No. 127229

IN THE SUPREME COURT OF ILLINOIS

CHARLES GREEN	)	Appeal from the Appellate Court, First Judicial District, Fifth Division
Plaintiff-Appellant	)	Case No. 1-20-0574
v.	)	Circuit Court of Cook County, Ill. County Department, Chancery Division
CHICAGO POLICE DEPARTMENT	)	Case No. 15 CH 17646
Defendant-Appellee	)	Honorable Alison C. Conlon, Trial Judge Presiding

BRIEF AND APPENDIX OF

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TABLE OF CONTENTS AND POINTS AND AUTHORITIES

I. NATURE OF THE CASE 1

II. ISSUE PRESENTED 2

III. STANDARD OF REVIEW 2

Price v. Philip Morris, Inc., 219 Ill. 2d 182, 236 (2005). 2

IV. JURISDICTION 2

Illinois Supreme Court Rule 315 3

V. STATUTES INVOLVED 3

VI. STATEMENT OF FACTS 6

A. Conviction, FOP Proceeding & FOIA Request 6

B. Appellant's FOIA Enforcement Action 9

C. Appellate Court Proceedings 12

VII. ARGUMENT 15

5 ILCS 140/1 15

In re Appointment of Special Prosecutor, 2019 IL 122949 .... 15, 18

5 ILCS 140/11(a) 16

5 ILCS 140/11(f) 16

A. FOIA's Plain Language Gave the Circuit Court Jurisdiction to Order CPD to Produce All of the Records Green Requested and Required the Court to Evaluate Green's FOIA Request *De Novo* as of the Time of the Court's Determination. 19

1..... The Circuit Court Had Subject Matter Jurisdiction to Adjudicate a FOIA Request Even When a Preliminary Injunction Precluded Disclosure at the Time the Request Was Made. 20

5 ILCS 140/11(d) 20, 21, 22

Green v. Chicago Police Dep't, 2021 IL App (1st) 200574 20

5 ILCS 140/11(a) 20, 22

S. Illinoisan v. Ill. Dep't of Pub. Health, 218 Ill. 2d 390 (2006) 21

2.FOIA Expressly Requires the Circuit Court to Review *De Novo* Whether the Requested Records May Be Withheld as of the Time of the Circuit Court's Decision. 21

5 ILCS 140/11(a) 22

5 ILCS 140/11(f) 22, 23

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Kopchar v. City of Chicago, 395 Ill. App. 3d 762 (2009) 22

De Novo, Black's Law Dictionary (11th ed. 2019) 22

People v. Vara, 2016 IL App (2d) 140849 23

S. Illinoisan v. Ill. Dep't of Pub. Health, 218 Ill. 2d 390 (2006) 23

3............ The Majority's Constrained View of the Circuit Court's Authority is Incompatible with FOIA's Express Policy Directives. 23

5 ILCS 140/1 24

5 ILCS 140/11(h) 24

Florez v. Central Intelligence Agency, 829 F.3d 178 (2d Cir. 2016) 24

In re Appointment of Special Prosecutor, 2019 IL 122949 .... 25, 27

5 ILCS 140/3(d) 25, 26

Senator Raoul, Senate Transcript, May 28, 2009 (p. 41) https://ilga.gov/Senate/transcripts/Strans96/09600058.pdf 25

Moran v. Bowley, 347 Ill. 148 (1932) 25

Representative Madigan, House Transcript, May 27, 2009 (pp. 92–93) https://ilga.gov/House/transcripts/Htrans96/09600062.pdf 26

Carmichael v. Laborers' & Retirement Bd. Emps.' Annuity & Benefit Fund, 2018 IL 122793 26

City of Chicago Office of Inspector General, *Follow-Up: Review of the Chicago Police Department's Management and Production of Records* (Sept. 16, 2021), https://igchicago.org/wp-content/uploads/2021/09/CPD-Records-Management-Follow-Up.pdf 27

Annum Haider, *Analysis: Illinois Law Hasn't Stopped Public Agencies from Withholding Records*, Better Government Association, Jan. 10, 2019, https://www.bettergov.org/news/analysis-illinois-law-hasnt-stopped-public-agencies-from-withholding-records. 27

Ashley v. Pierson, 339 Ill. App. 3d 733 (2003) 27

Leach v. Dep't of Emp. Sec., 2020 IL App (1st) 190299 27

Leach v. Dep't of Emp. Sec., 2020 IL App (1st) 190299 27

Island Lake Water Co. v. LaSalle Dev. Corp., 143 Ill. App. 3d 310, 317 (1986) 27

B. Illinois and Federal Case Law Supports the Circuit Court's Authority to Consider the Preliminary Injunction's Vacation When Evaluating the Propriety of CPD's Ongoing Withholding. 28

5 ILCS 140/1 28

Green v. Chicago Police Dep't, 2021 IL App (1st) 200574 28

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Kelly v. Vill. of Kenilworth, 2019 IL App (1st) 170780 28

Bonner v. U.S. Department of State, 928 F.2d 1148 (D.C. Cir. 1991) 29

1......*Special Prosecutor* Acknowledged that a FOIA Request Can Be Enforced Upon the Lifting of a Pending Injunction. 30

In re Appointment of Special Prosecutor, 2019 IL 122949 .... 30, 31, 32, 33

5 ILCS 140/11(d)...30

Green v. Chicago Police Dep't, 2021 IL App (1st) 200574 .... 31, 32

Fraternal Order of Police, 2016 IL App (1st) 143884.....................................32

2.... Federal Courts Frequently Consider Post-Response Events in Evaluating Whether Requested Documents Were Improperly Withheld. 33

Florez v. Central Intelligence Agency, 829 F.3d 178 (2d Cir. 2016) 33, 34

New York Times Co. v. U.S. Dep't of Just., 756 F.3d 100, (2d Cir. 2014)... 33, 34, 35

ACLU v. Cent. Intel. Agency, 710 F.3d 422 (D.C. Cir. 2013) 33

Powell v. U.S. Bureau of Prisons, 927 F.2d 1239 (D.C. Cir. 1991).................. 33

Carlisle Tire & Rubber Co. v. U.S. Customs Serv., 663 F.2d 210 (D.C. Cir. 1980) 33

Fraternal Order of Police v. City of Chicago, 2016 IL App (1st) 143884 35

Morgan v. U.S. Dep't of Just., 923 F.2d 195 (D.C. Cir. 1991) 36

Nat'l Sec. Couns. v. Cent. Intel. Agency, 898 F. Supp. 2d 233(D.D.C. 2012) . 36

3.............The Majority Misapplied Federal Case Law to Support Its Holding. 36

Green v. Chicago Police Dep't, 2021 IL App (1st) 200574 .... 36, 37

Bonner v. U.S. Departmentt of State, 928 F.2d 1148 (D.C. Cir. 1991) 36, 37, 39, 40

Am. Civ.Liberties Union v. Nat'l Security Agency, 925 F.3d 576 (2d Cir. 2019) 36, 40, 42

Lesar v. U.S. Department of State, 636 F.2d 472 (D.C. Cir. 1980)........... 36, 41

Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136 (1980) 37

Shapiro v. U.S. Dep't of Just., No. CV 13-555 (RDM), 2020 WL 7318014 (D.D.C. Dec. 11, 2020) 37

Florez v. Central Intelligence Agency, 829 F.3d 178 (2d Cir. 2016) 38

Bonner v. U.S. Department of State, 724 F. Supp. 1028, 1031 (D.D.C. Nov. 2, 1989) 38

New York Times Co. v. U.S. Dep't of Just., 756 F.3d 100, (2d Cir. 2014) 42

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Alley v. U.S. Dep't of Health & Human Servs., 2013 WL 6073500 (N.D. Ala. Nov. 18, 2013) 43

5 ILCS 140/1.. 43

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

I. NATURE OF THE CASE

This case concerns the Circuit Court's jurisdiction to order the production of records sought in an enforcement action brought under 5 ILCS 140/11(a) when a request for documents under the Illinois Freedom of Information Act 5 ILCS 140/1, et seq. ("FOIA") was statutorily deemed denied by the agency's failure to respond within the statutory period. The case further concerns whether the Circuit Court hearing such an action is to rule on the question of disclosure *de novo*, based on the validity of the agency's withholding at the time the court rules, or rather is constrained to determine only whether the agency's withholding was proper at the time the request was constructively denied.

Plaintiff-Appellant Charles Green ("Green" or "Appellant") filed this FOIA action in the Circuit Court of Cook County after the Chicago Police Department ("CPD") failed either to object or to produce public records of "closed"[1] police misconduct investigations, known as complaint register files ("CR files"), in response to a FOIA request submitted by Appellant Green. Considering the question of the records' release *de novo*, the Circuit Court ruled that there was no legal impediment to the release of the requested documents. The Appellate Court, First Division, reversed that order based on the fact that certain of the records at issue in Green's complaint were, at the time of Green's FOIA request, subject to a preliminary injunction preventing

[1] "Closed" investigations are investigations that have been completed, meaning that the file has been closed.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

disclosure, even though that injunction did not address all of the documents subject to Green's FOIA request, did not preclude CPD from raising any objection to the requested production, and had already been vacated as against public policy during the early stages of Green's FOIA enforcement suit. C859. Green appeals that reversal order. No question is raised on the pleadings.

II. ISSUE PRESENTED

Whether (A) the Circuit Court is divested of jurisdiction to order the production of records sought in a pending FOIA enforcement action under 5 ILCS 140/11 merely because a preliminary injunction prevented disclosure at the time the FOIA request was served but was lifted long before the court's determination, and whether (B) the Circuit Court in such an action is to determine whether to order production *de novo* as of the time the court considers the issue or rather solely based upon the circumstances existing at the time of the agency's failure to respond.

III. STANDARD OF REVIEW

This case presents an issue of statutory construction, which is a question of law that is reviewed *de novo*. *Price v. Philip Morris, Inc.*, 219 Ill. 2d 182, 236 (2005).

IV. JURISDICTION

Appellant filed a complaint in the Cook County Circuit Court pursuant to a grant of jurisdiction under 5 ILCS 140/11(a), after CPD was deemed to have denied Appellant's FOIA request by failing to respond to the request within the statutory period. On January 10, 2020, the Cook County Circuit

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Court ordered CPD to produce CR files covering the time period of 1967–2015. The Appellate Court issued an opinion reversing that order on March 31, 2021. No petition for rehearing was filed. Appellant filed a timely petition for leave to appeal to the Illinois Supreme Court, which was granted on September 29, 2021. The Court has jurisdiction over this matter under Illinois Supreme Court Rule 315.

V. STATUTES INVOLVED

5 ILCS 140/1

Sec. 1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.

****

Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people. The provisions of this Act shall be construed in accordance with this principle. This Act shall be construed to require disclosure of requested information as expediently and efficiently as possible and adherence to the deadlines established in this Act. The General Assembly recognizes that this Act imposes fiscal obligations on public bodies to provide adequate staff and equipment to comply with its requirements. The General Assembly declares that providing records in

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

compliance with the requirements of this Act is a primary duty of public bodies to the people of this State, and this Act should be construed to this end, fiscal obligations notwithstanding.

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5 ILCS 140/1.2

Sec. 1.2. Presumption. All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.

5 ILCS 140/3

Sec. 3.

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(d) Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. Denial shall be in writing as provided in Section 9 of this Act. Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request. A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).

(e) The time for response under this Section may be extended by the public body for not more than 5 business days from the original due date for any of the following reasons:

(i) the requested records are stored in whole or in part at other locations than the office having charge of the requested records;

(ii) the request requires the collection of a substantial number of specified records;

(iii) the request is couched in categorical terms and requires an extensive search for the records responsive to it;

(iv) the requested records have not been located in the course of routine search and additional efforts are being made to locate them;

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

(v) the requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 of this Act or should be revealed only with appropriate deletions;

(vi) the request for records cannot be complied with by the public body within the time limits prescribed by subsection (d) of this Section without unduly burdening or interfering with the operations of the public body;

(vii) there is a need for consultation, which shall be conducted with all practicable speed, with another public body or among 2 or more components of a public body having a substantial interest in the determination or in the subject matter of the request.

The person making a request and the public body may agree in writing to extend the time for compliance for a period to be determined by the parties. If the requester and the public body agree to extend the period for compliance, a failure by the public body to comply with any previous deadlines shall not be treated as a denial of the request for the records.

5 ILCS 140/9

Sec. 9.

(a) Each public body denying a request for public records shall notify the requester in writing of the decision to deny the request, the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial. Each notice of denial by a public body shall also inform such person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor. Each notice of denial shall inform such person of his right to judicial review under Section 11 of this Act.

(b) When a request for public records is denied on the grounds that the records are exempt under Section 7 of this Act, the notice of denial shall specify the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to supporting legal authority. Copies of all notices of denial shall be retained by each public body in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested.

(c) Any person making a request for public records shall be deemed to have exhausted his or her administrative remedies with respect to that request if the public body fails to act within the time periods provided in Section 3 of this Act.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

5 ILCS 140/11

Sec. 11.

(a) Any person denied access to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief.

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(d) The circuit court shall have the jurisdiction to enjoin the public body from withholding public records and to order the production of any public records improperly withheld from the person seeking access. If the public body can show that exceptional circumstances exist, and that the body is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

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(f) In any action considered by the court, the court shall consider the matter de novo, and shall conduct such in camera examination of the requested records as it finds appropriate to determine if such records or any part thereof may be withheld under any provision of this Act. The burden shall be on the public body to establish that its refusal to permit public inspection or copying is in accordance with the provisions of this Act. Any public body that asserts that a record is exempt from disclosure has the burden of proving that it is exempt by clear and convincing evidence.

VI. STATEMENT OF FACTS

A. Conviction, FOP Proceeding & FOIA Request

In 1986, then-16-year-old Appellant Charles Green was sentenced to life in prison without the possibility of parole. C20. He was charged with purported involvement in a quadruple homicide, for which he has consistently maintained his innocence. C20–21. His conviction resulted from coercive police tactics and prolonged interrogation, during which he was denied access to his mother and legal counsel.[2] C20. Green's counsel, whose "grossly

[2] In Green's 1988 appeal of his conviction, the Honorable Eugene Pincham, then serving on the Illinois First District Court of Appeals, wrote as part of a

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

inadequate and incompetent performance" was noted by the dissent in Green's appeal of his conviction, withdrew from representation without filing a timely notice of appeal. *People v. Green*, 179 Ill. App. 3d 1, 25 (1st Dist. 1988) (Pincham, J., dissenting). CPD's lead detective on Green's case has a notorious history of coercing inculpatory statements from persons in custody. C19–24. This history of abuse has been documented in numerous judicial decisions, and the detective was eventually convicted of sexual assault. *See, e.g.*, *Steward v. Summerville*, No. 90 C 6956, 1992 U.S. Dist. Lexis 15690 (N.D. Ill. Oct. 14, 1992); *Washington v. Summerville*, 127 F.3d 552 (7th Cir. 1997); *Seaton v, Kato*, No. 94 C 5691, 1995 U.S. Dist. LEXIS 2380 (N.D. Ill. Feb. 28, 1995); *People v. Vega*, 203 Ill.App.3d 33 (1st Dist. 1990); *People v. Saunders*, 220 Ill. App. 3d 647 (1st Dist. 1991); *People v. Sims*, 167 Ill. 2d 483 (1995); *People v. Murray*, 254 Ill. App. 3d 538 (1994). Green was released from custody in 2009 in the interests of justice after Green's co-defendant had completed his sentence. Green's conviction, however, still stands.

In 2014, the Fraternal Order of Police ("FOP")—the union representing CPD officers—challenged a separate FOIA request in an unrelated proceeding. The FOP sought a preliminary injunction from the Circuit Court prohibiting

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lengthy dissent that Petitioner Charles Green's quadruple murder conviction rested on "flagrantly egregious violations of the juvenile citizen's cherished, revered and basic Federal and State constitutional rights." *People v. Green*, 179 Ill. App. 3d 1, 21 (1988).

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

the City's production of certain police misconduct records[3] dating back to 1967 while the parties arbitrated FOP's claim that CPD was contractually obligated to destroy those records. The FOP's arbitration claim turned on a provision in the CPD collective bargaining agreement that required CPD to destroy records concerning alleged misconduct more than four years old. *Fraternal Order of Police v. City of Chicago*, 2016 IL App (1st) 143884, ¶ 14, *appeal denied*, 406 Ill. Dec. 321 (2016). The Circuit Court issued FOP's requested preliminary injunction in May 2015 (the "Preliminary Injunction"), enjoining CPD from releasing any police misconduct records more than four years old in order to maintain the status quo pending the litigation of the FOP claim. *Id.* ¶ 13. The Preliminary Injunction did not address CPD's obligations under the FOIA statute to respond to requests and to assert any objections. *Id.* The City appealed the Preliminary Injunction shortly thereafter (the "FOP appeal"), with proceedings on the remaining claims in that separate action stayed pending the final resolution of the arbitration. On November 4, 2015, the arbitrator ruled in favor of FOP in the arbitration and "order[ed] CPD to purge its online system of [CR files] and discipline more than five years old." *Id.* ¶ 14. The Circuit Court entered an order enjoining the City from deleting or destroying the CR files on December 3, 2015. *Id.* ¶ 15. The City filed a challenge to the arbitration award on January 29, 2016. *Id.* ¶ 18.

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[3] Unlike the CR files Appellant seeks, the FOIA request at issue in the FOP proceeding sought other records and data related to complaints of CPD misconduct.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

On November 19, 2015, Green submitted a FOIA request seeking all closed CR files. C20. CPD did not extend the time to respond to Green's FOIA request as permitted in 5 ILCS 140/3(e). CPD never responded in any fashion to Green's FOIA request within the periods set forth in 5 ILCS 140/3(d). More particularly, during the time permitted by statute, CPD never objected that responding to Green's FOIA request would be unduly burdensome. As a consequence of CPD's failure to respond, Green's request was deemed constructively denied pursuant to 5 ILCS 140/3(d), and, by the terms of that same provision, CPD was foreclosed from objecting to the request on grounds of undue burden. Appellant Br. at 19, *Green*, 2021 IL App (1st) 200574.

B. Appellant's FOIA Enforcement Action

Having received no response to his FOIA request, in accordance with 5 ILCS 140/11(a), Green filed a complaint in the Cook County Circuit Court on December 4, 2015, seeking an order requiring CPD to produce the requested records. C19. CPD filed an answer on February 18, 2016, asserting for the first time two bases for its denial: (1) that certain documents encompassed by Green's request allegedly contained private or personal information exempt from production, and (2) that the Preliminary Injunction barred CPD from producing CR files over four years old. Answer, C91–92. CPD did not attempt at that time to raise what would have been an untimely objection on grounds of undue burden. With both parties acknowledging to the Circuit Court that the resolution of the first FOP appeal regarding the Preliminary Injunction would directly bear on CPD's FOIA obligations to Green, C650-651, Judge

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Peter Flynn scheduled hearings in Green's case to coincide with expected developments in the FOP litigation. C106.

In July 2016, the Appellate Court hearing the first FOP appeal vacated the Preliminary Injunction, holding that it lacked a legal basis and violated public policy by "prevent[ing] defendants from complying with the disclosure requirements of the FOIA." *Fraternal Order of Police*, 2016 IL App (1st) 143884, ¶ 54. The FOP filed a Petition for Leave to Appeal, which was denied on September 28, 2016, at which point the Preliminary Injunction dissolved. *Fraternal Ord. of Police v. Chicago Police Sergeants Ass'n*, 60 N.E. 3d 872 (Ill. 2016).[4]

After the Preliminary Injunction had been vacated in the FOP litigation, proceedings continued in Green's case. CPD represented to Green's counsel in December 2016—over one year after he had submitted his FOIA request—that CPD was "getting ready for the eventual production" of the 2011–2015 CR files, which were never implicated by the FOP's then-invalidated Preliminary Injunction. Pl. Resp. to Def. Status Report, Ex. 3, C650–51. On March 17, 2017, CPD represented that CPD would confer with its vendor to determine

[4] In October 2017, the Circuit Court also vacated the arbitration award that would have allowed the FOP and CPD to agree on a schedule for destroying the CR files. *Fraternal Order of Police,* 2020 IL 124831, ¶ 21. The FOP appealed this decision, and the Appellate Court affirmed the Circuit Court's ruling. *Id.* ¶ 23. In June 2020, this Court affirmed the vacatur of the arbitration award as against Illinois' "well-defined public policy favoring the proper retention of important public records for access by the public." *Fraternal Order of Police*, 2020 IL 124831, ¶ 23.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

the status of processing and redacting the records. C653. After multiple status conferences, CPD moved for partial summary judgment on Green's request for the 1967–2011 records. C125–27. The Circuit Court denied CPD's motion for partial summary judgment and ordered that, as an initial matter, CPD must produce those four years' worth of CR files by the end of 2018. July 25, 2018 Order, C199; Sept. 19, 2018 Order, C200.

Despite that order, CPD did not produce a single record. Omnibus Order at C858. Faced with CPD's intransigence, Green moved to compel production and for summary judgment. C201; C328. In its opposition to Green's motion to compel, CPD still raised no defense of undue burden. Rather, CPD pointed again to the Preliminary Injunction as its basis for withholding the 1967–2011 CR files—even though the Preliminary Injunction had been vacated almost three years earlier, in 2016. C469. Following an April 2019 argument, the court held that Green was entitled to *all* of the requested CR files, from 1967–2015. C859. As the court later explained in a written order, "once the [Preliminary Injunction] was lifted, CPD no longer had a valid defense to withholding the CR files that were more than four years old and, without that defense, CPD must comply with FOIA." C861.

After this order, CPD grew even more intransigent. CPD failed to participate in a court-ordered meet-and-confer or even to appear for the next status conference. *Id.* On May 29, 2019, Green moved to compel again when

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

CPD "declined to discuss a production schedule for the 1967–2011 CR files." *Id.*

On June 3, 2019, following a status conference, counsel for CPD reached out to counsel for Green to set up a meet and confer and invite counsel "to sit down with us [to] discuss the potential to resolve the entire case" in light of the new administration. C840. Counsel for Green wrote to counsel for CPD on June 13, 2019 to memorialize the outcome of their meeting. C843. The discussions, however, consisted of CPD's attempt to produce less information than what the Circuit Court ordered. C844.

On January 10, 2020, after Judge Flynn's retirement and the case's reassignment to Judge Alison Conlon, the Circuit Court entered an Omnibus Order memorializing all of Judge Flynn's prior oral orders—including that CPD was required to fully comply with Green's request—and resolving certain outstanding issues. C858. Addressing one such outstanding issue, the Court held that CPD "willfully and intentionally failed to comply with the Court's order to produce the 2011–2015 CR files"—a finding that CPD has not appealed and that resulted in a $4,000 sanction. C865.

C. Appellate Court Proceedings

CPD appealed the Circuit Court's Omnibus Order on two grounds. First, it argued that because the Preliminary Injunction existed when CPD failed to respond to Green's FOIA request, CPD had "properly denied" Green's request by failing to respond, and thus the Circuit Court lacked jurisdiction to order production of documents that had not been "improperly withheld." Appellant

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Br. at 23–30, *Green,* 2021 IL App (1st) 200574. Second, CPD argued in the alternative that, despite FOIA's explicit declaration that CPD forfeited any undue burden defense—a waiver which CPD acknowledged on the record a number of times[5]—the Appellate Court should allow CPD to raise the defense belatedly. July 25, 2018 Hr'g Tr. at 33:6–10, C268.

While Green's lawsuit was pending before the Circuit Court, the Illinois Supreme Court issued its opinion in *Special Prosecutor*, holding that "where a circuit court with personal and subject-matter jurisdiction issues an injunction, the injunction must be obeyed, however erroneous it may be, ***until it is modified or set aside*** by the court itself or reversed by a higher court." *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 64 (emphasis added). In *Special Prosecutor*, a request was submitted to the City of Chicago (the "City") seeking grand jury documents that had previously been sealed from public disclosure by a protective order issued by the Circuit Court. *Id.* at ¶ 11. In contrast to this case, the City submitted timely written responses denying the request and explaining the grounds for denial. *Id.* At the time of the Circuit Court's ruling all the way through the Supreme Court's own decision, the requested documents were subject to the protective order, issued by a competent court prohibiting their disclosure. *See In re Appointment of Special*

[5] *See*, *e.g.*, Def. Mot. Partial Summ. J., C125 ("CPD waived its right to deny the request as burdensome by failing to respond in a timely manner."); *id.* at C127 ("CPD acknowledges that it waived its right to deny Plaintiff's request on the grounds that the request was unduly burdensome, when it failed to respond to the request within five business days.").

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Prosecutor, 2017 IL App (1st) 161376, ¶ 13. Unlike here, the protective order in *Special Prosecutor* was never vacated or set aside during the pendency of the FOIA case. *Id.* That being so, the court ruled *on the merits*—not as a matter of jurisdiction—that the protective order in place at the time of the court's decision prevented the City of Chicago from disclosing the documents. *Special Prosecutor*, 2019 IL 122949, ¶ 68. Thus, *Special Prosecutor* did not address the question presented here: whether a Circuit Court is divested of jurisdiction to order compliance with a FOIA request if a preliminary injunction that *temporarily* prevented disclosure at the time of the request is vacated during the pendency of the FOIA enforcement action.

Notwithstanding the several differences between the present case and *Special Prosecutor*, a majority of the Appellate Court reversed the trial court's decision under that precedent. The majority reasoned that because the Preliminary Injunction was in place at the time of CPD's constructive denial, that denial was not improper under *Special Prosecutor*, and therefore the Circuit Court had no jurisdiction to order disclosure even after the Preliminary Injunction was lifted. *Green*, 2021 IL App (1st) 200574, ¶ 26. The Appellate Court did not address CPD's argument that it should be able to raise an untimely undue burden defense. *Id.* at ¶ 28.

Presiding Justice Delort dissented, noting that this case presents a question not resolved by *Special Prosecutor*: "whether a requester has a remedy if a court is in the midst of hearing a lawsuit seeking release of public

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

records and the injunction upon which the public body had relied has now been vacated." *Id.* at ¶ 33 (Delort, J., dissenting). Construing FOIA in light of its "detailed, explicit declaration of legislative intent" favoring public disclosure, Justice Delort concluded that the Circuit Court rightly ordered CPD to disclose the records to which Green was clearly entitled. *Id.* at ¶¶ 34-38.

VII. ARGUMENT

In enacting FOIA, the Illinois General Assembly provided for "transparency and accountability of public bodies at all levels of government" through "access by all persons to public records." 5 ILCS 140/1. "Based on this clear expression of legislative intent, this court has held that public records are presumed to be open and accessible," and "FOIA is to be liberally construed to achieve the goal of providing the public with easy access to government information." *Special Prosecutor*, 2019 IL 122949, ¶ 25.

The Appellate Court's majority decision undermines these explicit directives by contravening FOIA's plain language and intent, and misreading state and federal case law. The result of that decision would be to dismiss Green's continuous six-year struggle to obtain public CPD misconduct records and require Green to file a new FOIA request and restart the months- or even years-long process to obtain documents from CPD. Even more antithetical to FOIA's clear purpose, CPD could respond to Green's subsequent FOIA request by asserting an undue burden defense, which CPD indisputably waived as to Green's initial request. The majority's decision thus wrongfully rewards CPD for flouting its FOIA responsibilities and subjecting Green and other FOIA

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

requesters to months or years of obstruction and delay, and undermines the role the legislature established for courts to guard against these very abuses. The decision below should be reversed.

First, FOIA's plain text contradicts the majority's conclusion that Circuit Courts are barred from exercising jurisdiction to order compliance with FOIA merely because, at the time a FOIA action is filed, a preliminary injunction in another action temporarily blocks disclosure of some (but not all) of those documents. Nothing in the plain terms of Section 11(d) or any of FOIA's other enforcement provisions places such a limit on the Circuit Court's jurisdiction to enforce a FOIA request. To the contrary, Section 11(a) allows requesters to file suit whenever their request is denied. More critically, FOIA's plain text makes clear that the Circuit Court is required to determine whether to order production *de novo* based on the justifications for withholding the documents at the time of the court's decision—not solely at the moment the agency initially denied (or constructively denied through inaction) the request. Indeed, Section 11(f) expressly requires the Circuit Court to consider the agency action *de novo* to determine if the records "*may be* withheld"—it does not direct the Circuit Court to review whether the records *were* properly withheld at the time of denial. The plain text of FOIA is dispositive. *See infra* Parts A.1–A.2.

Along the same lines, requiring Green to file a new request after years of litigation to vindicate his FOIA rights, as the Appellate Court opinion

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

suggests, would clearly contradict FOIA's policy directives, as expressly stated in the statutory text. Allowing CPD to withhold these records based on a preliminary injunction that was briefly in effect, but vacated years before the Circuit Court's decision, would further undermine these purposes: the majority's result would reward CPD for ignoring its obligations under FOIA by giving CPD a second chance to raise the burden objection that CPD admits it waived by ignoring Green's FOIA request. The statute is clear that a failure to respond forecloses burden objections, a point CPD admitted *five times* on the record below. On those facts, FOIA's expressly stated legislative policy directives favoring speed and transparency require the production of the records sought by Green, and CPD should not be rewarded for shirking its obligations to the public under FOIA. *See infra* Part A.3.

Second, the majority misapplied both Illinois and federal case law, which in fact overwhelmingly supports Appellant's position here. While this Court's recent decision in *Special Prosecutor* did not address the question presented here (where the injunction is lifted prior to the court's decision on whether to order production), it confirmed that courts properly evaluate the impact of a collateral injunction *on the merits*, not as a matter of jurisdiction. If CPD's position were correct, the *Special Prosecutor* court would have ordered the case dismissed on the ground that the protective order pending at the time of the request deprived the Circuit Court of jurisdiction to consider the disclosure question—but the Court did no such thing. *See infra* Part A.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Moreover, consistent with the statute, *Special Prosecutor* supports the rule that if a preliminary injunction is vacated while a Circuit Court is reviewing a requester's claims, the court is free to require production of the documents previously subject to that order. Indeed, this Court was clear that its ruling "does not mean that there is no remedy for the FOIA requester," emphasizing that a court order supersedes a pending FOIA request only "*until* [the injunction] is modified or set aside by the court itself or reversed by a higher court." 2019 IL 122949, ¶ 64. *See infra* Part B.1

The federal cases that CPD and the Appellate Court majority rely upon carry limited persuasive weight in the circumstances presented here. Those federal cases were decided by courts that could more liberally balance, for themselves, FOIA's policy interests against the burdens faced by agencies; unlike the Illinois statute, federal FOIA includes no express policy directives from the legislature. Even so, to whatever extent the reasoning from federal case law could apply to a case under the Illinois statute, that case law makes clear that the Circuit Court appropriately considered post-response events in this case. Indeed, federal courts frequently consider such events in evaluating whether requested documents were improperly withheld. In some cases, federal courts have declined to consider post-denial events in order to promote efficiency, but only where agencies have timely and appropriately responded to a FOIA request and already devoted considerable time and effort to processing it; in such circumstances, federal courts have held that the agency

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

need not devote considerable effort to re-processing those same documents simply because of changed circumstances. But where, as here, an agency has failed to respond to a request in the first place, and consequently has yet to review or process any documents, these federal cases provide that courts can and should consider post-response events. *See infra* Parts B.2–B.3.

A. FOIA's Plain Language Gave the Circuit Court Jurisdiction to Order CPD to Produce All of the Records Green Requested and Required the Court to Evaluate Green's FOIA Request *De Novo* as of the Time of the Court's Determination.

The majority erred by concluding that FOIA categorically divests a circuit court of jurisdiction to order production of documents if a preliminary injunction prevented disclosure at the time the FOIA request was denied (or, as here, constructively denied through inaction)—even when that injunction is vacated during the pendency of the requester's statutorily provided FOIA enforcement suit. That determination is unsupported, and indeed foreclosed, by FOIA's plain text. FOIA's enforcement provisions expressly provided the court subject matter jurisdiction over Green's enforcement action and the directive to evaluate CPD's withholding de novo as of the time of the Court's determination. Such a conclusion is not only compelled by FOIA's enforcement provisions, which are dispositive; it is reaffirmed by the policy directives of transparency and speedy disclosure that FOIA expressly enshrines. Under those directives, CPD cannot be allowed to withhold public records based on a since-vacated order that violated the public policies reflected in FOIA. Based

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

on FOIA's plain text, the Circuit Court had jurisdiction to order CPD to produce all of the records Green sought.

1. The Circuit Court Had Subject Matter Jurisdiction to Adjudicate a FOIA Request Even When a Preliminary Injunction Precluded Disclosure at the Time the Request Was Made.

The majority erroneously read into Section 11(d) a requirement that the circuit court is necessarily stripped of jurisdiction to order the production of documents if a preliminary injunction prevented disclosure at the time of the request's denial. 5 ILCS 140/11(d) ("[t]he circuit court shall have the jurisdiction to enjoin the public body from withholding public records and to order the production of any public records improperly withheld from the person seeking access."). Specifically, the majority held that it was immaterial whether the Preliminary Injunction had been vacated as of the time of the Circuit Court's decision because the court must "evaluate the public body's decision to withhold documents at the time the body responded to the request." *Green*, 2021 IL App (1st) 200574, ¶ 26.

But nothing in the plain text of Section 11(d) supports such a limited construction of the Circuit Court's authority. *See* 5 ILCS 140/11(d). First, Section 11(d) must be read together with Section 11(a), which provides requesters a straightforward right of action to challenge denied (or ignored) FOIA requests: "*Any person denied access* to inspect or copy any public record by a public body may file suit for injunctive or declaratory relief." 5 ILCS 140/11(a) (emphasis added). No language bars the Circuit Court from hearing

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

the dispute simply because the FOIA request might or might not have been properly denied on some provisional basis at the time it was submitted.

Against that backdrop, Section 11(d)'s reference to "public records improperly withheld" does nothing more than identify the subject matter of the court's review in such a suit. 5 ILCS 140/11(d). It places no temporal limit on jurisdiction based on *when* the records were improperly withheld. Additionally, Section 11(d)'s second clause—rather than tying jurisdiction to whether the agency was at fault at the time of an initial response—expressly provides that if the public body "is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records." *See* 5 ILCS 140/11(d). Obviously, whether an agency's decision to withhold documents is "improper" cannot be determined until the agency has reviewed its records. That Section 11(d) allows the court to retain continuing jurisdiction as the agency completes its review and potential production of documents makes clear that a court's power to conduct its "improper withholding" analysis is not immovably limited to the time of the agency's initial response (or failure to respond). *See S. Illinoisan v. Ill. Dep't of Pub. Health*, 218 Ill. 2d 390, 415 (2006).

2. FOIA Expressly Requires the Circuit Court to Review *De Novo* Whether the Requested Records May Be Withheld as of the Time of the Circuit Court's Decision.

FOIA's plain text also makes clear that the Circuit Court must evaluate an agency's withholding of records as of the time of the court's decision; the court's review is not constrained merely to whether the records were properly

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

withheld at the time the request was originally denied (or deemed denied through inaction).

Again, Section 11(a) provides a cause of action for "*[a]ny person denied access* to inspect or copy any public record by a public body," with no prerequisite that the withholding of documents must have been improper at the time of denial.

Quite the contrary. FOIA provides further that:

> In any action considered by the court, ***the court shall consider the matter de novo***, and shall conduct such in camera examination of the requested records as it finds appropriate to determine ***if such records or any part thereof may be withheld*** under any provision of this Act. The burden shall be on the public body to establish that its refusal to permit public inspection or copying ***is*** in accordance with the provisions of this Act. Any public body that asserts that a record ***is*** exempt from disclosure has the burden of proving that it ***is*** exempt by clear and convincing evidence.

5 ILCS 140/11(f) (emphasis added).

Section 11(f) leaves no doubt that FOIA expressly empowers the Circuit Court to consider such suit "*de novo*"—i.e., regardless of any prior basis for withholding. *See Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 769 (2009) (allowing agency to assert additional exemptions not listed in denial letter (not including undue burden) because "section 11(f) of the FOIA mandates that the circuit court conduct a *de novo* review"); *see also De Novo*, Black's Law Dictionary (11th ed. 2019) ("Anew.").

And critically, in conducting such *de novo* review, the court is required to determine if such records "*may be withheld,*" with the burden on the agency

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

to establish that its withholding "*is* in accordance with [FOIA]." 5 ILCS 140/11(f) (emphasis added). FOIA does not provide for the court to review whether the records "*were properly withheld*" at the time of denial or that the agency's refusal "*was*" in accordance with FOIA.

Thus, CPD's position is squarely incompatible with FOIA's plain language, which explicitly requires the Circuit Court to consider a denied request *de novo* and determine whether the records "may be withheld" as of the time of that determination. 5 ILCS 140/11(f); *see People v. Vara*, 2016 IL App (2d) 140849, ¶ 34 (noting that "the primary objective of statutory construction is to ascertain and give effect to the legislature's intent" and "the most reliable indicator of legislative intent is the language of the statute itself, given its plain and ordinary meaning."); *S. Illinoisan*, 218 Ill. 2d at 415 (court must "view all provisions of a statutory enactment as a whole" such that "words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute").

3. The Majority's Constrained View of the Circuit Court's Authority is Incompatible with FOIA's Express Policy Directives.

In addition to being foreclosed by the plain text of Section 11's FOIA enforcement provisions, the majority's rule artificially limiting the Circuit Court's review (and jurisdiction) merely because the agency's withholding of documents may have been excused by a temporary injunction at the time of the initial request is irreconcilable with FOIA's express policy favoring expeditious disclosure of public records.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Section 1 of FOIA explicitly enshrines efficiency and speed as the key to the government's "fundamental" obligation of transparency:

> The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly ***and provide public records as expediently and efficiently as possible*** in compliance with this Act.

5 ILCS 140/1 (emphasis added). Various other FOIA provisions reflect the legislature's desire to ensure that requests for public records are resolved promptly. For instance, the statute gives priority to FOIA litigation over other cases, providing that "[e]xcept as to causes the court considers to be of greater importance, proceedings arising under this Section shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way." 5 ILCS 140/11(h).

The Appellate Court majority's decision would require Green to file a brand new FOIA request and restart the months- or even years-long FOIA process, all because the Preliminary Injunction was briefly in effect after Green filed his request. Nothing about having to file *two* FOIA requests and at least one (possibly two) enforcing lawsuits promotes efficiency or speed. *See Florez v. Central Intelligence Agency*, 829 F.3d 178, 187-88 (2d Cir. 2016) (discussed *infra* at 33–34) ("Such an outcome makes little sense and would merely set in motion a multi-year chain of events leading inexorably back to a new panel of this Court considering the precise question presented here."). Nor does it serve

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

to promote government transparency to allow public bodies to evade (or at least defer for months or years) their "fundamental obligation . . . to operate openly." *Special Prosecutor*, 2019 IL 122949, ¶ 24 (quotations & citations omitted), *quoting* 5 ILCS 140/1. This Court has made clear that "all persons are entitled to full and complete information regarding the affairs of government" so that they can "fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest." *Id.* (*quoting* 5 ILCS 140/1); *see also id.*, ¶ 25 ("[P]ublic records are presumed to be open and accessible."). Excusing an agency's statutory disclosure duties and forcing a requester to restart the FOIA process, all based on a since-vacated injunction, is inefficient and directly contrary to FOIA's express policy goals.

Moreover, the majority's ruling would give CPD a pass for waiving its undue burden objection when it ignored Green's initial request, arguably allowing CPD to raise its untimely objection to a new FOIA request to block disclosure. FOIA strongly incentivizes public bodies to respond promptly to requests; where a public body fails to timely respond, FOIA dictates that the agency waives any right to object to a request on the ground that it is unduly burdensome. *See* 5 ILCS 140/3(d) ("A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g)."). This waiver provision was intended to create "significant

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

consequences for failing to respond to FOIA requests,"[6] denying public bodies the ability to claim an undue burden exemption that legislators have described as "often abused."[7] The majority's decision would undermine this provision. If Green were required to file a new FOIA request under the majority's holding, CPD could respond to the new request with an undue-burden defense that the legislature deems waived because of CPD's failure to respond to the first request. *See* 5 ILCS 140/3(d).

CPD should not be rewarded for its dilatory tactics under a statute that expressly calls for speed and transparency. CPD engaged in a pattern of such tactics designed to thwart Green's efforts to obtain these admittedly public and non-exempt police misconduct records. CPD not only ignored Green's FOIA request altogether, necessitating this lawsuit, but after asking the Circuit Court to stay litigation of Green's FOIA case to enable the Appellate Court to rule on the Preliminary Injunction's validity, CPD then waited nearly two additional years *after the Appellate Court vacated the injunction* and any legal impediment to release had vanished before asking the Circuit Court to dismiss Green's FOIA suit based on the now-vacated injunction. When interpreting a

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[6] *See* Senator Raoul, Senate Transcript, May 28, 2009 (p. 41) https://ilga.gov/Senate/transcripts/Strans96/09600058.pdf; *see also Moran v. Bowley*, 347 Ill. 148, 155 (1932) (holding that legislative statements may be considered to determine "the history of the times or of the evil which the legislation was intended to remedy").

[7] *See* Representative Madigan, House Transcript, May 27, 2009 (pp. 92–93) https://ilga.gov/House/transcripts/Htrans96/09600062.pdf; *see also Moran*, 347 Ill. at 155.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

statute, this Court's "primary goal . . . is to ascertain and give effect to the legislature's intent." *Carmichael v. Laborers' & Retirement Bd. Emps.' Annuity & Benefit Fund*, 2018 IL 122793, ¶ 35. Rewarding CPD's idleness would do the opposite. To allow CPD a second chance to assert its untimely defense would subvert this Court's command that FOIA "is to be liberally construed to achieve the goal of providing the public with easy access to government information." *Special Prosecutor*, 2019 IL 122949, ¶ 25. The majority's decision significantly weakens the deterrent effect of FOIA's defense-waiver provision.

Giving CPD a do-over here would be particularly inappropriate in light of CPD's well-documented pattern of failing to meet its statutory and constitutional obligations to produce records. *See* City of Chicago Office of Inspector General, *Follow-Up: Review of the Chicago Police Department's Management and Production of Records* (Sept. 16, 2021), https://igchicago.org/wp-content/uploads/2021/09/CPD-Records-Management-Follow-Up.pdf; *see also* Annum Haider, *Analysis: Illinois Law Hasn't Stopped Public Agencies from Withholding Records*, Better Government Association, Jan. 10, 2019, https://www.bettergov.org/news/analysis-illinois-law-hasnt-stopped-public-agencies-from-withholding-records.[8] The Appellate Court's

[8] Courts may take judicial notice of materials published on government websites. *Ashley v. Pierson*, 339 Ill. App. 3d 733, 739-40 (2003); *Leach v. Dep't of Emp. Sec.*, 2020 IL App (1st) 190299, ¶ 44. Courts have likewise taken judicial notice of articles under Illinois Rule of Evidence 201. *Colagrossi v. UBS Sec.*, LLC, 2015 IL App (1st) 133694-U, ¶13 fn. 4. And appellate courts

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

ruling creates an entirely new judicial rule that both undermines public policy and the express language of FOIA and that rewards CPD for continuing this disturbing pattern of shirking its FOIA responsibilities, this time simply because an injunction was briefly in place while Green's FOIA request sat on CPD's desk, completely ignored.

B. Illinois and Federal Case Law Supports the Circuit Court's Authority to Consider the Preliminary Injunction's Vacation When Evaluating the Propriety of CPD's Ongoing Withholding.

This Court's decision in *Special Prosecutor* further supports the Circuit Court's authority to order the records' production when the Preliminary Injunction had been vacated. And the non-binding federal case law relied on by the Appellate Court majority to reach a contrary result cannot be broadly and bluntly adopted in this case as the majority and CPD suggest. As the Appellate Court dissent observed, "federal FOIA does not contain a declaration of legislative purpose, much less one as robust as the one contained in" 5 ILCS 140/1. *Green*, 2021 IL App (1st) 200574, ¶ 37. Federal courts thus can craft rules for evaluating the propriety of a public body's FOIA responses free from express legislative directives to advance particular goals. Illinois courts are not so free, particularly where FOIA's plain text forecloses CPD's erroneous interpretation here, and where the General Assembly has explicitly included its policy directives in the statute's text. Illinois courts depart from federal

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may take judicial notice of materials that are not part of the record on appeal where the materials are the proper subjects of judicial notice. *Island Lake Water Co. v. LaSalle Dev. Corp.*, 143 Ill. App. 3d 310, 317 (1986).

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

standards where (as here) "key differences exist between the [FOIA] statutes." *Kelly v. Vill. of Kenilworth*, 2019 IL App (1st) 170780, ¶ 43. And yet, the majority and CPD look to distinguishable federal cases that, in certain narrow circumstances, allow burdens faced by an agency to override the public policies animating FOIA. In following those cases, the majority and CPD pay no attention at all to FOIA's enforcement provisions or the General Assembly's express directives that the Illinois statute must be enforced to promote the State's public policies of government transparency and speedy disclosure. The federal cases are simply not applicable, let alone persuasive here.

But even beyond this critical distinction between the Illinois and federal statutes, the relevant federal case law is entirely consistent with Green's position: a long line of federal cases evaluates post-response developments in determining the propriety of an agency's withholding under federal FOIA. The exception to that general approach recognized in *Bonner v. U.S. Department of State*, 928 F.2d 1148 (D.C. Cir. 1991), and adopted by the majority is simply inapplicable here: *Bonner* counsels against requiring that an agency ***re-process*** extensive sets of records already prepared for production, based on post-processing changes in the records' exemption status. Such a rule has no application here, where CPD had undertaken no meaningful effort to respond to Green's FOIA request when the Preliminary Injunction was vacated.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

1. *Special Prosecutor* Acknowledged that a FOIA Request Can Be Enforced Upon the Lifting of a Pending Injunction.

This Court's decision in *Special Prosecutor* is consistent with Appellant's position. That case addressed whether a public body improperly withheld grand jury documents under FOIA when a protective order sealing those documents prevented their disclosure throughout the pendency of the FOIA litigation. 2019 IL 122949, ¶¶ 10-11, 64. *Special Prosecutor* simply held that grand jury records requested under FOIA were not "improperly withheld" because a protective order that the criminal court issued to seal those records precluded the City's production. *Id.* ¶ 64.

Special Prosecutor said nothing about whether the Circuit Court was deprived of subject matter jurisdiction to evaluate the agency's withholding of documents merely because there was some temporary basis to withhold them at the time of initial denial. That issue never arose, because the protective order that supported the City's withholding was in force at all times relevant to the requester's FOIA enforcement suit, including when the Circuit Court ruled on the requester's claims. *Special Prosecutor*, 2019 IL 122949, ¶¶ 68–69. Indeed, if CPD's view of Section 11(d) were correct, the courts below and this Court in *Special Prosecutor* would have held that the Circuit Court lacked jurisdiction to rule on the City's withholding of documents because there was an injunction in place at the time of denial. Instead, the Court in *Special Prosecutor* said nothing about jurisdiction, but rather ruled on the merits, allowing the City's withholding of the grand jury records because there was an

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

injunction in place at the time of the Circuit Court's decision. It thus follows that the Circuit Court here likewise had jurisdiction to entertain Green's enforcement action.

Moreover, *Special Prosecutor supports* a requester's right to proceed with his FOIA suit upon the vacatur of the injunction or order preventing disclosure. While not addressing this question directly, this Court made clear that a pending injunction's primacy over a FOIA request was only effective "*until* [the injunction] is modified or set aside by the court itself or reversed by a higher court." 2019 IL 122949, ¶ 64 (emphasis added). In fact, *Special Prosecutor* was explicit that its holding "does not mean that there is no remedy for the FOIA requester," acknowledging that the injunction could be modified, vacated, or appealed. *Id.* at ¶ 67. And vacatur of the injunction is precisely what happened in this case, underscoring how the relief that Green obtained from the Circuit Court as a result is precisely the remedy contemplated in *Special Prosecutor*. *Id.*

At the same time, the majority's holding that a FOIA request must be evaluated as if time were frozen as of the date of the request is plainly inconsistent with *Special Prosecutor*. *See Green*, 2021 IL App (1st) 200574, ¶ 26 ("It is immaterial that the [preliminary] injunction was subsequently vacated because . . . we evaluate the public body's decision to withhold documents *at the time the body responded to the request*." (alteration added, emphasis in original)). If the events in this case were reversed—*i.e.*, no

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

injunction existed at the time of the FOIA request, but one was entered thereafter—CPD could not be expected to assert that it was required to produce documents in defiance of the later-issued injunction. And yet, if CPD's position were correct, the court would have to determine that CPD's withholding of documents was improper and order production, given the absence of an injunction at the time of denial. Hence, the majority's artificial narrowing of the Circuit Court's authority to consider post-request events in FOIA suits would lead to the situation that *Special Prosecutor* expressly sought to avoid—conflicting orders that require a public body to act in contempt of court. *See* 2019 IL 122949, ¶¶ 58-64.

Finally, the broader dictates of *Special Prosecutor* are flatly inconsistent with CPD's positions and the opinion below. A driving tenet of *Special Prosecutor*'s decision was that courts and agencies obey orders "out of respect for the judicial process." *See* 2019 IL 122949, ¶¶ 58-64. In this case, the Illinois trial and appellate courts vacated the Preliminary Injunction for violating public policy because it "prevented defendants from complying with the disclosure requirements of the FOIA." *Fraternal Order of Police*, 2016 IL App (1st) 143884, ¶ 54, *appeal denied*, 406 Ill. Dec. 321 (2016). However, as the dissent observed, the majority's approach "would . . . in essence, revive[ ] an injunction from another case [that is] no longer in force or effect." *Green*, 2021 Il App (1st) 200574, ¶ 36 (Delort, J., dissenting). Against that backdrop, CPD's position would deny Appellant the very remedy contemplated by *Special*

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Prosecutor through the vacatur of the Preliminary Injunction, and would undermine the judicial process by effectively reversing the court's decision that the Preliminary Injunction violates the public policy codified by FOIA. There simply is no way to square CPD's position with *Special Prosecutor*'s admonition that courts and agencies obey orders "out of respect for the judicial process." *See* 2019 IL 122949, ¶¶ 58-64.

2. Federal Courts Frequently Consider Post-Response Events in Evaluating Whether Requested Documents Were Improperly Withheld.

While the opinion below relied on a few federal cases to support its conclusion (and those cases are discussed below), the overwhelming weight of applicable authority interpreting the federal FOIA statute establishes that courts regularly review the agency's withholding of requested records as of the time of the court's decision and based on the circumstances then present.[9]

Taking only a few examples, in *Florez v. Central Intelligence Agency*, 829 F.3d 178, 181 (2d Cir. 2016), the CIA denied a FOIA request, stating that

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[9] *See, e.g.*, *New York Times Co. v. U.S. Dep't of Just.*, 756 F.3d 100, 110 n.8 (2d Cir. 2014), *opinion amended on denial of reh'g*, 758 F.3d 436 (2d Cir. 2014), *supplemented*, 762 F.3d 233 (2d Cir. 2014) (rejecting application of *Bonner* "time of request" rule where government made post-decision disclosures that went "to the heart of the contested issue"); *ACLU v. Cent. Intel. Agency*, 710 F.3d 422, 431 (D.C. Cir. 2013) (taking notice of CIA's post-decision statements acknowledging existence of documents the agency had previously denied were in its possession); *Powell v. U.S. Bureau of Prisons*, 927 F.2d 1239, 1242 (D.C. Cir. 1991) (subsequent release of portions of withheld record undermined agency's position that entire record was exempt); *Carlisle Tire & Rubber Co. v. U.S. Customs Serv.*, 663 F.2d 210, 219 (D.C. Cir. 1980) (denying FOIA exemption for portions of classified document published in Federal Register during the lawsuit).

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

that the existence or nonexistence of any responsive documents was classified. The trial court found that the CIA's response was appropriate and granted the CIA's motion for summary judgment. *Id.* During the pendency of the appeal of that action, the FBI released several responsive declassified documents in response to a separate FOIA request. *Id.* The Second Circuit remanded the case and required the CIA to re-review its FOIA responses after the FBI made disclosures during the pending litigation which rendered various documents non-exempt that had previously been subject to statutory exemptions. *Florez*, 829 F.3d at 187. Making no reference to any temporal or jurisdictional requirements in federal FOIA, the court observed that this was "the most sensible approach." *Id.* at 188. The Second Circuit refused to make the requester repeat the entire FOIA cycle merely to end up in the same place months or years later:

> [If the Second Circuit] were to proceed to the merits, and therefore potentially affirm the decision of the District Court, without considering the FBI Disclosures, we would accomplish little more than consign Mr. Florez to filing a fresh FOIA request, beginning the process anew with the FBI Disclosures in hand. Such an outcome makes little sense and would merely set in motion a multi-year chain of events leading inexorably back to a new panel of this Court considering the precise question presented here, perhaps in about two-and-a-half years (Mr. Florez's FOIA request was submitted in November 2013). ***This delay would not serve the purposes of FOIA or the interests of justice, and it is inefficient to send Mr. Florez back to the end of the line.***

Id. at 188 (emphasis added).

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

The Second Circuit's decision in *New York Times* is also instructive. In *New York Times*, reporters submitted FOIA requests seeking documents related to targeted killings of people suspected of having ties to terrorist organizations. *New York Times*, 756 F.3d at 105. The government responded by acknowledging the existence of responsive documents and claimed FOIA exemptions without identifying the particular documents withheld. *Id.* After the district court entered judgment for the government in the ensuing lawsuit, the DOJ disclosed a white paper containing information relevant to the FOIA request. *Id.* at 110. The Second Circuit held that, by disclosing the white paper, the government had waived FOIA exemptions justifying the denial of the reporters' requests. *Id.* at 115–116. And while the court acknowledged that it was "not required to consider such evidence, the circumstances of th[e] case support[ed]" doing so because the post-request events "go to the heart of the contested issue." *Id.* at 110 n.8.

The same rationale applies here. Although the Preliminary Injunction barred release of some records responsive to Green's request at the time it was made, the injunction was no longer in place by the time the Circuit Court ruled on Green's request. The order vacating the Preliminary Injunction goes to the "heart of the contested issue": not only was that injunction the only basis CPD had for challenging Green's request for pre-2011 records, the Preliminary Injunction also was vacated because it violated public policy by "***prevent[ing] [CPD] from complying with the disclosure requirements of the FOIA***"—

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

precisely the issue of this dispute. *Fraternal Order of Police*, 2016 IL App (1st) 143884, ¶ 54 (emphasis added). Thus, the Circuit Court acted well within its authority by considering the order vacating the Preliminary Injunction.

In fact, federal courts have repeatedly held that agencies must produce requested documents subject to an injunction or sealing order in separate litigation if the records become available while the FOIA case is pending. *See, e.g.*, *Morgan v. U.S. Dep't of Just.*, 923 F.2d 195, 198-99 (D.C. Cir. 1991) (finding that, if a sealing order in a separate case is lifted while FOIA litigation is pending, the agency must produce documents responsive to FOIA request); *see also Nat'l Sec. Couns. v. Cent. Intel. Agency*, 898 F. Supp. 2d 233, 282 (D.D.C. 2012), *aff'd*, 969 F.3d 406 (D.C. Cir. 2020) (stating in response to CIA policy applying a date-of-response cut-off that the "D.C. Circuit disfavors an agency's reflexive application of [a] cut-off policy to every request regardless of circumstances.") (quotations omitted).

3. The Majority Misapplied Federal Case Law to Support Its Holding.

Without acknowledging the authority above, the Appellate Court instead relied on three inapposite federal cases for the proposition that "the propriety of a response must be judged at the time the decision denying the FOIA request was made." *Green*, 2021 IL App (1st) 200574, ¶ 23, *citing Bonner*, 928 F.2d 1148, *and Am. Civ. Liberties Union v. Nat'l Sec. Agency*, 925 F.3d 576 (2d Cir. 2019) ("*ACLU*"), *and Lesar v. U.S. Department of State*, 636 F.2d 472 (D.C. Cir. 1980). But the rule announced in those cases—that an

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agency decision to withhold a document "ordinarily must be evaluated as of the time it was made"—plainly has no application here.

First, the majority invoked these federal cases as applying a *jurisdictional* limitation on the Circuit Court's ability to consider post-response events. *Green*, 2021 IL App (1st) 200574, ¶21. But the precedent the majority relied upon makes clear that a court may temporally limit its review of an agency decision as a *prudential* matter, not as a *jurisdictional* requirement. Indeed, none of the federal cases cited by the majority or by CPD categorically barred consideration of post-response developments like the lifting of a temporary court order, nor did these cases impose *any jurisdictional requirement* that a challenged withholding must have been improper at the time of the agency's initial response.[10]

Second, having mistaken the pragmatic rule applied by federal courts for a bright line jurisdictional requirement, the majority failed to consider any of the prudential factors that federal courts weigh in determining whether post-response events are relevant under FOIA. Specifically, the rule from *Bonner v. U.S. Department of State* limits a court's review to the time of its initial response only where the agency has gone to great trouble to process potentially responsive records and to determine, document-by-document,

[10] Indeed, the only case cited by CPD in their appellate briefing that addresses jurisdiction under federal FOIA involved an entirely separate issue—whether FOIA provides federal courts with jurisdiction to order the production of documents no longer within an agency's possession. *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 139 (1980).

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

which records the agency will withhold. *See, e.g.*, *Shapiro v. U.S. Dep't of Just.*, No. CV 13-555 (RDM), 2020 WL 7318014, at *31 (D.D.C. Dec. 11, 2020) (*Bonner* "stand[s] for the proposition that an agency may properly stop searching at a date certain so that it may prepare its response without having to execute further searches in an infinite loop."); *Florez*, 829 F.3d at 188 (*Bonner*'s "general rule" applies to judicially mandated reprocessing). In each of the cases principally relied on by the majority, the agency promptly denied the request at the time it was made, robustly explaining the denial's grounds, often document-by-document, to argue which records were statutorily exempted from disclosure. The court then refused to make the agency ***re-process*** the already evaluated and prepared records based on subsequent changes in the records' exemption status. Here, no one has asked or ordered CPD to re-process previously prepared records; indeed, CPD failed to respond to the FOIA request at all, and the Preliminary Injunction was vacated before CPD took any steps to actually prepare records for production. The *Bonner* line of cases simply does not and should not apply in the circumstances here.

In *Bonner*, the plaintiff sued the State Department to enforce FOIA requests submitted during the preceding two years. 928 F.2d at 1149. The State Department eventually identified some 4,600 documents as responsive to the requests, but it withheld or redacted over 1,700 of those documents pursuant to various exemptions. *Id.* After the parties agreed to test these exemption claims through representative sampling, the State Department

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

submitted a 143-page declaration justifying the withholdings "in excruciating detail." *Bonner v. U.S. State Dep't*, 724 F. Supp. 1028, 1031 (D.D.C. Nov. 2, 1989) (footnote omitted), *vacated*, 928 F.2d 1148 (D.C. Cir. 1991). While preparing the declaration and other supporting papers, the State Department concluded that redacted material in 19 sample documents had recently been declassified, and the agency produced those documents in full. Thus, the question on appeal was exceedingly narrow: whether the State Department's "release of the 19 documents in full . . . undermined the confidence one can have that the Department correctly invoked FOIA to shield information contained in the" other 1,700 withheld documents. *Bonner*, 928 F.2d at 1151.

Reasoning that "[t]he government cannot be expected to follow an endlessly moving target," the *Bonner* court ultimately held that the 19 newly released documents did not, without more, warrant "reprocessing [ ] the over 1,700 documents still withheld in whole or in part." *Id.* at 1153. These facts bear no resemblance to the present case, where CPD is attempting to avoid processing numerous documents in the first instance and failed at the outset to properly respond to Green's request. C862–863. And even *Bonner*'s rule requires re-processing if the agency's initial response is deemed materially deficient or improper: *Bonner* held that the agency *would* have to re-process

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

the documents if the sampling showed that the first processing had an unacceptably high exemption error rate. *Bonner*, 928 F.2d at 1154.[11]

Similarly, in *ACLU*, the government had processed and released responsive documents before their exemption status changed, and the requester sought to revisit those prior exemption decisions based on the post-disclosure status changes. The Second Circuit held that "a court reviewing a FOIA decision must not order reprocessing simply to reassure itself that a correct decision remains current." 925 F.3d at 585-88, 602. But the court made clear that considering post-decision disclosures can be appropriate where "reprocessing [is] unnecessary to decide whether the withheld documents were subject to disclosure." *Id.* In those circumstances, the court observed, "[i]gnoring such statements [after denial] would have needlessly added work for the courts and simply delayed the inevitable for the agencies"—*i.e.*, that the agencies will eventually have to process those documents after the plaintiff files a subsequent FOIA request. *Id.* at 603. This case presents an entirely different scenario: the Preliminary Injunction was vacated (and the CR files' exemption status changed) *before* CPD had disclosed the files, not after like in *ACLU*. On those facts, even the *ACLU* court would have considered post-

[11] What is more, the State Department in *Bonner* had chosen to disclose information that it had previously withheld but that had become non-exempt since the time of the initial response. 928 F.2d at 1149. If the State Department had taken CPD's position that the propriety of the withholding must be judged from the time of the denial, no disclosure would have been necessary unless the plaintiff filed a second FOIA request seeking the subsequently declassified information.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

decision events, because re-processing would be unnecessary to decide whether the withheld documents should be disclosed.

Finally, *Lesar* is even a step more removed from this case: it dealt with the unique rules governing executive orders on security classifications. The D.C. Circuit decided that, in that specific context, a court should assess an agency's classification decisions based on the Executive Order in effect at the time the classification occurred. 636 F.2d at 480. The court was prompted to adopt this rule because the Executive Order in effect at the time of appeal specified that documents properly classified under earlier Executive Orders would retain their classifications. *Id.* Thus, the new Executive Order did not change the classification of the relevant documents, which the agency had already processed under the earlier, more restrictive order.

Here, in contrast, CPD never responded to Green's request, failing to discharge its explicit statutory duty. It took a lawsuit to get any indication from CPD that it intended to withhold the CR files—let alone to get an explanation of CPD's grounds for withholding (though no such grounds existed for the 2011-2015 records). Unlike the agencies in the federal cases cited by the majority, CPD never processed the requested CR files in the first instance, and thus it would not need to ***re***-process them or incur additional, duplicative costs after the injunction lifted. The "moving target" concern that motivates those federal cases simply does not apply here: CPD ignored Green's request without processing any documents under any exemption, and CPD has refused

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

to produce records that were no longer exempt from disclosure at the time it finally began to process other records for production. And unlike in those federal cases, the post-request changed circumstances here "go[ ] to the heart of the contested issue" concerning whether the requested documents are presently exempt from disclosure—a fact that leads federal courts to consider post-withholding developments. *New York Times*, 756 F.3d at 110 n.8 (citation omitted); *cf. also ACLU*, 925 F.3d at 603 (Second Circuit departs from *Bonner* rule when "doing so is in the clear interest of judicial economy and would not burden the agency with prudential reprocessing").

In sum, the majority erred by converting the prudential rule applied by federal courts into a bright line jurisdictional rule that strictly prohibits consideration of post-response events. In the circumstances present here, that prudential rule favors assessing CPD's withholding in light of the Appellate Court's order vacating the Preliminary Injunction. No government interest in efficiency countervails against the statute's goals of transparency and speedy disclosure where, as here, the public body never responded to the original request with the detailed explanation of the claimed disclosure exemptions that FOIA explicitly requires. Unlike the agencies in the federal cases cited by the majority, CPD has never pointed to any work—let alone significantly burdensome work—that it would have to completely ***re-perform*** following the Preliminary Injunction's vacation. Thus, the efficiency concerns motivating every precedent cited by the majority and CPD are entirely absent here.

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Indeed, reflexively adopting *Bonner*'s prudential rule in the circumstances of this case would ignore the critical distinction between the federal and Illinois statutes, as discussed above: the explicit policy directives present in the Illinois statute and absent from the federal one give Illinois courts less leeway to craft rules for evaluating the propriety of agencies' withholding than the leeway enjoyed by federal courts. Imposing upon requesters like Green a "circuitous" and "frustrat[ing]" path to government transparency cripples that express public policy favoring "efficient[ ] and expedient[ ]" disclosure. *Alley v. U.S. Dep't of Health & Human Servs.*, 2013 WL 6073500, at *3 (N.D. Ala. Nov. 18, 2013); *see* 5 ILCS 140/1.

CONCLUSION

In light of FOIA's plain text and explicit policy directives and the relevant Illinois and federal case law, Green respectfully requests that the Court overturn the Appellate Court's ruling and order CPD to produce the records to which Green is entitled under FOIA.

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Respectfully Submitted,

Dated: November 3, 2021 By: */s/ Nicholas M. Berg*

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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 or words contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 11,352 words.

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PLEASE TAKE NOTICE that on the 3rd day of November, 2021, we filed and served electronically on the Clerk's Office of the Supreme Court of Illinois the attached Appellant's Brief and Appendix of Plaintiff-Appellant Charles Green, a copy of which is hereby served upon you and attached hereto.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is one of the attorneys for Plaintiff-Appellant and that she caused the foregoing Notice of Filing and Appellant's Brief and Appendix of Plaintiff-Appellant Charles Green to be served on all counsel of record on November 3, 2021, via email and by filing said documents electronically via Odyssey eFile and designating the following counsel for service at the email addresses listed below:

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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, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

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APPENDIX

TABLE OF CONTENTS TO THE APPENDIX

Page

Opinion dated March 31, 2021 .... A1

Omnibus Order on Pending Motions, January 10, 2020 .... A16

Index to the Record on Appeal A26

State of Illinois, Senate Transcript (May 28, 2009) A32

Analysis: Illinois Law Hasn't Stopped Public Agencies from Withholding Records, Better Government Association (January 10, 2019) A145

Follow-up: Review of the Chicago Police Department's Management and Production of Records (September 2021) A158

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2021 IL App (1st) 200574

FIFTH DIVISION
MARCH 31, 2021

No. 1-20-0574

CHARLES GREEN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CH 17646
	)	
THE CHICAGO POLICE DEPARTMENT,	)	Honorable
	)	Alison C. Conlon,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court, with opinion.
Justice Hoffman concurred in the judgment and opinion.
Presiding Justice Delort dissented, with opinion.

OPINION

¶ 1 This case arises out of plaintiff-appellee Charles Green's 2015 request, pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2014)), to the Chicago Police Department (CPD) for all closed complaint register files (CR files) concerning all Chicago police officers. When the CPD failed to respond to his request, Mr. Green filed suit in the circuit court of Cook County, seeking, *inter alia*, an order directing the CPD to produce the requested files. While Mr. Green's lawsuit was pending in the circuit court of Cook County, an injunction was also in place in that court, prohibiting the CPD from releasing any CR files over four years old from the date of any FOIA request. The trial court continued Mr. Green's lawsuit while the injunction that prohibited the release of any files over four years old was being litigated. This court ultimately vacated the injunction in 2016.

¶ 2 In 2018, following the vacatur of the injunction, Mr. Green and CPD filed cross motions for summary judgment in the circuit court of Cook County related to Mr. Green's pending complaint seeking to obtain the CR files after the CPD ignored his initial FOIA request. On January 10, 2020, the trial court granted Mr. Green's motion for summary judgment, denied the CPD's motion, and ordered the CPD to turn over all CR files dated 1967-2011. (The court had previously ordered the CPD to turn over the CR files dated 2011-2015.)

¶ 3 On appeal, the CPD argues that (1) the trial court lacked jurisdiction to order it to produce files that were subject to an injunction at the time that they were requested and (2) the court erred in rejecting its belated claim that producing 48 years of closed CR files would be unduly burdensome. For the following reasons, we reverse the judgment of the circuit court of Cook County.

¶ 4 BACKGROUND

¶ 5 In 1986, Mr. Green was convicted of four counts of murder, aggravated arson, residential burglary, home invasion, armed robbery, and armed violence, arising out of a quadruple homicide. Mr. Green, who was 16 years old at the time of the crimes, was sentenced to life imprisonment. Following Mr. Green's conviction, the lead detective who had investigated the homicide was found to have coerced inculpatory statements from arrestees and abused those in custody on several occasions. There was no specific finding related to this detective regarding Mr. Green. Mr. Green was released from custody in 2009 after numerous appeals, but his conviction stands.

¶ 6 On November 18, 2015, Mr. Green, through counsel, sent a FOIA request to the CPD, seeking "any and all closed complaint register files that relate to Chicago Police Officers." When the CPD did not respond to this request, Mr. Green filed suit in the circuit court of Cook County

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

on December 4, 2015. In his complaint, Mr. Green alleged that the CPD violated FOIA by failing to produce the requested documents or otherwise respond to his request. He sought, *inter alia*, an order requiring the CPD to produce the requested records with any exempted material redacted.

¶ 7 The CPD answered Mr. Green's complaint and admitted that it had not responded to Mr. Green's initial FOIA request. The CPD also asserted two affirmative defenses, arguing (1) that several documents or portions of documents encompassed in Mr. Green's request were exempt from production because they contained private or personal information and (2) that it was barred from producing CR files over four years old pursuant to an injunctive order in an unrelated case that was in place at the time of Mr. Green's FOIA request.

¶ 8 The injunctive order to which the CPD referred in its answer to Mr. Green's lawsuit, arose out of litigation between the Fraternal Order of Police (FOP), the City of Chicago (City), and the CPD. That litigation was prompted by an August 2014 FOIA request to the CPD by the Chicago Tribune (Tribune) and the Chicago Sun-Times (Sun-Times). The Tribune and the Sun-Times requested a list of names of police officers who had received at least one complaint dating back to 1967, along with the CR number of the complaint. The City informed the FOP that it intended to release the requested information. In response, the FOP sought to enjoin the City from producing CR files dating back to 1967 pursuant to any FOIA requests. The FOP cited a provision in the collective bargaining agreement between the City and the FOP, requiring the City to destroy CPD files over four years old.

¶ 9 A preliminary injunction was entered in December 2014 that prohibited the release of a list of police officers against whom there were complaints that were over four years old as of the date of the Tribune and Sun-Times's FOIA request. A second preliminary injunction was entered in

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

May 2015. That injunction more broadly prohibited the City and the CPD from releasing *any* CR files more than four years old as of the date of *any* FOIA request. The issue of whether the City had violated the collective bargaining agreement by not destroying CPD CR files that were more than four years old was brought to arbitration while the injunction was still in effect. And one year later, an arbitrator ruled that the City had violated the collective bargaining agreement by preserving outdated CR files and disciplinary records. The arbitrator ordered the City to purge its records of all police misconduct investigations and discipline that were more than five years old.

¶ 10 The City appealed both the December 2014 and the May 2015 preliminary injunctions. This court vacated both injunctions as against public policy. *Fraternal Order of Police, Chicago Lodge No. 7 v. City of Chicago*, 2016 IL App (1st) 143884, ¶¶ 35-40. Subsequently, this court also vacated the arbitration award that had ordered the files destroyed, finding it to be against public policy. *City of Chicago v. Fraternal Order of Police*, 2019 IL App (1st) 172907, ¶¶ 37-40. That decision was later affirmed by our supreme court. *City of Chicago v. Fraternal Order of Police, Chicago Lodge No. 7*, 2020 IL 124831, ¶¶ 43-44.

¶ 11 For case management purposes and due to the pending FOP litigation, the trial court had consolidated Mr. Green's instant lawsuit with the FOP case that sought to enjoin the release of files older than four years. That consolidation lasted until January 10, 2018, at which time the court set a schedule for dispositive motions in the instant case. In March 2018, the CPD moved for partial summary judgment, arguing that Mr. Green was only entitled to the CR files that were not subject to the injunction. Specifically, it argued that it should only have to produce CR files dated after 2011, or four years prior to Mr. Green's 2015 request. In its motion, the CPD also acknowledged

that when it failed to respond to the request within five business days pursuant to FOIA, it "waived its right to deny Plaintiff's request on the grounds that it was unduly burdensome."

¶ 12 On July 25, 2018, the trial court denied the CPD's motion for summary judgment, despite finding that the CPD did not wrongfully fail to produce the CR files dated 1967-2011 at the time they were requested. The trial court further ordered the parties to confer with each other to determine a schedule for production of the CR files dated from 2011-2015, as those files were not subject to the injunction. Then, in September 2018, the trial court ordered the CPD to produce the CR files dated 2011-2015 by December 31, 2018.

¶ 13 Between July 2018 and February 2019, the parties filed cross-motions for summary judgment. During this time, the CPD did not turn over any CR files dated 2011-2015. At an April 5, 2019, hearing on the parties' pending motions, including a motion by Mr. Green to compel the CPD to produce the files dated 2011-2015, the CPD stated that it was working on creating an online data portal for the files dated 2011-2015 but was still in the process of reviewing and redacting relevant files.

¶ 14 With regard to the issue of production of the 1967-2011 files, the trial court agreed that the CPD could not be sanctioned for withholding the files dated 1967-2011, since, at the time they were requested, the CPD was prohibited from releasing them by the injunctions that were then in place. Nevertheless, the trial court held that once the injunctions were lifted, there was no reason why Mr. Green should be required to submit a new FOIA request to access the files. Instead, the court again ordered the parties to work together to determine a schedule for producing the CR files dated 1967-2011. The trial court did not rule on the parties' cross motions for summary judgment

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

at that time, stating it needed more details on the "practicalities," but indicated it would probably grant both parties' motions in part.

¶ 15 Over the next eight months, the parties filed several motions. The CPD filed a motion to reconsider the trial court's ruling of April 5, which ordered the parties to work together to determine a schedule for production of the files dated 1967-2011. Mr. Green moved twice to compel compliance with the court's April 5, 2019, order, invoking the court's contempt power, in light of the CPD's failure to comply with the trial court's previous December 31, 2018, deadline for production of the CR files dated 2011-2015.

¶ 16 The trial judge who had issued the April 5, 2019, order retired from the bench in the midst of the proceedings. On January 10, 2020, the trial court, with a new judge presiding, issued an order disposing of all pending motions in the case. In that order, the trial court held that the April 5 order contained sufficient findings to resolve the parties' cross motions for summary judgment. To that end, the court entered summary judgment in favor of Mr. Green and against the CPD, describing it "as a ministerial act." The court further denied CPD's motion for reconsideration. Finally, the court granted, in part, Mr. Green's motion to compel after finding that the CPD willfully and intentionally failed to comply with the court's order to produce the files dated 2011-2015. The trial court imposed a $4000 civil penalty against the City. The trial court ordered CPD to produce these files dated 1967-2011 by December 31, 2020, without specifying the rate at which they were to be produced. On the other hand, with respect to the CR files dated 2011-2015, the court ordered CPD to produce them at a rate of at least 3000 files per month until production was complete.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

¶ 17 On March 16, 2020, the trial court granted the CPD's motion for a finding that there was no just reason for delaying appeal of the January 10, 2020, order, which granted Mr. Green's motion for summary judgment and denied the CPD's motion for summary judgment. The trial court stayed production of the CR files dated 1967-2011 pending the outcome of this appeal.

¶ 18 ANALYSIS

¶ 19 We note that we have jurisdiction to review this matter, as the CPD filed a timely notice of appeal following the trial court's finding that there was no just reason for delaying appeal of its January 10, 2020, order. See Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016); R. 303 (eff. July 1, 2017).

¶ 20 This appeal concerns only the order granting summary judgment in favor of Mr. Green and directing the CPD to produce the CR files dated 1967-2011. In order to prevail on a motion for summary judgment, the moving party must show there is no genuine issue of material fact and it is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2018). We review the trial court's grant of summary judgment *de novo*. *Gary v. City of Calumet City*, 2020 IL App (1st) 191812, ¶ 26.

¶ 21 The dispositive issue on appeal in this case, is whether the trial court had jurisdiction to order the production of the 1967-2011 records after it determined that the CPD did not improperly withhold those records at the time they were requested. Resolution of this issue turns on section 11 of FOIA, which allows any person who is denied access to public records by a public body to file suit for injunctive or declaratory relief. 5 ILCS 140/11(a) (West 2018). (Significantly, the failure to timely respond to a FOIA request is considered a denial. *Id.* § 3(d).) Section 11(d) goes on to vest the trial court with "jurisdiction to enjoin the public body from withholding public records and to order the production of any public records improperly withheld from the person

seeking access." *Id.* § 11(d). From this, it follows that the court may only order production of public records if they are "improperly withheld." See *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 57.

¶ 22 At the outset, we must determine the point in time at which a court should evaluate the propriety of a public body's decision to withhold documents. The question is whether the decision should be evaluated at the time the FOIA request is denied or at some later stage of litigation, depending on the circumstances. Courts confronting this issue have overwhelmingly considered whether the documents requested were improperly withheld *at the time the decision to withhold was made*. For example, in *Bonner v. United States Department of State*, 928 F.2d 1148, 1149 (D.C. Cir. 1991), the plaintiff filed a FOIA request with the United States State Department.[1] The State Department produced a number of the requested documents in full but released 1033 documents with partial redactions based on FOIA exemptions. *Id.* To test the validity of the redactions, the parties agreed to a sampling procedure in which the plaintiff would choose 63 out of the 1033 partially redacted documents for which the State Department would prepare an index summarizing the withheld information in those documents and the reason for the withholding. *Id.* When the State Department provided the index to the plaintiff, it addressed only 44 of the 63 documents, because, during the time between the plaintiff's FOIA request and the preparation of the index of representative documents, 19 of the 63 documents were no longer classified and could be released in full. *Id.* The plaintiff argued, in relevant part, that given that approximately one-third of the sample documents were declassified, one-third of the partially-redacted documents

[1]Because of the similarity of the Illinois FOIA and the federal FOIA, Illinois courts frequently look to federal case law in construing the Illinois FOIA. See *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 55.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

that were *not* part of the sample must also have become declassified during that time period and could also be released in full. *Id.* at 1153. The Court of Appeals agreed but held that it would not require the State Department to " 'follow an endlessly moving target,' " and reprocess the 1033 partially redacted documents to determine which ones were no longer classified. *Id.* (quoting *Meeropol v. Meese*, 790 F.2d 942, 959 (D.C. Cir. 1986)). The court explained that requiring an agency to "adjust or modify its FOIA responses based on post-response occurrences could create an endless cycle of judicially mandated reprocessing." *Id.* at 1152.

¶ 23 Similarly, in *Lesar v. United States Department of Justice*, 636 F.2d 472, 479 (D.C. Cir. 1980), the defendant initially withheld certain classified documents otherwise responsive to the plaintiff's FOIA request, but by the time the plaintiff appealed the lower court's decision, some of those withheld documents were declassified. The Court of Appeals rejected the plaintiff's argument that it was entitled to those subsequently declassified documents, holding that it would assess the agency's decision to withhold the documents under the circumstances that existed at the time the decision was made. *Id.* at 480; see also *American Civil Liberties Union v. National Security Agency*, 925 F.3d 576, 601 (2d Cir. 2019) (rejecting plaintiff's argument that it should order agency to reprocess documents based on new disclosures that postdated agency's initial FOIA decision on basis that *FOIA decision should be evaluated as of time it was made*). Those cases provide clarity for our determination in the case before us. Specifically, the propriety of a response must be judged *at the time the decision denying the FOIA request was made*.

¶ 24 Having determined that we should evaluate the CPD's response to Mr. Green's FOIA request at the time it was made, we next consider whether the 1967-2011 CR files were improperly withheld as of November 2015. In May 2015, an injunction was issued enjoining and ordering the

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

CPD "in connection with *any* Freedom of Information Act requests, not to release any Complaint Register Files (CR Files) more than four years old as of the date of the request." Given that the CPD implicitly denied Mr. Green's FOIA request in November 2015—when it failed to respond to the request—the CPD maintains that, therefore, it did not improperly withhold the CR files prior to November 2011. We agree.

¶ 25 The supreme court in *In re Appointment of Special Prosecutor* examined the relationship between a FOIA request that was at odds with a court-ordered injunction. In that case, our supreme court, relying on *GTE Sylvania, Inc. v. Consumers Union of the United States, Inc.*, 445 U.S. 375 (1980), held "where a circuit court with personal and subject-matter jurisdiction issues an injunction, the injunction must be obeyed, however erroneous it may be, until it is modified or set aside by the court itself or reversed by a higher court." *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 64. Therefore, our supreme court concluded that "a lawful court order takes precedence over the disclosure requirements of FOIA." *Id.* ¶ 66.

¶ 26 In this case, it is undisputed that the trial court had personal and subject matter jurisdiction over the parties to the injunction. Accordingly, the CPD was required to obey the May 2015 injunction and could not release the 1967-2011 CR files when requested by Mr. Green in November 2015. It is immaterial that the injunction was subsequently vacated because, as discussed *supra* ¶¶ 22-24, we evaluate the public body's decision to withhold documents *at the time the body responded to the request*. Because the CPD did not improperly withhold the 1967-2011 CR files at the time of its (implicit) response, we conclude that the trial court improperly ordered the CPD to produce those files in 2020, pursuant to the original FOIA request.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

¶ 27 For his part, Mr. Green argues that the injunction was void and did not have to be obeyed. But this argument rests on an erroneous reading of our decision in *Fraternal Order of Police*, 2016 IL App (1st) 143884. In that case, we overturned the May 2015 injunction. We held that there was no legal basis to issue an injunction prohibiting the release of CR files over four years old from the date of a FOIA request, as the collective bargaining agreement mandating such destruction of records over four years old violated FOIA and Illinois public policy. *Id.* ¶ 55. That ruling is *not* tantamount to a finding that the injunction was void. See *In re M.W.*, 232 Ill. 2d 408, 414-15 (2009) (void order is one entered by court lacking jurisdiction). Therefore, we reject Mr. Green's argument that the injunction was void and, thus, did not prohibit the CPD from releasing the requested files.

¶ 28 Because we conclude that the trial court erred in ordering the CPD to produce the 1967-2011 CR files pursuant to the original request, we need not determine whether the court also erred in refusing to allow the CPD to belatedly raise FOIA's undue burden exemption.

¶ 29 CONCLUSION

¶ 30 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County.

¶ 31 Reversed.

¶ 32 PRESIDING JUSTICE DELORT, dissenting:

¶ 33 This case concerns what a court should do when a public body denies a Freedom of Information Act (FOIA) request, but the public body is under a court order to not release the requested records. As our supreme court explained in *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 66, "a lawful court order takes precedence over the disclosure requirements of FOIA." Thus, a public body may refuse disclosure of the documents when a court order bars their

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

release. This case presents a question not resolved in *In re Appointment of Special Prosecutor*, which is whether a requestor has a remedy if a court is in the midst of hearing a lawsuit seeking release of public records and the injunction upon which the public body had relied has now been vacated. The majority concludes that because the public body did not "improperly withhold" the documents in first instance (see 5 ILCS 140/11(d) (West 2018)), the circuit court erred in requiring the City to release records to Green. While everyone agrees that there is no longer any court order in place barring disclosure of the public records Green seeks, he must now start over with a new FOIA request and return to the "back of the line." This not only delays the disclosure of documents to Green, it allows the City to assert exemptions that it failed to raise in the first instance. I respectfully disagree with this result.

¶ 34 The Illinois FOIA contains a detailed, explicit declaration of legislative intent. See *id.* § 1. This declaration explains that it is the public policy of Illinois that: (1) "all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees"; and (2) "access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act." *Id.* It further states:

> "Restraints on access to information, to the extent permitted by this Act, are limited exceptions to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

government and the lives of any or all of the people. The provisions of this Act shall be construed in accordance with this principle. This Act shall be construed to require disclosure of requested information as expediently and efficiently as possible ***." *Id.*

¶ 35 When construing a statute, a court "may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *Board of Education of the City of Chicago v. Moore*, 2021 IL 125785, ¶ 20 (citing *Chicago Teachers Union, Local No. 1 v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 15). As our supreme court has recently explained:

"We note at the outset that the primary goal in construing a statute is to ascertain and give effect to the legislature's intent, and the best indicator of that intent is the language of the statute itself. [Citation.] But a court will not read language in isolation; it will consider it in the context of the entire statute. [Citation.] It is also proper to consider not only the language of the statute but the reason for the law, the problem sought to be remedied, the goals to be achieved, and the consequences of construing the statute one way or another. [Citation.] Additionally, we must presume that the legislature did not intend to produce absurd, inconvenient, or unjust results." *Carmichael v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund*, 2018 IL 122793, ¶ 35.

¶ 36 When it denied Green's request, the City of Chicago correctly honored the injunction barring release of the records in question. However, by the time the circuit court heard Green's lawsuit, the injunction had been vacated, and it no longer barred City from releasing the records.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

The City admits that it failed to respond to Green's FOIA request, and its failure to do so is rather inexplicable. Had the circuit court ruled in favor of the City, it would have, in essence, revived an injunction from another case that was no longer in force or effect. That result would have been directly at odds with the explicit purposes of FOIA, which favor "expedient[ ] and efficient[ ]" disclosure. 5 ILCS 140/1 (West 2018). It would also violate the principle, outlined in *Carmichael*, that a statute should not be construed to obtain an absurd result.

¶ 37 While Illinois courts generally look to cases involving the federal Freedom of Information Act when construing the parallel state law (see *supra* ¶ 22 n.1), that rule is not inflexible. Unlike the Illinois FOIA, the federal FOIA does not contain a declaration of legislative purpose, much less one as robust as the one contained in section 1 of the Illinois FOIA. Compare 5 ILCS 140/1 (West 2018) with 5 U.S.C. § 552 (2018). While federal courts have looked to the legislative history of the federal FOIA to discern that Congress intended to promote disclosure by enacting the federal FOIA (see, *e.g.*, *Milner v. Department of the Navy*, 562 U.S. 562, 565 (2011)), they were not construing a law with an expansive declaration of intent such as that contained in the Illinois FOIA. Therefore, I do not find authorities such as *Bonner*, *American Civil Liberties Union*, or *Lesar* to be conclusive as to the issue presented here. See *supra* ¶¶ 22-23.

¶ 38 Construing the "improperly withheld" language in FOIA in light of its guiding principles promoting disclosure of public records leads me to the conclusion that Green was entitled to a remedy under FOIA. Therefore, I do not believe that the circuit court erred in requiring the City to disclose the records in question. I would affirm the judgment below and require the City to disclose the records which Green seeks.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

No. 1-20-0574

Cite as:	*Green v. Chicago Police Department*, 2021 IL App (1st) 200574
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 15-CH-17646; the Hon. Alison C. Conlon, Judge, presiding.
Attorneys for Appellant:	Mark A. Flessner, Corporation Counsel, of Chicago (Benna Ruth Solomon, Myriam Zreczny Kasper, and Elizabeth Mary Tisher, Assistant Corporation Counsel, of counsel), for appellant.
Attorneys for Appellee:	Jaime Orloff Feeney, of Ropes & Gray LLP, and Jared Kosoglad, of Jared S. Kosoglad, P.C., both of Chicago, for appellee.

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

GREEN, Plaintiff, v. CHICAGO POLICE DEP'T., Defendant.	)))))))))	No. 15 CH 17646

OMNIBUS ORDER ON PENDING MOTIONS

This matter comes before the Court on a number of pending motions: Defendant's Motion for Judgment on the Parties' Cross-Motions for Summary Judgment; Defendant's Motion for Reconsideration and Defendant's Supplemental Authority Brief in Support of Its Motion for Reconsideration; Plaintiff's Motion to Compel Compliance through the Court's Contempt Power Pursuant to 5 ILCS 140/11 ("First Motion to Compel"); Plaintiff's Second Motion to Compel Compliance through the Court's Contempt Power Pursuant to 5 ILCS 140/11 and for an Expedited Hearing ("Second Motion to Compel"); and Defendant's Motion for Leave to File a Reply to Plaintiff's Contempt Motions.

I. BACKGROUND

On November 18, 2015, Plaintiff Charles Green ("Green") submitted a request under Illinois' Freedom of Information Act ("IL FOIA") to Defendant Chicago Police Department ("CPD") for "any and all" closed complaint register files ("CR files") that relate to Chicago police officers. CPD did not respond to the request. On December 4, 2015, plaintiff filed a complaint against CPD alleging a violation of the IL FOIA. Because CPD had not responded to the original request, it waived its right to assert an undue burden exemption in the case. 5 ILCS 140/3(d).

As the case progressed, the CR files were divided conceptually into two groups: CR files that were 4 years old (the "2011-2015 CR files") and CR files that were more than four years old (the "1967-2011 CR files"). On September 19, 2018, the Court ordered CPD to produce the 2011-2015 CR files on or before December 31, 2018. CPD did not produce any files by December 31, 2018, nor did CPD did seek an extension or any other reprieve. On March 11, 2019, Green filed his First Motion to Compel asking the Court to impose a statutory fine of $5,000 plus $1,000 for each day of noncompliance until production is complete.

Later in 2018, both Green and CPD moved for summary judgment on the 1967-2011 CR files. In a separate case, CPD had been enjoined from producing those CR

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

files, but the Appellate Court vacated the injunction on July 8, 2016. *See FOP, Chicago Lodge No. 7 v. City of Chicago*, 2016 IL App (1st) 143884, ¶ 54. Primarily at issue in the cross-motions in the instant case was whether CPD had an obligation to respond to Green's FOIA request once the injunction was lifted. After hearing argument on April 5, 2019, the Court ruled orally on the cross-motions.[1] The Court concluded that Green is entitled to access to all of the CR files that are the subject of his request, including the 1967-2011 CR files. (4/5/19 Transcript ("Tr.") at 49:22-50:4) Given the scope of the request, the Court ordered the parties to meet and confer to develop a feasible timeline for production and submit a proposed production schedule by May 13, 2019. (4/5/19 Tr. at 50:5-23) To allow time for that conference, the Court held off on formally entering an order reflecting the summary judgment rulings and continued the motions to May 15, 2019. (4/5/19 Order)

On May 3, 2019, CPD moved for reconsideration of the April 5, 2019 summary judgment rulings. CPD did not participate in the court-ordered meet and confer before May 13, 2019 and did not appear for the May 15, 2019 status. At that status, the Court again ordered the parties to meet and confer and submit a proposed court order by May 29, 2019. The Court added that the conference must occur "[n]otwithstanding the pending motions." (5/15/19 Order)

The parties conferred on May 22, 2019, but CPD declined to discuss a production schedule for the 1967-2011 CR files; it took the position that it did not have to produce the files because of its pending motion to reconsider. (11/22/19 Tr. at 64-67; Ex. 4 to Plaintiff's Second Motion to Compel; Defendant's Response ¶ 8) As for the 2011-2015 CR files, CPD could not say how many remained to be produced and did not propose a production schedule. (Ex. 4 to Plaintiff's Second Motion to Compel[2]) After the conference, Green filed his Second Motion to Compel.

Some settlement discussions ensued, prompting the parties jointly to request extensions. After the discussions proved fruitless, the Court ordered the parties to brief CPD's pending motion to reconsider.

On November 22, 2019, the Court heard oral argument on the Motion for Reconsideration. Upon questioning by the newly assigned judge,[3] the parties realized that no formal order had been entered reflecting the Court's April 5, 2019 oral ruling on the summary judgment motions. The parties were subsequently unable to agree to an order reflecting the ruling, so the Court invited motions. CPD filed a Motion for

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[1] A copy of the April 5, 2019 transcript is hereby incorporated into this order.

[2] CPD does not dispute Plaintiff's version of events in its response. *See generally* Defendant's Response to Plaintiff's Motion to Compel.

[3] Judge Peter Flynn presided over this case until his retirement on August 31, 2019. Judge Alison Conlon was assigned to this case on October 28, 2019.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Judgment on the Parties' Cross-Motions for Summary Judgment on November 27, 2019. Green responded on December 6, 2019.

II. PENDING MOTIONS

A. DEFENDANT'S MOTION FOR JUDGMENT ON THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

The Court first addresses the Motion for Judgment on the Parties' Cross-Motions for Summary Judgment. Having reviewed the transcript of April 5, 2019, the Court finds that Judge Flynn made findings and orders relative to all contentions raised in the parties' cross-motions for summary judgment as to liability. His findings were neither preliminary nor tentative. Accordingly, this Court may enter a written order and judgment as a successor judge as a ministerial act. *In re Marriage of Zander*, 273 Ill. App. 3d 669 (4th Dist. 1995). Here, the Court enters summary judgment on liability in favor of Green and against CPD for the reasons stated in the transcript.

As for a remedy, Judge Flynn ordered the parties to confer about a reasonable rolling production schedule. (4/5/19 Tr. at 50:6-9; 4/5/19 Order) CPD did not comply fully because it did not share basic information with Green's counsel about the nature and volume of the 1967-2011 CR files. In the seven ensuing months, CPD has provided little useful information on the status of these documents. As recently as the November 22 hearing, CPD maintained that it is not possible to estimate how many such files there are. (11/22/19 Transcript at 84-86) This position strains credulity. While it may be time- and resource-intensive to estimate the volume of responsive files, it is hardly impossible to do so. In any event, no meaningful dialogue has occurred about a feasible production schedule for these CR files, despite the many efforts of the predecessor judge to facilitate such dialogues in a way that was consistently respectful of the realities of CPD's resources.

Were this Court to order any further conferences or do anything to cause further delay, it would offend the mandate to construe IL FOIA to "require disclosure of requested information as expediently and efficiently as possible." *Uptown People's Law Center v. Department of Corrections*, 2014 IL App (1st) 130161, ¶ 10 (citing 5 ILCS 140/1). Accordingly, it is up to the Court to impose a deadline for production of these files. The Court orders CPD to produce all 1967-2011 CR files requested by Green by December 31, 2020.[4]

B. DEFENDANT'S MOTION FOR RECONSIDERATION

Next, the Court turns to CPD's motion for reconsideration of the April 5, 2019 order.

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[4] A schedule for production of the 2011-2015 CR files is set forth below in section II(C)(2)(b).

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

1. Legal Standard

A motion to reconsider brings to the court's attention (1) newly discovered evidence that was unavailable at the time of the first hearing, (2) changes in the law, or (3) errors in the court's previous application of existing law. *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271, ¶ 36.

2. Analysis

a. Arguments Raised in the Briefing

CPD claims that the Court misunderstood CPD's position in two ways in its ruling on the summary judgment motions. CPD argues that the Court erroneously believed that (a) CPD agreed to produce all CR files back to 1967 to the public on a web portal, and (b) in order to gain access to that portal, CPD would require Green to submit a new FOIA request. *See* Defendant's Motion for Reconsideration at 4.

With regard to the first claimed error, even if the Court misunderstood CPD as agreeing to produce all CR files on a portal, that purported misunderstanding was not material to the ruling. The crux of the summary judgment ruling is that once the FOP injunction was lifted, CPD no longer had a valid defense to withholding the CR files that were more than four years old and, without that defense, CPD must comply with FOIA. Whether CPD would post the CR files on an online portal or otherwise is only material to *how* CPD would comply with FOIA, not whether it *must* comply. The latter was the subject of summary judgment; the former was not.

Similar reasoning disposes of CPD's second argument. Although there was some colloquy about whether Green should be required to submit a new request after the injunction was vacated, the Court held that with the injunction vacated CPD now has a duty under IL FOIA to produce the material irrespective of whether Green submits a new request.[5] In other words, this claimed error, like the first one, was not material to the Court's reasoning.

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[5] Judge Flynn "distinguish[ed] between improperly withholding for 11(d) purposes which has to do with sanctions and penalties and with a duty to comply with the request which has to do with compliance obligations, not with sanctions and penalties. And it seems to me to be perfectly possible to say that even if material was not improperly withheld, nevertheless, in a given set of circumstances, the obligation to produce that material can come into focus when a temporary stop on producing it has been withdrawn. And the obligation to produce at that point exists although one cannot be sanctioned for having failed to produce it at the time of the initial request." (4/5/19 Tr. at 48:21-24-49:6)

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

b. Defendant's Supplemental Authority Brief in Support of Its Motion for Reconsideration

After the hearing on its Motion for Reconsideration, on December 10, 2019, CPD filed a Supplemental Authority Brief in Support of its Motion for Reconsideration (the "Supplement"). In the Supplement, CPD argues that based on the First District's decision in *Kelly v. Village of Kenilworth*, 2019 IL App (1st) 170780, CPD may raise the undue burden exemption outside of the timeframe provided in FOIA.

First, the Supplement is not timely. The First District issued the *Kelly* decision on June 21, 2019, seven weeks after CPD moved for reconsideration and more than three months before Green responded. CPD had ample time to become aware of the case and supplement its moving papers in a timely manner. Instead, CPD waited nearly six months after the decision to raise it, after its Motion for Reconsideration was fully briefed and oral arguments were held.

Second, the Supplement is not material to the summary judgment ruling. CPD did not raise undue burden at any stage in this case prior to summary judgment, and accordingly the Court did not address that issue in its ruling.

Third, the *Kelly* case is of limited application here. Here, CPD failed to respond to Green's request. Consequently, under section 3(d) of IL FOIA, CPD forfeited its right to raise an undue burden exemption.[6] 5 ILCS 140/3(d) ("A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).") In *Kelly*, by contrast, the defendants timely invoked the ongoing investigation exemption under section 7(1), but not the undue burden exemption – arguably a sensible initial position, as Green points out, because Kelly sought a single investigatory file and not an entire category of records. *See* Plaintiff's Response in Opposition to Defendant's Supplemental Authority Brief in Support of Its Motion for Reconsideration at 13 n.7; *compare* section 7(1) (providing exemption for "a public record") *with* section 3(g) (providing exemption for "all records falling within a category"). Because the *Kelly* defendants responded to the request, section 3(d) was not implicated. *Kelly* does not provide this Court with a legal basis to ignore section 3(d).

For all of these reasons, the Court will not rely on *Kelly* on reconsideration.

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[6] CPD consistently acknowledged this forfeiture up until it filed its Supplement. By way of example, CPD did not raise undue burden as an exemption in its Answer. *See* Plaintiff's Response in Opposition to Defendant's Supplemental Authority Brief in Support of Its Motion for Reconsideration, Exhibit 2. CPD also stated on the record on several occasions that it cannot rely on the exemption. *See* 4/5/19 Tr. at 29:20-30:1 & 37:4-7; 12/10/19 Tr. at 24:9-19.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

C. Green's First and Second Motions to Compel

In the First and Second Motions to Compel, Green contends that CPD willfully and intentionally violated FOIA by not complying with three Court orders: the (1) September 18, 2018 requiring CPD to produce 2011-2015 CR files by December 31, 2018; (2) April 5, 2019 order requiring the parties to meet and confer and submit a proposed court order on a production schedule for all of the requested files; and (3) May 15, 2019 order requiring the parties to meet and confer and submit a proposed court order on a production schedule for all of the requested files.

CPD responds that its vendor has worked diligently on producing the 2011-2015 CR files, but they are voluminous. Defendant's Response to Plaintiff's Motion to Compel Compliance through the Court's Contempt Power Pursuant to 5 ILCS 140/11 ("Defendant's Response") ¶¶ 2, 4. The Court ordered CPD to provide more specific information about its vendor's productivity in a supplemental status report. CPD reported that as of December 4, 2019, it produced 2,130 complete CR files to Green. Defendant's Status Report on the Complaint Register Files from 2011-2015 ("Defendant's Status Report") ¶ 5. 27,604 CR files remain to be reviewed. Defendant's Status Report ¶ 9. At its vendor's current pace, CPD anticipates producing approximately 3,000 CR files to Green at the end of each month. Defendant's Status Report ¶ 8.

With regard to the 1967-2011 CR files, the City cites its pending Motion for Reconsideration and notes that the Court did not impose a specific date for production. Defendant's Response ¶ 8. CPD also attaches a September 2019 letter from its lawyers stating, without further explanation, that it could start production in late 2021 and finish it by 2030. Ex. A to Defendant's Response.

1. Legal Standard

Although Green styles his motions as ones to compel through the Court's contempt power and the IL FOIA allows the Court to use its contempt power to enforce its orders, *see* section 11(g), the substance and requested relief seek civil penalties under section 11(j) of IL FOIA. The motions neither set forth nor discuss the applicable legal standards for contempt. Accordingly, the Court will decide the motions under section 11(j).

The purpose of IL FOIA Act "is to open governmental records to the light of public scrutiny." *Bowie v. Evanston Community Consol. Sch. Dist. No. 65*, 128 Ill. 2d 373, 378 (1989). That is because in an "American constitutional form of government ... all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them.... Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest." 5 ILCS 140/1;

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

see also Stern v. Wheaton-Warrenville Community Unit Sch. Dist. 200, 233 Ill. 2d 396, 404 (2009).

To these ends, if a public body "willfully and intentionally failed to comply [with IL FOIA] or otherwise acted in bad faith," the Court must impose

> a civil penalty of not less than $2,500 nor more than $5,000 for each occurrence. In assessing the civil penalty, the court shall consider in aggravation or mitigation the budget of the public body and whether the public body has previously been assessed penalties for violations of this Act. The court may impose an additional penalty of up to $1,000 for each day the violation continues if:
>
> (1) the public body fails to comply with the court's order after 30 days;
> (2) the court's order is not on appeal or stayed; and
> (3) the court does not grant the public body additional time to comply with the court's order to disclose public records.

5 ILCS 140/11(j).

Whether a public body acted willfully and intentionally or otherwise in bad faith is typically a question of fact. *Rock River Times v. Rockford Pub. Sch. Dist. 205*, 2012 IL App (2d) 110879, ¶ 48.

2. ANALYSIS

a. Civil Penalties

The question before the Court is whether CPD willfully and intentionally failed to comply with the IL FOIA or acted in bad faith. Although the IL FOIA does not define the words willful, intentional, or bad faith, "willful" means "voluntary and intentional, but not necessarily malicious; "intentional" means "[d]one with the aim of carrying out the act"; and "bad faith," means "[d]ishonesty of belief or purpose." Black's Law Dictionary (9th ed. 2009); *see People v. M.T. (In re M.T.)*, 221 Ill. 2d 517, 535 (2006) (accepting the use of dictionary definitions when illustrating the meaning of a commonly understood term).

i. Violation of the September 2018 Order

With regard to the September 2018 order to produce the 2011-2015 CR files by December 31, 2018, it is undisputed that CPD did not produce any files by the court-ordered deadline, nor did CPD seek an extension or any other relief. CPD simply did not comply. Only when faced with the First Motion to Compel did CPD start to produce some CR files. Now, more than a year past the deadline, CPD has produced only a small fraction of the files – approximately 7.7%. In the interim, CPD offered

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

vague and incomplete explanations for the significant delay. *See generally* Defendant's Response ¶¶ 1, 2, 4, 5, 7.

Based on the foregoing, the Court finds that CPD willfully and intentionally failed to comply with the Court's order to produce the 2011-2015 CR files. Its conduct was purposeful; there is no evidence of accident, oversight or mistake. While these findings are a question of fact, *Rock River Times*, 2012 IL App (2d) at ¶ 48, they do not require an evidentiary hearing based on the present undisputed record. The only reasonable conclusion that may be drawn is that CPD willfully failed to comply with the Court's order requiring production under IL FOIA by December 31, 2018.

Given these findings, the Court must impose a civil penalty of at least the minimum statutory award of $2,500. In determining aggravating and mitigating factors, the Court must consider the size of CPD's budget (large[7]) and whether other penalties have been assessed (they have, and recently[8]). Here, due to the clear violation without justification and the extreme delay that resulted in contravention of IL FOIA, the Court imposes a penalty of $4,000 for this violation.

Green also asks the Court to impose a discretionary daily fine of $1,000 for noncompliance. The Court declines to do so at this juncture, but cautions that any future violations of the deadlines set in this order or otherwise may result in the imposition of such fines.

ii. Failure to Meet and Confer

CPD did not comply with the Court's April and May 2019 orders to meet, confer and propose a production schedule. However, the Court is not convinced that these failures warrant civil penalties under IL FOIA. The Court's power to order parties to meet and confer is not required by nor derived from FOIA. Accordingly, CPD's failure, while problematic, is not a violation of the statute that would subject it to civil penalties.

b. Additional Relief – Production Schedule

After the Motions were briefed and at the Court's request, CPD provided useful information in its Status Report about the status and progress of its production of the

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[7] The Court can take judicial notice that the budget allocation for CPD in 2019 was more than $1.6 billion. Ill. R. Evid. 201; *see People v. Murray*, 2019 IL 123289, P35; *see* https://www.chicago.gov/content/dam/city/depts/obm/supp_info/2019Budget/2019BudgetOverview.pdf (pp. 111, 114-17).

[8] *See, e.g., Peoples v. Chicago Police Dep't*, 2019 Ill. Cir. LEXIS 1048, ¶ 2 (assessing a civil penalty of $3,500 for "extreme delays in this case (and dubious excuses therefor)") and *Henderson v. City of Chicago*, 2018 Ill. Cir. LEXIS 669 (assessing a civil penalty of $2,500 for CPD's failure to respond to a FOIA request for 11 months).

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

2011-2015 CR files. Based on that information, the following production schedule is feasible and the Court hereby orders it pursuant to its obligation to require expedience and efficiency under the IL FOIA and also its own inherent powers. CPD is ordered to produce no fewer than 3,000 complete 2011-2015 CR files to Green per month until production of all such CR files is concluded. Productions must be made no later than the last day of each calendar month, starting January 31, 2020. CPD must file no later than the fifth (5th) day of the following month a statement certifying that it complied with this order and identifying the number of complete CR files produced and the number remaining.

D. Defendant's Motion for Leave to File a Reply in Support of its Status Report and in Opposition to Plaintiff's Contempt Motions

On January 3, 2020, CPD filed a Motion for Leave to File a Reply in Support of its Status Report and in Opposition to Plaintiff's Contempt Motions. The Court strikes this motion as untimely and immaterial. The reply is directed to the response to the Status Report filed by Green, which CPD construes as a motion for contempt. The Court did not rely on anything in that response in reaching the instant rulings.

III. Conclusion

Accordingly, **the Court orders** that:

1. Plaintiff's Motion for Summary Judgment is granted. The Court orders CPD to produce all 1967-2011 CR files to Green by December 31, 2020.

2. Defendant's Motion for Summary Judgment is denied.

3. Defendant's Motion for Judgment on the Parties' Cross-Motions for Summary Judgment is denied.

4. Defendant's Motion for Reconsideration is denied.

5. Plaintiff's Motion to Compel Compliance through the Court's Contempt Power Pursuant to 5 ILCS 140/11 is granted in part and denied in part. The Court finds that Defendant willfully and intentionally failed to comply with IL FOIA and imposes a civil penalty against Defendant and in favor of Plaintiff in the amount of $4,000.00. The Court orders CPD to produce no fewer than 3,000 complete 2011-2015 CR files to Plaintiff per month until production of all such CR files is concluded. Productions must be made no later than the last day of each calendar month, starting January 31, 2020. Defendant must file no later than the fifth (5th) day of the following month a statement certifying that it complied with this order and identifying the number of complete 2011-2015 CR files produced and the number remaining.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

6. Plaintiff's Second Motion to Compel Compliance through the Court's Contempt Power Pursuant to 5 ILCS 140/11 and for an Expedited Hearing is granted in part and denied in part. The relief granted is the same as stated above in paragraph 5.

7. Defendant's Motion for Leave to File a Reply in Support of its Status Report and in Opposition to Plaintiff's Contempt Motion is stricken.

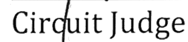
DATED: January 10, 2020

ENTER:

Judge Alison C. Conlon

JAN 10 2020

Circuit Court – 2140



Circuit Judge

INDEX TO THE RECORD ON APPEAL

Docket List (filed December 4, 2015) C7

Complaint (filed December 4, 2015) C18

Affidavit of Service (filed December 10, 2015) C74

Appearance (filed January 11, 2016) C75

Motion for Extension of Time to Answer (filed January 11, 2016) C77

Order (entered January 25, 2016) C83

Answer to Complaint (filed February 18, 2016) C84

Appearance (filed February 24, 2016) C94

Order (entered March 21, 2016) C98

Order (entered April 19, 2016) C99

Order (entered June 21, 2016) C100

Order (entered August 19, 2016) C101

Order (entered October 31, 2016) C102

Order (entered January 4, 2017) C103

Amended Order (entered January 4, 2017) C104

Order (entered March 7, 2017) C105

Order (entered March 17, 2017) C106

Order (entered March 31, 2017) C107

Order (entered May 3, 2017) C108

Agreed Order (entered July 20, 2017) C109

Order (entered August 23, 2017) C110

Agreed Order (entered September 27, 2017) C111

Order (entered October 6, 2017) C112

Order (entered January 10, 2018) C113

Motion for Extension of Time (filed February 2, 2018) C114

Motion for Extension of Time (filed February 21, 2018) C119

Agreed Order (entered February 22, 2018) C123

Motion for Partial Summary Judgment (filed March 9, 2018) C124

Agreed Order (entered March 29, 2018) C153

Agreed Order (entered April 18, 2018) C154

Response to Motion for Partial Summary Judgment
(filed April 26, 2018) C155

Exhibit (1) (filed April 26, 2018) C171

Exhibit (2) (filed Apri; 26, 2018) C173

Agreed Order (entered May 14, 2018) C182

Reply in Support of Motion for Partial Summary Judgment
(filed June 13, 2018) C183

Agreed Order (entered June 13, 2018) C197

Order (entered June 15, 2018) C198

Order (entered July 25, 2018) C199

Order (entered September 19, 2018) C200

Motion for Summary Judgment (filed November 19, 2018) C201

Exhibit 1 (filed November 19, 2018) C212

Exhibit 2 (filed November 19, 2018) C221

Exhibit 3 (filed November 19, 2018) C223

Exhibit 4 (filed November 19, 2018) C234

Exhibit 5 (filed November 19, 2018) C235

Exhibit 6 (filed November 19, 2018) C296

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Exhibit 7 (filed November 19, 2018) C297

Response to Motion for Summary Judgment
(filed December 20, 2018) C299

Notice of Filing (filed December 20, 2018) C315

Reply in Support of Motion for Summary Judgment
(filed January 11, 2019) C316

Agreed Order (entered February 1, 2019) C322

Notice of Filing (filed February 7, 2019) C323

Reply in Support of Cross Motion for Motion for Summary Judgment
(filed February 7, 2019) C324

Order (entered February 8, 2019) C327

Motion to Compel Compliance (filed March 11, 2019) C328

Exhibit (1) (filed March 11, 2019) C334

Exhibit (2) (filed March 11, 2019) C335

Notice of Motion (filed March 11, 2019) C345

Agreed Order (entered March 12, 2019) C347

Order (entered March 21, 2019) C348

Order (entered April 5, 2019) C349

Motion for Reconsideration (1) (filed May 3, 2019) C350

Motion for Reconsideration (filed May 3, 2019) C360

Exhibit A (filed May 3, 2019) C370

Exhibit B (filed May 3, 2019) C439

Exhibit C (filed May 3, 2019) C443

Notice of Filing (filed May 3, 2019) C445

Status Report (filed May 13, 2019) C447

Order (entered May 15, 2019) C449

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Second Motion to Compel Compliance (filed May 29, 2019) C450

Exhibits (filed May 29, 2019) C456

Agreed Order (entered June 6, 2019) C460

Agreed Order (entered June 24, 2019) C462

Agreed Order (entered July 19, 2019) C464

Order (entered August 28, 2019) C466

Agreed Order (entered September 16, 2019) C467

Response to Motion to Compel Compliance (filed September 25, 2019) C468

Notice of Filing (filed September 25, 2019) C472

Response in Opposition to Motion to Reconsider (filed September 25, 2019) C474

Combined Reply in Support of First and Second Motion to Compel Compliance (filed October 9, 2019) C479

Exhibit (filed October 9, 2019) C484

Exhibit A (filed October 9, 2019) C485

Reply in Support of Motion for Reconsideration (filed October 25, 2019) C486

Notice of Filing (filed October 25, 2019) C491

Order (entered October 29, 2019) C493

Order (entered November 22, 2019) C494

Motion for Judgment on the Cross Motion for Summary Judgment (filed November 27, 2019) C495

Notice of Motion (filed November 27, 2019) C564

Status Report on the Compliant Register Files from 2011-2015 (filed December 4, 2019) C566

Notice of Filing (filed December 4, 2019) C584

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Response to Motion for Judgment (filed December 6, 2019) C586

Supplemental Authority Brief in Support of Motion for Reconsideration (filed December 10, 2019) C594

Notice of Filing (filed December 10, 2019) C610

Order (entered December 10, 2019) C612

Response in Opposition to Supplemental Authority Brief in Support of Motion for Reconsideration (filed December 17, 2019) C613

Exhibits (filed December 17, 2019) C629

Response to Status Report in Further Support of Contempt Motions (filed December 17, 2019) C644

Exhibits (2) (filed December 17, 2019) C648

Motion for Leave to File a Reply in Support of Status Report (filed January 3, 2020) C720

Notice of Motion (filed January 3, 2020) C856

Omnibus Order on Ending Motions (entered January 10, 2020) C858

Order (entered January 22, 2020) C868

Production Statement for January 31, 2020 (filed February 5, 2020) ... C869

Notice of Filing (filed February 5, 2020) C870

Motion for Written Finding (filed February 5, 2020) C872

Notice of Motion (filed February 5, 2020) C877

Order (filed February 10, 2020) C879

Response in Opposition to Motion to Stay (filed February 21, 2020) C880

Exhibits (filed February 21, 2020) C887

Reply in Support of Motion for Written Finding (filed March 3, 2020) .. C957

Notice of Filing (1) (filed March 3, 2020) C961

Production Statement for February 27, 2020 (filed March 3, 2020) C963

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Notice of Filing (2) (filed March 3, 2020) C964

Order (entered March 16, 2020) C966

Production Statement for March 30, 2020 (filed March 31, 2020) C968

Notice of Appeal (filed March 25, 2020) C969

Notice of Filing (filed March 31, 2020) C973

Request for Preparation of Record (filed April 24, 2020) C975

Amended Request for Preparation of Record (filed April 29, 2020) C977

Notice of Filing (filed April 30, 2020) C979

Production Statement for April 30, 2020 (filed April 30, 2020) C981

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

STATE OF ILLINOIS
96th GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

59th Legislative Day 5/29/2009

HB0013	Second Reading	76
HB0083	Second Reading	77
HB0084	Second Reading	77
HB0088	Recalled	86
HB0088	Third Reading	88
HB0152	Second Reading	78
HB0402	Recalled	90
HB0402	Third Reading	91
HB0609	Second Reading	78
HB0612	Second Reading	79
HB0810	Out Of Record	93
HB0810	Recalled	92
HB0810	Recalled	95
HB0810	Third Reading	97
HB0852	Recalled	93
HB0852	Third Reading	93
HB0859	Second Reading	79
HB0962	Second Reading	80
HB0991	Second Reading	80
HB1105	Recalled	98
HB1105	Third Reading	99
HB1195	Recalled	100
HB1195	Third Reading	101
HB1345	Recalled	106
HB1345	Third Reading	107
HB2270	Second Reading	81
HB2314	Second Reading	81
HB2325	Second Reading	82
HB2469	Second Reading	83
HB2640	Second Reading	84
HB3841	Second Reading	84
HB3923	Second Reading	85
HB4046	Second Reading	86
SB0138	Concurrence	12
SB0235	Concurrence	58
SB0275	Concurrence	13
SB0450	Concurrence	23
SB1285	Concurrence	14
SB1289	Concurrence	15
SB1293	Concurrence	24
SB1296	Concurrence	16

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

STATE OF ILLINOIS
96th GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

59th Legislative Day 5/29/2009

SB1296	Vote Intention	59
SB1335	Concurrence	16
SB1477	Concurrence	21
SB1479	Concurrence	25
SB1486	Motion	64
SB1553	Concurrence	26
SB1553	Vote Intention	59
SB1576	Concurrence	27
SB1682	Concurrence	28
SB1705	Concurrence	31
SB1729	Concurrence	61
SB1739	Non-Concurrence	64
SB1739	Out Of Record	64
SB1750	Concurrence	32
SB1750	Concurrence	37
SB1750	Vote Intention	39
SB1750	Vote Intention	49
SB1905	Concurrence	38
SB1926	Concurrence	39
SB1977	Concurrence	50
SB2091	Concurrence	51
SB2091	Vote Intention	54
SB2103	Concurrence	55
SB2112	Concurrence	55
SB2112	Concurrence	60
SB2112	Out Of Record	56
SB2217	Concurrence	56
SB2256	Concurrence	57
SB2457	First Reading	76
SR0244	Motion	68
SR0249	Motion	70
SR0307	Resolution Offered	2
SR0308	Resolution Offered	74
SR0309	Resolution Offered	74
SR0310	Resolution Offered	74
SR0311	Resolution Offered	74
SR0312	Resolution Offered	74
HJR0005	Resolution Offered	2
HJR0006	Resolution Offered	2
HJR0019	Resolution Offered	2
HJR0046	Resolution Offered	2
HJR0048	Resolution Offered	2

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

STATE OF ILLINOIS
96th GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

59th Legislative Day 5/29/2009

HJR0050	Resolution Offered	2
HJR0053	Resolution Offered	2
HJR0055	Motion	71
SJR0030	Motion	65
SJR0030	Motion	69
SJR0065	Motion	69

Senate to Order-Senator Lightford	1
Prayer-The Reverend Joseph Eby	1
Pledge of Allegiance	1
Journal-Postponed	1
Messages from the House	2
Executive Session	3
Committee Reports	4
Committee Reports	5
Committee Reports	7
Committee Reports	8
Executive Session Arises	9
Senate Stands at Ease/Reconvenes	66
Senate Stands at Ease/Reconvenes	66
Senate Stands at Ease/Reconvenes	66
Committee Reports	67
Senate Stands in Recess/Reconvenes	72
Committee Reports	72
Messages from the House	74
Adjournment	110

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The regular Session of the 96th General Assembly will please come to order. Will the Members please be at their desk? Will our guests in the galleries please rise? The invocation today will be given by Pastor Eby. Pastor Eby, from Pastor -- Chatham Presbyterian.

THE REVEREND JOSEPH EBY:

(Prayer by the Reverend Joseph Eby)

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Please remain standing for the Pledge of Allegiance. Senator Maloney.

SENATOR MALONEY:

(Pledge of Allegiance, led by Senator Maloney)

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Madam Secretary, Reading and Approval of the Journal.

SECRETARY ROCK:

Senate Journal of Thursday, May 27th {sic} (28), 2009.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Hunter.

SENATOR HUNTER:

Madam President, I move to postpone the reading and approval of the Journal just read by the Secretary, pending arrival of the printed transcript.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Hunter moves to postpone the reading and approval of the Journal, pending arrival of the printed transcripts. There being no objection, so ordered. Madam Secretary, Resolutions.

SECRETARY ROCK:

Senate Resolution 307, offered by Senator Schoenberg and all Members.

It's a death resolution.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Madam Secretary, Resolutions Consent Calendar. Madam Secretary, Messages from the House.

SECRETARY ROCK:

A Message from the House by Mr. Mahoney, Clerk.

Mr. President - I am directed to inform the Senate that the House of Representatives has adopted the following joint resolution, in the adoption of which I am instructed to ask the concurrence of the Senate, to wit:

House Joint Resolution 5.

Offered by Senator Delgado, and adopted by the House, May 28th, 2009.

We have received like Messages on House Joint Resolution 6, offered by Senator Maloney; House Joint Resolution 19, offered by Senator McCarter; House Joint Resolution 46, offered by Senators Althoff and Steans; House Joint Resolution 48, offered by Senator Garrett; House Joint Resolution 50, offered by Senator Steans; and House Joint Resolution 53, offered by Senator Jacobs.

All adopted by the House, May 28th, 2009. Mark Mahoney, Clerk of the House.

They are substantive, Madam President.

A Message from the House by Mr. Mahoney, Clerk.

Mr. President - I am directed to inform the Senate that the House of Representatives has concurred with the Senate in the passage of a bill of the following title, to wit:

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Senate Bill 1434, together with the following amendments which are attached, in the adoption of which I am instructed to ask the concurrence of the Senate, to wit:

House Amendment 1 and 2.

We have received a like Message on Senate Bill 1938, with House Amendments 1, 3 and 4.

All passed the House, as amended, May 28th, 2009. Mark Mahoney, Clerk of the House.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Will all Members please arrive to the Senate Floor? We will be going to Executive Session for appointments. Will all Members please come to the Senate Floor for approval of Executive Session for appointments? To fulfill our responsibilities under Article V, Section 9 of the Constitution, we will now proceed to the Order of Advise and Consent. Senator Muñoz.

SENATOR MUÑOZ:

Thank you, Madam President. I move that the Senate resolve itself into Executive Session for the purpose of acting on appointments set forth in the Message from the Governor dated February 10th, 2009, together with the appointments set forth in the Message from the Secretary of State dated February 26th, April 23rd and May 1, 2009.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Muñoz moves that the Senate resolve itself into Executive Session for the purpose of acting on the appointments set forth in the Message from the Governor dated February 10th, 2009, together with the appointments set forth in the Message from the Secretary of State dated February 26, April 23rd and

May 1st of 2009. Madam Secretary, Committee Reports.

SECRETARY ROCK:

Senator Muñoz, Chairman of the Committee on Executive Appointments, to which was referred the Governor's Message of February 10th, 2009, reported the same back with the recommendation that the Senate do advise and consent to the following appointments.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Muñoz.

SENATOR MUÑOZ:

Madam President, with respect to the Governor's Message of February 10th, 2009, I will read the salaried appointments of which the Committee on Executive Appointments recommends that the Senate do advise and consent:

To be the Director of the Department of Natural Resources for a term commencing February 6, 2009, and ending January 17th, 2011: Marc Miller.

To be the Director of the Department of Veterans' Affairs for a term commencing February 9th, 2009, and ending January 17th, 2011: Daniel Grant.

Madam President, having read the salaried appointments from the Governor's Message of February 10th, 2009, I now seek leave to consider the appointments on a roll call. Madam President, will you put the question as required by our rules?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? The question is, does the Senate advise and consent to the appointments just read from the Governor's Message of February 10th. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 voting Aye, 0 voting Nay, 0 voting Present. A majority of the Senators elected concurring by record vote, the Senate does advise and consent to the appointments just read. Madam Secretary, Committee Reports.

SECRETARY ROCK:

Senator Muñoz, Chairman of the Committee on Executive Appointments, to which was referred the Secretary of State's Message of February 26, 2009, reported the same back with the recommendation that the Senate do advise and consent to the following appointment.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Muñoz.

SENATOR MUÑOZ:

Madam President, with respect to the Secretary of State's Message of February 26, 2009, I will read the salaried appointments of which the Committee on Executive Appointments recommends that the Senate do advise and consent:

To be a Member of the Ethics -- Executive Ethics Commission for the Secretary of State for a term commencing February 26th, 2009, and ending June 30th, 2013: Maria Kuzas.

Madam President, having read the salaried appointment from the Secretary of State's Message of February 26, 2009, I now seek leave to consider the appointment on a roll call. Madam President, will you put the question as required by our rules?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, does the Senate advise and consent to the appointment just read

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

from the Secretary of State's Message of February 26. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 56 voting Aye, 0 voting Nay, 0 voting Present. A majority of the Senators elected concurring by record vote, the Senate does advise and consent to the appointment just read. Senator Viverito, for what purpose do you rise?

SENATOR VIVERITO:

Madam President, I inadvertently pressed my button, but it didn't go green. Would you please record me as a Yes?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Yes. Senator…

SENATOR VIVERITO:

Thank you.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

…Viverito will be recorded as voting Aye.

SENATOR VIVERITO:

Thank you very much.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Alexandrea Davis, WICS Channel 20, requests permission to shoot video. Leave is granted. Senator Demuzio, for what purpose do you rise?

SENATOR DEMUZIO:

Yes, point of personal privilege, please.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Good morning. Please state your point.

SENATOR DEMUZIO:

Thank you, Madam President. I have with me today Rachael

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Gorman. Rachael is the eleven-year-old daughter of John and Selena Gorman and you know that Selena works here in the Illinois Senate. She just completed her fifth grade at St. Isidore's School in Farmersville and it has -- the school is going to be closing its doors effective May 27th after eighty-eight years of providing a Catholic education. Rachael is going into the sixth grade at Lincolnwood Junior High School in Raymond. She enjoys swimming and spending time with her cousins, and she will be going to her aunt's house this summer and will be helping to take care of her little cousin, Rylan. Let's give Rachael a great big guy's hand here.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Welcome, Rachael, to the Illinois General Assembly. For Members that are seeking personal privilege, we're still in the middle of Executive Session. I will return to you in just one moment. Madam Secretary, Committee Reports.

SECRETARY ROCK:

Senator Muñoz, Chairman of the Committee on Executive Appointments, to which was referred the Secretary of State's Message of April 23rd, 2009, reported the same back with the recommendation that the Senate do advise and consent to the following appointment.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Muñoz.

SENATOR MUÑOZ:

Madam President, with respect to the Secretary of State's Message of April 23rd, 2009, I will read the salaried appointments of which the Committee on Executive Appointments recommends that the Senate do advise and consent:

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

To be a Commissioner of the Merit Commission for the Office of Secretary of State for a term commencing June 30th, 2009, and ending June 30th, 2015: Mike Masterson.

Madam President, having read the salaried appointments from the Secretary of State's Message of April 23rd, 2009, I now seek leave to consider the appointment on a roll call. Madam President, will you put the question as required by our rules?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, does the Senate advise and consent to the appointment just read from the Secretary of State's Message of April 23rd. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 voting Aye, 0 voting Nay, 0 voting Present. A majority of the Senators elected concurring by record vote, the Senate does advise and consent to the appointment just read. Madam Secretary, Committee Reports.

SECRETARY ROCK:

Senator Muñoz, Chairman of the Committee on Executive Appointments, to which was referred the Secretary of State's Message of May 1st, 2009, reported the same back with the recommendation that the Senate do advise and consent to the following appointment.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Muñoz.

SENATOR MUÑOZ:

Madam President, with respect to the Secretary of State's Message of May 1, 2009, I will read the salaried appointment of

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

which the Committee on Executive Appointments recommends that the Senate do advise and consent:

To be the Inspector General for the Office of the Secretary of State for a term commencing May 1, 2009, and ending July 31st, 2014: Jim Burns.

Madam President, having read the salaried appointment from the Secretary of State's Message of May 1, 2009, I now seek leave to consider the appointment on a roll call. Madam President, will you put the question as required by our rules?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Absolutely, Senator. Is there any discussion? Seeing none, the question is, does the Senate advise and consent to the appointment just read from the Secretary of State's Message of May 1st. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 voting Aye, 0 voting Nay, 0 voting Present. A majority of the Senators elected concurring by record vote, the Senate does advise and consent to the appointment just read. Senator Muñoz.

SENATOR MUÑOZ:

Thank you, Madam President. I move that the Senate arise from Executive Session.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. Senator Muñoz moves that the Senate arise from Executive Session. All those in favor will say Aye. Opposed, Nay. The Ayes have it and the motion carries. The Senate has arisen from Executive Session. The Chair recognizes our very own former Senator George Shadid to the Illinois

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

General Assembly. Would you please welcome George Shadid to the Illinois General Assembly? Senator Koehler, for what purpose do you rise?

SENATOR KOEHLER:

Thank you, Madam President. You -- you kind of stole my thunder. I was going to introduce my Page for the Day. But he is actually here. You know, all of you signed the birthday proclamation for his eightieth birthday, which was just a few weeks ago, and so he wanted to come and say "thanks a lot". Now I'm not sure how he meant that. But he was very appreciative of us remembering his birthday. So, it's great to have the former Senator here with me.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Well, happy belated birthday, Senator Shadid. It's always a pleasure to see you. I enjoyed serving with you, Senator. Senator Schoenberg, for what purpose do you rise?

SENATOR SCHOENBERG:

Thank you, Madam President. I rise on a point of personal privilege.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Please state your point, Senator.

SENATOR SCHOENBERG:

I -- first of all, I want to say, I, too, am very glad to see Senator Shadid here. Senator Shadid's wife's niece is a babysitter and -- and actually may be the first crush of my nine-year-old son. But that's not who's standing next to me. Who's -- standing next to me, Madam President, Ladies and Gentlemen of the Senate, is Haleigh Haffner. Haleigh is the second student that we've had this week from Glenbrook South.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

So attendance is down at Glenbrook South this week. She is an excellent student and she's an recognized athlete for running cross country and track. In fact, she was the Student Athlete of the Year. And she is highly competitive in track and is going to be an outstanding future leader in our community. She's joined by her brothers, Harte and Hunter; her grandmother, Marion Serstad; and her parents, Kristin and Joe Haffner, who are up in the President's Gallery directly behind the Chamber. Would we please give our Glenview guests a warm Senate greeting? Thank you.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Please welcome our Glenbrook guests, a warm welcome, and rise in the gallery. Senator Rutherford, for what purpose do you rise?

SENATOR RUTHERFORD:

Thank you -- thank you, Madam President. For the purpose of introduction, if I may, please.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Yes, you may, please.

SENATOR RUTHERFORD:

I wanted -- thank you very much, Madam President. You look very nice and smiley today. I'd like to ask the Senate if they would please welcome a guest that I have today that's going to spend the day. His name is Ted Mason. He's actually from Elk Grove Village in Senator Millner's district. But he has just graduated from Illinois State University, where he completed a term as president of the student body of that fine institution - a -- an office that I held, actually, a number of decades ago, a long time ago, Madam President. So if the Senate would please

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

welcome Ted Mason to the Illinois State Senate.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Let's welcome Ted Mason to the Illinois General Assembly. Thank you, Senator Rutherford, for your nice comments. Always making my day. Senator Jacobs, for what purpose do you rise, sir?

SENATOR JACOBS:

Thank you, Madam Chairwoman. I rise for a point of introduction.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Please state your point.

SENATOR JACOBS:

I would like to have a warm Senate welcome for Mr. and Mrs. Kurt Henkel, who are in the mezzanine. I'd appreciate a warm Senate welcome.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

If your guests in the gallery would please rise and be welcomed by the Illinois General Assembly. Welcome. On the page 60 -- on page 60 of the Calendar is the Order of Secretary's Desk, Senate Bills, Concurrences. This is final action. Please go to page 60. On the Calendar is the Order of Secretary's Desk, Senate Bills, Concurrences. This is final action. Senate Bill 138. Senator Link. He indicates he wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 138.

Signed by Senator Link.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Senator Link.

SENATOR LINK:

Thank you, Madam President. As amended, this just puts qualified inspectors and took away all opposition to the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, shall the Senate concur in House Amendment No. 1 to Senate Bill 138. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 56 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 138 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 to Senate Bill 138 and the bill is declared passed. With leave of the Body, we will skip Senate Bill 235. Senator Syverson, on Senate Bill 275. Senator Syverson. He indicates he wish to proceed. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 275.

Signed by Senator Syverson.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Syverson.

SENATOR SYVERSON:

Thank you, Madam President. One change that was made in the House is they added dental hygienists to the repayment program. Know of no opposition to this.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Thank you, Senator. Is there any discussion? Seeing none, the question is, shall the -- shall the Senate concur in House Amendment No. 1 to Senate Bill 275. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 56 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 275 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 and the bill is declared passed. Senator Clayborne, on Senate Bill 450. Senator Clayborne. Out of the record. Senator Holmes, on Senate Bill 1285. She indicates she wish to proceed. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 1285.

Filed by Senator Holmes.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Holmes.

SENATOR HOLMES:

Yeah. The amendment is a joint effort of the Illinois Attorney General's Office, the Illinois Retail Merchants Association and the Illinois State Bar Association. And it modernizes the Illinois Franchise Law. There are no known opponents. I would appreciate an Aye vote. If you want full details, I can take the time and give you those.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, shall the Senate concur in House Amendment No. 1 to Senate Bill 1285. All those in favor will vote Aye. Opposed, Nay. The

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 58 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1285 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 and the bill is declared passed. Senator Raoul, on Senate Bill 1289. He indicates he wish to proceed. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendments 1, 2 and 5 to Senate Bill 1289.

Signed by Senator Raoul.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Raoul.

SENATOR RAOUL:

Thank you, Madam President. Senate Bill 1289, as amended by the House, creates an adult version of Redeploy Illinois with a focus on breaking the cycle of recidivism for adults convicted of crimes by providing direct services to defendants on probation and mandatory supervised release. This came out of the Criminal Law Committee unanimously.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. Is there any discussion? Seeing none, the question is, shall the Senate concur in House Amendments No. 1, 2 and 5 to Senate Bill 1289. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Please take the record. On that question, there are 58 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1289 having

received the required constitutional majority, the Senate does concur in House Amendments No. 1, 2 and 5 to Senate Bill 1289 and the bill is declared passed. Senate Bill 1293. Out of the record. Senate Bill 1296. Senator Althoff. She indicates she wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 1296.

Signed by Senator Althoff.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Althoff.

SENATOR ALTHOFF:

Thank you very much, Madam President. The amendment actually reduces the legal description of the quick-take property in question. We actually were negotiating this land as we were going forward. Came to an agreement with one of the property owners, so we -- we had the necessity of reducing the legal description. It's actually less property that we're going to be asking for quick-take. Be happy to answer any questions.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. Is there any discussion? Seeing none, the question is, shall Senate -- 1296 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 50 voting Aye, 7 voting Nay, 0 voting Present. Senate Bill 1296 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 and the bill is declared passed. Senate Bill 1333. Out of the record. Senate Bill 1335.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Senator Trotter. He indicates he wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 1335.

Signed by Senator Trotter.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Trotter.

SENATOR TROTTER:

Thank you, Madam President, Members of the Senate. Senate Bill 1335, House Amendment No. 1 creates the Bowling Center Act and requires the operator of a bowling center to post a notice warning bowlers about wearing their bowling shoes outside of the center and addresses the issues of civil liability for the operator of a bowling center and makes it clear that the provisions of this amendment applies only to causes of actions on or -- or after January 1st, 2010.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator Trotter. Is there any discussion? Senator Righter, are you for discussion on this bill?

SENATOR RIGHTER:

Yes.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Righter.

SENATOR RIGHTER:

Thank you, Madam President. Will the sponsor yield, please?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

He indicates he will. Senator Righter.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

SENATOR RIGHTER:

Senator Trotter, I want to make sure that I have accurate information here on my system. My system indicates that you are carrying a motion to concur on a bill that is entitled the Bowling Center Act. I want to make sure that's the correct title. Is that right?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Trotter.

SENATOR TROTTER:

That is correct.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Righter.

SENATOR RIGHTER:

Thank you, Madam President. Senator Trotter, what is the problem that we are trying to solve with your legislation?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Trotter.

SENATOR TROTTER:

Thank you very much for asking that question. This is an issue that's really been festering since 1983, something that the -- the bowling proprietors have been trying to get a handle on, that is, individuals who go -- leave the bowling alley wearing the bowling shoes - excuse me - wearing the bowling shoes and going in the rain, snow, and then coming back in the bowling alley, falling, and end up suing the bowling alley itself. The -- the situation has actually grown because of our nonsmoking laws, that they have to go out to smoke. But they're wearing these shoes and, still, because of their habits, come back in and then make the bowling owners liable for paying for

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

their mishap.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Righter.

SENATOR RIGHTER:

Thank you, Madam President. Senator Trotter, let me ask you. Let's take another scenario. Let's say that a person who is a smoker goes to an indoor skating rink and so they put on their skates and they skate around for awhile and then they have a desire to have a smoke and so they walk outside with their ice skates still on and they light up. And while they're puffing away, they slip and they fall because they're standing on ice skates and not normal shoes. Is that the kind of immunity that you are seeking for bowling alleys in this? I mean, that's the scenario you're talking about. What about these ice skating rinks?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Trotter.

SENATOR TROTTER:

If I get you correctly, you're saying they're standing outside and they fall. This is when they come back into the bowling alley and fall inside the bowling alley. The liability is there. And we're -- this also has a notification -- or, a posting requirement as well, telling individuals that if they do go outside, to remove the shoes; if they do not, then don't hold us liable when you come back in and -- and fall.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Righter.

SENATOR RIGHTER:

Thank you, Madam President. Senator Trotter, let me ask

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

you -- and I don't know how often you bowl; I bowl sometimes, but not really often. I know there are some people in here who bowl quite frequently. Some people are so into it that they have their own shoes. I'm not one of those people. But what I have found with the rental bowling shoes is that they seem to be really slick on the alley itself. I mean, we've all seen that. Whether you did it or whether someone else did it, when they're getting actually -- they get on the lane and they walk down and they let the ball go and then they -- because of the shoes or the floor is so slick, their feet go out from under them and they fall. Some people crack their tailbone, they injure their back, they go to the chiropractor, maybe they go get a lawyer and sue. Would this bill provide any liability protection for a bowling alley if the floor on which they're bowling, the actual bowling alley, is too slick and they slipped and fell?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Trotter.

SENATOR TROTTER:

No. From my understanding of how the bill has been written, that it has to address those individuals who have gone outside, who, under inclement weather, have walked back in to the site, not if they're in the act of bowling and their shoes are dry or there is, in fact, some -- something that will make the operator liable. So this does not give them that indemnity of -- of immunity.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Righter.

SENATOR RIGHTER:

One last question, Madam President. Thank you for your

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

indulgence. I think this is probably the most important question I'm going to ask on this bill. There is some buzz on this Floor already, Senator Trotter, that this bill is nothing other than a setup to require, maybe next year or maybe in the fall Veto Session, a mandatory helmet requirement for people who are wearing bowling shoes. I'd like you to be able to address that on the Floor to dispel that rumor, if you can. Thank you, Madam President.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Trotter.

SENATOR TROTTER:

Sir, that was my original intent, but Senator Forby has told me that that would violate his freedoms and he's not going to let that happen. So, it's dead in the water.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Trotter, to close.

SENATOR TROTTER:

I just ask for an Aye vote for this important piece of legislation.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. The question is, shall Senate Bill 1335 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 51 voting Aye, 4 voting Nay, 0 voting Present. Senate Bill 1335 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 and the bill is declared passed. Now on the order of Senate Bill 1477. Senator Noland. Senator Noland, on

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Senate Bill 1477. He indicates he wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 1477.

Signed by Senator Noland.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Noland.

SENATOR NOLAND:

Thank you, Madam President. The amendment from the House simply restores the bill -- the bill to its original form. Under this bill, Senate Bill 1477 would simply provide a TIF extension for Hoffman Estates, effective immediately. I ask for an Aye vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Senator Righter.

SENATOR RIGHTER:

Thank you, Madam President. Will the sponsor yield, please?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

He indicates he will.

SENATOR RIGHTER:

Now, Senator Noland, we've seen this bill a few times, so when you say "in its original form", do you mean its original, original form, or the original form that had some language in it about someone being allowed to buy some property in the district? We just want to make sure that that language appears nowhere in the bill. Can you assure us that?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Senator Noland.

SENATOR NOLAND:

Yes.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Righter. Senator Noland, to close.

SENATOR NOLAND:

And I do appreciate the -- the Senator's question. The original, original bill - the version that you liked most - that is the -- the version that we're celebrating today. I urge an Aye vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Very good, Senator. Is there any discussion further? Seeing none, the question is, shall Senate Bill 1477 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 55 voting Aye, 1 voting Nay, 0 voting Present. Senate Bill 1477 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 and the bill is declared passed. With leave of the Body, we will return to Senate Bill 450. Senator Clayborne. He indicates he wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment 1 and 2 to Senate Bill 450.

Filed by Senator Clayborne.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Clayborne.

SENATOR CLAYBORNE:

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Thank you -- thank you, Madam President and Members of the Senate. Senate Bill 450 has come back and it -- it has several amendments. And the -- the changes that -- as before, I have a aviation company that refurbishes airplanes in the district. And the bill has come back. The amendments change it and only limit this to four other companies in Illinois and it also excludes parts for engines and power plants. It -- it’s limited to only five years. I would ask for your favorable vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Senator Lauzen, for what purpose do you rise?

SENATOR LAUZEN:

To the bill, Madam President.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

To the bill.

SENATOR LAUZEN:

This bill passed Revenue Committee unanimously. Commend the sponsor for his work on protecting jobs in Illinois.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. The question is, shall Senate Bill 450 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 450 having received the required constitutional majority, the Senate does concur in House Amendments No. 1 and 2 to Senate Bills {sic} 450 and the bill is declared passed. Senator Clayborne, on Senate Bill 1293. He indicates he wish to proceed. Mr. Secretary, please read the

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendments 1 and 2 to Senate Bill 1293.

Signed by Senator Clayborne.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Clayborne.

SENATOR CLAYBORNE:

Thank you, Madam President, Members of the Senate. This involves one of my school districts that's had mine subsidence. At the last election, they passed a bond referendum to build a new school supported by the voters for 47.5 million dollars. And what we're doing, we're extending the bond maturity date for thirty years.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, shall Senate Bill 1293 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 58 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1293 having received the required constitutional majority, the Senate does concur in House Amendments No. 1 and 2 and the bill is declared passed. On page 62, on the Order of Secretary's Desk, Concurrences, Senate Bill 1479. Senator Raoul. Senator Raoul, on Senate Bill 1479. He indicates he wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Amendment No. 1 to Senate Bill 1479.

Filed by Senator Raoul.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Raoul.

SENATOR RAOUL:

Thank you -- thank you, Madam President. Senate Bill 1479 allows State employees to receive service credit for up to five furlough days taken between July 1 and June 30th. House Amendment 1 requires contributions to be paid for the five furlough days.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, shall Senate Bill 1479 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 58 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1479 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 and the bill is declared passed. Now on the top of page 63, Secretary's Desk, Concurrences, is Senate Bill 1553. Senator Rutherford. Senator Rutherford, on Senate Bill 1553. Out of the record. He -- just in time, Senator Rutherford. He indicates he wish to proceed. Mr. Secretary, please read the gentleman's motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 1553.

Signed by Senator Rutherford.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Senator Rutherford.

SENATOR RUTHERFORD:

As I said earlier, you do look lovely and I appreciate the accommodation. This legislation would just concur with the motion to change the TIF for Downs, time period, moving it from twelve years to nine years.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator Rutherford. Is there any discussion? Seeing none, the question is, shall Senate Bill 1553 pass. All those in favor will vote Aye. Opposed, Nay. And the voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 voting Aye, 1 voting Nay, 0 voting Present. Senate Bill 1553 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 and the bill is declared passed. Senator Cronin. Senate Bill 1576. Senator Cronin indicates he wish to proceed. Mr. Secretary, please read his motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 1576.

Filed by Senator Cronin.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Cronin.

SENATOR CRONIN:

Yes, thank you very much, Madam President. This amendment deletes all and became the bill. It separates the Racing Board from the Department of Revenue, thereby making the Board autonomous from the Department of Revenue and a stand-alone

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

agency. And we know that that's a good thing. I know of no opposition and I'd ask for your favorable consideration.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, shall Senate Bill 1576 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 58 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1576 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 to Senate Bill 1576 and the bill is declared passed. Senator Demuzio, on the order of 1682. Senate Bill 1682. She indicates she wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 and 2 to Senate Bill 1682.

Signed by Senator Demuzio.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Demuzio.

SENATOR DEMUZIO:

Yes, thank you, Madam President and Members of the Senate. Senate Bill 1682 and House Amendment No. 1 amends the Illinois Funeral or Burial Funds Act and the Illinois Cemetery Pre-Need {sic} (Pre-Need Cemetery) Sales Act. Right. That's Amendment No. 2.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Senator John Jones, for what purpose do you rise?

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

SENATOR J. JONES:

Thank you, Madam President. A question of the sponsor and then a -- and then to the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

She indicates she will yield. Senator John Jones.

SENATOR J. JONES:

Senator -- Senator Demuzio, I -- I noticed your arm this morning and I'm just curious, is the arm-twisting getting that serious over there this morning?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Demuzio.

SENATOR DEMUZIO:

Senator, it -- it's getting very serious. This is only the first arm. There may be others, you know.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator John Jones.

SENATOR J. JONES:

…just curious of how many arms was going to look like that before the day was over. But, to the bill, Madam President: You know, I -- I rise in support of this piece of legislation. This is something that Senator Demuzio and many others have been working on this Session. And -- and we all have funeral directors all over the State of Illinois that -- that have been involved in these pre-need funerals, of -- of the -- of making those commitments, and the Fund is in -- in serious trouble. This will not affect what's going on that happened up until this point. We're just trying to work with the Comptroller's Office in -- in correcting a problem from this point on. And so I rise in strong support of this legislation. And I appreciate you --

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

your hard work on this, Senator Demuzio.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Althoff, for what purpose do you rise?

SENATOR ALTHOFF:

Thank you, Madam President. To the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

To the bill, Senator.

SENATOR ALTHOFF:

I, too, rise in strong support of this legislation and would like to take the opportunity to thank Senators {sic} Demuzio, Senator Jones and Senator Sullivan for working so diligently on this effort that affected many funeral homes throughout the State of Illinois. There is also going to be legislation that you'll see coming up that creates a task force to look at this issue, as well as several others in this arena. And I think we need to support those efforts as well. But I would urge a strong Aye vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Demuzio, to close.

SENATOR DEMUZIO:

Yes. I certainly ask for a Yes vote on this piece of legislation. As was mentioned, this is an initiative of the Comptroller's Office and it's a very important initiative that I feel that will set into motion some of the concerns that have been raised. It is a good consumer-advocate bill to protect our consumers when it comes to pre-need burial and I ask for an Aye vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The question is, shall the Senate concur in House

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Amendments No. 1 and 2 to Senate Bill 1682. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 58 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1682 having received the required constitutional majority, the Senate does concur in House Amendments No. 1 and 2 and the bill is declared passed. Senator Raoul, on Senate Bill 1705. He indicates he wish to proceed. Mr. Secretary, please read the gentleman's motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 1705.

Filed by Senator Raoul.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Raoul.

SENATOR RAOUL:

Thank -- thank you, Madam President. Senate Bill 1705, as we passed it out, made changes to the Cook County Article of the Pension Code, giving the Fund authority to initiate proceeding against a third party for recovery of damages if a disabled firefighter had not instituted a proceeding. House Amendment 1 makes some clarifications concerning the -- the action, to allow the Fund to recover only the portion of the recovery to cover expenses, but not the portion allocated for pain, suffering and other certain purposes.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, shall Senate -- shall the Senate concur in House Amendment No. 1

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

to Senate Bill 1705. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1705 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 and the bill is declared passed. Senator Schoenberg, on Senate Bill 1729. Senator -- Senator Schoenberg is in the gallery. Hi, Senator Schoenberg. Please welcome Senator Schoenberg to the gallery. Please rise and be recognized by the General Assembly. Senator Schoenberg. Out of the record. Senator Schoenberg, on Senate Bill 1739. Out of the record. Senator Noland, on Senate Bill 1750. He indicates he wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 2 to Senate Bill 1750.

Signed by Senator Noland.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Noland.

SENATOR NOLAND:

Thank you, Madam President. This amendment clarifies for the purposes of a front door referendum of the PTELL tax, clarifies that the tax to be, perhaps, increased by not more than .15 percent does not increase the levy, it just simply allows for the definition of what the referendum is for and specifying that it is for mental health services or to assist people with developmental disabilities or substance abuse disorder. Passed quite -- didn’t quite pass unanimously out of

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

committee. There was only one objection, which was Senator Lauzen. But other than that, passed unanimously, and of course passed unanimously out of the House as well. I ask for an Aye vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. Are there any questions? Senator Righter, for what purpose do you rise?

SENATOR RIGHTER:

Thank you, Madam President. Will the sponsor yield, please?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Yes, he indicates he will. Senator Righter.

SENATOR RIGHTER:

Senator Noland, I see that the bill, over in the House, received 37 No votes. I mean, I don't -- obviously I'm not sure that you were over in the House when -- when that vote was taken, but would you care to characterize, if you can, the opposition in the House to this -- this language?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Noland.

SENATOR NOLAND:

Thank you, Senator. My understanding was that it passed out of its -- its committee - I was told that - unanimously. And I do stand corrected regarding the No votes on the Floor in the House and I do apologize for the -- for the error.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Righter.

SENATOR RIGHTER:

I appreciate that, Senator. The -- to my question about

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

why there was that substantial opposition in the House, would you care to characterize that for me, please?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Noland.

SENATOR NOLAND:

Thank you. I am told by the proponents of the bill that there was some confusion regarding whether or not this was actually going to increase the levy. It does not increase the tax levy. And that was the reason for some of the opposition in the House.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Righter.

SENATOR RIGHTER:

Thank you, Madam President. Does -- does it -- does it allow for -- I mean, I see that you're amending the PTELL statute that we have here in Illinois. Tell me what the effect of that amendment is, if you would.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Noland.

SENATOR NOLAND:

Thank you. Senator, the -- and thank you for the question. The effect is just merely definitional. When people go to vote on these types of measures -- or, these types of referendum, up until now, the language on the referendum has been more generalized and not particularized. And what this -- what -- what this bill does and what the amendment does is it provides that, in quotes, that the referendum -- referendum is for the purposes that the -- that the governmental unit shall tax -- create a tax imposed by the governmental unit, if you will -

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

please forgive me - for the purposes of providing community -- community mental health facilities and services, including facilities and services for persons with a developmental disability or substance abuse {sic} disorder to allow the tax to be increased to not more than 0.15 percent.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Clayborne in the Chair.

SENATOR NOLAND:

End quotes.

PRESIDING OFFICER: (SENATOR CLAYBORNE)

Senator Righter.

SENATOR RIGHTER:

Thank you, Mr. President. So, Senator Noland, if I'm -- I want to make sure I'm correct on this. This bill moves upward that cap, but only allows that to happen if the voters approve the referendum. Is that a fair way to characterize the bill?

PRESIDING OFFICER: (SENATOR CLAYBORNE)

Senator Noland.

SENATOR NOLAND:

I don't believe so. I don't believe that it increases the cap. Okay? It allows for the governmental unit to increase the levy within the cap up to .15, but not more than .15. What the bill does is it provides a -- a specification of what the purpose of the referendum is.

PRESIDING OFFICER: (SENATOR CLAYBORNE)

Senator… Any further discussion? Seeing none, the question is, shall the Senate concur in House Amendments {sic} No. 2 to -- No. 2 to Senate Bill 1750. Those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 40 voting Yea, 18 voting Nay. Senate Bill 1750 having received the required constitutional majority, the Senate does -- does concur in House Amendments {sic} No. 2 to Senate Bill 1750 and the bill is declared passed. Senator Dahl, for what purpose do you seek recognition?

SENATOR DAHL:

Moment of personal privilege.

PRESIDING OFFICER: (SENATOR CLAYBORNE)

Please state your point.

SENATOR DAHL:

Thank you. I have with me today a - excuse me - very special person. Savanna -- Savanna Milasuski is a -- going to be a senior at the St. Bede Academy in Spring Valley -- in Peru. She's a honor student and intends to go on to college after high school. But she also happens to be my granddaughter. And her mother is…

PRESIDING OFFICER: (SENATOR CLAYBORNE)

Welcome to Springfield. Please stand. Thanks for coming to Springfield.

SENATOR DAHL:

Her -- her mother is sitting up here in the -- in the balcony behind you, and welcome to Springfield.

PRESIDING OFFICER: (SENATOR CLAYBORNE)

Senator Lightford, back in the Chair.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Bomke, for what purpose do you rise?

SENATOR BOMKE:

Thank -- thank you, Madam President. Point of personal privilege.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Please state your point.

SENATOR BOMKE:

With me today is an honorary Page. It is Tommy Sagins. His mother, Anne Sagins, works for the Illinois Senate Republicans. And I'd like you to help me welcome Tommy here today.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Hi, Tommy. Welcome to the Illinois General Assembly. Please stand and be recognized. Handsome little guy. Handsome. Ladies and Gentlemen of the Senate, we are following up on some paperwork to Senate Bill 1750, if you could be patient for a moment. Thank you. The Senate will now come to order. The Associated Press requests to take photos, Seth Perlman. Leave is granted. Now on the order of Senate Bill 1750. House Amendment No. 1 to Senate Bill 1750. He indicates he wishes to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 1750.

Signed by Senator Noland.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Noland.

SENATOR NOLAND:

Thank you, Madam President. I understand that I inadvertently overlooked Amendment No. 1. I just simply ask that it be -- that we concur with the -- the House amendment at

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

this time.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. Seeing no discussion, the question is, shall the Senate concur in House Amendment No. 1 to Senate Bill 1750. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 42 voting Aye, 12 voting Nay, 0 voting Present. Senate Bill 1750 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 to Senate Bill 1750 and the bill is declared passed. Now on the order of Senate Bill 1905. Senator Garrett. She indicates she wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendments numbered 1, 2 and 5 to Senate Bill 1905.

Signed by Senator Susan Garrett.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Garrett.

SENATOR GARRETT:

Yes, thank you very much, Madam President. House -- just briefly, House Amendment No. 1 deals with the appointment process of Board members. House Amendment No. 2 addresses the long-term care programs. And House Amendment No. 5 addresses the organization of the Comprehensive Health Planner, the Board members, and the appointment of the Board chairman from among the members, which will be made by the Governor. I'd be happy to answer any questions.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, shall the Senate concur in House Amendments No. 1, 2 and 5 to Senate Bill 1905. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 55 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1905 having received the required constitutional majority, the Senate does concur in House Amendments No. 1, 2 and 5 and the bill is declared passed. Senator Lauzen, for what purpose do you rise?

SENATOR LAUZEN:

Thank you, Madam President. On Senate Bill 1750, it was my intention to vote No on that bill and unfortunately I pressed the Yes vote. So, if the record could reflect that my intention was to vote No, I -- I'd appreciate it.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. Senator Noland -- I'm sorry, Senator Lauzen would like to request a No vote on Senate Bill 1750. So noted. Senate Bill 1926. Senator Martinez. She indicates she wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 1926.

Signed by Senator Martinez.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Martinez.

SENATOR MARTINEZ:

Thank you, Madam President and Members of the Senate.

House Amendment No. 1 becomes the bill to 1926, Senate Bill 1926. The amendment seeks to include area vocational centers and facilities eligible for school construction dollars under the School Construction Law. It also requires State-designated facilities that are jointly owned and wish to be part of the school construction list to have an agreement including language specifying how the debt obligation is to be paid and also what will happen with any debt in the event the entity withdraws from the joint agreement. Type 4 {sic} (40) area vocational centers will not be awarded construction grants before any school district currently on a school construction waiting list. And lastly, it requires the average of the grant indexes of the districts that are part of the joint agreement to be used to calculate the amount of a school construction project grant. And I'll be happy to answer any questions.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. Are there any questions? Senator Risinger, for what purpose do you rise?

SENATOR RISINGER:

Thank you, Madam President. Will the sponsor yield for a question?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

She indicates she will. Senator Risinger.

SENATOR RISINGER:

Yes, I have to admit that I'm not fully up on this bill, but I notice, in -- in reading the analysis here, that there's some Type 41s and -- and I have one of those vocational centers in my district and they're -- they won't be eligible for this. Can you explain to me what's the rationale between not allowing

the Type 41s to join also?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Martinez.

SENATOR MARTINEZ:

Type 41s are already eligible for this. There's only fourteen -- I mean thirteen schools that qualify for this and they will always be put at the bottom of the list. But remember, they have to be signed off by all the other districts in order for them to even be put on the list. So I think it's just an opportunity for them, who have not been able to get any help, to update facilities, to at least be on that list to just update material and the facility for these vocational centers that are there.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Risinger.

SENATOR RISINGER:

So, you're telling me right now that my Galesburg area is eligible to partake of the funds that we -- the capital funds that we passed right now, where the Type 40 is not eligible. Is that correct?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Martinez.

SENATOR MARTINEZ:

Yes.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Risinger.

SENATOR RISINGER:

I'm -- I'm -- I'm not real sure where we are with the bonded indebtedness of our school district, so I'm not real sure

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

where I'm at on this vote. I may not be in favor of it because of just lack of understanding of it. Thank you.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Further discussion? Senator Rutherford, for what purpose do you rise?

SENATOR RUTHERFORD:

Thank you, Madam President. Question, if I may please, of the sponsor.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Indicates she'll yield. Senator Rutherford.

SENATOR RUTHERFORD:

Thank you very much. Senator Martinez, would you help -- help walk me through, one more time, what you just explained, 'cause I have the same question marks as Senator Risinger does, and I think a few of us, as to why certain districts are not eligible.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Martinez.

SENATOR MARTINEZ:

Some of these school districts are owned by one and they're -- that -- that's a Type 41 and then there is -- there is other schools that are owned -- that are jointly owned by, you know, by -- there could be five that belong to -- to that school district. So it will be -- have to be signed off by all those districts before they're able to qualify.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Cronin.

SENATOR RUTHERFORD:

No. I'm sorry.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

PRESIDING OFFICER: (SENATOR LIGHTFORD)

I'm sorry. Senator Rutherford.

SENATOR RUTHERFORD:

I -- I understand that part of it then, but that still doesn't help me understand why those that may be owned by one singular district, why they're not going to be included in that. I mean, I understand the provision of needing to have everybody sign off on the Type 40s, but why would you not want to also include the Type 41s?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Martinez.

SENATOR MARTINEZ:

Senator Rutherford, they can. They can apply.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Cronin -- Rutherford. I don't know why Cronin is on the brain. Rutherford.

SENATOR RUTHERFORD:

No. Thank you, Madam President.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Further discussion? Senator Wilhelmi, are you seeking to present on this bill? For what purpose do you rise?

SENATOR WILHELMI:

Thank you, Madam President. To the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

To the bill, Senator.

SENATOR WILHELMI:

Thank you. Ladies and Gentlemen of the Senate, I rise in strong support of Senator Martinez's efforts on Senate Bill 1926. I think it's very important to understand the difference

between the Type 40 and the Type 41 career centers. Currently, Type 41 career centers are already allowed to apply for construction grants as long as they have the support of that one member, as Senator Martinez said. Type 40 career centers are treated much differently. Type 40 career centers have multiple members -- school districts as members. For example, the Wilco vocational center, in Romeoville, Illinois, has five high schools as members of their career center. Currently, for them to apply for school construction grants, each of those five high school districts would have to pass a referendum, which would allow for the matching dollars for that Wilco Career Center to be able to apply for construction grants - for school construction grants. That’s very important to understand. We’re bringing parity between the Type 40 and the Type 41 career centers. And number two, as already indicated, there will be no line jumping. Career centers will be treated in a separate category under the school construction grant application process. They will be after all K through 12 school districts -- they will be listed after all K through 12 school districts. For example, if there are fifty K through 12 school districts that apply in 2010 and there are five career centers, the five career centers will be fifty-one through fifty-five on the list. So that makes sure that our K through 12 school districts are not treated in a -- in a disproportionate manner or an unfair manner. I think it’s very important to understand this, that we’re bringing parity for the 40 and 41 career centers and we’re allowing these thirteen career centers a chance to apply for school construction grants that they haven’t had the opportunity to apply for. And it’s been forty years since these things were

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

built -- since these career centers were built. They are in dire need of capital. This brings parity to both groups of career centers and I ask for your support on this very meaningful piece of legislation.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Very good. Senator Cronin, for what purpose do you rise?

SENATOR CRONIN:

Thank you very much, Madam President. To the bill: I -- I don't think I can be any more persuasive than Senator Wilhelmi was moments ago. I rise in strong support of the bill. And two points, if I may: Number one, Senator Wilhelmi points out that these are unique, specially situated organizations, these career centers that have agreements with multiple school districts. They don't fall into a category right now that allows them to participate in the school construction grant program. Other career centers that are solely within the purview of individual school districts, they can already, just, you know, these Type 41 career centers. So, we're just enabling a new group, but albeit a group that's committed to the same mission, to participate. Now, the only issue is that the school construction grant program is typically, woefully underfunded and so this does increase the pool of competitors. But that doesn't mean that these organizations aren't -- aren't any less worthy. And so, for those of you who firmly believe in the value and the virtue of a career and technical and trade education - and I happen to think that it's just as important as the education the kids get who want to go to college - I think you ought to be a Yes vote on this.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Senator Crotty, for what purpose do you rise?

SENATOR CROTTY:

To the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

To the bill, Senator.

SENATOR CROTTY:

I happened to be in committee waiting for another committee that I serve on to start when I happened to hear the debate on this bill in -- in committee. And for many of us, we might remember - I think it was last year or the year before - we had talked about special ed cooperatives and putting them on the list in order for them to be able to make repairs and -- and adjustments to their buildings, whether it be for technology or whatever, because our -- our own school districts are members, they own that building, and just as they're able to put in for the construction grants, they should be able to make sure that that building also, because they own it - the taxpayers own that - that they should be able to qualify to get help in those special ed buildings. I see this as the same. If we're talking education, whether the student has special needs or whether they are not college-bound students - but we certainly need those persons that are going to get vocational training for a career - we need those services here in the State of Illinois also. So this allows, as far as I'm concerned, our school districts to give the best education, individually, to the students that they serve and we serve in the State of Illinois. And they should have that option to keep those buildings and those centers for those students up to par so that we can get the best work force that we can get. So I highly support this bill and the students

that go to those buildings and the school districts that didn't forget those students. Thanks.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Well said, Senator. Senator Burzynski, for what purpose do you rise?

SENATOR BURZYNSKI:

Thank you, Madam President. Will the sponsor yield for a question?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Indicates she will. Senator Burzynski.

SENATOR BURZYNSKI:

Thank you. Senator, first of all, I -- I like the concept of what you're doing. I think cooperative schools are great. I think they do the right things. They give kids alternatives. They give them the ability to -- to maybe get out of a more formal setting into a setting that -- that's more adaptable to their needs and what they want to do in their lives. I wanted to follow up, though, on a comment made by Senator Wilhelmi, and maybe this will clarify something for me. So I -- maybe it will. Senator Wilhelmi used the -- the example that if there were fifty schools that were -- that applied for the grant and there were five vocational centers that did, they would be fifty-one through fifty-five, for instance, in 2010. In 2011, where would they be? Would they be -- if -- if you had five schools that were qualified in 2010, would they be, you know, then forty-six through fifty the next year? Or would they continue to go to the back of the list?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Martinez.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

SENATOR MARTINEZ:

Thank you for that question. No, they will continue to move up and that's -- that's been advised to me by the State Board of Education.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Burzynski.

SENATOR BURZYNSKI:

Thank -- thank you. Will that be something that would be written into the rules then, as I understand it, Senator? Because I'm not sure that it's in the legislation, or at least I don't remember us being able to -- to point to it yesterday.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Martinez.

SENATOR MARTINEZ:

I can check on that. But I do believe that, because that school district has applied for that -- that -- for that construction grant. I would say they will continue to be moved -- they will continue to move up the ladder as far as having that kind of relief brought to their school.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Burzynski.

SENATOR BURZYNSKI:

Thank you, Madam President. To the bill then: I voted -- excuse me, I voted in opposition to the bill yesterday in committee simply because I think that we're putting one more type of facility into the school construction program. However, I think I'm going to change my vote, because I do believe it's the right thing to do as we move forward providing additional opportunities, alternative opportunities, to kids. And I just

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

think that we have to be very careful, maybe when the State Board of Education writes the rules, as -- as we move through this process. Thank you.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any further discussion? Seeing none, Senator Martinez, to close.

SENATOR MARTINEZ:

Thank you very much. I am so thankful to all the previous speakers and my colleagues on this important bill. I just think it gives the students an opportunity to be in a healthy and safe environment. I think that, like Senator Wilhelmi says, it does bring parity to all the -- all these different schools that right now are all waiting, and they should not be treated any different. So, I really want to see all the green lights go up, because it’s about the students that we are voting for. Thank you very much.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The question is, shall the Senate concur in House Amendment No. 1 to Senate Bill 1926. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 56 voting Aye, 2 voting Nay, 0 voting Present. Senate Bill 1926 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 and the bill is declared passed. Senator Millner, for what purpose do you rise?

SENATOR MILLNER:

Hi, Madam President. Yes. Regarding Senate Bill 1750 on the motion to concur with Amendment 1, I wish to be recorded as

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

a No.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Millner, good morning. Your intent will be so reflected. Stephen Bourque seeks leave, from WICS-TV ABC, to shoot video. Leave is granted. Now on the order of Senate Bill 1977. Senator Meeks. He indicates he wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 1977.

Signed by Senator Meeks.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Meeks.

SENATOR MEEKS:

Thank you so much, Madam President. You look lovely this morning.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Flattery gets you everywhere, Senator. Thank you.

SENATOR MEEKS:

I was hoping so. 1977 is just some technical changes. And I wish that we would concur with the House on these changes.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, shall the Senate concur with Senate Bill 1977, House Amendment No. 1. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 55 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1977 having received the required

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

constitutional majority, the Senate does concur in House Amendments {sic} No. 1 to Senate Bill 1977 and the bill is declared passed. Senator Haine. Senator Lauzen. Senate Bill 2090. Out of the record. Senator Haine, on Senate Bill 2091. He indicates he wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendments No. 1, 2 and 3 to Senate Bill 2091.

Signed by Senator Haine.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Haine.

SENATOR HAINE:

Thank you, Madam President and Ladies and Gentlemen of the Senate. The House Amendment No. 3 is actually the gist of the bill. And this is a -- been a two-year effort. This piece of legislation prohibits STOLI, which is stranger-originated life insurance, and it regulates other forms of life insurance, such as viatical settlements. The practice of STOLI, a stranger-originated life insurance, are deals put together by investors, hedge funds, strangers, only for a profit. The stranger will finance the purchase of an insurance policy with a high interest loan that is paid off when the policy is sold. The senior citizen or someone who's very ill - actuarial -- the actuarial tables indicate they have not long to live - those who become involved in these schemes will sell these policies -- sell their policies, typically receive twenty percent or thirty percent of the death benefit. They repay the loan and they only net about forty grand out of maybe a million dollars. The -- this is a

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

gambling scheme. It is bad for consumers. It exploits people in difficult circumstances. It is bad for the insurance industry since it makes insurance policies a gambling enterprise, which will, in -- in essence, destroy the insurance market for all of us and all of our citizens who do use and purchase life insurance. Viaticals are those settlement contracts that are legitimate and regulated under the Act, and that's the sale of an insurance policy, but it is done late in life. The transfer for compensation of the value or ownership of a beneficial trust has to meet the guidelines of this Act, and there are other provisions in it. This is a two-year effort to satisfy all those who are concerned. A viatical settlement is also made by someone late in life who owns an insurance policy. It comes from the root word -- the Roman word for road. Viaticum is -- is a Roman idiom meaning the last journey. The last rites of the Catholic Church is still referred to as the viaticum. So, viaticals are authorized.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator Lauzen. I'm -- I'm sorry, Senator Haine. Thank you. We have a question of the sponsor. Senator Lauzen.

SENATOR LAUZEN:

Thank you -- thank you, Madam President. Question…

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Lauzen, for what purpose do you rise?

SENATOR LAUZEN:

…for the -- question…

PRESIDING OFFICER: (SENATOR LIGHTFORD)

He indicates he'll yield. Senator Lauzen.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

SENATOR LAUZEN:

So, Senator, what you're saying, the shorter version is that this limits only strangers on these policies, not -- in -- in no way does this affect a person's property right in their insurance policy or a family member's or even a business associate's. It affects none of those, only strangers. Is that right?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Haine.

SENATOR HAINE:

Do you want the long answer or the short answer? Short answer. Okay. Just testing, that's all. The -- the answer is it prohibits STOLI.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Lauzen.

SENATOR LAUZEN:

Well, that's nice, but, you know, for some of us who are not as familiar as you are with STOLI, I ask just the question, in layman's terms, does this only affect strangers taking out some kind of insurance policy on somebody who they don't know? Does it in any way limit the property right that an individual has on either their own policy, a family member's policy, a friend, or even a business associate? You know, in a protection of a business.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Haine.

SENATOR HAINE:

No. The Act clarifies that the settlement of insurance policies that were originally purchased with a requisite

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

insurable interest and for the purposes of policy ownership are not to be considered illegal STOLI arrangements.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Lauzen.

SENATOR LAUZEN:

Thank you very much.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Haine, to close, please.

SENATOR HAINE:

I respectfully ask for an Aye vote on a very important piece of work by many people on the Insurance Committee and particularly by Representative Frank Mautino, Leader Mautino, in the House.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you. The question is, shall Senate Bill 2091 pass -- shall the Senate concur, excuse me, on House Amendments No. 1, 2 and 3 to Senate Bill 2091. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 voting Aye, 0 Nay, and 0 voting Present. Senate Bill 2091 having received the required constitutional majority, the Senate does concur in House Amendments No. 1, 2 and 3 to Senate Bill 2091 and the bill is declared passed. Senator Noland, for what purpose do you rise?

SENATOR NOLAND:

My apologies, Madam President. I wish to be recorded as an Aye vote on the last bill. Thank you.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The record will reflect. Senator Hunter, on Senate Bill

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

127229

2103. She indicates she wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 2103.

Signed by Senator Hunter.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Hunter.

SENATOR HUNTER:

Thank you, Madam President and Ladies and Gentlemen of the Senate. I wish to concur with House Amendment 1 which retains -- Senate Bill 2103, but it prohibits the Illinois -- IEPA from issuing administrative citations for tire violations for those used or waste -- waste -- waste tires located at a residential household with twelve or fewer used or waste tires. And I ask for an Aye vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, shall the Senate concur in House Amendments {sic} No. 1 to Senate Bill 2103. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 53 voting Aye, 1 voting Nay, 0 voting Present. Senate Bill 2103 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 and the bill is declared passed. Senator Harmon, on Senate Bill 2112. He indicates he wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

I move to concur with the House in the adoption of their Amendments 1 and 2 to Senate Bill 2112.

Signed by Senator Harmon.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon.

SENATOR HARMON:

I'd like to come back to this one later, Madam President. May I take it out of the record?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Absolutely. Senate Bill 2112, out of the record. On page 66, Secretary's Desk, Concurrences, Senate Bill 2217. Senator Radogno. Leader Radogno. She indicates she wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 2217.

Signed by Senator Radogno.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Leader Radogno.

SENATOR RADOGNO:

Thank you, Madam President, Ladies and Gentlemen of the Chamber. This House amendment retained the language in the underlying bill, which recognized, as an approved driver education course, any courses of drivers' ed taught at a Department of Defense Education Activity school. This was to help out a constituent who had a child in an overseas school. And it added language suggested by the Secretary of State to also recognize enhanced skills driving schools as approved driver education courses.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, shall the Senate concur in House Amendment No. 1 to Senate Bill 2217. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 2217 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 to Senate Bill 2217 and the bill is declared passed. Senator Wilhelmi, on Senate Bill 2256. He indicates he wish to proceed. Mr. Secretary, please read the gentleman's motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 2256.

Signed by Senator Wilhelmi.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Wilhelmi.

SENATOR WILHELMI:

Thank you, Madam President, Ladies and Gentlemen of the Senate. House Amendment No. 1 to Senate Bill 2256 clarifies that a witness, who signs a voluntary do-not-resuscitate advance directive, certifies that the patient or his or her surrogate has had the opportunity to read the form and sign the form or acknowledge the signature on the form in the witness's presence. This -- this bill will now bring the DNR form into consistency with the Power of Attorney for Health Care Act. One witness is needed for both. It's the right thing to do and I ask for your

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Aye vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Seeing no discussion, the question is, shall the Senate concur in House Amendment No. 1 to Senate Bill 2256. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 2256 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 to Senate Bill 2256 and the bill is declared passed. Senator Harmon in the Chair.

PRESIDING OFFICER: (SENATOR HARMON)

Mr. Secretary, would you please print on our Calendar Senator Holmes' motion to reconsider the vote on Senate Joint Resolution 30 and Senator Haine's motion to reconsider the vote on Senate Bill 1486? Ladies and Gentlemen of the Senate, on page 60 of your Calendar, on the Order of Secretary's Desk, Concurrences, we are returning to Senate Bill 235. Senator Lightford. Mr. Secretary, please read the lady's motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 235.

Signed by Senator Lightford.

PRESIDING OFFICER: (SENATOR HARMON)

Senator Lightford, to explain your motion.

SENATOR LIGHTFORD:

Thank you, Mr. President. House Amendment No. 1 deletes the underlying language and becomes the bill. It would transfer any remaining assets in the CSFA, the Chicago School Finance

Authority, to the Chicago Board of Ed, rather than to the State Board of Ed, which was in the original language. The City of Chicago feels that these funds came from property tax levies in Chicago, and therefore they're -- the Authority financial and educational oversight powers were suspended in '94 and again in '98 and in 2003. And the Authority has focused on paying off the debt it issued before its activity was suspended. And so they're wanting the funds to return to the Chicago Board of Ed, rather than the State. I'd be happy to answer questions.

PRESIDING OFFICER: (SENATOR HARMON)

Is there any discussion? Seeing none, the question is, shall the Senate concur in House Amendment No. 1 to Senate Bill 235. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 58 voting Aye, none voting Nay, none voting Present. And the -- and having received the required constitutional majority, the Senate does concur in House Amendment No. 1 to Senate Bill 235 and the bill is declared passed. Senator Lightford, are you seeking recognition?

SENATOR LIGHTFORD:

I am, Mr. President. On purpose of an inquiry. Purpose of personal privilege. Thank you. Mr. President, as I presided over the Chamber, there were two bills that were voted in -- as an Aye and I would prefer those bills to be voted as a Present. I generally vote Present votes on TIFs, and I'd like the record to reflect that on Senate Bill 1296 and 1553, I would have voted Present.

PRESIDING OFFICER: (SENATOR HARMON)

Thank you, Senator. The record will so reflect your intention. Senator Lightford back in the Chair.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

On page 65, Senate Bill 2112. Senator Harmon. Senator Harmon indicates he wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendments numbered 1 and 2 to Senate Bill 2112.

Signed by Senator Harmon.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon.

SENATOR HARMON:

Thank you, Madam President, Ladies and Gentlemen of the Senate. The underlying bill, Senate Bill 2112, is a modernization of the Real Estate Timeshare Act. It passed out of the Senate without controversy. The House amended it first in Floor amendment -- or, in House Amendment No. 1 for a technical amendment and then in House Amendment 2 with a gut and replace with a series of additional technical amendments. I do not believe that this makes the bill controversial in any way. And I would ask you to support my motion to concur in the House's amendments.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, shall Senate Bill 2112 pass -- shall the Senate concur in House Amendments No. 1 and 2 to Senate Bill 2112. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

wish? Take the record. On that question, there are 57 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 2112 having received the required constitutional majority, the Senate does concur in House Amendments No. 1 and 2 to Senate Bill 2112 and the bill is declared passed. On page 63 -- on page 63, Senate Bill 1729. With leave of the Body, we'll return to Senate Bill 1729. Senator Schoenberg. He indicates he wish to proceed. Mr. Secretary, please read the gentleman's motion.

ACTING SECRETARY KAISER:

I move to concur with the House in the adoption of their Amendment No. 1 to Senate Bill 1729.

Signed by Senator Schoenberg.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Schoenberg.

SENATOR SCHOENBERG:

Thank you -- thank you, Madam President and Ladies and Gentlemen of the Senate. I move that the House concur -- the Senate concur on House Amendment No. 1, which makes a slight modification in the language. It changes it from -- the word "Amtrak" to "intercity" rail. There's no disagreement and I urge your favorable support.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Senator Righter, for what purpose do you rise?

SENATOR RIGHTER:

Inquiry of the Chair if I might, Madam President.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Absolutely. Senator Righter.

SENATOR RIGHTER:

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

You know, I don't know the rules of the Senate inside and out, but I wonder, is there some provision in our rules that calls for some kind of admonition or censure or smackdown of a Member who repeatedly refers to the Senate Chamber as the House of Representatives and refers to the Presiding Officer as Madam Speaker or Mr. Speaker. I mean, this has gone on time and time and time again. Now, if the sponsor had just shown up in the Senate, like last week or last month or even last year, I think we'd all be willing to give him a break, but he's been here five or six years, Madam President - seven years. So I hope that -- I mean, we've got a lot of work to do here in the next couple days, but after that, Madam President, I hope that maybe you and I and some others can sit down and give some serious thought about how we're going to deal with this situation. I appreciate it. Thank you, Madam President.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Righter, your point is well-taken and I will refer you to Section 11-1 of Article XI, deals with disorderly behavior. In accordance with Article IX {sic} (IV), Section 6 of the Constitution, the Senate may punish any of its Members for disorderly behavior and, with the concurrence of two-thirds of the Members elected, expel a Senator, but not for a second time for the same cause. Senator Righter.

SENATOR RIGHTER:

Well -- well, Madam President, it appears this issue's got legs now. I appreciate that very much. You know, Madam President, in the name of bipartisanship and compassion, I don't think that we're going to ask for a roll call to expel Senator Schoenberg or send him back to the House, although - although -

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

I think, even on the first try and maybe with working the Membership a little bit, I think we could get close to that two-thirds. But I don't think we should do that quite yet. I think that your admonition, as you just articulated, will be just fine. Thank you, Madam President, very much.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you very much, Senator Righter. And Senator Schoenberg just have the seven-year itch. He's getting over it. Is there any further discussion on Senator -- this is not Senator Schoenberg's first bill. Senator Schoenberg, to close.

SENATOR SCHOENBERG:

Thank -- thank you, Madam President. First of all, it was my belief that, in this country, people get -- while I get to face my accused and look across the Chamber at them, that I should also be able to defend myself as well. To be -- I can tell you with absolute certainty that I know where I am at all times. It may -- and it may elude some Members; it may not seem like it. I may have my head somewhere else, like trying to help hospitals in Senator Righter's district, for example, or trying to do something else as part of the do-gooder caucus here in this Chamber, but I can assure you I always know where I am. And I also wanted to say that I made this last slip-up -- I addressed the Presiding Officer correctly. I addressed the Body correctly. I just slipped up on whether it was a House or a Senate amendment. I don't think that's worth being expelled for, unless I've done something else to deserve it. And finally, I want to say that I just wish, Senator Righter, that all the Members on your side contributed to the same -- to the tip -- to the -- to pay for the refreshments in the back on your

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

side with the frequency that I do, because I don't believe in a free lunch. Now, that's my close. Please concur with the amendment.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The question is, shall the Senate concur in House Amendment No. 1 to Senate Bill 1729. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 58 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1729 having received the required constitutional majority, the Senate does concur in House Amendment No. 1 and the bill is declared passed. Senator Schoenberg, on Senate Bill 1739. He indicates he wish to proceed. Mr. Secretary, please read the gentleman's motion.

ACTING SECRETARY KAISER:

I move to non-concur with the House in the adoption of their Amendment No. 1 to Senate Bill 1739.

Signed by Senator Schoenberg.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

We will take Senate Bill 1739 out of the record. On the Order of Supplemental Calendar No. 1, Members are receiving that order. Supplemental Calendar No. 1, the Motions in Writing to Reconsider the Vote -- to Reconsider the Vote. Senate Bill 1486. Senator Haine. He indicates he wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

Pursuant to Rule 7-15(a), having voted on the prevailing side, I move to reconsider the vote by which Senate Bill 1486 passed.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Signed by Senator Haine.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Haine.

SENATOR HAINE:

Madam President, I wish to reconsider that vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

There is discussion. Senator Righter, for what purpose do you yield?

SENATOR RIGHTER:

Thank you, Madam President. It's my understanding that there's a - for lack of a more articulate term - a paperwork snafu. We need to roll these items back and then pass them again. Is that correct, Madam President?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

That's correct, Senator. Ladies and Gentlemen of the Senate, you have heard the motion to reconsider. All those in favor will vote Aye. Opposed, Nay. The Ayes have it, and the motion is reconsidered. And now on the order of Senate Joint Resolution 30. Senator Holmes. Senator Holmes indicates she wish to proceed. Mr. Secretary, please read the motion.

ACTING SECRETARY KAISER:

Pursuant to Rule 7-15(a), having voted on the prevailing side, I move to reconsider the vote by which Senate Joint Resolution 30 passed.

Signed by Senator Holmes.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Holmes.

SENATOR HOLMES:

Yes, thank you, Madam President. I wish to reconsider the

vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Seeing no discussion on the motion to reconsider, all those in favor will vote {sic} Aye. Opposed, Nay. The Ayes have it, and the motion is adopted. The Senate will stand at ease. The Senate will stand at ease for just a moment, so please stand by. Thank you.

(SENATE STANDS AT EASE/SENATE RECONVENES)

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Ladies and Gentlemen of the Senate, it is the intention of the Chair to move to Committee on Assignments. We are finalizing paperwork. Could the members of the Committee on Assignments please stand by? Thank you. The Chair recognizes and welcome Glenn Poshard, former Senator. Once a Senator, always a Senator. Please welcome SIU President Glenn Poshard to the Senate Floor. Welcome, Mr. Poshard.

(SENATE STANDS AT EASE/SENATE RECONVENES)

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The Senate will now come to order. Will the Committee on Assignments please meet in the President's Anteroom immediately? The members of the Committee on Assignments will come to the President's Anteroom immediately. The Senate will then stand at ease.

(SENATE STANDS AT EASE/SENATE RECONVENES)

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The Senate will come to order. Mr. Secretary, Committee Reports.

ACTING SECRETARY KAISER:

Senator Clayborne, Chairman of the Committee on Assignments, reports the following Legislative Measures have been assigned: Refer to the State Government and Veterans Affairs Committee - Senate Joint Resolution 30, House Joint Resolution 55 and Senate Resolution 249; Be Approved for Consideration - Motion to Concur with House Amendment 1 to Senate Bill 1486.

Signed by Senator James F. Clayborne, Chairman.

Senator Clayborne, Chairman of the Committee on Assignments, reports the following Legislative Measures have been assigned: Refer to the Commerce Committee - Floor Amendment No. 2 to House Bill 852; refer to the Consumer Protection Committee - Motion to Concur with House Amendments 1 and 2 and 3 and 4 to Senate Bill 1483; refer to the Education Committee - Floor Amendment 4 and Floor Amendment 5 to Senate Bill 750; refer to the Energy Committee - Motion to Concur with House Amendments {sic} No. 3 to Senate Bill 1906 and a Motion to Concur with House Amendments 1, 2 and 3 to Senate Bill 1918; refer to the Gaming Committee - Motion to Concur with House Amendment No. 1 to Senate Bill 1298 and Floor Amendment No. 9 to Senate Bill 744; refer to the Human Services Committee - Motion to Concur with House Amendments 1 and 2 to Senate Bill 367 and a Motion to Concur with House Amendment 1 to Senate Bill 807; refer to the Judiciary Committee - Motion to Concur with House

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Amendment 1 to Senate Bill 1556 and a Motion to Concur with House Amendments 1 and 3 and 4 to Senate Bill 1938; refer to the Licensed Activities Committee - a Motion to Concur with House Amendment 1 to Senate Bill 1925; refer to the Local Government Committee - a Motion to Concur with House Amendment 1 to Senate Bill 1511 and a Motion to Recede from Senate Amendment No. 1 to House Bill 793; refer to the Public Health Committee - a Motion to Concur with House Amendment No. 3 to Senate Bill -- 314 and a Motion to Concur with House Amendments 1 and 2 to Senate Bill 1919; refer to the Revenue Committee - a Motion to Concur with House Amendment No. 1 to Senate Bill 2046 and a Motion to Concur with House Amendment No. 1 to Senate Bill 2115; refer to the State Government and Veterans Affairs Committee - Floor Amendment No. 3 to Senate Resolution 273 and Committee Amendment No. 1 to House Joint Resolution 55; refer to the Transportation Committee - a Motion to Concur with House Amendment No. 1 and 2 to Senate Bill 1434; and Be Approved for Consideration - Floor Amendment No. 5 to House Bill 3923.

Signed by Senator James F. Clayborne, Chairman.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Link. Senator Link, motion to waive -- suspend posting requirements. Senator Link, on a motion to waive or suspend posting requirements.

SENATOR LINK:

Thank you, Madam President and Ladies and Gentlemen of the Senate. I move to waive all posting requirements so that Senate Joint {sic} Resolution 244 can be heard in Senate Committee on Public Health today at 3 p.m.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

127229

Senator Link moves to waive all posting requirements so that Senate Resolution 244 can be heard in the Senate Committee on Public Health today at 3 p.m. All in favor will say Aye. Opposed, say Nay. The Ayes have it, and the motion is adopted. Senator Steans, for what purpose do you rise?

SENATOR STEANS:

Madam President, Ladies and Gentlemen of the Senate, I move to waive all posting requirements so that SJR 65 can be heard in the Senate Committee on Public Health today at 3 p.m.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. Senator Steans moves to waive all posting requirements so that SJR 65 can be heard in the Senate Committee on Public Health today at 3 p.m. All in favor will say Aye. Opposed, say Nay. The Ayes have it, and the motion is adopted. Senator Haine. Senator Haine -- I'm sorry -- Steans.

SENATOR STEANS:

Anytime, Senator Haine. I'm flattered. Madam President, Ladies and Gentlemen of the Senate, I move to waive all posting requirements so that SJR 30 can be heard in the Senate Committee on State Government today at 4 p.m.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator Steans. Senator Steans move to waive all posting requirements so that Senate Joint Resolution 30 can be heard in the Senate Committee on State Government today at 4 p.m. All in favor will say Aye. Opposed, say Nay. The Ayes have it, and the motion is adopted. Senator Righter, for what purpose do you rise?

SENATOR RIGHTER:

Thank you, Madam President. I move to waive all posting

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM A103

requirements so that Senate Resolution 249 can be heard in the State Government and Veteran {sic} (Veterans) Affairs Committee this afternoon.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Bomke, for what purpose do you rise?

SENATOR BOMKE:

Thank you, Madam President. A point of personal privilege.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Just one moment, Senator Bomke. We have to finalize Senator Righter's motion. Senator Righter moves to waive all posting requirements so that Senate Resolution 249 can be heard in the Senate Committee of State Government today at 4 p.m. All in favor will say Aye. Opposed, say Nay. The Ayes have it, and the motion is adopted. Now, Senator Bomke, on personal privilege, please state your point.

SENATOR BOMKE:

Thank you, Madam President. Sitting beside me today is Lee Blocks. He's here with his uncle, who is one of our many great doormen here. And I would ask you to help me welcome Lee. He's visiting. He just got out of high school yesterday. He's on summer break and looking forward to going back in the fall, I'm sure.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Please welcome Senator Bomke's guest to the Illinois General Assembly. Okay, Ladies and Gentlemen of the Senate, we will have one more waiving of the post requirement to announce. Until we're ready for that, I'd like to announce committee assignments for your attention, please. Committee assignments. At 2 o'clock, Appropriations I will meet in Room 212. At 2

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

o'clock, Transportation will meet in Room 400. And also, 2 o'clock, Education will meet in Room 409. At 3 o'clock, Public Health will meet in Room 212. 3:15, Human Services will meet in Room 212 and Judiciary will meet in Room 400. That's 3:15. At 3:30, Local Government will meet in Room 409. 3:30, Local Government, Room 409. At 3:45, Revenue will meet in Room 400; Licensed Activities will meet in Room 409. That's at 3:45. At 4 o'clock, State Government and Veterans Affairs will meet in Room 409. At 4:15, Energy will meet in Room 212; Consumer Protection will meet in Room 409. And at 4:30, Gaming will meet in Room 400 and Commerce will meet in Room 409. Commerce will meet in Room 409 at 4:30. Senator Clayborne, for what purpose do you rise?

SENATOR CLAYBORNE:

Point of a motion, Madam President.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

State your motion.

SENATOR CLAYBORNE:

Thank you. Madam President and Ladies and Gentlemen of the Senate, I move to waive all posting requirements so that House Joint Resolution 55 can be heard in the Senate Committee on State and Local Government {sic} today.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you. Leader Clayborne moves to waive all posting requirements so that House Joint Resolution 55 can be heard in the Senate -- Senate Committee on State Government today - at 4 p.m.? - at 4 p.m. All in favor will say Aye. Opposed, say Nay. The Ayes have it, and the motion is adopted. Senator Clayborne.

SENATOR CLAYBORNE:

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

I apologize, Madam Secretary. That's State Government and Veteran {sic} (Veterans) Affairs. I'm sorry.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Absolutely, Leader, State Government and Veterans Affairs. The Senate will stand in recess to the call of the Chair. The Senate will stand in recess.

(SENATE STANDS IN RECESS/SENATE RECONVENES)

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The Senate will come to order. Madam Secretary, Committee Reports.

SECRETARY ROCK:

Senator Sandoval, Chairperson of the Committee on Transportation, reports Motion to Concur with House Amendment 1 and 2 to Senate Bill 1434 recommended Do Adopt.

Senator Meeks, Chairperson of the Committee on Education, reports Senate Amendments 4 and 5 to Senate Bill 750 recommended Do Adopt.

Senator Delgado, Chairperson of the Committee on Public Health, reports Senate Resolution 244 Be Adopted; Senate Joint Resolution 65 Be Adopted; and Motions to Concur with House Amendment 3 to Senate Bill 314 and House Amendments 1 and 2 to Senate Bill 1919 recommended Do Adopt.

Senator Hunter, Chairperson of the Committee on Human Services, reports Motions to Concur with House Amendments 1 and 2 to Senate Bill 367 and House Amendment 1 to Senate Bill 807 recommended Do Adopt.

Senator Wilhelmi, Chairperson of the Committee on

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Judiciary, reports Motions to Concur with House Amendment 1 to Senate Bill 1556, House Amendments 1, 3 and 4 to Senate Bill 1938 recommended Do Adopt.

Senator Koehler, Chairperson of the Committee on Local Government, report Motion to Recede with Senate Amendment 1 to House Bill 793 and Motion to Concur with House Amendment 1 to Senate Bill 1511 recommended Do Adopt.

Senator Viverito, Chairperson of the Committee on Revenue, reports Motions to Concur with House Amendment 1 to Senate Bill 2046 and House Amendment 1 to Senate Bill 2115 recommended Do Adopt.

Senator Martinez, Chairperson of the Committee on Licensed Activities, reports Motion to Concur with House Amendment 1 to Senate Bill 1925 recommended Do Adopt.

Senator Demuzio, Chairperson of the Committee on State Government and Veterans Affairs, reports Senate Resolution 249 Be Adopted; Senate Joint Resolution 30 Be Adopted, as Amended; House Joint Resolution 55 Be Adopted, as amendment -- as Amended; and Senate Amendment 3 to Senate Resolution 273 recommended Do Adopt.

Senator Jacobs, Chairperson of the Committee on Energy, reports Motions to Concur with House Amendment 1 to Senate Bill 1140, House Amendment 1 to Senate Bill 1357, House Amendment 1 to Senate Bill 1448, House Amendment 1 to Senate Bill 1570, House Amendment 3 to Senate Bill 1906 and House Amendments 1, 2 and 3 to Senate Bill 1918 recommended Do Adopt.

Senator Holmes, Chairperson of the Committee on Consumer Protection, reports Senate Amendment 2 to House Bill 4088 and Motion to Concur with House Amendments 1, 2, 3 and 4 to Senate

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Bill 1483 recommended Do Adopt.

Senator Link, Chairperson of the Committee on Gaming, reports Senate Amendment 9 to Senate Bill 744 and Motion to Concur with House Amendment 1 to Senate Bill 1298 recommended Do Adopt.

Senator Kotowski, Chairperson of the Committee on Commerce, reports Senate Amendment 2 to House Bill 852 recommended Do Adopt.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Madam Secretary, Resolutions.

SECRETARY ROCK:

Senate Resolution 309, offered by Senator Lauzen and all Members.

Senate Resolution 308, offered by Senator Lauzen and all Members.

Senate Resolution 310, offered by Senator Haine and all Members.

Senate Resolution 311, offered by Senator Haine and all Members.

Senate Resolution 312, offered by Senator Haine and all Members.

They're all death resolutions, Madam President.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Madam Secretary, Resolutions Consent Calendar. Madam Secretary, Messages from the House.

SECRETARY ROCK:

A Message from the House by Mr. Mahoney, Clerk.

Mr. President - I am directed to inform the Senate that the House of Representatives has refused to concur with the

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

127229

Senate in the adoption of their amendment to a bill of the following title, to wit:

House Bill 699.

Which amendment is as follows:

Senate Amendment 1 and Senate Amendment 3.

Non-concurred in by the House, May 28th, 2009.

We have received a like Message on House Bill 797, with Senate Amendments 1 and 3.

Non-concurred in by the House, May 29th, 2009. Mark Mahoney, Clerk of the House.

A Message from the House by Mr. Mahoney, Clerk.

Mr. President - I am directed to inform the Senate that the House of Representatives has concurred with the Senate in the passage of a bill of the following title, to wit:

Senate Bill 39, together with the following amendments which are attached, in the adoption of which I am instructed to ask the concurrence of the Senate, to wit:

House Amendment 1, House Amendment 3, House Amendment 4, House Amendment 5.

We have received like Messages on Senate Bill 80, with House Amendments 1 and 2; Senate Bill 414, with House Amendments 1 and 2; Senate Bill 658, with House Amendments 1 and 3; Senate Bill 1030, with House Amendments 1 and 3; Senate Bill 1267, with House Amendments 1 and 3; Senate Bill 1342, with House Amendment 1; Senate Bill 1350, with House Amendment 1; Senate Bill 1579, with House Amendments 1 and 2; Senate Bill 1691, with House Amendments 1 and 3; and Senate Bill 1934, with House Amendment 1.

All passed the House, as amended, May 29th, 2009. Mark Mahoney,

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Clerk of the House.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Madam Secretary, Introduction of Bills.

SECRETARY ROCK:

Senate Bill 2457, offered by Senator Millner.

(Secretary reads title of bill)

1st Reading of the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Will all Members please come to the Senate Floor for Floor action? Ladies and Gentlemen of the Senate, will you please immediately report to the Senate Floor for Floor action? It is approaching the hour of 6 p.m. and we would love to retire ourselves this evening at an adequate time. So please come to the Senate Floor. Thank you. Mike Majewski, State -- WFLD-TV, requests permission to videotape. Leave is granted. Ladies and Gentlemen of the Senate, will you please come to the Senate Floor for further Floor action? It is now five minutes of the hour. Five minutes till 6. And just for a news flash, the House of General Assembly has retired for the evening. They're not due back until noon tomorrow. I hope that we can pick up our pace. I will not be as fast as Senator Hendon, but I would love for us to go home for the evening. Ladies and Gentlemen, please come to the Senate Floor. House Bills 2nd Reading. We will go to the Order of House Bills 2nd Reading, page 57 of the Calendar. House Bills 2nd Reading, page 57 of the Calendar. Senator Trotter, on House Bill 13. Senator Trotter. He indicates he wish to proceed. Madam President {sic}, please read the bill.

SECRETARY ROCK:

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

House Bill 13.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations I adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any -- any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. House Bill 83. Senator Schoenberg. No. Just don't do it again. He indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 83.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations I adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. House Bill 84. Senator Schoenberg. He indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 84.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations II adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Are there any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. Senator Frerichs, on House Bill 152. He indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 152.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Insurance adopted Amendment No. 2.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. Senator Wilhelmi, on House Bill… Senator Trotter, on Senate Bill -- House Bill 609. Senator Trotter. He indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 609.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations I adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. On the top of page 58, House Bills 2nd Reading. House Bill 612. Senator Trotter. He indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 612.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations I adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. House Bill 859. Senator Trotter. He indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 859.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations I

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Are there any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. House Bill 962. Senator Sullivan. He indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 962.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations II adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. House Bill 991. Senator Trotter. He indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 991.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations I adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. House Bill 2270. Senator Trotter. He indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 2270.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations I adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. House Bill 2314. Senator Trotter. He indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 2314.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations I adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for

consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. House Bill 2325. Senator Garrett. She indicates she wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 2325.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Insurance adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

Floor Amendment 3, offered by Senator Garrett.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Garrett, to explain your amendment.

SENATOR GARRETT:

Yes, thank you very much, Madam President. Basically what this does, it's an agreed-upon amendment that extends COBRA based on the Obama stimulus plan, with some of the funding being covered by the federal government.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Senator Sandoval, are you seeking discussion on this issue? Just one moment. Is there any discussion? Seeing none, all those in favor will vote Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Are there any further Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. Senator Sandoval, for what purpose do you rise?

SENATOR SANDOVAL:

Madam President, point of personal privilege.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Please state your point, Senator.

SENATOR SANDOVAL:

You know, I haven't been home in the last couple weeks and I've decided that I needed a little R & R, so I invited the -- what I call the "Sandoval Democratic Organization" from the southwest side. So I'd like to welcome to the Illinois Senate my lovely wife, Marina, and my children, Jenny, my twins, Angie and Marty, and a friend, Claudia, and my assistant from my office, Jerry Lopez. Like to give them a warm welcome to the Illinois Senate.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Please welcome Senator Sandoval's family to the Illinois General Assembly. Welcome. Enjoy your time here. On the order of House Bill 2469, Senator Trotter. Senator Trotter indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 2469.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations I

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. Now on the top of page 59 - the top of page 59 - is House Bill 2640. Senator Trotter. He indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 2640.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations I adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. On the order of House Bill 2652 is Senator Muñoz. Senator Muñoz, on House Bill 2652. Out of the record. House Bill 3841. Senator Trotter. Madam Secretary, he indicates he wishes proceed. Please read the bill.

SECRETARY ROCK:

House Bill 3841.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Appropriations I

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. On the Order of House Bills 2nd Reading, House Bill 3923. Senator Steans. She indicates she wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 3923.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Executive adopted Amendments 3 and 4.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

Floor Amendment 5, offered by Senator Steans.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Steans, to explain your amendment.

SENATOR STEANS:

Yes, this amendment's really a technical one. It had inadvertently been left out from -- in a drafting and it does not change the agreement to the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, the question is, shall House Bill -- should Floor Amendment No. 1 be adopted.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

All those -- 5. All those in favor will say Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted. Have there been any Floor -- further Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. House Bill 4046. Senator Harmon. He indicates he wish to proceed. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 4046.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Revenue adopted Amendment No. 2.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon. Have there been any Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. Ladies and Gentlemen of the Senate, please turn to page 53. Page 53. House Bills 3rd Reading. Page 53. House Bill 3rd Reading. Senator Harmon. Senator Harmon seeks leave of the Body to return House Bill 88 to the Order of 2nd Reading. Leave is granted. On the Order of 2nd Reading is House Bill 88. Madam Secretary, are there any Floor amendments approved for consideration?

SECRETARY ROCK:

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Floor Amendment 1, offered by Senator Harmon.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon.

SENATOR HARMON:

Thank you, Madam President, Ladies and Gentlemen of the Senate. Floor Amendment No. 1 becomes the bill and creates the much-awaited Lieutenant Governor Vacancy Act. I'd move for its adoption and I'm happy to debate the entire bill on 3rd Reading.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. Is there any discussion? Seeing none, all those in favor will say Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted. Are there any further Floor amendments approved for consideration?

SECRETARY ROCK:

Floor Amendment 2, offered by Senator Harmon.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon.

SENATOR HARMON:

Thank you, Madam President. Floor Amendment No. 2 eliminates some of the provisions that caused some concerns in committee and should eliminate any objections or concerns about the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Are there any discussion? Is there any discussion? Seeing none, all those in favor will say Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted. Are there any further Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. Now on the Order of 3rd Reading is House Bill 174 -- 88. Sorry, Senator. You're ready. I'm ready. Let's do it. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 88.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon.

SENATOR HARMON:

Thank you, Madam President, Ladies and Gentlemen of the Senate. House Bill 88, as amended, creates the Lieutenant Governor Vacancy Act, which provides for an orderly transition of the powers of the Lieutenant Governor to the Governor's Office so that we may continue the fine work of our former Lieutenant Governor now that he is the Governor. It -- it expires on its own accord at the end of this term. I'm not aware of any opposition and I ask for your Aye votes.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Senator Murphy, for what purpose do you rise?

SENATOR MURPHY:

Question of the sponsor, Madam President.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Indicates he will yield. Senator Murphy.

SENATOR MURPHY:

Senator, would -- we're all really focused on the budget right now. Couldn't we just eliminate the Lieutenant Governor

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

line item of the budget for this year and next, being that we're not going to have one, as a way to save money and maybe fund a program?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon.

SENATOR HARMON:

Thank you, Madam President. If you were in committee, you'd know that, for instance, our colleague Senator Hendon would be adamantly defending the Lieutenant Governor's Office and all of its duties and its import. So, this bill does not deal in any way, shape or form with the budget and I'd rather not tread on that ground today.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Murphy.

SENATOR MURPHY:

To the bill, and far be it for me to ever try and stir up trouble, and I wouldn't want to encourage you down that road. But it would be an opportunity perhaps to save a little bit of money, Senator Hendon's protestations notwithstanding. I appreciate your effort on the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any further discussion? Senator Harmon, to close.

SENATOR HARMON:

I ask for your Aye votes.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The question is, shall House Bill 88 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 52

voting Aye, 1 voting Nay, 0 voting Present. House Bill 88, having received the required constitutional majority, is declared passed. House Bill 174. Senator Bond. House Bill 174. Senator Bond. Out of the record. House Bill 277. Senator Harmon. House -- House Bill 277. Senator Harmon. Out of the record. House Bill 313. Senator Trotter. Out of the record. House Bill 402. Senator Garrett. House Bill 402. Senator Garrett indicates she wish to proceed. Madam Secretary, House Bill 402. Senator Garrett seeks leave of the Body to return House Bill 402 to the Order of 2nd Reading. Leave is granted. On the Order of 2nd Reading is House Bill 402. Madam Secretary, are there any Floor amendments approved for consideration?

SECRETARY ROCK:

Floor Amendment 1, offered by Senator Garrett.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Garrett.

SENATOR GARRETT:

Yes, thank you, Madam President. This was an agreed-upon amendment that basically has a location for all of the license fees and permits, fines to be deposited into a fund.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? All those in favor will vote {sic} Aye. Opposed, Nay. The voting is -- the Ayes have it, and the amendment is adopted. Are there any further Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

3rd Reading. Now on the Order of 3rd Reading is House Bill 402. Senator Garrett. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 402.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Garrett.

SENATOR GARRETT:

Yes, thank you, again, Madam President. What House Bill 402 does is that it establishes the Private Sewage Disposal Program Fund in the State treasury and requires that fees collected by the Department of Public Health for exams, licenses, permits, and fines to be deposited into this Fund and appropriated by the General Assembly to the Department.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Senator Risinger, for what purpose do you rise?

SENATOR RISINGER:

Thank you, Madam President. To the bill: There's been a lot of work done by the sponsor on this bill, and with the amendment that she has placed on it, we -- we think it's a acceptable bill, very good. And I urge those on this side of the aisle to vote Aye.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The question is, shall House Bill 402 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 52

voting Aye, 2 voting Nay, 0 voting Present. The amendment is adopted -- House Bill 402, having received the required constitutional majority, is declared passed. Senator John Jones, for what purpose do you rise? Senator John Jones, are you seeking recognition, sir? Your light was blinking.

SENATOR J. JONES:

Yes, Madam President. Point of personal privilege.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Please state your point.

SENATOR J. JONES:

If -- if I might, one of my State Representatives is standing back here at the back, David Reis. But the most important thing is his wife, Maria, is up in the gallery up here, along with his son and his daughter, Nick and Adriana. So, welcome to Springfield.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Let's welcome Representative Reis and his family to the Illinois General Assembly. If you could rise and be recognized. House Bill 542. Senator Sullivan. Out of the record. On page 54, the top of page 54, is House Bill 607. Senator Martinez. Out of the record. House Bill 656. Senator Noland. Out of the record. House Bill 806. Senator Harmon. Out of the record. House Bill 810. Senator Haine. 810. Senator Haine. He indicates he wish to proceed. Madam Secretary, please read the bill. Senator Haine seeks leave of the Body to return House Bill 810 to the Order of 2nd Reading. Leave is granted. On the Order of 2nd Reading is House Bill 810. Madam Secretary, are there any Floor amendments approved for consideration?

SECRETARY ROCK:

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Floor Amendment 2, offered by Senator Althoff.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Haine, to explain. Let's just pull House Bill 810 out of the record just for the moment. Out of the record. House Bill 821. Senator Cronin. Out of the record. House Bill 852. Senator Forby. Senator Hunter, on House Bill 852. She indicates she wish to proceed. Senator Hunter seeks leave of the Body to return House Bill 852 to the Order of 2nd Reading. Leave is granted. On the Order of 2nd Reading is House Bill 852. Madam Secretary, are there any Floor amendments approved for consideration?

SECRETARY ROCK:

Floor Amendment 2, offered by Senator Hunter.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Hunter.

SENATOR HUNTER:

I wish to adopt the amendment. Floor Amendment 2 to House Bill 852 basically makes two technical changes and I'll explain it further on 3rd Reading.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, all those in favor will say Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted. Are there any further Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. Now on the Order of 3rd Reading is House Bill 852. Senator Hunter. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 852.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Hunter.

SENATOR HUNTER:

Thank you, Madam President and Ladies and Gentlemen of the Senate. This bill basically makes -- this amendment basically makes two technical changes to the -- where it creates the 21st Century Workforce Development Fund Act. And what it does is adds that DCEO shall be responsible for the administrative and staffing of the Workforce Advisory Committee and it also removes from membership of the committee a representative of the Illinois Community College Sustainability Network and replaces it with a representative of the Illinois Community Colleges {sic} (College) Board. And I ask -- and I'll entertain any questions.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator McCarter, for what purpose do you rise?

SENATOR McCARTER:

Madam Chairman, I'd like to speak to the bill, please.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator McCarter, you're going to end up in the same situation as Senator Schoenberg. It's Madam President.

SENATOR McCARTER:

President. Well, I -- I'm in good company. I'm in good company.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Okay, great. Senator Hunter indicates she will yield, Senator.

SENATOR McCARTER:

Senator, I -- I'd just like to say to the sponsor of this bill I think this is -- this is a good thing. She's converted me. She's explained to me the -- specifically what this is going to do for these folks with barriers. I'm -- I'm learning the language. And so for people with barriers, this is a good thing. And -- and I do support her bill and I recommend an Aye vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Any further discussion? Senator Hunter, to close.

SENATOR HUNTER:

I ask for a favorable vote. And thank you very much for those comments, Senator. It's always good to -- to be able to explain to people what the situation is. So, thank you very much.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The question is, shall House Bill 852 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 55 voting Aye, 0 voting Nay, 0 voting Present. House Bill 852, having received the required constitutional majority, is declared passed. Senator Haine. With leave of the Body, we will return to Senate Bill 810. House Bill 810. Senator Haine seeks leave of the Body to return House Bill 810 to the Order of 2nd Reading. Leave is granted. On the Order of 2nd Reading is House Bill 810. Madam Secretary, are there any Floor amendments

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

approved for consideration?

SECRETARY ROCK:

Floor Amendment 2, offered by Senator Althoff.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Althoff.

SENATOR ALTHOFF:

Thank you, Madam President. I would just like to move to table Amendment No. 2.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Althoff moves to withdraw Amendment No. 2. The amendment is withdrawn. Are there any further Floor amendments approved for consideration?

SECRETARY ROCK:

Floor Amendment 3, offered by Senator Haine.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Haine, to explain your amendment.

SENATOR HAINE:

Thank you, Madam President and Ladies and Gentlemen of the -- the Senate. This is an initiative of the Alzheimer’s Association. It was in another bill which we passed, but was hijacked - I guess is the term we use - by the House for another bill. And what this Floor Amendment No. 3 does is assure that the people that are in these care units that are marketed as Alzheimer’s units - and -- and they have people suffering from Alzheimer’s diseases and related dementia - are, in fact, going to provide that care and to disclose the related -- to disclose the availability of these special service units, pursuant to a previous bill, actually passed by Senator Trotter some years ago, to create this disclosure Act. And I’d like to thank

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Senator Rutherford and Senator Althoff for -- for pursuing this matter in the diligent fashion in which they did.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. Is there any discussion? Seeing none, all those in favor will say Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted. Are there any further Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. Now on the Order of 3rd Reading is House Bill 810. Senator Haine. I keep forgetting about you, Madam Secretary. Please read the gentleman's bill.

SECRETARY ROCK:

House Bill 810.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Haine.

SENATOR HAINE:

Thank you, Madam President. I would again ask for an Aye vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. The question is, shall Senate Bill -- House -- House Bill 810 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 54 voting Aye, 0 voting Nay, 0 voting Present. House Bill 810, having received the

required constitutional majority, is declared passed. House Bill 1105. Senator Murphy. Indicates he wish to proceed. Madam Secretary, please read the bill. Senator Murphy seeks leave of the Body to return House Bill 1105 to the Order of 2nd Reading. Leave is granted. On the Order of 2nd Reading is House Bill 1105. Madam Secretary, are there any Floor amendments approved for consideration?

SECRETARY ROCK:

Floor Amendment 2, offered by Senator Murphy.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Murphy, to explain your amendment.

SENATOR MURPHY:

Thank you, Madam President. Senate Amendment 2 becomes the bill. It creates a separate prong in the disorderly conduct for transmitting or causing to be transmitted a threat of destruction of a school building or school property or a threat of violence, death, or bodily harm directed against persons at a school, school function or school event. The offense applies whether or not the school is in session and it is a Class 4 felony. The legislative intent here is to address threats being phoned in to schools, as opposed to any threat communicated from one student to another of a personal nature. That is the -- we tightened up the bill for that reason.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Senator Raoul.

SENATOR RAOUL:

Yes, just a question of the sponsor.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

He indicates he'll yield. Senator Raoul.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

SENATOR RAOUL:

Senator, as we've talked about and as you indicated, the legislative intent is not to punish -- not aimed at a student that might be threatening another student. The language itself talks about transmitting. The transmissions that you're talking about are meant to cover transmissions -- calls to -- 9-1-1 or calls to the school and not a transmission such as a cell -- one student's cell phone to anther student's cell phone, saying, hey, I'm going to beat you up or something like that.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Further discussion? Senator Murphy, to close.

SENATOR MURPHY:

Thank you for the question. That is, in fact, the legislative intent, Senator. You correctly stated it. I would -- I appreciate the work in tightening up this bill to more reflect the -- the threat and would appreciate an Aye vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. On the amendment, all those in favor will say Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted. Are there any further Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. Now on the Order of 3rd Reading is House Bill 1105. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 1105.

(Secretary reads title of bill)

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Murphy.

SENATOR MURPHY:

The bill is as explained on -- on 2nd Reading with the amendment and I'd appreciate an Aye vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The question is, shall House Bill 1105 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 55 voting Aye, 0 voting Nay, 0 voting Present. House Bill 1105, having received the required constitutional majority, is declared passed. Senator Collins, on House Bill 1195. She indicates she wish to proceed. Senator Collins seeks leave of the Body to return House Bill 1195 to the Order of 2nd Reading. Leave is granted. On the Order of 2nd Reading is House Bill 1195. Madam Secretary, are there any Floor amendments approved for consideration?

SECRETARY ROCK:

Floor Amendment 2, offered by Senator Collins.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Collins, on your amendment.

SENATOR COLLINS:

Thank you, Madam President and Ladies and Gentlemen of the Senate. Floor Amendment No. 2 deletes all and becomes the bill. And I'll be glad to discuss it on 3rd Reading.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Seeing none, all those in favor

will say Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted. Are there any further Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. Now on the Order of 3rd Reading is House Bill 1195. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 1195.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Collins.

SENATOR COLLINS:

Thank you, again, Madam President. House Bill 1195 allows municipalities to impose liens upon abandoned residential property for the cost of specific types of maintenance. This lien is superior to all other liens, except tax liens, and the amount of the lien is contestable. Now, there might be some -- well, it also requires that each municipality must receive notice of a foreclosure action and a notice of the order confirming the judicial sale. This problem -- the problem we're trying to address here is that many times municipalities do not find that abandoned property is up in foreclosure before a problem develops in the community where it becomes a nuisance. This is to give some notice primarily to the municipalities that a property is abandoned or in foreclosure. And it allows them to do the repair and upkeep of the property and, on the sale of

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

the property, to recoup the money for the repair and the managing of the property. I would like to thank all the parties that came together and worked on the agreed-upon language: the Illinois Bankers Association, the Community Bankers Association, Illinois Mortgage Brokers, and the Business and Professional People for the Public Interest. But -- and in particular, I want to commend my staffer, Stephanie Vojas, for her hard work on this as well. And I would appreciate an affirmative vote.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Is there any discussion? Senator Burzynski, for what purpose do you rise?

SENATOR BURZYNSKI:

Thank you, Madam President. Will the sponsor yield for a question or two, please?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

She indicates she will. Senator Burzynski.

SENATOR BURZYNSKI:

Thank you. Senator, in -- in committee, I indicated to you that I'd received some correspondence from some apartment and rental owners in -- in my district. And so I've got a couple of questions I want to ask in reference to that, because their indication was -- but I -- they said they're still opposed to the bill, but I'm not sure whether you thought that -- that the apartment owners - the statewide association - was more neutral now or not. So, can -- can you tell me that much anyway?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Collins.

SENATOR COLLINS:

Yes. I found out today that a group by the name of the

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Illinois Housing Rental Association had confused the language of the bill in the sense that they were contesting language in the bill that was consistent with House Bill 2415 that we changed during the last Session - I think it was Senator Rutherford's bill dealing with the priority of liens. And that's what they were contesting. However, that bill passed both Chambers and now sits on the Governor's Desk, and we wanted to make this language consistent with House Bill 2415.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Burzynski.

SENATOR BURZYNSKI:

I think I heard most of that, but I'm not sure. Senator, I -- I think that -- and -- and maybe somebody else can help with this as well, but according to the information I have, one of the concerns that my folks had was the bill does not define what is "nuisance greenery" - you know, the vegetation, the plants. Is there a definition for reasonable notice in the bill? And does it provide for due process? Those were some of the questions and -- and there -- there are about nine or ten questions or -- or so that were asked, but -- you know, just to give you a flavor. Because if those are in the bill, then I'm going to assume that maybe some of these other things are -- are taken care of as well. And -- and that's why I'll just stop there for a minute.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Collins.

SENATOR COLLINS:

The language spelled out deals with the definitions of the various neglect that might be covered under the legislation:

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

cutting and removal of neglected weeds, grass, trees and bushes, pest extermination, removal of infected trees, removal of garbage, debris, and graffiti. What I find interesting is that the bill has been out there. I was not aware -- no one came to me with any objection. We would have been glad to have them at the table for clarification. But I had -- this is my first time hearing of that concern.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Burzynski.

SENATOR BURZYNSKI:

Thank you, Madam President. Well, you know, and -- and I do understand that and I just got this yesterday, so that’s why I’m asking the questions and started to last night a little bit. And so, I mean, they had some concerns relative to those items - whether the pest control inside an occupied property, whether it included pests like spiders, centipedes, that, you know, often depending on where you are whether that’s covered or not. So, I -- I think there are some questions that are still out there. I don’t know if -- if the bill takes care of them or not, and I’ll try and scan through it here in the next couple of minutes. So, thank you.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Further discussion? Senator Murphy, for what purpose do you rise?

SENATOR MURPHY:

Question of the sponsor, Madam President.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

She indicates she’ll yield. Senator Murphy.

SENATOR MURPHY:

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Senator, thanks for working on this. It appears the original opponents included the -- the Realtors, the Home Builders, the Bankers, Chicago Title, Community Bankers, Mortgage Bankers Association and the Credit Union League, in addition to the aforementioned Renters. Are those other opponents now neutral with your amendment?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Collins.

SENATOR COLLINS:

Based on the dialogue, discussions and compromises made, they're all neutral on the legislation, except maybe the group that contacted Senator Burzynski. But everybody else was at the table.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Murphy.

SENATOR MURPHY:

I thank the sponsor for her work on the bill and for addressing the concerns of the original opponents.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Collins, to close.

SENATOR COLLINS:

I just ask for an affirmative vote. Thank you.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The question is, shall House Bill 1195 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Please take the record. On that question, there are 47 voting Aye, 1 voting Nay, 2 voting Present. House Bill 1195, having received the required constitutional majority, is

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

declared passed. Senator Harmon, on House Bill 1306. Out of the record. On the top of page -- 55, House Bills 3rd Reading. Page 55. Senator Harmon, on House Bill 1345. He indicates he wish to proceed. Madam Secretary -- Senator Harmon seeks leave of the Body to return House Bill 1345 to the Order of 2nd Reading. Leave is granted. On the Order of 2nd Reading is House Bill 1345. Madam Secretary, are there any Floor amendments approved for consideration?

SECRETARY ROCK:

Floor Amendment 2, offered by Senator Harmon.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon.

SENATOR HARMON:

Thank you, Madam President. The amendment becomes the bill. I'd move for its adoption and look forward to the -- presenting it on 3rd Reading.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Thank you, Senator. Seeing no discussion -- oh! Senator Pankau, for discussion. What purpose do you rise?

SENATOR PANKAU:

A question of the sponsor, please.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

He indicates he'll yield. Senator Pankau.

SENATOR PANKAU:

When this was in committee, there were four TIF districts, I believe, in Chicago that were -- that make up this bill, TIF extensions. And one of our Members expressed the desire to have -- make it only three. Has that been done? Is this three or four TIF extensions?

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon.

SENATOR HARMON:

Thank you, Madam President. Senator Pankau, thank you for that question. I'm eager to report to Senator Hendon that you are looking out for his interests. He'll be thrilled to know you're defending him when he's not on the Floor. But we've worked through that issue. Senator Hendon is fine with us leaving that TIF in. We're going to proceed with the four TIF extensions and he has given his authority and appreciates us having a chance to talk about it.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Pankau.

SENATOR PANKAU:

Okay. Thank you very much.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon, to close.

SENATOR HARMON:

I just move for the adoption of the amendment, Madam President. Thank you.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

All those in favor will say Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted. Are there any further Floor amendments approved for consideration?

SECRETARY ROCK:

No further amendments reported.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

3rd Reading. Now on the Order of 3rd Reading is House Bill 1345. Madam Secretary, please read the bill.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

SECRETARY ROCK:

House Bill 1345.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon.

SENATOR HARMON:

Thank you, Madam President. As -- as was discussed on 2nd Reading as we adopted the amendment, the bill now extends the maturity dates for four City of Chicago TIF districts and imposes new requirements on the City to post on its website certain materials relating to its -- its TIF districts created or extended after -- created or amended after 2004. I'd ask for your Aye votes.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Further discussion? Senator Burzynski, for what purpose do you rise?

SENATOR BURZYNSKI:

Thank you, Madam President. Will the sponsor yield for a question?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

He indicates he will. Senator Burzynski.

SENATOR BURZYNSKI:

Thank you. Senator, as you know, I don't like TIF extensions anyway, but let me ask you a question. Have -- we always have letters of support from all of the affected taxing districts. Has that occurred in this case?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

SENATOR HARMON:

Thank you, Madam President. We have letters of support from the Chicago Public Schools, the Chicago Park District and the City Colleges of Chicago.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Burzynski.

SENATOR BURZYNSKI:

So, in other words, they have not all been received, because you don't have them from the Metropolitan Water Reclamation District, Cook County, or the Cook County Forest Preserve.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon.

SENATOR HARMON:

Thank you, Madam President. I -- I believe, if I recall the testimony in committee correctly, this is the first time the City has extended a TIF. Is that consistent with your recollection of the testimony in committee? I -- I -- I think its -- the City is a slightly different entity, and I understand that, but here we have the letters of support from all the major City taxing bodies.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Burzynski.

SENATOR BURZYNSKI:

Thank you, Madam President. Just one or two last questions, very quickly. Senator, the -- what will -- what is the intent of the extension of the TIF? I mean, what will the City use these for? Are -- are they going to redevelop these malls that are already established within the TIF districts or

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

is it more of a ploy to capture that three billion dollars that they've already -- you know, to continue capturing the money that they have in the past?

PRESIDING OFFICER: (SENATOR LIGHTFORD)

Senator Harmon.

SENATOR HARMON:

I -- I'm not sure if I can load an answer as well as you loaded the question. But -- but as the City representatives explained in committee, these extensions are being sought for the purposes of long-term planning and to continue the development efforts therein.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

The question is, shall House Bill 1345 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 46 voting Aye, 5 voting Nay, 0 voting Present. House Bill 1345, having received the required constitutional majority, is declared passed. Senator Syverson, for what purpose do you rise?

SENATOR SYVERSON:

Thank you, Madam President. The Republicans would request a caucus.

PRESIDING OFFICER: (SENATOR LIGHTFORD)

A caucus is always in order, Senator Syverson, but before you do that, I've got an announcement. There being no further business to come before the Senate, the Senate stands adjourned until the hour of 10 a.m. on Saturday, May 30th, 2009. The Senate stands adjourned.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Better Government Association
Illinois' Non-Partisan Full-Service Watchdog

Civic Engagement

Analysis: Illinois Law Hasn't Stopped Public Agencies From Withholding Records

Government agencies continue to violate public records laws at high frequency despite 2009 changes intended to curb abuses.

By **Annum Haider** / Jan 10, 2019 12:00 PM

The Freedom of Information Act in Illinois is best understood by viewing the Act in two eras: "Before Blago" and "After Blago."

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Illinois Governor Rod Blagojevich was removed from office in 2009 after his arrest on corruption charges. The scandal set off a new round of government accountability efforts in Illinois.

Before Blago, getting your FOIA request denied meant you were out of luck unless you had a good lawyer. After Blago came the Public Access Counselor's office — or PAC — designed by the state legislature to provide an alternative to litigation for disputes between members of the public and public bodies around records requests.

It's almost nine years since the PAC — 13 full-time lawyers, 3 supervisors, and 4 support staff — started receiving, investigating and ruling on records disputes under the supervision of the Illinois Attorney General's Office. With Lisa Madigan on her way out and A.G.-elect Kwame Raoul gearing up, it's a good time to assess how well public officials are sharing information with the public in the PAC era.

Last October, ProPublica Illinois' Mick Dumke published an in-depth review of the PAC based on a comprehensive record of PAC rulings on the Freedom of Information Act from April 6, 2010, to March 15, 2018. Dumke's story is a critique of the office itself that consolidates arguments frequently raised by critics, including the BGA: Resolution of a PAC review can often take months or longer, and the vast majority of the time it ends in a non-binding determination that many public bodies have ignored with no repercussions.

What follows here is the BGA's analysis of that same PAC dataset — which is publicly available and dissectable — to assess behavior patterns for the public bodies based on the findings and rulings of the PAC.

The BGA shared its findings with the PAC, which issued an official statement expressing its concern over the behavior of public bodies.

"Despite years of work to change the culture of secrecy in Illinois government, the BGA's findings show that many government offices still routinely disregard their obligation to provide access to government records," the statement read. "The role of the Public Access Counselor is to resolve open records disputes, and we devote

thousands of hours to doing that every year. But, as these findings demonstrate, far too often, government offices are choosing to ignore the law and working to thwart the Public Access Counselor."

Summary: What we found and how we found it

When public bodies deny requests for information made by the public under the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA), members of the public can file a request for review with the PAC. For FOIA requests, the PAC then determines whether denial of the request was warranted and the public body lawfully withheld information, or whether that denial constitutes a violation of FOIA and the information should have been released to the requester. For OMA requests, the PAC determines whether a public meeting did or did not comply with the Open Meetings Act.

The BGA looked at how the PAC ruled on 28,270 FOIA and OMA requests for review from April 6, 2010 to March 15, 2018.

We broke down the available data to determine how often public bodies had (or had not) violated FOIA and OMA, according to the PAC.

Key finding #1: Many ignore records requests, with CPD and prisons as top offenders

The most basic requirement under FOIA is that public bodies are required to respond to all requests they have received within the statute's deadlines. In fact, the statute says that this is a "primary obligation" of government.

The BGA examined the frequency with which public bodies failed to respond to FOIA requests and tallied the top 5 non-responsive public bodies. While this does not reflect the full extent of these failures (only those in which the requester sought PAC review), examining the subset that resulted in PAC review paints a troubling picture.

SUBMITTED - 15467936 - Paul Lang - 11/3/2021 10:24 PM

Out of the top 5 public bodies that initially failed to respond to requests — and only responded after the PAC intervened — the Chicago Police Department ranked the highest with 672 requests that it did not respond to during this period. Additionally, there were 6 instances in which the Chicago Police Department did not respond even *after* PAC intervention during the time period we studied. In fact, the PAC issued a binding opinion as recently as December 31, 2018, based on CPD's failure to respond to a request even after the PAC intervened. Based on a FOIA request we submitted to CPD recently, it does not appear that anyone at CPD was ever disciplined for these violations.

In our list of the top 5 offenders, the Illinois Department of Corrections ranked second with 519 FOIA violations[1] — that is, they did not respond to 519 FOIA requests. The Illinois State Police ranked third with 200 violations[2] , followed by Chicago Public Schools with 199 violations[3] , and the Cook County State's Attorney's Office with 162 violations. Overall, there were over 4,600 of these instances for all public bodies across the state during the time period we examined.

Key finding #2: Some public bodies improperly deny records more than half the time

The BGA examined the frequency with which public bodies claimed a FOIA exemption that was found to be improper from April 6, 2010, to March 15, 2018. The PAC Office determined that public bodies had asserted incorrect exemptions 1,345 times — approximately 30 percent of the times in which the PAC issued a substantive determination on an exemption claim.

The BGA also tallied the 14 public bodies with the worst records for denying information requests based on incorrectly applying an exemption. We limited our analysis to public bodies with at least 20 substantive review determinations during the time period we analyzed and noted the 14 public bodies with violation rates higher than the statewide average.

According to the PAC data, out of the top 14 public bodies that incorrectly applied exemptions to deny FOIA requests, the City of East St. Louis was in violation 100 percent of the time, the University of Illinois 63 percent of the time, the City of Joliet following closely at 58 percent of the time, the Illinois Department of Central Management Services and the Illinois Department of Transportation both 46 percent of the time, and the Chicago Police Department 43 percent of the time.

This shows the frequency with which public bodies incorrectly apply FOIA exemptions to deny public records. However, it does not cover the broad expanse of all the FOIA requests received by these bodies — it only covers those requests that were sent to the PAC Office for review and yielded a substantive determination.

Additionally, some public bodies whose overall violation rate fell below 30 percent were noteworthy for their total number of violations. One such example is the Illinois Department of Corrections. During the period we examined, the PAC determined that the Department of Corrections incorrectly applied FOIA exemptions 109 times. The total number of times the PAC reviewed substantive exemption claims against the Department of Corrections was 702.

Reviews of FOIA requests can also be “informally resolved” by the PAC. From April 6, 2010, to March 15, 2018, the PAC resolved 2,216 requests for reviews with public bodies informally. According to the PAC Office, more often than not, these are cases in which they *would have* ruled against the public bodies — that is, they would have decided that the public body was in violation of FOIA — but decided to pursue the case informally instead.

Informally resolving cases typically entails the public body releasing documents that should not have been withheld in the first place.

Alongside determining that the 14 public bodies listed above failed to apply FOIA exemptions correctly, the PAC also informally resolved requests for FOIA reviews with 9 out of those 14 public bodies. Chicago Police Department tops the list with the PAC settling requests for review informally 157 times over a span of approximately

eight years. This means that other than FOIA exemption violations, there were an additional 157 instances in which the PAC would most likely have decided that CPD *was* in violation of FOIA but chose to settle the dispute through informal correspondence and resolution instead.

The PAC informally resolved requests for FOIA reviews with the Illinois State Police 76 times, Chicago Public Schools 71 times, Cook County State's Attorney's Office 18 times, the Illinois Department of Transportation and the University of Illinois 17 times each, and Will County Sheriff's Office, the Illinois Department of Central Management Services, and the City of Chicago Office of Emergency Management and Communications, 15 times each.

Additionally the PAC informally resolved requests for FOIA reviews with the Illinois Department of Corrections 102 times, Adams County State's Attorney's Office 67 times, and the Cook County Sheriff's Office 25 times.

These violation findings do not mean that public bodies released documents to those requesting them. PAC determinations are either binding or advisory. If the PAC issues a binding opinion, which occurs infrequently, the public body must either comply with it or initiate review proceedings in a court. If the PAC Office issues a determination, it is merely advisory. Therefore, despite the issuance of a PAC determination, public bodies are not bound to follow them and the requester is forced to file a lawsuit against the public body if the public body ignores the PAC's determination.

Finally, public bodies often complain that FOIA exemptions are not sufficiently clear. What this overlooks, however, is that the law is very well established that all exemptions must be "narrowly construed."[4] Public bodies that complain about the lack of clarity of exemptions are failing to comply with this legal mandate: If the scope of an exemption does not clearly apply to a record with 100 percent certainty, it must be produced.

Key finding #3: Open Meetings Act was violated in 42% of cases

The BGA also looked at the PAC dataset for entries on the Open Meetings Act and determined the frequency with which public bodies violated OMA or did not violate OMA, according to PAC.

The PAC dataset could be referring to any number of OMA violations and does not indicate whether the violation in question referred to one of the following, for instance:

- Whether a public body improperly went into closed session
- Whether a public body provided adequate notice of the meeting
- Whether a public body allowed public comment
- Whether the meeting was held in circumstances that were convenient to the public
- Failure to disclose minutes of meeting
- Failure to conduct the meeting in an adequate place

Between April 2010 and March 2018, the PAC Office reviewed 717 OMA requests and found that public bodies violated the Open Meetings Act approximately 42 percent of the time. There were 301 instances in which the PAC determined that the public bodies' denial of open meeting records violated OMA and 416 instances in which PAC decided the public bodies' actions were not in violation of OMA.

What it all means

In the debate on the 2009 FOIA amendments, Speaker Michael Madigan noted the problems with FOIA compliance and stated that "a good way to compel compliance with the statute is to impose stiff civil penalties for noncompliance." The BGA's findings make clear that despite the 2009 FOIA amendments, and the introduction of

penalties of up to $5,000 for "willful" violations, public bodies continue to violate FOIA on a regular basis. Clearly, a stronger deterrent is needed to discourage public bodies from improperly keeping information secret.

The findings also demonstrate that many of the top violators are law enforcement agencies. This is particularly troubling as it makes clear that agencies charged with enforcing the law are failing to follow the law that applies to them. Further, the lack of transparency into law enforcement activities is troubling in a city like Chicago, in which the federal government has found that the department has engaged in a pattern of civil rights violations.

More on our process, and raw numbers

Part I: Decoding "dispositions"

The PAC data contained a set of 32 codes — called "dispositions" — that corresponded with each request for review received. The PAC Office uses these codes, which abbreviate the reasons for each decision on each case, for internal tracking purposes.

In order to get a full picture of the how, why and who, the BGA worked with the PAC Office to clarify what each "disposition" code meant and how they were applied by the PAC. From there we clarified each disposition code — effectively re-creating the PAC's decision-making rubric — in order to filter and analyze the 28,270 entries from April 6, 2010, to March 15, 2018.

Examples include:

- "Closed - RFR Unfounded."
- "Closed - Pre-authorization denied."
- "Closed RFR mediation."

The BGA reduced the full data set down to "dispositions" that were *substantive* in nature — that is, those that addressed the merits of each FOIA claim and yielded a practical result.

We excluded all FOIA entries in the dataset that did not lead to a substantive determination, such as those that were resolved by agreement or mediation, were withdrawn by the requesters, were not filed in a timely fashion, or were not targeted at public bodies.

We also excluded the 2,777 cases that were still under review ("Open") by the PAC Office, and the 127 cases that were closed by the PAC because the requesters decided to file a lawsuit against the public body. In such cases, the PAC is required by law to end its inquiry.

This left a total of three categories in the PAC spreadsheet that were relevant to the Freedom of Information Act claims and led to substantive determinations. Each of these three categories pertained to the use and applications of FOIA exemptions by public bodies.

Part II: Exemption violations and non-violations under the Freedom of Information Act

"Exemptions" under the Freedom of Information Act are protections afforded to public bodies to reject requests for information and prevent the disclosure of certain information.

While FOIA exemptions are highly technical and generally require public bodies to prove a number of elements, some general examples are personal information like home addresses, confidential information such as Social Security numbers, certain law enforcement records, certain trade secrets, internal deliberations on policy matters, and certain requests where the burden of compliance outweighs the public interest in disclosure.

When an individual believes their FOIA request has been denied due to the application of an incorrect exemption, they may file a request for review with the PAC Office.

If the PAC determines that the public body incorrectly applied an exemption that led to information being wrongfully withheld, denial of the FOIA request amounts to a violation.

If the PAC determines that the public body applied an exemption correctly and did *not* wrongfully withhold information, denial of the FOIA request does not amount to a violation.

We decoded and split the three categories pertaining to the use and application of FOIA exemptions into 4,559 determinations of FOIA violations and non-violations:

1. **FOIA NON-VIOLATION: "RFR Unfounded."**

   Total entries within a span of approximately 8 years: 977

   These are cases in which an informal inquiry by the PAC Office provides sufficient information to determine that the complaint has no merit — that is, the public body did not violate the statute and the PAC did not need to initiate a formal review to reach this conclusion.

   The information requested may have been destroyed in the ordinary course of business, may not exist, or could be confidential. An example of this instance is where a call by a PAC staff member to the public body confirms that the one redaction in a report was a Social Security number. The PAC Office found that 977 complaints about FOIA denials had no merit and that the requests were rightfully denied by the public body.

   The fact that a FOIA requester is not satisfied with the records that have been furnished to him or her does not amount to a denial. Therefore, when the PAC determines that the requester's claim against the public body was unfounded, it is

treated as if the response complied with the FOIA statute and was not a violation of it.[5]

2. **FOIA NON-VIOLATION: "RFR Public Body's Exemption Proper."**

   Total entries within a span of approximately 8 years: 2,237

   There were 2,237 instances in which the PAC Office initiated a formal review but found no violation and no abuse of FOIA exemptions.

3. **FOIA VIOLATION: "RFR Disagree with Public Body's Asserted Exemption."**

   Total entries within a span of approximately 8 years: 1,345

The BGA used the following formula to calculate the frequency with which the top 14 public bodies in the PAC dataset incorrectly applied exemptions to deny FOIA requests:

$$\frac{\textbf{\# of Violations (Category 3)}}{\textbf{\# of Substantive PAC Exemption Reviews (Sum of categories 1, 2, and 3)}}$$

Applying the formula to the statewide numbers above yields a statewide violation rate of approximately 30 percent:

$$\frac{1,345}{4,559} \times 100 = 29.50\%$$

Looking at one example, the Chicago Police Department's total number of violations was 142 and the total number of substantive PAC exemption reviews was 331. At 43 percent, therefore, the Chicago Police Department is among the top offenders for public bodies that improperly claimed FOIA exemptions.

It is important to remember that this is a subset of the actual number of FOIA requests that are sent to the PAC Office for review, and an even smaller subset of the number of FOIA requests received by each public body over the years. In many instances, requesters do not seek review by the PAC.

For instance, while the Chicago Police Department had 142 exemption violations, that is a small portion of the FOIA requests people sent to the PAC for review. The number of exemption violations could be far greater, but that statistical analysis could only be completed if every person whose FOIA request had *ever* been denied by the Chicago Police Department sent it for review to the PAC Office. In addition, the number of CPD exemption violations determined by the PAC make up a small percentage when compared to the *total* number of FOIA requests received by the Chicago Police Department over the years—which is well into the thousands.

Part III: Failure to respond to FOIA requests

("RFR Response after Public Body Intervention")

The BGA used the PAC data to deduce the frequency with which public bodies failed to respond to FOIA requests.

If a public body does not respond to a FOIA request within 5 business days, it amounts to a denial of that request, according to the law. While a public body can ask the requester for an extension of the deadline by an additional 5 business days, that request must be asserted within the original 5-day timeline — not after it has already expired.

There were 4,668 instances in which the PAC Office found that the public body had not responded to a FOIA request and responded only *after* the PAC had reviewed the request and prompted the public body to do so by sending a letter of further inquiry.

As noted above, in our list of the top 5 public bodies that initially failed to respond to requests — and only responded after the PAC intervened — the Chicago Police Department ranked the highest with 672 requests that lacked a timely response. The Illinois Department of Corrections ranked second, failing to respond to 519 FOIA requests. The Illinois State Police ranked third with 200 non-responses, followed by Chicago Public Schools with 199, and the Cook County State's Attorney's Office with 162.

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[1] All of the individual correctional centers in the PAC dataset were consolidated.

[2] Consolidated with an individual PAC entry for the Illinois State Police Forensic Science Center at Chicago.

[3] Consolidated with individual PAC entries for the Chicago Public School Law Department; Lincoln Park High School; Curtis Elementary School, John Marshall Metropolitan High School, and Jamieson Elementary School.

[4] *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997) ("In conducting our analysis, we are guided by the principle that under the Freedom of Information Act, public records are presumed to be open and accessible. The Act does create exceptions to disclosure, but those exceptions are to be read narrowly.").

[5] To be conservative, we treated all "RFR Unfounded" entries as a finding that an exemption was properly asserted. In reality, the PAC has informed us that some of these may have been unfounded for other reasons, such as where a requester objected to the accuracy of the information in the records, which is not a basis for an RFR. Because the PAC did not separately track exemption-based entries and others, we included them all as a substantive finding of an exemption properly asserted, which means that the violation rates are likely higher than we have reported here.

SEPTEMBER 2021

FOLLOW-UP: REVIEW OF THE CHICAGO POLICE DEPARTMENT'S MANAGEMENT AND PRODUCTION OF RECORDS

CITY OF CHICAGO
OFFICE OF INSPECTOR GENERAL

JOSEPH M. FERGUSON
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I. INTRODUCTION

The Public Safety section of the City of Chicago Office of Inspector General (OIG) has completed a follow-up to its June 2020 review of the Chicago Police Department's (CPD or the Department) management and production of records. Based on CPD's responses, OIG concludes that CPD has undertaken almost no corrective actions. As a result, CPD's ability to meaningfully ensure that it is fulfilling all of its constitutional and legal obligations to produce all relevant records for criminal and civil litigation remains seriously impaired.

The purpose of OIG's 2020 review was to determine how CPD managed and produced records responsive to criminal and civil litigation and to identify risk areas within those processes. OIG found that CPD could not ensure that it was producing all relevant records in its possession as required by constitutional and legal mandates. Specifically, CPD personnel responsible for relevant duties had no standardized or effective means to identify the totality of records responsive to any specific incident, individual, request, prosecution, or lawsuit. Various stakeholders—including prosecutors, defense attorneys, private attorneys, and judges—told OIG that CPD's practices around record production were ineffective and lacked clarity.

Based on the findings of its 2020 review, OIG recommended that CPD undertake a comprehensive staffing and resource analysis for its records management and production functions; charge a single unit with responsibility for records management across the Department; and develop policies, procedures, and trainings to ensure its ability to produce all responsive records, to include developing a directive outlining responsibilities, developing trainings for relevant personnel, and ensuring all records productions are tracked. OIG also recommended that CPD audit and evaluate its records management and production processes to ensure that records are stored, managed, and produced in accordance with recommended policies, improve transparency with stakeholders, develop better search functions within its Citizen and Law Enforcement Analysis and Reporting (CLEAR) system, and develop and implement a comprehensive, automated records management system.[1] Finally, OIG recommended that the development of a new system consider the management of older records, especially paper records, already in CPD's possession. In its response to OIG's recommendations, CPD described corrective actions it would take (summarized below in *Follow-Up Results*).

In June 2021, OIG inquired about the status of corrective actions taken by CPD in response to the 2020 recommendations. Based on CPD's response, OIG concludes that CPD has implemented very few corrective measures. Although CPD has developed better search functions within its CLEAR system and has, on an ad hoc basis, converted some paper files into electronic formats, CPD has yet to implement most of the improvements to which it committed. Specifically, CPD has yet to conduct a comprehensive staffing and resource analysis, develop and implement

[1] CLEAR is a software product procured by CPD, consisting of several modules and applications that, among other functions, store electronic CPD records. In totality, CLEAR is a collection of different technologies, dating from the early 2000s to present day.

standard operating procedures for the management and production of records, or develop necessary trainings. If fully and properly implemented, the improvements to which CPD committed would represent significant improvements in its operations and its ability to meet its legal and constitutional obligations. OIG urges the Department to fully realize its commitments and implement these corrective actions.

II. FOLLOW UP-RESULTS

In June 2021, OIG followed up on its June 2020 review of the Chicago Police Department's management and production of records, and sought information from CPD on the status of the corrective measures to which it committed in response to OIG's recommendations.[2] Below, we summarize OIG's single finding, the associated recommendations, and the status of CPD's corrective actions. Of note, the City and CPD previously committed to convening a working group with stakeholders to address OIG's finding, but an update on those efforts was not provided. Further, in its response to OIG's follow-up inquiry, CPD provided a copy of Special Order S08-02–Court Appearance, Notification, and Attendance Responsibilities, which appears to be minimally relevant to the issues raised in OIG's report; CPD did not account for the special order's relevance in its written response. This follow-up did not observe or test implementation of the new procedures; thus, we make no determination as to their effectiveness, which would require a new review with full testing.

FINDING: CPD CANNOT ENSURE THAT IT IDENTIFIES AND PRODUCES ALL RELEVANT RECORDS IN ITS POSSESSION AS REQUIRED.

OIG Recommendation 1:

OIG recommended that CPD undertake a comprehensive staffing and resource analysis to determine the technical resources, workforce size, and personnel capacities that would be required for the Department to meaningfully meet its constitutional and legal obligations, and should provide its analysis to the Superintendent and the Office of the Mayor.

Status of Corrective Action: **Not Implemented**

In CPD's 2020 response to OIG's recommendation, the Department stated that, pursuant to requirements set out in the consent decree entered in *Illinois v. Chicago*, a data-driven staffing assessment and analysis was being conducted.[3] Further, CPD reported that relevant units, such as the Records Section and the Office of Legal Affairs (OLA), were working with CPD's Office of Reform Management to ensure that these units were sufficiently staffed.[4] Finally, the response indicated that CPD's Information

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[2] City of Chicago Office of Inspector General, "Chicago Police Department's Management and Production of Records," June 10, 2020, https://igchicago.org/wp-content/uploads/2020/06/OIG-Review-of-CPDs-Management-and-Production-of-Records.pdf.

[3] Consent Decree, *State of Ill. v. City of Chi.*, No. 17-cv-6260 (N.D. Ill. Jan. 31, 2019).

[4] As of January 30, 2020, CPD's organizational charts refer to this unit as the Legal Affairs Division. In its responses to OIG, CPD continues to refer to this unit as "Legal Affairs" or "OLA." Additionally, the Office of Reform Management has been referred to as the Office of Constitutional Policing and Reform in organizational charts since January 2020.

Services Division and other administrative positions were being transitioned out of CPD to the City's Office of Public Safety Administration.

In its 2021 response to OIG's follow-up inquiry, CPD reported that it does not anticipate meeting its original December 2021 timeline for completing a staffing analysis. CPD did note that a single-unit staffing review was conducted within OLA, and additional positions were added including two Legal Officer I positions and a new position called the Director of Litigation.[5] This new, exempt position will reportedly oversee litigation-related issues for the Department including those related to discovery. CPD has also begun filling vacant OLA positions, including three Staff Attorney positions and two Paralegal positions.

OIG Recommendation 2:

OIG recommended that CPD charge a single unit with responsibility for records management across all units and record types (e.g., paper and electronic records). This entity should ensure that CPD's records management system allows for effective identification and production of records across all units and CPD members, including the Subpoena Unit and OLA. The charged unit should provide other Department units with guidelines as to how members should maintain and store records they create, in order to ensure processes are consistent between different members and different units.

Status of Corrective Action 2: **Not Implemented**

In its 2020 response to OIG's recommendation, CPD rejected OIG's recommendation to charge a single unit with developing and implementing records management and production policies. Instead, CPD committed to charging the Subpoena Unit, OLA, the Research and Development Division, and the Records Division with increasing communication and modifying existing policies and standard operating procedures related to records management and production. These additional responsibilities were to include determining whether there should be any changes to the current policy for filling subpoena requests and whether CPD should create a new directive detailing how units should maintain and search for records which might be responsive to a request or subpoena. CPD also stated that each of its bureaus would be tasked with

[5] The Legal Officer I position is held by a sworn member who is also a licensed attorney. As relevant here, this position is responsible for "re[v]iew[ing] and distribut[ing] subpoenas and responses to legal request for CPD files and records; review[ing] discovery requests for CPD files and records; review[ing] discovery requests for civil litigation proceedings and initiat[ing] requests for documents to comply with requests." City of Chicago Department of Human Resources, "Police Legal Officer I Job Description (Oct. 1991)," accessed September 10, 2021, https://www.chicago.gov/content/dam/city/depts/dhr/supp_info/JobSpecifications/JobSpecName/POLICE-LEGAL-OFFICER-I_9015.pdf.

creating an internal standard operating procedure (SOP) outlining how they would search for records in its control and verify production of these records. CPD also reported that it had established some Department-wide procedures through a software solution called GovQA, which would allow the Subpoena Unit to track internal production processes related to criminal prosecutions. Further, CPD reported that the Subpoena Unit conducted a Department-wide training on and required each unit to develop an SOP for the use of GovQA.

In its 2021 response to OIG's follow-up inquiry, CPD stated that relevant policies and SOPs have been discussed but the development and implementation is awaiting the implementation of GovQA for use in managing discovery requests arising out of civil litigation, a use that was approved in August 2021 but is not yet operational. It is not clear from CPD's response why policies or SOPs are not yet in place, as GovQA has reportedly been in use for records production in criminal prosecutions since 2019. CPD further stated that its bureaus continue to work on their SOPs regarding how records should be searched for and produced. CPD reported that the Bureau of Detectives has completed a draft SOP that is in the process of internal Department review, "however, even this draft SOP will be informed by the upcoming" GovQA implementation for civil litigation. Once this SOP is finished, CPD asserted that it will serve as an example for other bureaus as they create their SOPs.

When prompted to note any additional corrective actions taken relevant to Recommendation 2, CPD also stated that it has met with external partners to address records production issues that arise. Those partners have reportedly included the Department of Law (DOL) and the Cook County State's Attorney's Office.

OIG Recommendation 3:

OIG recommended that the unit responsible for records management and production, with input from other CPD units, develop policies, procedures, and trainings to ensure the effective identification and production of records across all CPD units; including, but not limited to:

- Developing a single directive outlining the responsibilities of the Subpoena Unit, OLA, and any other relevant CPD members for ensuring that the Department meets its constitutional and legal obligations, along with a clear delineation of responsibilities;
- Ensuring, both by assigning qualified personnel and by providing adequate training, that responsible members are sufficiently aware of CPD's constitutional and legal obligations and the importance of maintaining and producing records in a manner that satisfies those obligations;

- Providing direction to relevant CPD units as to how to identify and produce paper and electronic records in a manner that will satisfy CPD's obligations and will allow stakeholders to be reasonably confident that they could submit one production request to CPD and receive all relevant and responsive records;
- Ensuring that, in light of the breadth and weight of CPD's constitutional and legal obligations, Subpoena Unit and OLA personnel are adequately trained on CPD's records management practices and the universe of CPD records;
- Given an understanding of legal and constitutional obligations, ensuring that Subpoena Unit members follow consistent procedures when identifying and producing records responsive to subpoenas;
- Ensuring that all records produced to litigants are tracked, including those not produced by the Subpoena Unit; and,
- Providing clear guidelines on the circumstances under which CPD personnel should forward responsive records to OLA for legal review before production, including identifying the person(s) responsible for doing so.

Status of Corrective Action: **Not Implemented**

CPD originally agreed to partly implement this recommendation. In CPD's 2020 response to OIG's recommendation, the Department again relied upon its procurement of GovQA for criminal discovery and the trainings given on the system. CPD also stated that "in the coming months" OLA and the Records Division would work together to confirm that each "responsive unit" had created SOPs detailing how it receives, searches for, and produces records. The Department's response also highlighted that OLA had created internal SOPs and provided trainings to its staff. Finally, CPD's response noted that, in 2017, it gave DOL direct access to its electronic records and that CPD meets with DOL divisions regularly to address any discovery issues.

In its 2021 response to OIG's follow-up inquiry, CPD stated that units had not created SOPs since GovQA for civil litigation was still being implemented. Further, the Department reported that it had not yet provided relevant trainings but would do so when GovQA is implemented and SOPs have been developed. Finally, CPD stated that members of the Records Division meet regularly with members of OLA to discuss subpoenas and conduct any necessary legal reviews.

OIG Recommendation 4:

OIG recommended that CPD audit and evaluate its production and records management processes to ensure that records are stored, managed, and

produced in accordance with forthcoming policies and in a manner that would allow CPD to meet its obligations.

Status of Corrective Action: **Pending**

In its 2020 response to OIG's recommendation, CPD agreed to audit these processes once the document tracking systems and SOPs were developed and implemented, and estimated that this process would be completed no later than December 2023. In its 2021 response to OIG's follow-up inquiry, CPD continued to project this as the appropriate timeline for such an audit.

OIG Recommendation 5:

OIG recommended that CPD improve its transparency with stakeholders by providing contact information for relevant personnel that could answer questions about CPD's management and production of records, as well as providing more complete, publicly available information on the totality of records CPD may have in its possession related to an individual, case, investigation, etc.

Status of Corrective Action: **Partially Implemented**

In its 2020 response to OIG's recommendations, CPD stated that it would detail its records production processes in one of its publicly available directives. Additionally, the Department committed to including contact information for individuals responsible for records requests in unit SOPs on records management. By way of example, CPD pointed to the Subpoena Unit SOP, which includes contact information. CPD also reported that it has had ongoing meetings with the Cook County State's Attorney's Office (CCSAO), the Public Defender's Office, and DOL to help resolve any technical or communication problems and to improve production-related outcomes. Finally, CPD reported that it had taken steps to ensure that DOL Attorneys could directly contact CPD subject matter expert members to ensure complete production, as opposed to having to contact them through OLA.

In its 2021 response to OIG's follow-up inquiry, the Department acknowledged that it has not created or implemented the new directive to which it committed in 2020. With regards to improving communication and providing contact information with stakeholders, CPD indicated that DOL's Federal Civil Rights Litigation Division (FCRL) has the contact information for each CPD unit from which it might request information. Other DOL units are expected to continue making requests through OLA, as opposed to having the direct contact with subject matter experts that FCRL has and which CPD touted in its initial response. CPD also indicated

that contact information is not shared with other agencies such as CCSAO or the Public Defender's Office; those entities must request information through the subpoena process and members of the Subpoena Unit have been trained on who to contact to request records. Neither CPD's 2020 response nor its follow-up response offered any indication that CPD would improve transparency around the type of records it maintains.[6]

OIG Recommendation 6:

OIG recommended that CPD develop and implement a comprehensive records management system that allows for the automation of all CPD records. If records need to be created on paper, these records should be scanned into the system and rendered searchable for effective and efficient identification and production

Status of Corrective Action: **Not Implemented**

In its 2020 response to OIG's recommendations, CPD did not agree to implement this recommendation, reporting that it could not commit to a single, comprehensive records management system due to costs, personnel, and technical considerations. CPD did highlight some recent examples of paper records becoming automated but questioned the feasibility of having a single records management system given the number of CPD units with varying legal, confidentiality, and investigatory interests. Finally, CPD stated that a "comprehensive data systems plan" is being developed to comply with the consent decree. Once that data systems plan is developed, CPD reported that further investigation into a comprehensive records management system would be possible.

In response to OIG's 2021 follow-up inquiry, CPD stated that the function of developing a data systems plan has been transferred out of CPD entirely to the Office of Public Safety Administration.

OIG Recommendation 7:

OIG recommended that CPD production processes provide for the management of older records already in CPD's possession. Improvements to how records are created, stored, and indexed in the future may not impact older records, which may themselves be relevant to ongoing criminal prosecutions and civil litigation arising from law enforcement

[6] In an effort to improve transparency, OIG published an Appendix to its 2020 report listing CPD records which were potentially related to criminal and civil litigation arising from law enforcement. The Appendix was intended to demonstrate the breadth of the potential universe of CPD records related to a criminal case, and the significant potential for the existence of records which fall outside of litigants' knowledge and specific requests. See https://igchicago.org/wp-content/uploads/2020/06/OIG-Review-of-CPDs-Management-and-Production-of-Records.pdf at Appendix A.

activities for years to come, given the sometimes lengthy duration of these proceedings.

Status of Corrective Action: **Minimally Implemented**

In its 2020 response to OIG's recommendations, CPD stated that it continued to seek opportunities to move paper records to electronic systems; the Bureaus of Detectives and Internal Affairs had undertaken an initiative to scan older files into electronic format. However, CPD highlighted that this process was "arduous and expensive."

In response to OIG's 2021 follow-up inquiry, CPD indicated that it continued to convert older Bureau of Detectives and Bureau of Internal Affairs paper files into electronic files on an ad hoc basis, as they were specifically requested and being produced. CPD once again described the process as "arduous," given the number of paper files and the age of those files.

OIG Recommendation 8:

OIG recommended that CPD develop a "search all" function for CPD's various CLEAR applications and ensure that related identifiers (e.g., Records Division Numbers for cases and Central Booking Numbers for arrests) are associated with one another to make it more efficient for Subpoena Unit and OLA members to identify and gather electronic records.

Status of Corrective Action: **Partially Implemented**

In its 2020 response to OIG's recommendations, CPD indicated that the Information Services Division was working to develop a "search all" function by Records Division Number across all applications in the Criminal History Records Information System (CHRIS) and CLEAR system.[7]

In its response to the 2021 follow-up inquiry, CPD indicated that the "search all" function had been created for purposes of searching records by Records Division Number; there is no indication that records are searchable by other identifiers.

[7] CHRIS consists of several applications that are used to complete and store various automated records, including some records created by the Bureau of Detectives during their investigations.

III. CONCLUSION

OIG urges CPD to fully implement the corrective measures to which it committed in 2020, to include conducting a resource analysis, better organizing top-down guidance for records management and production, and creating SOPs and trainings to ensure consistency across its operational units. Not having made these improvements, CPD is now—just as it was when OIG published its 2020 report—unable to ensure that it can meet legal and constitutional obligations which are at the core of its function as a law enforcement agency. This is an area of very serious risk for CPD and for the City. In criminal litigation, CPD's failure to identify and produce records and information in its possession might undermine criminal prosecutions or lead to vacated convictions. In civil litigation, the same failures may result in significant legal and financial liability. OIG also urges CPD to reconsider recommendations with which it originally disagreed—specifically, those which concern its enterprise-wide records management processes. Expanding the use of GovQA, along with some of the other incremental steps already taken, will help CPD improve some of its records management and production processes. Particularly when measured against the weight of the obligations at issue, however, these steps do not adequately address the concerns raised in OIG's 2020 report; unless and until CPD improves its processes around records management and production, it will continue to be plagued by the risks identified there.

The City of Chicago Office of Inspector General (OIG) is an independent, nonpartisan oversight agency whose mission is to promote economy, efficiency, effectiveness, and integrity in the administration of programs and operations of City government. OIG achieves this mission through,

- administrative and criminal investigations by its Investigations Section;
- performance audits of City programs and operations by its Audit and Program Review Section;
- inspections, evaluations and reviews of City police and police accountability programs, operations, and policies by its Public Safety Section; and
- compliance audit and monitoring of City hiring and human resources activities by its Compliance Section.

From these activities, OIG issues reports of findings and disciplinary and other recommendations to assure that City officials, employees, and vendors are held accountable for violations of laws and policies; to improve the efficiency, cost-effectiveness government operations and further to prevent, detect, identify, expose and eliminate waste, inefficiency, misconduct, fraud, corruption, and abuse of public authority and resources.

OIG's authority to produce reports of its findings and recommendations is established in the City of Chicago Municipal Code §§ 2-56-030(d), -035(c), -110, -230, and -240.

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Or visit: igchicago.org/contact-us/report-fraud-waste-abuse/

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