpretation renders the Amendment toothless. They say if the protections in the Amendment are based only on what is contained in a statute, and a statute

may be amended at any time by the General Assembly, then the General Assembly could essentially legislate the Amendment out of existence through statutory changes to these laws. The County, for its part, and to our surprise, agrees—it likewise sees the logical extension of its position to be that the General Assembly can always amend statutes and remove transportation purposes from the statutory authorization for spending these moneys.

¶ 163 On this point, we disagree with the County. This Amendment is anything but toothless. Subsection (d) of the Amendment states that "[n]one 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." Ill. Const. 1970, art. IX, § 11(d). This language is easily broad enough to restrict the various statutory actions the General Assembly may take to circumvent the Amendment—sweeps by the General Assembly from one fund to another, or legislative attempts to eliminate transportation purposes from statutory spending authorizations (or add non-transportation purposes to those statutes).

¶ 164 The point of the Amendment is to sequester transportation tax revenues from the moment they are generated until the moment they are spent—on transportation purposes. Subsection (d), as we read its broad language, would follow that money wherever it went and thwart any legislative attempt to divert those funds to other spending purposes. We fail to see how the General Assembly could "legislate around" the restrictions in the Amendment. We thus find no merit to the claim that our interpretation would render the Amendment functionally impotent.

¶ 165 E

¶ 166 The County argues that, because the Amendment is "only applicable to situations involving governments' use of transportation-related monies as specified by an applicable statute and is thus inapplicable to the County under the circumstances of the instant case," the lawsuit

was properly dismissed. We agree, as we have said, with the County's interpretation of the Amendment. And we agree with its suggested disposition as well.

¶ 167 The taxes imposed by the County that are the subject of the complaint are six different taxes. The County spends the revenue from each of these taxes 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 tax revenues. We agree with the County that the complaint fails to state a claim for a constitutional violation and was properly dismissed.

¶ 168 CONCLUSION

¶ 169 The judgment of the circuit court is affirmed.

¶ 170 Affirmed.

No. 1-19-0396

Cite as:	*Illinois Road & Transportation Builders Ass'n v. County of Cook*, 2021 IL App (1st) 190396
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 18-CH-2992; the Hon. Peter Flynn, Judge, presiding.
Attorneys for Appellant:	Gino L. DiVito, John M. Fitzgerald, and Amanda N. Catalano, of Tabet DiVito & Rothstein LLC, of Chicago, for appellants.
Attorneys for Appellee:	Kimberly M. Foxx, State's Attorney, of Chicago (Cathy McNeil Stein, Martha Victoria Jimenez, and James Beligratis, Assistant State's Attorneys, of counsel), for appellee.

E-FILED
Transaction ID: 1-19-0396
File Date: 8/23/2019 2:03 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-19-0396

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ILLINOIS ROAD AND TRANSPORTATION BUILDERS ASSOCIATION, et al, Plaintiffs-Appellants, v. COUNTY OF COOK, a body politic and corporate, Defendant-Appellee.	Appeal from the Circuit Court Cook County, Illinois, County Department, Chancery Division No. 2018 CH 02992 Honorable Peter Flynn, Judge Presiding

BRIEF OF DEFENDANTS-APPELLEES

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ORAL ARGUMENT REQUESTED

under the circumstances of the instant case. 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). An absurd reading of a new constitutional provision is exactly what Plaintiffs propose here.

Plaintiffs would like this Court to believe that at a time when the State of Illinois faced a fiscal crisis, the General Assembly decided that it would be a good idea to place a constitutional amendment before the voters that would drastically tie its hands as well as the hands of every one of the more than 8,000 units of local government in the State with respect to funding the State's and local governments' challenging and ever-changing fiscal priorities by mandating that any money derived from taxes whose subject matter evokes an association with "transportation" be *forever* sequestered for the benefit of transportation contractors, *whether or not* these governments decide to fund *any transportation projects whatsoever.* Despite the absurd and unjust outcome inherent in such a construction, Plaintiffs insist that it is correct, despite the inconsistency with the Amendment's plain language; impliedly and therefore improperly overrules the home rule article of the Illinois Constitution (Article VII § 6(a)); and is inconsistent with the ballot summary provided to the voters as well as the Amendment's legislative history.

What the Amendment actually does is promote openness and transparency in government by preventing the General Assembly and, to the ex-

78, 90 (1988). While the court adjudicating a Section 2-615 motion should interpret the allegations of the complaint in the light most favorable to the plaintiff (*id.),* the question presented by a 2-615 motion is whether sufficient facts are contained in the pleadings which, if established, could entitle the plaintiff to relief. *Urbaitis,* 143 Ill. 2d at 475. That is the case here. This Court may also affirm on any basis appearing in the record, whether or not the trial court relied on that basis. *Water Applications & Systems Corp. v. Bituminous Casualty Corp.*, 2013 IL App (1st) 120983 ¶ 33.

A. The County's interpretation of the Amendment is consistent with its plain language and requires the County to use transportation-related funds only as dictated by an applicable statute.

Plaintiffs' interpretation of the Amendment is that it requires any revenue from any transportation-related taxes and fees, such as those imposed by the tax ordinances identified in the Complaint, to be used for transportation-related purposes. (Complaint at ¶¶ 79-97) (C 58-60)

However, as the plain language of the Amendment states, and as Plaintiffs' own Complaint admits (Complaint at ¶¶ 78, 81) (C 57, 58), the "moneys" "relating to" or "related to" transportation referred to in subsection (a) are to be expended "for the costs of *administering laws* [related to transportation]" which costs are in turn "limited to direct program expenses." Ill. Const., Art. IX, § 11(a), (b), (c). (Emphasis added). Moreover, the Amendment provides that these "transportation funds" may be spent by "local governments[1] [for]

1 Ill. Const., Art. VII, § 1 defines units of local government to include "counties."

vided by the General Assembly); *Peile v. Skelgas, Inc.*, 242 Ill. App. 3d 500, 518 (5th Dist. 1993) (noting that the constitutional commentary accompanying several sections of the Illinois Constitution states that the phrase "provided by law" or "required by law" indicates a legislative function of the General Assembly).[2] The language of Section (b) authorizing funds to be spent on "*other statutory highway purposes"* and "with respect to local governments, other transportation purposes *as authorized by law"* further supports the conclusion that the Amendment's reference to "laws" means statutes passed by the General Assembly and not local ordinances.

Thus, the language of the Amendment actually supports the conclusion that it requires the State and local governments to expend transportation-related revenues for transportation purposes only when a statute directs the State or a local unit of government that such revenues be expended upon the transportation purposes set forth in that statute.

Interpreting the Amendment as the plain language of section (b) suggests, namely, as required by statute, *i.e.*, for the "cost of administering laws," is also consistent with the ballot summary submitted to the voters, which defines "transportation related taxes and fees" (presumably, the "moneys" described in section (a) of the Amendment) as those that are "*dedicated* to public highways, roads, streets, bridges, mass transit (buses and rail),

2 It should be noted that when the General Assembly wishes to make local ordinances applicable to a given legislative enactment, it specifically says so. *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.

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

The only reasonable -- and correct -- interpretation of the Amendment is the County's, namely, that the "moneys" identified in subsection (a) of the Amendment must be expended upon the purposes set forth in paragraphs (b) and (c) only as directed by *statute.* This interpretation promotes openness and transparency in government; is based on the Amendment's plain language; does not lead to any absurd and unjust consequences; is consistent with the ballot summary with respect to the conflict with the home rule article and its applicability to sales and gasoline taxes; preserves the critical ability of state and local legislative bodies to prioritize and address their fiscal needs; and eliminates the need to discern the meaning of the phrase "related to …. transportation," because the "relationship" to transportation will be dictated by an applicable statute.

D. The Legislative Debates Shed Light Upon the Meaning of the Amendment.

A review of the legislative debates regarding the Amendment further (and significantly) undermines Plaintiffs' interpretation. As a preliminary matter, it should be noted that "in general, the rules of statutory construction apply to the construction of constitutional provisions." *People v. State Board of Elections*, 136 Ill. 2d 513, 526 (1990). (Emphasis added). In all cases of statutory construction, the court's goal is to ascertain and give effect to the intent of the General Assembly and the enacted language is *generally* the best evidence of that intent. *Maddux v. Blagojevich*, 233 Ill. 2d 508, 513 (2009). The court may *also* consider the "purpose behind the legislation and

such power is vested in the Legislature only by the grant found in the Constitution [in Article XIV, Section 2], and such power must be exercised within the terms of the grant." *City of Chicago v. Reeves*, 220 Ill. 274, 288 (1906).

Article XIV, Section 2(b) of the Illinois Constitution requires that a proposed amendment "be published with explanations, as provided by law, at least one month preceding the vote thereon by the electors." Pursuant to Article XIV, Section 2 the General Assembly caused a ballot summary to be published by the Secretary of State. The ballot summary (whose language Plaintiffs did not challenge prior to the presentation of the proposed amendment to the voters) was the General Assembly's explanation and included the following statement:

> 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 the Constitution.*

(C 481). (Emphasis added.)

Unlike the ballot summary, the Amendment makes no mention of the fact that it is "not intended to …. alter home rule powers granted under the Constitution," nor does it contain any exception for "sales taxes, including the sales and excise tax on motor fuel." Such taxes "relate" to the subjects listed in Section (a) of the Amendment and are therefore covered by its plain language.

For the reasons stated above, construing the Amendment in the manner Plaintiffs now claim and the consequences that would flow therefrom would render the Amendment constitutionally invalid because the ballot summary's explanation contained material inaccuracies. This would mean that the voters did not have a clear opportunity to express their choice for or against the Amendment, thus violating Article III of the Illinois Constitution (the free elections clause) and Article XIV's requirement that constitutional amendments be published with explanations, which, as noted above, implicitly must accurately inform voters and not mislead them.

CONCLUSION

For the foregoing reasons, Defendant County of Cook prays that this Court affirm the February 22, 2019 ruling of the trial court dismissing Plaintiffs' Complaint with prejudice.

Dated: August 23, 2019

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COMMON LAW RECORD VOLUME

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NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

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

The undersigned, being first duly sworn, deposes and states that on June 30, 2021, there was electronically filed and served upon the Clerk of the above court the Brief and Appendix of Appellants. On June 30, 2021, service of the Brief will be accomplished by email as well as electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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

/s/John M. Fitzgerald
John M. Fitzgerald

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/John M. Fitzgerald
John M. Fitzgerald