PORTFOLIO

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Submitted to the University of Illinois Springfield

in partial fulfillment of the requirements

for the degree of

MASTER OF ARTS

Public Affairs Reporting

August 01, 2018

Contents

Spot News

Feature Pieces

News Analyses

Group wants expedited appeal on abortion act

BY REBECCA ANZEL
Law Bulletin correspondent

SPRINGFIELD — A conservative legal group is bringing its fight against a law allowing tax dollars to be used on abortions to the state appellate court.

The Thomas More Society appealed its Sangamon County lawsuit to the 4th District Appellate Court in Springfield, claiming state taxpayers "will suffer irreparable harm" if money is allowed to be spent on abortions as allowed by House Bill 40, which became Public Act 100-583 in September.

The group has filed motions to expedite its appeal in the case, *Springfield Right to Life v. Felicia Norwood*, No. 4-18-0005, asking for a timetable that includes reply briefs from the state by Feb. 20.

Attorney General Lisa M. Madigan's office, meanwhile, has countered the appellate court should not grant the society's motion in the case because her office is busy prepping for another major case — the national fight over union fees in *Janus v. AFSCME*, to be argued at the U.S. Supreme Court later this month.

The office filed briefs last week saying Deputy Solicitor General Brett E. Legner, the lawyer on the HB40 case, is also "a principal author" of the state's brief in *Janus* and will be present before the nation's highest court in Washington, D.C., when it's argued.

"Because of his responsibilities related to the preparation for the *Janus* argument, the undersigned counsel will not be able to complete defendants' brief by the proposed February 20 due date," the office wrote.

The Thomas More Society, however, argued that's not a good enough excuse. Legner is just one of many lawyers the attorney general has at her disposal, the group argued, and the need to spend most of the month prepping for arguments "that he acknowledges he is not even presenting" is questionable.

"The attorney general provides no explanation why Mr. Legner is the only attorney employed by the attorney general's office who can work on [d]efendants' brief," wrote Rep. Peter C. Breen, a Lombard Republican and senior attorney for the Thomas More Society. "The attorney general provides no explanation why the three [a]ssistant [a]ttorneys [g]eneral who successfully represented [d]efendants before the [c]ircuit [c]ourt are unable to prepare [d]efendants' [b]rief."

On the merits, the group's case against the law is twofold. First, they argued the General Assembly did not estimate HB40's cost to taxpayers or appropriated funds to cover that cost. According to the brief filed Jan. 29, the law will cost Illinois between $22.5 million and $30 million annually, none of which qualifies for Medicaid reimbursements.

They claim that's a violation of Article 8, Section 2(b) of the state constitution, which says appropriations for a fiscal year "shall not exceed funds estimated" by lawmakers to be available that year.

ABORTIONS, *Page 6*

AG wants more time; appellate attorney also handling *Janus* case

ABORTIONS, *FROM PAGE 3*

"What the framers of our constitution said was the General Assembly has to do two things: Estimate the revenues and spend within that estimate, and that's it," Breen said today during a Statehouse news conference. "And so the argument I made in the HB40 case is you've got this spending on HB40, there's no revenue estimated to support the many new services that are required under HB40, so you can't do it."

He also claims the law should not have taken effect on Jan. 1. Although both chambers approved it by early May, a procedural hold in the Senate kept it from Gov. Bruce Rauner's desk until September. The constitution requires measures approved after May 31 to receive a three-fifths majority vote to take effect immediately, but House Bill 40 only received a simple majority.

The Sangamon County trial court dismissed the case in January, with 7th Judicial Circuit Court Judge Jennifer M. Ascher ruling the issue of how lawmakers estimate funds was a "political question," and wading into it would be a separation-of-powers violation.

Ascher also ruled that regardless of when HB40 was handed to the governor, it was passed before the May 31 deadline.

In her office's response to Breen's request for an expedited proceeding, Madigan wrote that the plaintiffs are "right-to-life or pro-life organizations and legislators who voted against House Bill 40" who waited just over two months after the law was enacted to file their initial complaint.

She also addressed Breen's argument that "irreparable harm" to taxpayers will occur if a court does not hear the case quickly.

"Indeed, the circuit court already has found no basis for plaintiffs' claims and, even if state money is spent by virtue of Public Act 100-538, plaintiffs do not establish that expenditure will occur during the briefing phase of the appeal," according to the response. "At most, they simply state that defendants anticipated spending money for services performed under the law between January 1 and June 30, 2018, but do not indicate when those services will be paid for."

It is unclear when the court will decide whether to expedite the case, but Breen said he doesn't expect it to take long.

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Chicago Daily Law Bulletin

Comptroller says salary measure not jab at Rauner

BY REBECCA ANZEL
Law Bulletin correspondent

SPRINGFIELD — Illinois' chief payment officer announced a transparency measure aimed at eliminating the long-standing practice of governors allocating employee salaries from the budgets of other state agencies.

While Comptroller Susana Mendoza, a Democrat, maintained the bill is not targeted at or meant to embarrass Republican Gov. Bruce Rauner — a point she made at least eight times during a Thursday news conference — it is one of several recent efforts to shape the debate on budget issues.

"Offshoring is wrong. It was wrong when Governor Quinn did it. It was wrong when Governor Blagojevich did it. It was wrong when Governor Ryan did it. And it's still wrong when Governor Rauner does it," Mendoza said at the news conference.

Coined the Truth in Hiring Act, House Bill 5121 and Senate Bill 3233 would ban "offshoring" the salaries of employees working for the office of the governor to other agencies. The term is a nod to the practice of hiding assets in other countries to avoid paying taxes.

Mendoza said the practice enables Rauner's office to "mask" its true budget size and personnel costs and to sidestep legislative oversight.

Her office's payment system codes employees in a way that shows which agency a state employee is paid by and for which agency that employee works.

Using this information, Mendoza said the governor has 102 staffers, not the 44 his office budgeted for this fiscal year. Those additional 58 staffers, whose salaries total $5.5 million, are paid out of other agencies' budgets.

"Let's be clear: all state agencies that operate under Governor Rauner are part of the administration and carry out the necessary functions of state government. Unlike previous administrations, we have been transparent and publicly reported employees that work in our office — reflecting that number in our headcount," Rauner spokeswoman Rachel Bold said in a statement.

The bill, which has bipartisan support, would take effect

MENDOZA, *Page 5*

Mendoza: 'Offshoring' lets governors hide budget, sidestep oversight

MENDOZA, *FROM PAGE 1*

immediately if successful. That would force the governor to amend his budget proposal.

Many times, when Mendoza pushes for a bill or new practice, she uses the same argument — her support of efforts she saw as a furtherance of transparency were not to needle Rauner, but to clean up the way Illinois does business.

The comptroller's new initiative follows her legislative win in November when the General Assembly voted to pass Mendoza's Debt Transparency Act despite Rauner's opposition. The law mandates state agencies under the governor's control to send reports of outstanding bills to her office more frequently.

"For too long, governors of both parties have been able to hide unpaid bills at their agencies," Mendoza said when the debt transparency bill passed. "This legislation opens up government to citizens, taxpayers and my office, which is charged with paying the state's bills."

Before that, she urged legislators to approve a bill that would require independent oversight on any efforts by a governor to negotiate healthcare contracts.

At the time, Mendoza said "The [g]overnor's Democratic predecessor, Governor Pat Quinn[,] made the same mistake and rather than learning from it, Governor Rauner is repeating it on a larger scale. It was wrong when the Democratic governor did it and it's wrong today."

And in July when the General Assembly passed a budget, after about 2½ years the state went without one, Mendoza said "There is plenty of blame to go around with both parties, for the decades of fiscal mismanagement."

Mendoza said she champions certain issues because she sees herself as a "fiscal watchdog."

"I'm not going to not do my job because someone else finds it offensive for me to be looking out for the best type of financial oversight that we can have as a government," she said. "That's my job. I take it seriously."

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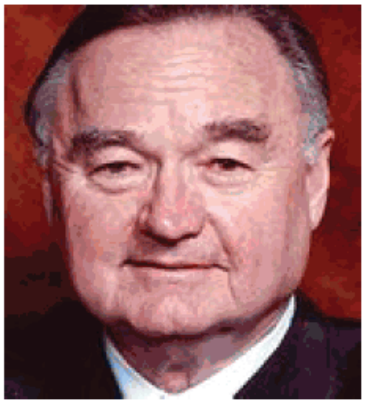
Shades of Butch, Sundance in top court bike case

When is a bicycle not a bicycle? When it turns into an Illinois Supreme Court case



Lloyd A. Karmeier

Rita B. Garman

BY REBECCA ANZEL
Law Bulletin correspondent

A lawyer arguing before the state's highest court likened her client's case to the 1969 film "Butch Cassidy and the Sundance Kid."

There is a scene where Paul Newman, one of the movie's stars, takes Katharine Ross' character for a ride on his bicycle. Over the next few minutes, Newman executes tricks, such as riding backward and putting one of his feet on the seat with the other in the air.

"While I thought this was for entertainment, I now realize Paul Newman was just trying to determine if his bike was a motor vehicle," Francis L. Thomas, the attorney, said.

"And there's 500 people out there trying to determine who is Paul Newman," Chief Justice Lloyd A. Karmeier said, eliciting laughter from the audience.

The case is one of two the state's Supreme Court heard at the University of Illinois at Urbana-Champaign on Thursday to better show the public what the court does. It was the first time such an event was held since 2016, when the justices traveled to Benedictine University in Lisle.

John Plank, the appellee, was pulled over in August 2016 just south of Champaign for driving 26 miles per hour on a motorized bicycle. He was later charged with operating a motor vehicle while his license was revoked which, based on his prior convictions, qualified as a Class 4 felony.

The case rests on whether Plank was driving a low-speed gas bicycle or a motor vehicle, and whether the statute is too vague to enable an average person to figure out the difference.

According to Section 1-140.15 of the Vehicle Code, a low-speed gas bicycle is a "2- or 3-wheeled device with fully operable pedals and a gasoline motor of less than one horsepower, whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 miles per hour."

Sixth Judicial Circuit Judge Richard L. Broch Jr. ruled in January 2017 the statute facially violates due process standards under both the state and national constitutions.

Eric M. Levin, assistant attorney general, argued Plank violated the law either way — he either was riding a low-speed gas bicycle faster than the speed limit allows or he was driving a motor vehicle without a valid license or registration.

"I think the specificity and the objective nature of some of the criteria could be misleading, but when you put it all together and read it as a whole, it becomes very subjective."

The state also contended the maximum speed component is "technical" but fair and that it is incumbent upon the operator of a vehicle to follow the law or to determine what that vehicle qualifies as.

"It's complex, and it may in some instances may be difficult to apply, certainly immediately and without doing any sort of investigation and inquiry," Levin said. "But what matters for purposes of the void for vagueness doctrine is that the definition allows no room at all for anybody to employ any subjective judgments."

Thomas said she disagreed with that point, and Justices Karmeier and Rita B. Garman pressed her about the nature of what her argument truly was and to whom her argument applies.

"Isn't it really true you're saying that the statute, although you argue it's vague, it's really very specific but it might be difficult to ascertain those objective standards that are set out?" Karmeier asked.

"I believe that's correct," Thomas replied. "I think the specificity and the objective nature of some of the criteria could be misleading, but when you put it all together and read it as a whole, it becomes very subjective."

The application of the law is subjective to an average person, she clarified in response to a question by Garman, and to law enforcement.

The cases is *People v. John W. Plank*, No. 122202,

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Voir dire query on prostitution ruled improper

Question on jurors' biases regarding sex work prematurely inserted defense's main argument

BY REBECCA ANZEL
Law Bulletin correspondent

SPRINGFIELD — Illinois' high court ruled potential jurors can be asked questions pertaining to their biases about participation in gang activities but not about sexual history.

The case centers on whether the defendant, Theophil Encalado, was wrongly convicted on three counts of aggravated criminal sexual assault due to an unfair trial.

His representation before the Supreme Court, Jennifer L. Bontrager, argued the trial judge should have allowed potential jury members to be asked if they could fairly consider evidence about prostitution. Prosecutors argued that the question was designed to place in potential jurors' minds the idea the victim was a prostitute, inserting the defense's main argument into voir dire.

In an opinion written by Justice Anne M. Burke and issued Thursday, the Supreme Court found the question inappropriate.

"Defendant's proffered question did not involve a matter that was indisputably true and inextricably a part of trial," according to the opinion. "Rather, the question amounted to a preliminary argument regarding a disputed question of fact. This type of questioning during voir dire is generally not permitted."

Encalado was accused of "knowingly, and by the use of force or threat of force, committ[ing] acts of oral, vaginal and anal sexual penetration" on a woman identified as Y.C., according to court documents. The state was allowed to include evidence of two other women it believed Encalado assaulted in a similar manner.

The defense claimed all three women were prostitutes who agreed to provide a service and, when it was not fulfilled to the defendant's satisfaction, were not paid. Encalado's attorney wanted to ask potential jurors if they could fairly consider evidence about prostitution: "Would that fact alone prevent you from being fair to either side?"

The trial court did not allow the question. The 1st District Appellate Court reversed Encalado's convictions on appeal — with Justice Mary Anne Mason dissenting — and remanded for a new trial.

Mason wrote in her opinion that if the defense was permitted to ask the proposed question, jurors "would have been left with the impression, as Encalado undoubtedly hoped, that the victim was a prostitute." Allowing such a question, Mason continued, would allow defendants in similar cases to "circumvent" the rape shield statute.

In its opinion, the high court instead relied on the same case the appellate court did to reach a different conclusion.

That case, *People v. Strain*, focused on whether the defendant in a murder case believed to be related to gang activity was entitled to question potential jury members about their ability to fairly judge information related to gangs.

The Supreme Court ruled in part that because Illinois law makes note of the fact gang activity is viewed negatively by members of the public, that question should be allowed.

"The same concerns regarding the prejudicial effect of gang violence dictate our holding that, when testimony regarding gang membership and gang-related activity is to be an integral part of the defendant's trial, the defendant must be afforded an opportunity to question the prospective jurors, either directly or through questions submitted to the trial court, concerning gang bias," the Supreme Court wrote, quoting *Strain*.

In this case, because "there is no body of law that holds that the testimony of patrons of prostitutes is treated with skepticism by the public," the voir dire process in Encalado's trial was not unfair. The justices also found that allowing the question to be posed to potential jury members would help the defense introduce part of its argument, which is a "disputed issue of fact."

Bontrager said the Office of the State Appellate Defender is "disappointed" with the decision.

"We had hoped that the court would recognize, as the appellate court did, that asking a question in voir dire such as the one posed here would have assisted both sides in ensuring that a fair jury heard the case," she wrote in an e-mail.

Annie Thompson, a spokeswoman for the attorney general's office, said in a statement that they are "pleased with the decision in that it provides further clarification of the voir dire process to ensure the removal of jurors who are biased or unable to be impartial."

The state was represented by Assistant Attorney General Evan B. Elsner.

The case is *People of the State of Illinois v. Theophil Encalado*, No. 122059.

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Chicago Daily Law Bulletin

Net neutrality bill gets first OK, but legal fight looms

BY REBECCA ANZEL
Law Bulletin correspondent

SPRINGFIELD — Legislation that would force internet service providers operating in Illinois to adhere to net neutrality rules barely passed committee Wednesday.

Six members of the House Cybersecurity, Data Analytics and Information Technology Committee voted to pass the bill, two voted no and two others voted present.

Proposed by Chicago Democrat Ann M. Williams, House Bill 4819 would prevent internet service providers from securing state contracts unless they agree not to manipulate web speeds or prioritize certain sites for Illinois users.

The measure is one of more than 30 other efforts nationwide to codify internet protections reversed by the Federal Communications Commission in December.

The new ruling is scheduled to take effect on April 23.

A similar bill, SB 2975, sponsored by Sen. Daniel Biss, an Evanston Democrat, is still waiting to be assigned to a committee.

But telecommunication industry representatives warned legal challenges will follow if the bill becomes law. They pointed out about six pages of the FCC's ruling explains that states are not permitted to create their own requirements of service providers.

"We, therefore, pre-empt any state or local measures that would effectively impose rules or requirements that we have repealed or decided to refrain from imposing in this order or that would impose more stringent requirements for any aspect of broadband service that we address in this order," according to the [FCC] ruling.

It also mentions that "a patchwork of separate and potentially conflicting requirements" would not be supported by federal courts, which have maintained policies of deregulation as similarly pre-emptive as policies of regulation.

When Dixon Republican Tom Demmer questioned Williams about this issue, which he characterized as "a way to do backdoor regulation," the sponsor said it is not a concern.

"We're not challenging it in court; today, we're asking to pass it through the legislature," Williams said. "There's a whole other branch of government that can make that

NEUTRALITY, *Page 5*

Federal pre-emption question brought up several times by opponents

NEUTRALITY, *FROM PAGE 1*

decision, but I would submit to you that 22 attorneys general and 33 legislatures disagree and believe it is not pre-emptive."

Khadine Bennett, director of Advocacy and Intergovernmental Affairs for the American Civil Liberties Union's Illinois chapter, added the bill would not impose new regulations. Instead, the measure, written by her organization, would leave the previous net neutrality protections in place and mandate any policy changes be published in a "clear and conspicuous statement" on the company's website.

"What we have the capacity to do as a state is to say that we want to be able to contract in whatever way we want to," she said. "Our bill does not require companies to do anything except disclose."

But Matthew Brill, who represented several industry members and testified before the FCC when it was considering whether to remove the net neutrality guidelines, disagreed. A partner Latham & Watkins LLP's Washington office, he cited two U.S. Supreme Court opinions he argued supersede Illinois' standing.

The first, *Wisconsin Department of Industry v. Gould Inc.*, held that a Wisconsin statute which prevented the state from doing business with an entity that violated the National Labor Relations Act three times within five years was pre-empted by the NLRA itself.

"Although state action in the nature of "market participation" is not subject to the restrictions placed on state regulatory power by the commerce clause, Wisconsin[,] by prohibiting state purchases from repeat labor law violators is not functioning as a private purchaser; its debarment scheme is tantamount to regulation," according to the 1986 opinion.

The other is a case from 2008 that challenged the same act. In *Chamber of Commerce of United States v. Brown*, the chamber challenged a California law that in part prevented organizations that received at least $10,000 in state funds from using it to "assist, promote or deter union organizing."

"This issue has been decided at the U.S. Supreme Court level and at several courts of appeals and it's really a settled question of law," Brill said.

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Chicago Daily Law Bulletin

Nursing area bill passes state Senate

County courthouses must make space for mothers if bill signed

BY REBECCA ANZEL
Law Bulletin correspondent

SPRINGFIELD — Legislation requiring Illinois county courthouses to have a private room for nursing mothers is one step closer to becoming law.

The unanimously passed measure would mandate each building with a circuit courtroom include at least one lactation space by this January.

Just one day earlier, state senators approved the Equal Rights Amendment, language for the U.S. Constitution to codify rights free of gender discrimination.

Sen. Elgie R. Sims Jr., a Democrat from Chicago and Senate Bill 3503's sponsor, said it was an "historic day" for the state to further a bill that enables women to more fully participate in the court system.

"I agree with one of my Republican colleagues who said this is a bill whose time has come," he said at a news event after the vote. "It's time for us to make sure we provide everyone with equal access to justice, and that's what this bill does."

Sims was joined by civil liberties attorney Gail Schnitzer Eisenberg, as associate with Stowell & Friedman, Ltd., who said the obstacles she experienced as a lawyer and new mom informed her of the need for this legislation.

In one instance in 2016, she went to the McHenry County Courthouse in Woodstock to argue a dispositive motion. The bathroom did not have an outlet for her to use a pump, so Eisenberg asked personnel for an alternative accommodation. She was told to use the cafeteria, an "open room" and face the wall.

"This is not the kind of dignity that I went into the legal profession in order to obtain," she said. "Having accommodations for pumping mothers — attorneys, jurors, witnesses and anyone who finds themselves exercising the fundamental right to access our courts — well, we're going to have more dignity for all those who walk in."

The bill stipulates each lactation room include a chair, table and electrical outlet and "a sink with running water where possible." It must also be located apart from a restroom.

"None of us are going home tonight to make dinner for ourselves or our families in our bathroom — certainly not in a bathroom stall," Chicago Democratic Rep. Kelly Cassidy, the House sponsor, said. "That's the equivalent of what we're asking parents to do when they express breast milk, which is food for their children, in a public restroom stall."

She pointed out that the requirements are already being

MOTHERS, *Page 5*

McHenry County told lawyer to pump in cafeteria, face toward wall

MOTHERS, *FROM PAGE 1*

implemented in airports, which sometimes have a mobile pod device for mothers to use.

Edwardsville Democrat Rep. Katie Stuart has a similar measure in the House that would instruct the secretary of state's office to install a lactation room in the Capitol, Howlett Building and Stratton Building — none of which have one currently. It is awaiting a vote that could send it to the Senate.

Stuart said she met with the Capitol architect recently about House Bill 1042 and he identified several places where such a room could be constructed with the same stipulations as those outlined in Senate Bill 3503.

Sims' measure moved to the House and was assigned to a preliminary committee today. If it passes the chamber, it continues to Gov. Bruce Rauner's desk.

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Vets' home award cap could rise twentyfold

BY REBECCA ANZEL
Law Bulletin correspondent

SPRINGFIELD — In the wake of a deadly Legionnaire's disease outbreak at a veterans' home, a Senate panel voted to raise the maximum award for Court of Claims cases twentyfold.

Senate Bill 2481, proposed by Tinley Park Democrat Michael E. Hastings, was approved by the chamber's Judiciary Committee this week. It would raise the cap currently applied to tort cases from $100,000 to $2 million.

The measure is a response to the deadly outbreak of Legionnaire's disease that caused 13 deaths and infected numerous others at the Quincy Veterans' Home. The change specifically affects cases filed since July 1, 2015, the date of the first known outbreak of the Legionella bacteria, which causes a severe form of pneumonia.

"This is a chance to vote for caps and be with the trial lawyers at the same time," committee chairman Sen. Kwame Y. Raoul joked during the hearing. The Chicago Democrat is his party's nominee for attorney general.

The Court of Claims has jurisdiction in cases against the state, including the 11 filed by the families suing for damages, according to a Senate Democratic staff analysis.

Hastings' legislation, which originally eliminated the cap for all types of tort cases, passed committee with an agreement the senator would formally propose the updated language specifying an upper limit for awards on the Senate floor.

In a brief appearance before the committee, he summarized the legislation as a bill that still generally takes aim at the current caps.

He could not be reached for further comment afterward. But Hastings, an Army veteran, earlier this year told the Daily Law Bulletin the push is personal for him.

"I want to see this go through. These people, what happened to their families is unacceptable, and $100,000 is not the value of one person's life, that's for sure," he said.

Hastings also said at the hearing that Senate Republicans requested some of the legislative findings included in the bill be taken out before they would vote for it. Part of that language includes calling the Court of Claims cap "an arbitrary, inequitable, and unjust limit" that is one of the lowest nationwide.

Another section set to be scrapped reads: "Victims and families harmed by the negligence of the State of Illinois in veterans homes, correctional facilities, Illinois roadways, or other places in which the State conducts business deserve equal access to justice under the law."

In addition to raising the cap to

VETERANS, *Page 6*

GOP wants lines calling cap 'arbitrary, inequitable' cut prior to vote

VETERANS, *FROM PAGE 3*

$2 million, the bill leaves in place language exempting cases involving a state-owned vehicle from that limit. It also allows the court to adjust the maximum award to reflect increases in the Consumer Price Index determined by the U.S. Department of Labor.

The measure was approved by the panel without opposition.

State lawmakers from both parties filed five measures since the start of the year that alter the Court of Claims Act in response to the Legionnaire's outbreak.

They include Senate Bill 3008, which also raises the maximum award to $2 million but removes the exception for cases involving state-owned vehicles; Senate Bill 2434, which removes any sort of cap for cases involving the death of a resident of a veterans' home; House Bill 4534, which is a duplicate of the original version of Hastings' proposal; and House Bill 5171, which is aimed at expediting payouts of $100,000 to the families of veterans who died from Legionnaire's disease.

Of those bills, only Hastings' measure has advanced from the committee stage.

Republican Gov. Bruce Rauner's office has said it's "open to a conversation" on changing the Court of Claims cap. But in a report sent to legislators last week, the administration pushed back against criticisms its public health department and veterans' affairs department botched their response to the outbreak, saying it was "quick, coordinated and comprehensive."

The 35-page report claimed, among other things, that the disease is tough to diagnose, that the number of cases around the country is rising and that the administration took decisive action to protect veterans in the home as early as August 2015.

"If Illinois had not taken the quick, coordinated approach that it did in 2015, the number of cases likely would have been much higher," the report claimed.

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Lawmakers weigh early adoption of blockchain system

Joint committee looks at ways latest internet leap will affect public business

BY REBECCA ANZEL
Law Bulletin correspondent

SPRINGFIELD — First, there was the web. Then, social media.

Now, the cutting-edge technology that powers cryptocurrencies like Bitcoin could be at the heart of a third wave of digital innovation.

That's what some Illinois lawmakers and government officials think, at least. And it's why they held a joint committee hearing this week to explore blockchain, an unchangeable, sequential ledger of transactions that could beef up virtual security.

If the internet started as a way to connect users in chat rooms and by e-mail. then evolved into the age of social media, "Web 3.0" will focus on information security, said John Mirkovic, deputy recorder at the Cook County Recorder of Deeds' Office.

"We built this thing we're all connected to, but now we can get in each other's computers and steal each other's things," he said. "Blockchain allows us to sort of reassert our claims over our identity and control what other people are able to access."

Some aren't as bullish on the idea. Rep. Al Riley, a Democrat from Olympia Fields and the committee's most critical member, called blockchain "theoretical in its nature" and cautioned that like any new technology, its weaknesses and problems will only become apparent after it is put into use.

"I am in the business of protecting the people in the state of Illinois. That's what my business is," he said. "We're talking about putting in and trusting records and things that are germane to the government to basically a new technology."

Currently, large stores of information are generally housed by entities in one general location. In the case of governments, that could mean databases protected by outdated software.

"Our personally identifiable information is located in thousands of government servers that are probably running Windows 95 at this very moment."

"The current model is so fundamentally and ridiculously unsafe that it's almost a farce at this point," Mirkovic said. "Our personally identifiable information is located in thousands of government servers that are probably running Windows 95 at this very moment."

Blockchain decentralizes information by breaking down a file, encrypting each piece and storing it in random locations across many computers. The users with permission to see a particular file can use blockchain to put the document back together and read it on demand, but a hacker would have extreme difficulty reversing the process. Therefore, information becomes remarkably complicated to infiltrate.

Five state and county agencies formed the Illinois Blockchain Initiative in November 2016 to study the technology's potential government application and economic impact. It made the Prairie State the second in the country, behind New York, to explore blockchain.

Jennifer O'Rourke, deputy director of the Department of Commerce's Office of Entrepreneurship, Innovation & Technology, and Tyler Clark, chief of staff at the Department of Innovation and Technology, also testified at the hearing.

What the trio hoped to do, Mirkovic said, was further the conversation so that legislators can begin setting standards, practices and regulations for state use of blockchain in the next several years.

For now, Mirkovic said the question lawmakers should consider is whether the government will continue its trend of following behind the innovations of the private sector or help set the narrative.

"We could work together and develop this technology and ensure that it is safe and secure and, frankly, cheap to implement, or we can let the private sector do it in a bubble, and in 10 years they can come and sell it to us at 10 times the price," Mirkovic said.

Two bills proposed by Rep. Michael J. Zalewski, a Democrat from Riverside, could encourage the General Assembly to take that first step by implementing blockchain and cryptocurrencies in Illinois practices.

Zalewski is the chairman of the Revenue and Finance Committee and a member of the Cybersecurity, Data Analytics & IT Committee — the two committees who held the hearing. One measure, House Bill 5335, would mandate the Department of Revenue to accept virtual currencies as a form of payment of state taxes.

It also stipulates that "the Department shall convert such payments to United States dollars at the prevailing rate within 24 hours after receipt of the payment and shall credit the taxpayer's account with the converted dollar amount."

The measure would be the first time Illinois deals with cryptocurrencies. For instance, Illinois' investment portfolio does not include them because "[s]tate statutes limit the types of investments the state treasurer's office can pursue. Currently, cryptocurrencies are not one of those types," Greg Rivara, spokesman for Treasurer Michael Frerichs said in an e-mail.

The other, House Bill 5553, would allow blockchain to be used in some instances, excluding the termination of a health insurance or utility policy or eviction or foreclosure of a residence.

It also prevents a home-rule unit from regulating blockchain independently.

"I think it has the power to transform the way we do government," Zalewski said. "It has the potential to sort of reshape the societal scope of government in a way that people will respond to, given pressure on us to do something to reform our old, antiquated systems."

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Push renewed to set 21 for tobacco sales

REBECCA ANZEL
Law Bulletin correspondent

SPRINGFIELD — Legislation aimed at changing the minimum age to purchase tobacco products in Illinois has been percolating for about four years.

Its most recent iteration, the third attempt in as many years, has been submitted by a Chicago Democrat who said she and its 22 co-sponsors, all from the same party, are fighting for a "better society."

House Bill 4297, and its equivalent Senate Bill 2332, raise the age to purchase cigarettes, e-cigarettes, vapes, chewing tobacco and other tobacco products in an effort to prevent teenagers from becoming addicted to nicotine at an early age.

"We're at it again, and it's critical for us to think about how we can address this differently," Rep. Camille Lilly, the House sponsor, said. "We the legislators are saying we hear you. You're saying you want to be a better society — let's raise the age to 21."

Proponents point to research that suggests 95 percent of current smokers began the habit before the age of 21. Opponents say if someone is old enough to join the military, vote or get married, they should be old enough to smoke.

"Voting and my right to choose who I marry and potentially build a family with seem more core to a liberty we would want to protect than picking up a cigarette. Drawing those together is problematic," Stephanie Morain, an assistant professor at Baylor College of Medicine in Houston, said.

Morain is a national proponent for Tobacco 21. She has conducted a number of surveys on smoking and youth and has written numerous papers on the topic.

But state efforts are encountering "a lot of pushback," Lilly, who represents a Chicago House district, said. Local governments have responded by making the change at their level. The result is a patchwork of ordinances in the northeastern corner of the state.

Evanston was the first community to adopt the Tobacco 21 initiative in 2014. Since then, use of all tobacco products among high schools decreased 37.5 percent, according to an American Heart Association fact sheet.

Chicago followed Evanston's lead soon after, with Oak Park, Highland Park, Naperville and Deerfield close behind.

When Lake County approved the measure, which took effect Jan. 1, it was the first county to do so. The move caused confusion for other areas hoping to do the same but felt stymied by a restriction in the state's constitution.

According to Section 6 of the state's governing document, a home-rule unit is a "[c]ounty which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units."

The first communities to change their statutes are home rule units, large enough that they are able to self-govern in areas not specifically prohibited by the General Assembly. Lake County is not one of these authorities.

TOBACCO, *Page 5*

Lake County set age limit based on health concerns for teenagers

TOBACCO, *FROM PAGE 3*

Lake County Health Department Executive Director Mark Pfister exploited a loophole to pass an effort he likened to the statewide push to ban smoking from public places in 2008.

Instead of passing a new ordinance, which it legally did not have the authority to do, the Lake County Board voted 19-2 to amend its existing County Code giving the health department permission to manage tobacco sales.

"The act that allows us to regulate these products right now neither prohibits nor gives us permission to raise the age to 21," Pfister said. "Our authority comes from a statute under the County Codes for Board of Health, so one thing we are tasked with is what I consider primary prevention."

The effort started when Pfister held a summit of more than 200 entities from Lake County communities, including law enforcement, hospitals, politicians and park districts.

The health department had three issues it wanted to tackle — passing Tobacco 21 laws, encouraging residents to cut down on the obesity rate and to build a better capacity to handle mental health — and it wanted to know which was the most doable.

More than 90 percent of those present, Pfister said, wanted to raise the age to purchase tobacco products. From there, it was a matter of sending notice of the proposed changes to the entities already regulated by the health department, holding public hearings, going through the appropriate committees and then presenting the proposal to the county board.

Once the measure passed, Pfister also sent notice to vaping shops and other stores that were not previously regulated.

"This is a product that is known to do harm — we have over 60 years of data to support that claim. The harm to be prevented is substantial," he said.

Morain also pointed out that while states might be concerned about the sales tax revenue drawn from tobacco products, and that is something to be considered, she said, "states' revenue and budgets should not be dependent on getting 15-year-olds addicted to cigarettes."

Last year, sales tax on tobacco products generated about $38 million and tax on cigarettes generated about $744 million, according to the state Department of Revenue.

The legislative gymnastics Lake County performed to pass the initiative does not appeal to every local governing body that supports the tenets of Tobacco 21.

Andrew Wheeler, chairman of the Kankakee County Board, expressed doubts his county could do what Lake County did.

"If the Illinois Constitution's County Code says we can't do it, we can't do it," Wheeler said. "Unless it specifically says we can do it, we won't do it."

The conversation, whether it leads to the passage of new ordinances or resolutions in support of the measure, is important, Lilly said.

"The beauty of different people picking up this charge is an indication of the importance of this issue," she said. "This issue is being talked about and addressed and advocated for across categories of our society. That means something."

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RADICAL CONFIDENCE

A Seyfarth Shaw associate focuses on doing the job

BY REBECCA ANZEL

Perspective is everything to Kevin Fritz.

Laws are simply "pieces of paper with a bunch of words" that, once he understands their meaning, he uses to help his clients. His law degree from Washington University in St. Louis is more than proof of an education and the gateway to a career — it provides him with the tools he uses as a labor and employment attorney.

And having a form of muscular dystrophy presents him with a "unique perspective" he leverages when working with employers to settle discrimination, leave entitlement and unemployment disputes, to name a few.

The 29-year-old associate at Seyfarth Shaw also acts as the vice chair of the firm's All Abilities Affinity Group, an advocacy group for the disability community.

At least once a week, Fritz donates his time, whether by advising small businesses on how to accommodate disabled people or filing cases that he said highlight the struggles individuals face every day, such as guardian ad litem for disabled adults and employment work for nonprofit organizations.

His current case is working to secure asylum for a disabled man forced to flee Mexico after receiving death threats. Fritz said he can identify with his client's challenges and was drawn to the case, like many of his pro bono projects, because of his "ability to really identify with people's real issues."

In his career, Fritz works to find a resolution. Sometimes it involves shifting his perspective.

"There are unique challenges in every situation, but there's always a solution," he said. "You just have to look at it a little bit differently."

This interview has been edited for length and clarity.

CL: What is most meaningful to you about your pro bono work?

Fritz: Probably that no matter the circumstances, disability or otherwise, you can make a difference and you can also relate to people. I think that as an attorney, we're given a very unique set of tools through our education. That's the only difference between me and a non-lawyer, right? Like, I know the law. I know how to navigate it. I know how to look at procedures and figure out loopholes and figure out ways to get ahead. And I think that what we need to do is advocate for people, know their rights and know how to challenge the system when necessary.

CL: How do your experiences affect how you practice law?

Fritz: My main thing in my entire life has always been about I'm very different from the defense attorney you see on a TV show. I am very physically disabled — I can't even type with my fingers — and yet on a regular basis, I'm doing huge things, and that's pretty good. I mean, it's a big deal because it shows that it doesn't matter about the physical that much. We worry too much about how people look and how people are perceived, when the focus should be on can they do the job.

CL: How else do you promote that idea?

Fritz: I do a youth program talking to kids with disabilities about what to do after high school, how to get a job, how to get an interview. You have to have something that I call radical confidence in life when you're disabled. And I try and promote that with my pro bono clients. You have to just be confident. People will look at you, people are going to stare, people are going to say things. But you can't let that bother you because you know your worth and that's all that matters.

CL: How would you define that radical confidence?

Fritz: I think I would define that as not allowing yourself to feel bad or to second-guess what you know is true. But I want to be very clear to you also, I don't think I'm an inspiration. I know that people always say that but I'm just living my life, just like you're living your life, just like the readers are living their lives. Your challenges are not my challenges and my challenges are not your challenges. I'm a guy from Pennsylvania who has always liked the law, I went to law school and I happen to be disabled. We all need to just live our lives and remember to be confident, and we can make changes. CL

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Photo by Rena Naltsas

Dispensaries confident protections for budding pot industry will stay

Bill keeping DOJ dollars away from state medicinal marijuana programs lapses soon

BY REBECCA ANZEL
Law Bulletin correspondent

SPRINGFIELD — Congress has little more than a week to renew legal protection for states with medical marijuana programs.

Federal lawmakers are considering whether to renew legislation, called the Rohrabacher-Blumenauer Amendment, that prevents the Department of Justice from spending federal dollars to prosecute marijuana-related charges in states where cannabis is legal. The provision is set to expire Jan. 19.

But officials at Illinois dispensaries and legal experts in the industry are confident Congress will act and that the business in marijuana will continue to grow.

Scott Abbott, chief operating officer for HCI Alternatives, said he does not think the amendment is at risk of expiring because medical marijuana programs have received "enough traction" with the American public. HCI Alternatives operates two dispensaries, one in Collinsville and the other in Springfield.

"I suspect whenever the next budget is passed, the amendment will still be in there simply because, even if it's anecdotal, there is more evidence being produced every day about the benefits of medical cannabis," he said. "And there's enough information that Congress is going to say the Department of Justice has other things to worry about."

Just last week, Attorney General Jeff Sessions announced he was rescinding Obama-era guidance to federal prosecutors to deprioritize marijuana-related cases in states with legal programs.

"Given the [d]epartment's well-established general principles, previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately," the memo states. His announcement came days after recreational cannabis became legal under California state law.

Sessions has a history of criticizing state legalization of marijuana. Last May, he wrote a letter to the legislative leaders in both houses disapproving of the Rohrabacher-Blumenauer Amendment and asking that Congress not renew the legislation.

"I believe it would be unwise for Congress to restrict the discretion of the [d]epartment to fund particular prosecutions, particularly in the midst of an historic drug epidemic and potentially long-term uptick in violent crime," he wrote in the letter.

In both his memo issued Jan. 4 and his letter to Congress, Sessions argues marijuana is dangerous and points out Congress also believes marijuana to be dangerous.

"I think Congress' next moves will be a direct response to that," Peter Murphy, a partner in Eckert Seamans' regulated substances practice group in Wilmington, Del., said. "We'll see if Sessions and Congress are in line. I don't think they are, and I think it's more than likely Congress will extend those protections contained in the Rohrabacher-Blumenauer Amendment."

The 9th U.S. Circuit Court of Appeals, sitting in California, looked at what protections states with medical marijuana programs are afforded under the amendment twice, most recently in *United States v. Steve McIntosh*. The court argued the Justice Department could not use its allocated funds to prosecute individuals who operated within the parameters of California's medical marijuana laws.

"It remains to be seen whether other courts will follow the [9th] Circuit's interpretation of the statutory language," Michael S. McGrory, partner at SmithAmundsen LLC, said in an written statement. "However, I think the reasoning employed by the [9th] Circuit in *McIntosh* will prove persuasive around the country."

The court made clear that the amendment only applies to medical marijuana programs, legal in 29 states and the District of Columbia. The Cole Memo, issued in 2013 by former deputy attorney general James Cole, did not differentiate between medical and recreational programs. States with the latter risk potential federal prosecution.

"It makes it very confusing because now, if you're a medical-marijuana patient or you're a business in a state where it's legal, you will need to look to the federal prosecutor in that state or federal district to determine his or her enforcement priorities," Murphy said. "And that could be problematic because it could play out differently in different jurisdictions."

> *"We'll see if Sessions and Congress are in line. I don't think they are ... "*

While the rescission of the Cole Memo may not directly affect licensed dispensaries in Illinois, it could indirectly perpetuate an existing industry issue.

In February 2014, the Department of Treasury's Financial Crimes Enforcement Network issued guidance to banking institutions that relied heavily on the Cole Memo to help explain "how financial institutions can provide services to marijuana-related businesses."

The federal government considers handling money associated with a marijuana transaction to be money laundering, and the memo issued "benchmarks" that clarified which suspicious activity reports banks should file each time money in a marijuana business' account is manipulated, William Silas Hackney III, a partner in SmithAmundsen's financial services group, said.

"The removal of those benchmarks most likely places Illinois financial institutions in the unenviable position of having to report any and all marijuana-related activity with their customers (even that activity which after extensive due diligence indicates is in all respects compliant with Illinois' already rigorous compliance standards) with a time consumer and expensive degree of heightened care and disclosure," he said in an written statement.

Hackney added these economic barriers are likely keeping Illinois banks from working with the cannabis industry.

Illinois' medical marijuana program, which became effective about four years ago, is set to expire in July 2020.

The law, Public Act 98-0122, included language to explain why legislators defend the program as legal: "States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this [a]ct does not put the [s]tate of Illinois in violation of federal law."

Last month, the 29,900 qualifying people enrolled in the state's program spent almost $9.3 million.

Abbott, who runs the HCI Alternatives dispensaries, said he does not think Sessions' rescission of the Cole Memo will halt the progress of the proposed state Cannabis Regulation and Taxation Act, encompassed in House Bill 2353 and Senate Bill 316, which would legalize recreational marijuana in Illinois and regulate it in the same way as alcohol.

"Recreational use is coming, and it's wise to start crafting some language before it's changed federally," he said. "Those conversations are taking place now, which I think is wise."

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Rebecca Anzel
Aug. 01, 2018
Charles N. Wheeler III
Public Affairs Reporting Portfolio

Project Memo: "Dispensaries confident protections for budding pot industry will stay"

News Judgment

Given that the Chicago Daily Law Bulletin presents news to Illinois' legal community of judges, attorneys, lawmakers and others, any news updates from the U.S. Department of Justice are of interest to its audience. What made this piece, about Attorney General Jeff Sessions' rescission of a guidance memo, of particular interest, though, is its potential effect on the state's marijuana program. Law Bulletin readers typically subscribe to other news outlets, such as the Chicago Tribune, for day-to-day news coverage of national and state issues. So more than this story being topically interesting to the paper's readers is the Law Bulletin's ability to contextualize it with the additional background and legal information readers have come to expect from the Bulletin. CDLB's deep-dive coverage of issues such as this one tends to clear up misreporting from other news outlets because articles delve into the legal weeds.

Marijuana is illegal at the federal level, but that has not stopped 29 states and the District of Columbia from legalizing the drug for medical purposes and other states for recreational uses. Given this murkiness, President Barack Obama's Department of Justice had issued a guidance memo to federal prosecutors that it would be best to focus resources pursuing other types of crime. That is the memo Sessions overruled, effectively instructing federal prosecutors to pursue marijuana charges as they see fit. It came at a time when

Sessions was being criticized by President Donald Trump and others, and just shy of the Trump Administration's first full year in office. All of these factors made this story one of interest to national, state and community audiences.

And the piece was timely beyond Sessions' involvement. Eight days after the article was published, a rider to the federal government's budget legislation that expressly prohibited the Department of Justice from using resources to prosecute marijuana-related crimes was set to expire. More than the memo rescission, this would have definitely negatively affected Illinois, which has a medical marijuana program in place. (That program is set to expire in July 2020.) It also has a community of attorneys who specialize in regulated substances, including marijuana. As such, this piece had a definitive audience of invested readers.

Research

I began working at the Law Bulletin's Capitol bureau on January 2, when there was not much of any news coming from the state's legislative, executive or judicial branches. My bureau chief did not have anything for me to work on, so I spent a lot of time consuming the national and state news of the day from other outlets. When the news of Sessions' decision to rescind the marijuana guidance memo broke, my first inkling was to localize the story for the Law Bulletin's readers and contextualize it with as much background information and details as possible. California also had just legalized recreational cannabis, adding another layer to the potential piece. As I began exploring the topic, though, I discovered a better news hook — while these two news events were playing out, reports of the stopgap measure's looming expiration, which provided funds for the federal government, was

getting buried. Further research led me to discover the Rohrabacher-Blumenauer Amendment, a measure passed with the federal budget that prohibited the Department of Justice from spending federal funds prosecuting cannabis-related crimes. At the time, the future of the amendment was unclear. There was speculation that Congress might not renew it after Sessions' announcement, or if it did, whether it would also seek to protect the states that have protections in place for recreational marijuana use.

The majority of my research for this piece was through documents, and I used interviews with attorneys and local cannabis distributors to add color and insight to the information I discovered in those documents. I read Illinois' medical marijuana program law to learn about what it specified, how long the program was to run and when dispensaries were allowed to begin operating in the state. The law also includes an interesting line that related to the national legal quandary very well — it almost defends the state's program despite marijuana's status as an illegal substance federally. In the same vein, I also consulted a piece of proposed legislation, Senate Bill 316, to get a sense of what the current General Assembly thought about marijuana and contacted Melaney Arnold with the Department of Public Health's press office to get a report from the Division of Medical Cannabis detailing how that industry was performing.

To get a sense on where Sessions, and thus the Justice Department, stood on these issues, I read two pertinent memos: the initial Cole Memo, issued by the assistant attorney general under Obama that suggested U.S. attorneys leave prosecution of marijuana laws to state officials, and Sessions', which overturned it. I also read a number of letters from Justice to the U.S. Senate and U.S. House legislative leaders, including the supplemental

information mentioned therein and the U.S. Treasury Department's guidance to banks detailing how to interact with cannabis businesses.

I also consulted the text of the Rohrabacher-Blumenauer Amendment and Trump's statement concerning it when he signed the stopgap measure. (That statement indicated he would balance his constitutional duties with the budget as it was passed.) In an effort to further contextualize this information, I read about laws in other states, such as Georgia, and court cases from around the country that attempted to interpret how these laws interacted.

To make sense of these documents, pieces of legislation and court cases, I consulted the websites of attorneys who practiced law in this area. SmithAmundsen's website includes legal guidance, and is how I found Michael McGrory. From speaking with him, I learned a bit about the state's medical cannabis industry, its legal challenges, the Rohrabacher-Blumenauer Amendment, how states have been able to legalize marijuana despite the federal government's stance and what effect Sessions' announcement had on any of this. William Silas Hackney III is from the same firm, but practiced financial law and so was able to illuminate issues the banking industry faced in regards to interacting with cannabis businesses. I also interviewed Peter Murphy about the same topics. As an attorney from Delaware, he was able to speak more broadly. To localize these issues, I spoke with the chief operating officer, Scott Abbott, for a local dispensary.

The aforementioned sources were the ones that made it into the final product. There were other sources, such as the U.S. Justice Department's website showing who the U.S. attorneys in Illinois are and how, because a few of the positions had not been filled at the

time, there was confusion about whether marijuana businesses in those districts could safely continue operations; letters from the U.S. Drug Enforcement Agency on this topic that address ongoing cannabis studies, which could eventually lead to the reclassification of the drug; and a press release from U.S. Senator Cory Gardner (R-Colorado) detailing how Sessions' memo was contrary to promises the AG had made.

Editorial Decisions

The information I discovered about the Rohrabacher-Blumenauer Amendment's expiration forthcoming became my lede after a discussion with my bureau chief, Andrew Maloney. We both decided it was not only a better news hook, it would not make this piece as overplayed as the rest of coverage around Sessions' rescission of the guidance in the Cole memo. From there, I zoomed in to quickly touch on how this national news was of any importance to the Law Bulletin's Illinois audience. Therefore, the piece hits the story's most important parts right away: the timely national deadline for re-upping an amendment to the budget, the possibility of this negatively impacting Illinois dispensaries and the outlook of those businesses.

From there, I continued to organize this story in order of the importance of the information. It is important in news pieces to arrange information in order of most impactful to least, so if a reader stops consuming the piece, he or she still has absorbed the most important tidbits. I zoomed out to explain the national legal precedent and clear up what Law Bulletin readers may have been misinformed about from other news outlets, then zoomed back in to more directly spell out the information's effect on local businesses, banks and legal practices.

In my opinion, quotes should add opinions that, as a journalist, I cannot assert or phrase information in a way that rewriting would not benefit readers. The quotes from Scott Abbott, from a local dispensary, do just that. Murphy's quotes contain interpretations of Session's actions and speculation about what Congress might do; McGrory's interpret court actions; and Hackney's explain the conundrum banks face. Those insights are based on the three men's legal expertise and I felt the information they shared were best left said by them. The quotes I used from documents better summarized points than I could have, and quotes from legal documents were included to adhere to the Law Bulletin's style of letting its audience read the most important text from a law or court decision.

Reaction

The four experts I spoke with for the piece emailed me to say they were satisfied with how I framed this issue and the manner in which I depicted their positions. SmithAmundsen in particular circulated the article around to members of both their substances and banking divisions. Aside from this feedback, I did not hear anything else from Law Bulletin readers about this story. I am satisfied with the level of in-depth reporting I did on this piece and think I accomplished what I set out to do. At the time, several news outlets were incorrectly reporting that Sessions' announcement meant U.S. attorneys would automatically begin to prosecute medical marijuana dispensaries across the country despite their status of being legal under state law. In fact, all the attorney general's memo did was allow prosecutors to use their judgement in bringing such cases. The Cole Memo still allowed for this, and as such, the only impact Sessions' announcement had was creating unease in the medical marijuana industry. I am hopeful that those who

consumed my piece had a better understanding of this fact, and were more informed on the various nuances of the topic.

Chicago Daily Law Bulletin

Trade orgs: No 'persons' in state bill

Bill expanding who can challenge state agencies draws ire

BY REBECCA ANZEL
Law Bulletin correspondent

SPRINGFIELD — Trade groups are attacking legislation that would give people directly and aversely affected by administrative decisions standing to fight the state in court.

Bills proposed by Geneva Republican Steven A. Andersson in the House and Chicago Democrat Kwame Y. Raoul in the Senate would open up agency decisions about permits to criticism from "persons" in a lawsuit. Currently, the law allows for "parties" in a dispute to lodge a claim.

According to the House version of the bill, which is identical to the one originally filed in the Senate, "a person suffering legal wrong because of an administrative decision, or adversely affected or aggrieved by an administrative decision, is entitled to judicial review of the administrative decision."

But the measures have drawn the ire of business groups, which claimed this week they go too far to expand standing. The courts have ruled that the current "parties" wording limits standing to the person or organization requesting the permit, and that members of the public have no role in the process. The change to "persons," the business leaders argue, could be interpreted to give "anyone in the world" the right to weigh in on Illinois permit decisions.

The Illinois Manufacturers' Association, Farm Bureau, Chamber of Commerce and others said at a news conference Tuesday that the legislation, House Bill 5119 and Senate Bill 3005, would "clog our court system" with new lawsuits.

"Environmental activists are pushing legislation that would allow anyone in the world, not just in Illinois, to weigh in on permit decisions issued by Illinois agencies," Mark Denzler, vice president of manufacturers association, said. "No longer would a person have to live in Illinois or be an impacted party."

At issue is the phrase "adversely affected or aggrieved," which the coalition said can be interpreted broadly to allow for challenges to Illinois policy to come from "a huge amount of people" who feel wronged.

"A person in California can claim that expanding Interstate 355 would add more cars to the road and increase emissions. A person in Indiana could claim that spraying for mosquitoes that control

BUSINESS, *Page 6*

GOP lawmaker calls manufacturers' interpretation 'flatly incorrect'

BUSINESS, *FROM PAGE 1*

West Nile virus impacts air quality negatively," Denzler said.

But Jennifer C. Walling, executive director of the Illinois Environmental Council, which drafted the language, said business interests received "poor legal advice."

According to a memo written by two environmental lawyers, case law proves a person must be physically harmed, not abstractly harmed, to bring a suit under the bills.

The phrase Denzler called too broad was pulled from the U.S. Administrative Procedures Act, which states, "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

The U.S. Supreme Court found in *Sierra Club v. Morton* (1972) that the environmental activist group could not challenge a decision to permit commercial development because it did not adequately prove the project would affect its members personally.

"It is clear, then, that passage of SB3005 would not allow persons to seek judicial review who have only an intellectual or ideological interest in the administrative decision," according to the memo. "People who were not so directly affected by the agency decision could not seek judicial review no matter how passionate their interest in the problem or how illegal the agency decision."

Andersson said Denzler's characterization of the potential effects of the measures is an "exaggeration" and "flatly incorrect." Currently, he said, only the group seeking a permit can appeal a state agency's decision. The bills would allow for others who might be affected to also make an appeal.

But Bill Bodine, associate director of State Legislation for the Farm Bureau, argued at the Statehouse media conference that there are "strong regulatory processes already in place" and adding new ones is unnecessary.

The House version of the bill stipulates someone has 60 days to lodge a challenge, though Andersson said he might change it back to the 35 days currently allowed under law. His bill additionally mandates that no new evidence "regarding the merits" of a decision can be submitted during judicial review.

And it explains that administrative decisions found to be "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law" can be struck down, among other criteria.

The Senate had an identical version, but it was amended at the end of February. It now stipulates that only a person who voiced his or her concern about a potential decision at a public hearing can seek a review.

It also limits which agencies are subject to the law to the Department of Agriculture, Environmental Protection Agency, Department of Natural Resources, Department of Public Health and the Department of Transportation — or, those that make decisions most impactful on Illinois' natural resources.

Raoul said the changes are a result of working to resolve objections raised in committee and that the version currently under consideration in his chamber is not the final iteration.

"I appreciate that everyone is all up in arms about the bill, but this is an issue I'm committed to working to try to resolve," he added. "The bill as it was passed out of committee is not how I intend on going forward on it. It's what I clearly stated and that's why there was bipartisan support coming out of committee."

Raoul is the Democratic nominee for Illinois attorney general. His Republican opponent in the race criticized the measure.

"[The bill] creates a dissenter's delay, allowing anyone who disagrees with the decision an opportunity to go to court to try to block the permit that the administrative agency already found should be issued," Erika N.L. Harold, the Republican pick for the state's top attorney, said in a statement.

"This unfettered expansion of standing will exacerbate Illinois' already overly litigious environment and hurt job creation by further driving up the cost of doing business in Illinois," she said.

The House version of the legislation is in committee. A hearing is scheduled for Tuesday. The Senate version is further along in the legislative process.

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Rebecca Anzel
Aug. 01, 2018
Charles N. Wheeler III
Public Affairs Reporting Portfolio

Project Memo: "Trade orgs: No 'persons' in state bill"

News Judgment

A pair of bills, House Bill 5119 and Senate Bill 3005, would change the scope of who could appeal a permit decision by a group of state agencies. I had been tracking them since they were proposed because this is the sort of legislation in which attorneys are invested, as it had the potential to expand client sizes for firms. What cemented my interest in the story, and the reason I reported it out when I did, was because a coalition of interest groups scheduled a news conference to denounce the measures, but for reasons that were inaccurate. The groups were circulating a news release that claimed these bills, if enacted, would allow anyone in the world to sue the decisions made by Illinois state agencies. Each chamber had a different version of the bill with separate stipulations, and to arrive at that interpretation, the groups conflated the two versions. Given the subject matter and the potential for less informed news outlets to be doomed to parrot this misinformation, I felt it was important to pursue this story.

It also helped that Senator Kwame Raoul (D-Chicago), the sponsor of the Senate's version of the measure, was (and still is) a candidate for attorney general. This race is perhaps as well followed by Law Bulletin readers as the gubernatorial race is for the rest of the state's news consumers. Therefore, this story would be part of a wider coverage of issues in both Raoul's campaign and that of his Republican rival, Erika Harold. Also, Rep.

Steven Andersson (R-Geneva), the sponsor of the other chamber's initiative, is one of the republican lawmakers who split from Governor Bruce Rauner's influence during the almost three-years-long budget stalemate. Law Bulletin readers who closely followed state government expressed interest in what Representative Andersson and his other Republican colleagues not running for reelection would choose to support moving forward. Both men are also attorneys.

The organizations holding the news conference included the Illinois Manufacturers' Association and the Illinois State Chamber of Commerce, both of which the paper's readership follows, especially in Chicago. Any time these groups hold a media event to denounce or support legislation, someone from the bureau attends.

Research

I began, much like Professor Wheeler has advised, by rereading both bills again. I compared each version of both chambers' legislation and then made a chart comparing what HB 5119 actually would do if enacted and what SB 3005 would do differently. Creating such a detailed graphic better helped me to understand the complexity of what the bills included and what that meant practically, and then ask informed questions at the news conference.

The media advisory circulated to Statehouse reporters also helped me prepare for the news conference and writing the story. It included the names of the trade groups' representatives scheduled to attend the event and a synopsis of what those organizations would discuss. At the event, I was able to record information given by each of those five individuals: Mark Denzler, vice president of the Illinois Manufacturers' Association; Bill

Bodine, associate director of State Legislation for the Illinois Farm Bureau; Kelly Thompson from the Illinois Chamber of Commerce; Dan Eichholz, executive director of the Illinois Association of Aggregate Producers; and Jim Watson, executive director of the Illinois Petroleum Council. I specifically questioned Denzler at the press conference, pressing him to address in inaccuracies presented.

After the conference, I interviewed Andersson, Raoul and Harold. The lawmakers not only were able to speak in great detail about their bills but also, being attorneys, the legal nuances of the issue. My conversation with Harold was short, but she was able to articulate why she did not support either version of the bill. Additionally, I spoke to both attorney general candidates generally about their positions on regulation.

I spent a bit of time looking into which other groups supported and opposed the legislation, and who drafted the language. I placed phone calls to representatives from law firms and other organizations who filled out a witness slip when both bills were still in committee. It was through one of those many inquiries that I discovered Jennifer Walling from the Illinois Environmental Council, the executive director of the group that wrote this legislation. She was able to answer questions about why the legislation would be important and what accurate arguments opposition groups might have. Walling also passed along an internal memo her organization penned that detailed what inspired HB 5119 and SB 3005 and how the judicial branch had interpreted similar legislation. I spent additional time learning about the cases mentioned in that memo.

Editorial Decisions

To avoid repeating the misinformation the trade group representatives said at the news conference, I began this story more generally. Law Bulletin style is to craft a lede that is as specific as possible without naming names. Therefore, this piece begins by saying trade groups do not like a piece of legislation that specifically would open permit decisions made my state agencies to more criticism. My next paragraph gets slightly more specific, naming both sponsors, adding additional information about what the legislation does and introduces the legal crux of the problem. From there, I informed readers of the controversy, the main trade organizations that have a problem with the legislation and the bill numbers. This is the right place for such information because by this point in the story, readers are already aware of the facts, have a basis of information to understand the groups' opposition and, if they choose, can look up the bills' language for themselves.

The piece then zooms in to examine the legal minutia of two main points: the "persons" v. "parties" debate and the issue with the phrase "adversely affected or aggrieved." To break up this dense information, I interspersed quotes from the group that wrote the legislation, the groups that oppose it and one of the sponsors. To contextualize how the courts have interpreted these legal debates, I included information about a relevant court case, Sierra Club v. Morton, that addresses these issues directly. I also added specific changes each bill would make. Law Bulletin readers, as aforementioned, prefer this sort of detail and often read the legislation's text for themselves. I concluded the piece with information from the other sponsor, Raoul, and the position of Harold, his rival in the attorney general race.

The quotes I chose for this piece are phrase and complete thoughts that are strongly-worded opinions best left in their own words. I also included relevant language from the bills to provide the Law Bulletin's audience with the sort of information they have come to expect from the publication.

Reaction

Prior to publishing this piece, I had a good working relationship with the Chamber of Commerce and the Illinois Manufacturers' Association. In interviews with Denzler for subsequent stories, he has insisted a spokesperson be present. He apparently did not appreciate being grilled during the press conference. Aside from that, however, this story did not spark any other reaction. I am glad I pursued this story because other reporters had come up to me after the press conference to say they had not realized the trade organizations' position was predicated on a conflated amalgamation of both chamber's versions of the legislation.