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.

PLAINTIFFS-APPELLANTS' REPLY BRIEF AND RESPONSE TO REQUEST FOR CROSS-RELIEF

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ARGUMENT

The people of Illinois overwhelmingly approved the Safe Roads Amendment to the Illinois Constitution. The County now argues that the Safe Roads Amendment should not be enforced as written or, in the alternative, that it should somehow be invalidated — all because enforcing the Amendment as written would be "undemocratic." (County's Br. at 31.)

In truth, the "undemocratic" outcome is the one demanded by the County. The County's interpretation distorts the Amendment's language and renders it practically meaningless. Under its interpretation, "[n]o moneys" somehow means "most moneys," "local governments" means "some local governments but not others," and "[n]one of the revenues" means "a lot of the revenues." In another attempt to avoid the Amendment's language, the County simply asserts that it would be "absurd" to restrict how the County spends "its" money. Then it argues that maybe the Amendment is invalid after all.

All of these attempts to undo a democratically-made decision by the people of Illinois should be rejected. The County may disagree with the voters' decision to approve the Amendment, but the voters had every right to prohibit "local governments" (including the County) as well as the State government from diverting transportation tax revenue to purposes other than transportation. See Ill. Const. art. IX, § 11. The Amendment was approved by the people of Illinois and it should be enforced as written. Accordingly, the County's attempts to justify the appellate court's erroneous interpretation of the Amendment should be rejected.

A. The County Simply Ignores Most of the Amendment's Language.

The County repeatedly argues that the Amendment must be construed as a whole, but then it ignores most of the Amendment's language. "Interpretation of a constitutional provision begins with the language of the provision." *Graham v. Illinois State Toll Highway Auth.*, 182 Ill. 2d 287, 301 (1998). "[I]t is the language itself which provides the best evidence of what

the drafters intended to convey to the citizens for ratification." *Cincinnati Ins. Co. v. Chapman*, 181 Ill. 2d 65, 77 (1998).

1. Subsection (a) contains no limitations or restrictions on the transportation funds that are covered by the Amendment's terms.

Subsection (a) of the Amendment 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 correctly observed that subsection (a) "speaks in the broadest terms about revenue sources" (A-34, ¶ 121), and that it "contains no limitation on the types of 'taxes, fees, excises, or license taxes' to which the Amendment applies" (A-23, ¶ 85). More specifically, 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.* No such limitation may be read into the Amendment now. See *Kanerva v. Weems*, 2014 IL 115811, ¶ 41. The County almost entirely ignores subsection (a) and offers no explanation for it.

2. The County ignores most of the language in subsection (b).

The County turns its attention to subsections (b) and (c), apparently on the theory that those subsections limit the scope of subsection (a). But subsections (b) and (c) address a different subject and perform a different function than subsection (a). Subsection (d), which the County entirely ignores, explains the distinction: "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." See Ill. Const. art. IX, § 11(d) (emphasis added). Thus, subsection (a) describes which funds are restricted, and subsections (b) and (c) explain the purposes on which those funds may be spent.

Even assuming that the issue in this appeal were addressed by subsections (b) and (c), the County does not even analyze those provisions as a whole. This is the County's characterization of subsection (b):

> Subsection (b) states that "[t]ransportation funds" (presumably, the "moneys" referred to in paragraph (a)), "may be expended for the following: the costs of administering *laws* related to vehicles and transportation . . . *and other statutory highway purposes . . . and, with respect to local government, other transportation purposes, as authorized by law*."

(County's Br. at 15 (emphasis in original).)[1]

The ellipses in the County's characterization of subsection (b) mask serious omissions. This is the full text of subsection (b), with emphasis on the words the County omits:

> 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.

See Ill. Const. art. IX, § 11(b) (emphasis added).[2]

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[1] The County slightly misquotes subsection (b). Subsection (b) refers to "local governments" instead of "local government," and no comma separates "other transportation purposes" from "as authorized by law." See Ill. Const. art. IX, § 11(b).

[2] Subsection (c) defines one of the terms used in subsection (b) — the "costs of administering laws related to vehicles and transportation" — which is just one of many purposes for which transportation funds may be spent under subsection (b). See Ill. Const. art. IX, § 11(c).

In short, the County ignores a huge swath of subsection (b)'s language, including language that authorizes the expenditure of transportation funds on "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.* This is no minor oversight. The language that the County ignores in subsection (b) authorizes the use of transportation funds on road construction, bridge maintenance, and a host of other transportation purposes that are *not* modified or limited by the word "laws," the word "statutory," or any similar language.

The County devotes much of its argument to the proposition that the words "laws" and "statutory" refer exclusively to State statutes. (County's Br. at 15-18.) Even if that were true, however, the County overlooks that none of those terms appear in subsection (a), and that many of the transportation purposes specified in subsection (b) — including the most common and consequential purposes listed there — are not qualified by those terms at all.

The County makes a superficial attempt to distinguish *Ill. Bell Telephone Co. v. Ill. Commerce Comm'n*, 362 Ill. App. 3d 652, 660-61 (2005) and *Gutraj v. Bd. of Trustees of Police Pension Fund of Vill. of Grayslake*, 2013 IL App (2d) 121163, ¶¶ 14-15, which the plaintiffs cited for the proposition that terms on which the County relies ("laws" and "statutory") cannot be lifted from the subsections in which they appear and grafted onto subsection (a), where they do not appear. But instead of distinguishing those cases on their facts, the County argues that the Amendment should be read as a whole. (County's Br. at 19-20.) The Amendment should indeed be read as a whole, but "[r]eading a provision in context does not give one a license to disregard the clear language of the provision itself." *Ill. Bell Telephone Co.*, 362 Ill. App. 3d at 660. The drafters chose not to include the words "laws," "statutory," or any derivation of them in subsection (a), which explains which funds fall within the Amendment's scope. That

choice reflects the drafters' intent *not* to limit the scope of subsection (a). *Divane v. Smith*, 332 Ill. App. 3d 548, 553 (2002) ("[W]here the legislature uses certain words in one instance and different words in another, it intends different results.").

3. The County misconstrues subsection (e).

The County next argues about "flying cars" and other hypothetical future modes of transportation. It invokes subsection (e), which states: "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 County asserts that, if the plaintiffs' interpretation is correct, then "surely" the Amendment's drafters "would have sought to tie the hands of future local legislators just as they tied the hands of future General Assembly members," and from that premise, the County leaps to the conclusion that "the Amendment was only intended to cover state-authorized revenues to begin with." (County's Br. at 16.)

But the drafters never limited the Amendment's scope to "state-authorized revenues," either by including that limitation in subsection (a) or by tacking an exemption onto the Amendment (like subsection (f)) that would have accomplished the same goal.

Moreover, subsection (b) makes it entirely clear why subsection (e) applies only to the General Assembly. After listing the purposes on which transportation funds may be spent, subsection (b) adds that transportation funds also may be spent on, "with respect to local governments, other transportation purposes as authorized by law." See Ill. Const. art. IX, § 11(b). So, by law, the list of transportation purposes on which local governments may spend transportation funds may be expanded. The General Assembly, on the other hand, is confined to the transportation purposes listed in subsection (b). Thus, if the General Assembly wants to spend money on a mode of transportation that is not mentioned in the Amendment, it

cannot use the transportation funds listed in subsection (a). It must instead "provide for a dedicated source of funding." See Ill. Const. art. IX, § 11(e).

In other words, subsection (e) clarifies that the Amendment does not prohibit the General Assembly from subsidizing such things as flying cars, but if the General Assembly wants to do so, it cannot use revenue derived from taxes on transportation operations or transportation infrastructure, because that revenue must be spent on the transportation purposes specified in subsection (b). The drafters apparently did not want the General Assembly to divert revenue from the transportation purposes listed in subsection (b) to other modes of transportation. Local governments may do so, but only as "authorized by law." See Ill. Const. art. IX, § 11(b). Thus, no level of government has unfettered discretion to spend the transportation funds described in subsection (a) on "transportation purposes" that are not listed in subsection (b).

Subsection (e) therefore just mirrors the distinction made by subsection (b). Contrary to the County's argument, subsection (e) does not suggest the existence of some limitation or restriction that is never mentioned anywhere in the Amendment.

4. The County ignores subsection (f)'s express exemption for federal funds.

The County also entirely ignores subsection (f), which specifies 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. See *White v. Barrett*, 45 Ill. 2d 206, 211 (1970) (*expressio unius est exclusio alterius*). The plaintiffs raised this argument in their opening brief (Plaintiffs' Br. at 17), but the County did not respond to it.

5. The County describes a constitutional amendment that is very different from the one approved by the voters.

The County argues that the Amendment was intended merely to "prevent further 'sweeps' of dedicated state transportation funds into general revenue funds." (County's Br. at 1.) But if the County's interpretation were correct, the Amendment would merely say: "Funds dedicated to transportation by statute shall not be diverted to other purposes unless the statutory dedication is amended or repealed." That is miles away from the six paragraphs of detailed restrictions on the State and "local governments" that actually appear in the Amendment. And because any statute can always be amended or repealed, the protection afforded to transportation funds by the County's imagined amendment would be illusory. Such an amendment would serve no meaningful purpose. The County's interpretation fails on that basis alone. See *Hirschfield v. Barrett*, 40 Ill. 2d 224, 230 (1968) ("[T]he fundamental rule that each word, clause or sentence must, if possible, be given some reasonable meaning is especially apropos to constitutional interpretation.") (internal citations omitted).

The County nevertheless argues that the Amendment applies only if transportation funds are required "by *statute*" to be spent on the purposes listed in subsections (b) and (c). (County's Br. at 20 (emphasis in original).) The County describes this limitation in a few other ways throughout its brief. Elsewhere, for example, the County says that the Amendment applies "exclusively to state-imposed tax revenues" (*id.* at 12), and that the Amendment "encompass[es] only state-earmarked transportation revenues" (*id.* at 14).

But none of those limitations, in any formulation, appear anywhere in the actual text of the Amendment. Subsection (a) of the Amendment says that "[n]o moneys" relating to certain specified transportation operations or "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). As the appellate court

recognized, subsection (a) contains no limitation that would exclude such moneys that are spent by home rule units under their home rule authority, or that would more generally limit the Amendment's scope to moneys whose expenditure is controlled by a State statute. (A-23, ¶ 85.) None of the limitations imagined by the County appear anywhere else in the Amendment, either. No matter how strongly the County disagrees with the voters' decision to approve the Amendment, it cannot be rewritten now "to include restrictions and limitations that the drafters did not express and the citizens of Illinois did not approve." *Kanerva*, 2014 IL 115811, ¶ 41.

The County also argues that the Amendment does not expressly mention home rule units, use the term "ordinance," or appear in section 6 of article VII of the Constitution. (County's Br. at 15-16, 18-20.) There is a simple reason why the Amendment does not appear in section 6 of article VII: It is an across-the-board restriction on governmental power. It applies to the State government and to all local governments, including home rule units.

Many other constitutional provisions apply to the County and other home rule units without expressly mentioning home rule units, using the term "ordinance," or appearing in section 6 of article VII. Indeed, the Constitution never uses the term "home rule" outside of sections 6 and 7 of article VII. Yet there is no question that the Bill of Rights restricts the powers of home rule units without explicitly mentioning them. The same is true of the Pension Protection Clause (art. XIII, § 5). See *Jones v. Mun. Employees' Annuity & Ben. Fund of Chicago*, 2016 IL 119618, ¶ 61. The same is also true, by way of example, for article X, § 3, which states that "[n]either the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose . . . ." See Ill. Const. art. X, § 3. Like the Amendment, this provision restricts how local governments may spend tax revenue,

yet it nowhere mentions home rule units specifically, it does not use the term "ordinance," and it does not appear in section 6 of article VII. The County cannot seriously contend that it is exempt from this provision. Similarly, the County is bound by the uniformity clause (art. IX, § 2), even though, like the Amendment, it appears in article IX, it never mentions home rule units, and it never uses the term "ordinance." See *Guns Save Life, Inc. v. Ali*, 2021 IL 126014, ¶¶ 37-41.

Finally, all the County's arguments overlook a cardinal principle of constitutional interpretation: 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). According to the County's interpretation, stray uses of the word "statutory" and the word "laws" in subsections (b) and (c) of the Amendment — which, again, were used to modify only a few of the purposes on which transportation funds may be spent — somehow put the people of Illinois on notice that the Amendment would have no application whatsoever to transportation funds spent by "local governments" in the State's largest transportation hub.

That interpretation is not even remotely plausible. The voters would naturally have expected such a sweeping limitation to the Amendment's scope to be clearly and expressly stated somewhere in its text, much like subsection (f)'s unambiguous exemption for federal funds. The voters would reasonably be surprised to learn now that an Amendment which says that "[n]o moneys" derived from transportation taxes may be diverted from transportation purposes actually means that hundreds of millions of dollars in those moneys *may* be diverted each year, and that the term "local governments" somehow excludes some of the largest local governments in Illinois.

B. The County's Interpretation Would Yield Absurd Results.

Because its position is defeated by the Amendment's plain language, the County argues that the Amendment's meaning "should not be determined solely upon stringent rules of construction." (County's Br. at 23.) The County argues that adhering to the Amendment's plain language would yield an absurd result. (*Id.* at 18-19.) That absurd result, according to the County, is that its discretion over how to "spend its money" would be limited. (*Id.* at 18.)

But an outcome is not "absurd" just because it imposes fiscal restraints on a unit of government. See, *e.g.*, *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 76. Nor is an outcome "absurd" merely because a litigant does not like it, or even because an outcome may seem harsh to some people. See, *e.g.*, *People v. McCarty*, 223 Ill. 2d 109, 126-27 (2006); *Grams v. AutoZone, Inc.*, 319 Ill. App. 3d 567, 571-72 (2001). And the "possibility of an unjust or absurd result is generally not enough to avoid the application of a clearly worded statute." *Petersen v. Wallach*, 198 Ill. 2d 439, 447 (2002); see also *People ex rel. Pauling v. Misevic*, 32 Ill. 2d 11, 15 (1964) (rejecting argument that plain meaning of statute was absurd, and adding that "courts are not at liberty to read exceptions into a statute the legislature did not see fit to make, or, by forced or subtle constructions, to alter the plain meaning of the words employed") (internal citations omitted). Even when the "absurd results" doctrine applies, it bars only an outcome that "offends our sense not only of fairness, but of rationality and common sense." See Veronica M. Dougherty, *Absurdity and the Limits of Literalism: Defining the Absurd Result Principle in Statutory Interpretation*, 44 Am. U. L. Rev. 127, 151 (1994). The "absurd results" doctrine is used "sparingly" because it entails an "obvious risk that the judiciary will displace legislative policy on the basis of speculation that the legislature could not have meant what it unmistakably said." See 2A Sutherland Statutory Construction § 45:12 (7th ed.).

In this case, there is no absurdity in applying the Amendment to transportation revenues that are collected and spent by home rule units pursuant to home rule authority. In fact, it is the County's interpretation that would yield absurd results. The clear purpose of the Amendment is to prohibit the diversion of transportation tax revenues to purposes other than transportation. All parties agree that the Amendment plainly applies to the State government. The Amendment also expressly applies to "local governments" without exception or qualification. See Ill. Const art. IX, § 11(b).

It is simply not plausible that the drafters intended to exempt all home rule units of government from the Amendment's scope without expressly saying so. Such an unstated exemption would leave a gaping hole in the Amendment's prohibition on the diversion of transportation funds. See Ill. Const. art. IX, §§ 11(a), 11(d). Aside from invoking the breadth of home rule powers, the County never offers a coherent rationale for exempting home rule units from the Amendment's scope. Are the transportation needs in the County and other home rule units less significant, or less deserving of investment, than in other parts of the State? Do home rule units have a better track record than other local governments on making responsible investments in transportation infrastructure? Or do home rule units impose fewer or less burdensome taxes on transportation than other local governments? The answer to all these questions is a resounding "no."

The County's interpretation of the Transportation Funding Protection Act, 30 ILCS 178/5-1, *et seq.*, similarly yields absurd results. The County argues that, although the Act expressly referenced the Amendment's application to home rule units of government and stated that all transportation funds are dedicated to transportation purposes, home rule units still cannot be restricted in how they spend transportation funds. (County's Br. at 33-36.) This is reminiscent of the "never-ending statutory loop" that this Court rejected as absurd in *Evans*

v. Cook Cty. State's Att'y, 2021 IL 125513, ¶¶ 33-35. According to the County's logic, the Amendment applies to home rule units' transportation funds only if the use of those funds is regulated by a State law, but if the General Assembly passes a law regulating the use of those funds (*e.g.*, the Act), that law is ineffective anyway due to home rule authority. (County's Br. at 33-36.)[3]

The *amicus* brief filed by the City of Chicago, the City of Berwyn and the Village of Bridgeview asserts that the plaintiffs' interpretation of the Amendment is absurd because the City of Chicago collects "more than $300,000,000 a year" in transportation tax revenue. (*Amicus* Br. at 16-17.) The City of Chicago made the same argument in 2016. Before the voters went to the polls, Chicago Budget Director Alex Holt issued a public warning that, if the Amendment were approved, "the city might lose discretion over at least $250 million a year in local taxes . . . ." See Greg Hinz, *Why You Should Vote "No" On The Safe Roads Amendment*, Crain's Chicago Business, Oct. 22, 2016.[4] Having been warned that one of the State's largest home rule units believed the Amendment would restrict its discretion over a large amount of revenue derived from local transportation taxes, the voters resoundingly approved the Amendment. In short, the people of Illinois apparently did not view this as an absurd result.

C. The County Cannot Use Extrinsic Evidence to Change the Amendment's Plain Meaning.

1. Because the Amendment's language is plain and unambiguous, extrinsic evidence may not be used to interpret it.

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[3] The County has no clear response to the plaintiffs' argument that express preemption language was unnecessary in the Transportation Funding Protection Act because the Amendment already restricted how home rule units and other local governments could spend transportation funds — a point that the Act expressly clarified. See 30 ILCS 178/5-10(b). (See Plaintiffs' Br. at 43.) The County argues that the Act applies only to "state-directed revenue" (County's Br. at 36), but that term appears nowhere in the Act. See 30 ILCS 178/5-10.

[4] https://www.chicagobusiness.com/article/20161022/ISSUE05/310229994/why-the-saferoads-amendment-is-bad-policy-in-illinois.

"When the language of an enactment is clear, it will be given effect without resort to other interpretative aids." *Petersen*, 198 Ill. 2d at 445. In addition, when it is considered, legislative history "is meant to clean up ambiguity, not create it." *Roberts v. Alexandria Transp., Inc.*, 2021 IL 126249, ¶ 48 (quoting *Milner v. Dept. of the Navy*, 562 U.S. 562, 574 (2011)).

In this case, the constitutional text is plain and unambiguous, so no resort to extrinsic evidence is necessary or appropriate. The County repeatedly admits that the Amendment's language is plain (see County's Br. at 1, 21, 23 and 48), and yet it heavily relies on extrinsic evidence. The County tries to justify this approach by saying that, *to the extent* the plaintiffs' interpretation is "colorable," an ambiguity "necessarily" exists somewhere in the Amendment. (County's Br. at 24.) The County cannot have it both ways: the Amendment is either plain or it is not. If it is plain, as the County concedes, then extrinsic evidence cannot be used to interpret it, and in no event can extrinsic evidence be used to create an ambiguity where none exists on the Amendment's face. No such ambiguity exists. The County never identifies a single word or phrase in the Amendment that it contends is ambiguous.

2. The legislative history cited by the County is unreliable and inconsistent with the Amendment's actual language.

Moreover, the legislative history on which the County relies is, to put it mildly, not "entirely accurate." (A-43, ¶ 142.) The County relies on remarks by a senator who:

- Incorrectly described the Cook County Home Rule County Use Tax as a "general tax[] on all tangible personal property just like the State sales tax," when in fact the Use Tax applies only to the privilege of using tangible personal property "which is titled or registered . . . with an agency of this State's government," see 55 ILCS 5/5-1008 — *i.e.*, vehicles such as cars, trucks and motorcycles;

- Incorrectly claimed that the Amendment was not intended to "interfere in any way with local governments' current authority and practices," even though the Amendment plainly applies to "local governments," see Ill. Const. art. IX, § 11(b); and
- Described a non-existent exception to the Amendment for distributions under the Metropolitan Pier and Exposition Authority Act. (See generally C 513–15.)

Thus, the legislative history is not a reliable guide to what the Amendment says.

In addition, the County is relying on comments by senators who claimed to find the Amendment ambiguous. (County's Br. at 25.) Tellingly, those senators did not even identify which word or phrase they considered ambiguous. Additionally, rather than propose changes to the Amendment's language that might clarify any perceived ambiguity and send the proposed Amendment back to the House with modifications, several senators simply described exemptions and limitations that are nowhere to be found in the Amendment's actual language. (C 501-15.) House members were given no opportunity to respond to those remarks, and when the voters went to the polls, they were asked to vote on the Amendment's actual language, not on a transcript of Senate proceedings. That transcript cannot be used now to modify the Amendment's actual language. When legislative history "stands by itself, as a naked expression of 'intent' unconnected to any enacted text, it has no more force than an opinion poll of legislators—less, really, as it speaks for fewer." *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 448 (7th Cir. 2005); *see also Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 570 (2005) (rejecting "a deliberate effort to amend a statute through a committee report"); *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.").

The County also refers to legislative history indicating that the Amendment was not intended to encompass sales taxes. (County's Br. at 25.) This is a red herring. The plaintiffs make no claim about sales taxes and seek no relief concerning sales taxes. (See C 43-65.)

3. The voter's guide supports the plaintiffs' interpretation of the Amendment.

The County next argues that the voter's guide creates an exception to the Amendment's language, but the County disregards most of what the voter's guide actually says. The County seizes on a single line in the voter's guide, which says that the Amendment was 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." (C 481.)

The County argues that the plaintiffs' position is somehow inconsistent with the comment in the voter's guide about "sales taxes," and it incorrectly describes the Cook County Home Rule County Use Tax as a sales tax. (County's Br. at 30.) It is not a sales tax. It is a tax on the "*privilege of using*," in a home rule county, "any item of tangible personal property which is purchased at retail from a retailer, and which is titled or registered to a purchaser residing within the corporate limits of such home rule county with an agency of this State's government . . . ." See 55 ILCS 5/5-1008 (emphasis added); *City of Chicago v. City of Kankakee*, 2019 IL 122878, ¶ 3 (explaining the difference between the State sales tax and the State use tax). Nothing sought by the plaintiffs in this lawsuit is inconsistent with the statement in the voter's guide about "sales taxes." The plaintiffs seek no relief regarding any sales tax.

The County also focuses on the comment in the voter's guide that the Amendment was not intended to "alter home rule powers granted under this Constitution." (C 481.) In the County's retelling, however, this comment is transformed into a statement that the Amendment "would not impact home rule taxes," and then it further evolves into a statement

that the Amendment "would not apply to local taxes." (County's Br. at 29, 31.) Nothing in the voter's guide says that the Amendment "would not impact home rule taxes" or "would not apply to local taxes." The voter's guide instead says that the Amendment would not "alter home rule powers granted under this Constitution." In context, this statement simply means that the Amendment would not alter any provisions in article VII, section 6 — the constitutional provision that grants home rule powers.

Elsewhere, the voter's guide makes perfectly clear that the County's interpretation cannot be reconciled with any reasonable understanding of the Amendment's purpose. The voter's guide explains that, under the Amendment, "revenue generated from transportation related taxes and fees (referred to as 'transportation funds') shall be used exclusively for transportation related purposes," and under the Amendment, "transportation funds may be used by the State or *local governments* only for" transportation purposes. (C 480-81 (emphasis added).) The Amendment, the voter's guide explained, "is a limitation on the power of the General Assembly *or a unit of local government* to use, divert, or transfer transportation funds for a purpose other than transportation." (C 481 (emphasis added).) The 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 promised that the Amendment "will ensure that transportation funds are used only for transportation purposes." (*Id.* (emphasis added).) The arguments against the Amendment, meanwhile, warned that the Amendment would "limit[] 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." (*Id.* (emphasis added).)

Faced with this language, no reasonable voter would believe that there was an exception, completely unexpressed in the Amendment's actual language, for home rule units

of government or, more generally, for transportation funds that are not dedicated to transportation by statute. To the contrary, a reasonable voter would believe the promise in the voter's guide that the Amendment would "ensure that transportation funds are used only for transportation purposes," and that the Amendment would apply to "local governments" without exception.

Meanwhile, both the Amendment's actual language and the voter's guide expressly disclosed that the Amendment "does not impact the expenditure of federal funds, which may be spent for any purpose authorized by federal law." (C 481; see also Ill. Const. art. IX, § 11(f).) Any reasonable voter would expect an exemption for home rule units to be expressed with comparable clarity both in the Amendment and in the voter's guide. After all, an exemption for all home rule units would be a colossal limitation on the Amendment's scope and would run counter to the purposes stated in the voter's guide.

D. The Amendment is Valid.

The voter's guide was accurate and, for the reasons stated above, it does not support the County's strained interpretation of the Amendment. Based on its faulty interpretation of the voter's guide, however, the County argues that if the plaintiffs' interpretation of the Amendment were correct, the Amendment would somehow be invalidated by an inaccuracy in the voter's guide. (County's Br. 29-31.) The County cites no case in Illinois, or in any other American jurisdiction, in which a constitutional amendment was deemed invalid based on a purported inaccuracy in a voter's guide. The cases cited by the County are simply inapposite. See *People ex rel. Walgenbach v. Chicago & N.W. Ry. Co.*, 91 Ill. App. 3d 49, 52 (1980) (deciding whether a notice promulgated by a county board of review complied with the notice requirements of the Revenue Act); *Haggard v. Fay*, 255 Ill. 85, 90 (1912) (notice of a town meeting did not meet statutory requirements); *Samour, Inc. v. Bd. of Election Comm'rs of City of*

Chicago, 224 Ill. 2d 530, 540 (2007) (analyzing whether, in a local option election, an alleged translation error on Chinese-language ballots violated the Liquor Control Act); *Brooks v. Bd. of Election Comm'rs of City of Chicago*, 334 Ill. App. 3d 472, 476 (2002) (the form of a ballot in a local option election complied with the Liquor Control Act).

E. The Plaintiffs Have Standing.

A plaintiff "need not allege facts establishing standing." *Int'l. Union of Operating Engineers, Local 148 v. Ill. Dep't. of Employment Security*, 215 Ill. 2d 37, 45 (2005). "Rather, it is the defendant's burden to plead and prove lack of standing." *Id.* See also *Winnebago Cty. Citizens for Controlled Growth v. Cty. of Winnebago*, 383 Ill. App. 3d 735, 745 (2008) (dismissal was improper where it was not "clear that it would be impossible" for plaintiffs to have associational standing). Standing requirements are "not meant to preclude a valid controversy from being litigated." *Kluk v. Lang*, 125 Ill. 2d 306, 315-318 (1988) (rejecting standing challenge because "no other plaintiffs could sharpen the issues by bringing a keener interest to the litigation").

The County faults the appellate court for citing federal cases on standing, but in *Int'l. Union of Operating Engineers*, this Court adopted the associational standing test set forth in *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977): "[A]n association has standing to bring suit 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." See 215 Ill. 2d at 47 (quoting *Hunt*, 432 U.S. at 343). In addition, Illinois law "tends to vary in the direction of greater liberality" than federal law on standing. *Greer v. Illinois Hous. Dev. Auth.*, 122 Ill. 2d 462, 491 (1988).

"Economic injuries have long been recognized as sufficient to lay the basis for standing," *id.* at 493, and such injuries are alleged here (C 45-51, ¶¶ 6-50). The County argues

there is no "guarantee" that an end to its diversion of transportation funds will economically benefit any of the plaintiffs' members. (County's Br. at 39, 45.) No such "guarantee," however, is required for associational standing under the *Hunt* test. See *W. Va. Ass'n. of Cmty. Health Ctrs., Inc. v. Heckler*, 734 F.2d 1570, 1574-76 (D.C. Cir. 1984) (plaintiff was not required to prove its members were "certain to receive funding," and it had standing even though the state had "complete discretion" to award funds to health centers that were not plaintiff's members); *U.S. Women's Chamber of Commerce v. U.S. Small Bus. Admin.*, No. 1:04-CV-01889, 2005 WL 3244182, at *8-14 (D.D.C. Nov. 30, 2005) (association of women contractors had standing to challenge governmental defendants' failure to complete a congressionally-mandated study that could result in preferences for plaintiff's members in contracting decisions, because "it reasonably could be inferred" that "there is a substantial probability that one of [the association's] members would have benefitted" from that study) (quoting *Warth v. Seldin*, 422 U.S. 490, 504 (1975)) (quotation marks omitted).

In an effort to distinguish these cases, the County suggests that the plaintiffs' members are not the Amendment's "intended beneficiaries." (County's Br. at 44.) The County appears to be invoking the "zone-of-interests" test for standing, which this Court rejected in *Greer*, 122 Ill. 2d at 487-92.

The County speculates that it could find a way to spend its transportation funds exclusively on transportation purposes that have nothing to do with building, maintaining or improving any transportation infrastructure. (County's Br. at 40-42). This deeply implausible speculation cannot overcome the plaintiffs' allegations, which establish that the County's transportation infrastructure is in dire need of immediate investment. (C 51-55.)

The County next relies on *I.C.S. Ill., Inc. v. Waste Mgmt. of Ill., Inc.*, 403 Ill. App. 3d 211 (2010). Unlike the plaintiffs in *I.C.S.*, the plaintiffs here do not challenge the award of any

contract to a competitor, they do not challenge the outcome of any particular bidding process, they assert no tort claims, and they do not seek any award of lost profits from any competitor. See *id.* at 212-20, 225-31; *id.* at 225 ("duplicative recoveries" would occur if "each member of the class were awarded damages in the amount of the value of the contract . . . .").

Finally, in the alternative, the plaintiffs adequately alleged taxpayer standing. It is at least a fair inference from the plaintiffs' allegations that their members who are Cook County taxpayers will be liable to replenish the treasury for the County's misappropriation of transportation funds, because the County's dire transportation needs cannot go unmet forever. (C 51-55.) The plaintiffs allege that this misappropriation has caused them to suffer economic harm. (C 55 (¶ 70); see also C 45-51 (¶¶ 6-50); C 132 ("Failure to invest in transportation shifts more of the cost of moving people and goods to taxpayers.").)

CONCLUSION

Accordingly, the plaintiffs respectfully request that this Court reverse the appellate court's opinion and the circuit court's dismissal order, and deny the County's request for cross-relief.

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 containing 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 and the certificate of service is 20 pages.

/s/ *John M. Fitzgerald*
John M. Fitzgerald

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

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

The undersigned, being first duly sworn, deposes and states that on October 27, 2021, there was electronically filed and served upon the Clerk of the above court the Plaintiffs-Appellants' Reply Brief and Response to Request for Cross-Relief. On October 27, 2021, service of this 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
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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/John M. Fitzgerald
John M. Fitzgerald