NO. 3-19-0159

IN THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

LANDMARKS ILLINOIS, NATIONAL TRUST FOR HISTORIC PRESERVATION, ROCK ISLAND PRESERVATION SOCIETY, MOLINE PRESERVATION SOCIETY, BROADWAY HISTORIC DISTRICT ASSOCIATION, and FREDERICK SHAW,	)	Appeal from the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois
Plaintiffs-Appellants,	)	
vs.	)	Case No. 2019 CH 40
ROCK ISLAND COUNTY BOARD and ROCK ISLAND COUNTY PUBLIC BUILDING COMMISSION,	)	Judge Jodi M. Hoos
Defendants-Appellees.	)	

BRIEF OF DEFENDANT-APPELLEE, ROCK ISLAND COUNTY BOARD

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ORAL ARGUMENT REQUESTED

APPENDIX SEPARATE

POINTS AND AUTHORITIES

JURISDICTION

There is a question as to jurisdiction in this case. Plaintiffs claim jurisdiction from the Circuit Court's March 22, 2019 order (C. 1195) pursuant to Ill. Sup. Ct. R. 304(a). However, this order was entered after the case was already up on appeal pursuant to an interlocutory appeal filed by Plaintiffs pursuant to Ill. Sup. Ct. R. 307(d) on March 21, 2019. (C. 1188). As will be explained below in Part I of the Argument of this brief, that means the 304(a) finding of the Circuit Court may be a nullity, and thus Plaintiffs have not obtained jurisdiction for this appeal.

STATEMENT OF FACTS

The facts alleged in Plaintiffs' Complaint and matters which the Circuit Court was requested to judicially notice[1] showed the following facts.

A. Background on the Courthouse

The Rock Island County Courthouse, located at 210 15th Street, Rock Island, Illinois (the "Courthouse"), was constructed in 1896 and opened in 1897. (C. 7, 12). The Courthouse is a four-story structure plus basement, each floor measuring roughly 11,500 square feet. (C. 886).

In their Complaint, Plaintiffs allege that the Courthouse was designed by a noted architectural firm and was designed with Spanish Renaissance or Roman-style architecture. (C. 12). The Courthouse has allegedly been determined to be eligible for

[1] The County Board requested that the Circuit Court take judicial notice of various documents with respect to its Motion to Dismiss which incorporated its TRO Resistance. (C. 858; 1030-31). A court may take judicial notice of facts outside the complaint in determining whether a complaint states a valid claim for relief. *Pooh-Bah Enterprises, Inc. v. Cty. of Cook*, 232 Ill. 2d 463, 473 (2009).

listing on the national register of historic places by the director of Illinois Department of Natural Resources (IDNR). (C. 13).

Significant problems with the condition of the Courthouse have arisen through the years. In 1992, the Illinois Judges Association issued a report finding that the Courthouse failed to meet minimum courtroom standards. (C. 1008). The report noted that the Courthouse had originally been constructed with domes on the roof, but the domes were removed in 1958 due to serious leaking. (C. 1004). The report stated that the "patchwork remodeling" done in the Courthouse was expensive and inadequate, and that the Courthouse gave the impression to the public of being an "obsolete court building." (C. 1010). The report recommended that the County Board construct a modern judicial facility. (C. 1015). In 2008, an assessment of the Courthouse by KJWW Engineering listed deficiencies, including mechanical and electrical systems requiring substantial upgrades, that were deemed to be cost prohibitive. (C. 1017).

The Courthouse was vacated in December 2018. (C. 13).

B. The Rock Island County Public Building Commission and the Construction of the Jail, Justice Center, and Annex

In 1987, Defendant Rock Island County Board (the "County Board") passed a resolution creating Defendant Rock Island County Public Building Commission ("PBC"). (C. 10, 44-45). The purpose of the PBC was to provide for a good and sufficient jail for Rock Island County. (C. 44).

In or around 1998, the PBC constructed improvements to the Rock Island County jail, including adding courtrooms, in the facility that was referred to as the jail's "Justice Center." (C. 71). In 2015, the County Board and PBC determined that in order to

provide for a good and sufficient jail, it was necessary to construct, improve, alter, equip, repair, maintain, operate and secure the Justice Center, including construction of an Annex to the Justice Center (the "Annex") on the previously approved site. (*Id.*). In 2015, the PBC and County approved plans for constructing the Annex, to include additional judicial facilities. (C. 21). Under the plans, the Annex was physically connected to the Jail and Justice Center, and directly across from the Courthouse. (C. 343).

In 2015, the Rock Island County State's Attorney moved to appoint a special prosecutor to challenge the PBC's legal authority to construct the Annex. (C. 56). Judge Walter Braud, the Chief Judge of the Fourteenth Judicial Circuit (the "Chief Judge"), granted that motion and appointed the State's Attorney Appellate Prosecutor to file a *quo warranto* action against the PBC. (*Id.*). With the approval of the Illinois Supreme Court, the Chief Judge also assigned the *quo warranto* case to a judge outside of Rock Island County to avoid any potential conflict of interest. (*Id.*). The State Attorney Appellate Prosecutor filed its *quo warranto* complaint alleging that the Annex was improper because it was not within the PBC's purpose of providing for a good and sufficient jail. (C. 57-58).

On January 6, 2016, the Circuit Court in the quo *warranto case* determined that the construction of the Annex was lawful under the PBC's existing purpose. (C. 1028-29). The court noted that the Annex would not be a separate structure, but was completely integrated with the jail and Justice Center structure, and thus the Annex would enhance the PBC's purpose. (*Id.*). No appeal was taken and the Court's determination in the *quo warranto* action is a final judgment.

C. The Decision to Demolish the Courthouse

The Courthouse is in close proximity to the Justice Center and Annex, as the Courthouse is less than 40 feet away from the Annex. (C. 343, 884).

In July 2017, the County Board passed a resolution finding that the Courthouse was in a functional state of decrepitude. (C. 895). It found the County lacked the funds necessary to rehabilitate the Courthouse, and its efforts had not identified any realistic solution to preserve the Courthouse. (*Id.*). The County Board found that demolishing the Courthouse was "necessary for the maintenance and security" of the Justice Center and Annex. (*Id.*). The County Board and the PBC entered into an intergovernmental agreement where they determined that the Courthouse's decrepit state and lack of security poses a risk to the safety and maintenance of the adjacent Justice Center and Annex, as well as those using it. (C. 898-99). The County Board determined it was in the best interests of the citizens of Rock Island County to demolish the Courthouse and improve the site to protect and enhance the Annex. (C. 898).

Regarding the County and PBC's obligations under the Illinois Public Building Commission Act (PBC Act), the intergovernmental agreement found that the area for the PBC's work would be expanded to cover the location of the Courthouse. (C. 899).

In December 2018, in preparation for the demolition, the County and PBC submitted a Notice of Intent for General Permit to Discharge Stormwater Associated with Construction Activities (the "NOI") to the Illinois Environmental Protection Agency (IEPA). (C. 355-56). Under the terms of NPDES Permit No. ILR10, the IEPA's general storm water permit, an applicant submits a NOI to use the permit, and after 30 days the

applicant may proceed to discharge stormwater unless the IEPA informs the applicant they may not. (C. 1163).

Following the submission of the NOI, the Illinois State Historic Preservation Office (SHPO) wrote a letter to the County's agent. (C. 358). In this letter, the SHPO asserted that the County and PBC had to consult with the SHPO to develop a plan to avoid any adverse effect on the Courthouse, pursuant to the Illinois State Agency Historic Resources Preservation Act. (C. 29, 358).

On January 25, 2019, the Chief Judge entered an administrative order in which he concurred with the County Board's decision to demolish the Courthouse. (C. 884-93). The Chief Judge determined that, given the close proximity of the Old Courthouse to the Annex, it posed a security risk to judicial personnel and those visiting the Annex. (C. 884, 892). The Chief Judge also determined that the Courthouse's condition of disrepair posed risks to those who would be in the area of the Courthouse. (C. 892). Under its administrative authority as Chief Judge, the Court ordered the County Board and PBC to demolish the Courthouse, and that security enhancements for the Annex should be put in its place. (C. 892).

D. The Litigation

On February 6, 2019, more than six months after the County Board and PBC resolved to demolish the Courthouse, Plaintiffs filed this lawsuit to obtain an injunction halting demolition. (C. 7). Plaintiffs are either bondholders or special interest groups who purport to value the alleged historic character of the Courthouse. (C. 7-9). In their claim under Count I, Plaintiffs alleged that the County and PBC would violate the State Agency Historic Resources Preservation Act by demolishing the building. (C. 33-34). In

Counts II and III, Plaintiffs alleged that the County and PBC violated the PBC Act because they did not obtain approval from the Rock Island City Council to demolish the Courthouse, and because demolition would be outside the PBC's purpose. (C. 34-35). Counts IV-VI are only directed at the PBC and raised claims under the bonds issued for the PBC. (C. 35-38).

Plaintiffs requested a temporary restraining order (TRO). (C. 377-88). The Defendants resisted Plaintiffs' request for a TRO, and also filed Motions to Dismiss the Plaintiffs' Complaint. (C. 857-1033).

On March 8, 2019, the Trial Court granted a TRO in Plaintiffs' favor, temporarily halting any demolition activities. (R. 36). The Circuit Court ruled that the TRO would be in effect until the hearings on the Motions to Dismiss, which were set for hearing on March 19, 2019. (*Id.*).

On March 19, 2019, following argument, the Circuit Court granted the Defendants' motions in an oral ruling. (R. 76). On the claim under the State Agency Historic Resources Preservation Act, the court found that the County and PBC were not state agencies, and that expanding the statute to apply to them would be improper. (R. 70-72). On Count II, the court determined that approval of a new "site" by the Rock Island City Council was not necessary, because the PBC Act allows demolition activities within the "area." (R. 72-73). On Count III, the court ruled that the demolition of the Courthouse was not an improper purpose. (R. 73-74). The court relied on the fact that the demolition was closely related to the construction of the Annex, and the *quo warranto* decision had determined that the Annex was validly within the PBC's purpose. (*Id.*).

Counts I, II, and III were dismissed with prejudice but Plaintiffs were granted leave to replead their other counts. (R. 74-76). Plaintiffs did not move for a Rule 304(a) finding at that time.

On March 21, 2019, Plaintiffs filed a Notice of Interlocutory Appeal pursuant to Rule 307, appealing the court's decision on the TRO, which was docketed as Appeal No. 3-19-0146. (C. 1188). On appeal, Plaintiffs requested a stay of the Circuit Court's order, which was granted. (C. 1194). On March 22, 2019, the Circuit Court entered a written order dismissing Plaintiffs' Complaint and entering a Rule 304(a) finding with respect to Counts I, II, and III. (C. 1195-96). Plaintiffs appealed. (C. 1197-98). On April 1, 2019, this Court granted Appellants Rule 307 Petition and ordered that its stay and the TRO issued by the Circuit Court would "remain[] in full force and effect until further order of this Court in Case No. 3-19-0159," which is the present appeal. (C. 1200).

STANDARD OF REVIEW

This appeal involves the dismissal of Plaintiffs' Complaint for failure to state a claim. The Circuit Court's grant of a motion to dismiss is reviewed *de novo*. *Dawson v. City of Geneseo*, 2018 IL App (3d) 170625, ¶ 11.

"The appellate court may affirm a trial court's grant of a section 2-615 motion to dismiss on any basis supported by the record." *Id.* It is the judgment of the lower court, not its reasoning, that is reviewed on appeal. See *In re Estate of Funk,* 221 Ill. 2d 30, 86 (2006). "A reviewing court may sustain the decision of a lower court on any grounds which are called for by the record regardless of whether the lower court relied on the grounds and regardless of whether that court's reasoning was correct." *Id.*

ARGUMENT

As correctly noted by the Circuit Judge, this case is not about the wisdom of the County's decision to demolish the Courthouse. (R. 70). Nor was the decision to demolish the Courthouse, as Plaintiffs seek to argue, a decision forced on the County by the Chief Judge, whom Plaintiffs accused of concocting a plan to "circumvent the law." (C. 1111). Rather, the demolition decision was a legislative decision by the County Board, made after years of debate within the County.

The County, like many financially distressed public bodies in Illinois, was faced with a public facility that was significantly deteriorating, and was struggling with methods to pay for its repair or replacement. (C. 877). The County partnered with the PBC to address these issues. (*Id.*). The County and PBC built an Annex attached to the Jail with additional courtrooms, investing over $28 million of PBC bonds. (C. 23). To protect this substantial investment made by the taxpayers of Rock Island County, the County Board decided it was in the best interest of the County and its residents to demolish the dilapidated Courthouse. (C. 877-79). This case is about whether Plaintiffs, who represent a narrow range of special interest groups, can override the County Board's legislative decision.

While Plaintiffs accuse the County and PBC of "having a history of failing to comply not complying with their legal obligations (Appellant's Brief p. 18), the record does not support that assertion. The County and PBC have made every effort to determine their legal obligations and comply with them. They filed a *quo warranto* action and obtained a ruling that building the Annex was a valid part of the PBC's purpose. (C. 1028-29). (This is the final judgment that Plaintiffs, without any evidence,

denigrate as "sham litigation" (Appellants' Brief p. 34)). The County and PBC analyzed their obligations under the PBC Act (C. 820-23, 899) and made the legislative judgement that demolition of the Courthouse was necessary for the maintenance and security of the Annex. (C. 877). And the County and PBC followed the process mandated by the IEPA by giving notice that they intended to use the NPDES general stormwater permit for demolition activities. (C. 355-56). At every step of the process, the County and PBC have obtained rulings that their actions are lawful.

The Circuit Court properly rejected Plaintiffs' attempts to stop the County's legislative decision to demolish the Courthouse by using inapplicable statutory provisions. Count I fails because the Illinois State Agency Historic Preservation Act does not create a cause of action against the County or PBC, and is not triggered under the facts of this case. Count II fails because the County and PBC are demolishing a building in the area of the Jail and Annex, and did not need to select a new site. Count III fails because the demolition of the Courthouse is necessary to secure and maintain the Annex and does not expand the PBC's purpose.

Therefore, all claims raised by Plaintiffs fail on the merits. However, before the merits of their claims are addressed, jurisdiction must be addressed. Plaintiffs' appeal may fail because they did not secure jurisdiction for this Rule 304(a) appeal where they failed to obtain a 304(a) finding until the case was already up on appeal of the TRO.

I. There is a Question About Jurisdiction Over Plaintiffs' Rule 304(a) Appeal

Because Plaintiffs did not obtain a Rule 304(a) finding until the day after they noticed their Rule 307 appeal, there is a question about whether this Court lacks jurisdiction over the Plaintiffs' appeal. The procedural history of the Plaintiffs' filings in

the Circuit Court and in the Plaintiffs' Rule 307 Appeal (Appeal No. 3-19-0146) demonstrates that the Circuit Court may have lacked jurisdiction to enter the Rule 304(a) finding in its March 22, 2019 order, as Plaintiffs may have already divested the Circuit Court of jurisdiction by filing a Rule 307(d) appeal.

On March 8, 2019, the Circuit Court entered a TRO against Defendants; under the terms of the TRO, it would only be in effect until the hearing on the Defendants' Motions to Dismiss. (R. 36). The Defendants' Motions to Dismiss were heard on March 19, 2019, and the Court granted the motions in an oral ruling after oral argument. (R. 76). Counts I, II, and III were dismissed with prejudice but Plaintiffs were granted leave to replead their other counts. (R. 74-76). Plaintiffs then requested that the TRO be left in place for 7 days so Plaintiffs could decide whether to take an appeal. (R. 77). The Circuit Court denied Plaintiffs' oral motion. (*Id.*). Plaintiffs did not move for a Rule 304(a) finding at any time during the March 19th hearing, even though the Circuit Court asked whether any further issues needed to be addressed following its dismissal of Plaintiffs' Complaint. (R. 79).

On March 21, 2019, Plaintiffs filed a Notice of Interlocutory Appeal pursuant to Rule 307(d), which was eventually docketed as Appeal No. 3-19-0146. (C. 1188). Plaintiffs also filed in the Appellate Court an Emergency Petition to Stay. (See A. 147-58).[2] In that filing, Plaintiffs requested that the Appellate Court "stay the enforcement, force, and effect of the Circuit Court's March 19, 2019 Order in its entirety, including its order dismissing the Complaint and the order vacating the TRO, pending this Court's

[2] For the Court's convenience, the Plaintiffs' filings from Appeal No. 3-19-0146 that are referenced in this brief are provided in the County Board's separate appendix, and citations to those documents will be by appendix page number.

resolution of Appellants appeal of the Circuit Court's order, which Appellants are prepared to undertake on an expedited basis to mitigate any harm from delay of the demolition." (A. 158). While Plaintiffs sought a stay so they could pursue an appeal of the Circuit Court's grant of the motion to dismiss, Plaintiffs acknowledged that they had not obtained a Rule 304(a) finding at that time they requested their stay. (A. 148). In their Rule 307 Petition, Plaintiffs requested that the case be remanded to the Circuit Court with instructions to reinstate the TRO until Plaintiffs could be heard on an appeal of the merits of dismissal of Plaintiffs' Complaint. (A. 169).

On March 22, 2019, the Appellate Court allowed Plaintiffs' Emergency Petition to Stay. (C. 1194). The Circuit Court then entered a written order confirming the dismissal of Counts I, II, and III with prejudice, and making a Rule 304(a) finding that an appeal may be taken from the final judgment on Counts I, II, and III because there is no just reason for delaying an appeal. (C. 1195-96). Plaintiffs then filed a "Notice of Appeal Joining Prior Appeal" stating that they were appealing the Circuit Court's March 22, 2019 order and attempting to join it with their Rule 307 appeal. (C. 1197-98). Plaintiffs also filed a Motion to Consolidate the two appeals, arguing that the appeals presented identical issues and proposing that the Rule 304(a) appeal be briefed on an expedited basis. (A. 196-201).

On April 1, 2019, this Court granted Appellants Rule 307(d) Petition and ordered that its stay, and the TRO issued by the Circuit Court, would remain in full force and effect until further order of the Court in the 304(a) appeal currently before the Court. (C. 1200).

Plaintiffs claim jurisdiction under Rule 304(a), which allows for the appeal of orders that do not dispose of all claims or parties before the court if the trial court makes a finding that there is no just reason to delay enforcement or appeal. Ill. Sup. Ct. R. 304(a). Here, because Plaintiffs did not obtain a 304(a) finding until their Rule 307 appeal had already been noticed, and because Plaintiffs were attempting to use the 304(a) finding to change the nature of the relief they could obtain in the Rule 307 appeal, the Circuit Court's 304(a) finding on March 22 was a nullity.

Before the appellate court can consider the merits of an appeal, it must ensure it has jurisdiction. *In re Application of Cty. Collector*, 395 Ill. App. 3d 155, 159 (2009). "[T]his court has a duty to determine if jurisdiction to hear this appeal exists and to dismiss this appeal if jurisdiction is lacking." *Id.* The mere fact that a trial court makes a finding that an order is appealable, including a Rule 304(a) finding, does not make that order appealable. *Id.* at 160. Where there is no proper Rule 304(a) finding, there is no jurisdiction for an appeal. *Harreld v. Butler*, 2014 IL App (2d) 131065, ¶ 17.

The general rule of jurisdiction is that a trial court is divested of jurisdiction over a cause upon the filing of a notice of appeal. *Bank of Viola v. Nestrick*, 94 Ill. App. 3d 511, 513–14 (1981). While the filing of a notice of appeal from an interlocutory order does not divest the trial court of all jurisdiction in the case, it does prevent the trial court from entering orders that would change or modify the interlocutory order. *Home Savings and Loan Association of Joliet v. Samuel T. Isaac*, 99 Ill. App. 3d 795, 799 (3d Dist. 1981). The trial court also loses jurisdiction to enter any order that affects the subject matter of the order on appeal. *Id.* While the trial court retains jurisdiction to hear and determine matters arising independent of and unrelated to the portion of the proceeding

that pends on appeal, an order affecting the subject matter of a prior interlocutory appeal is a nullity. *Id.* See also *Jill Knowles Enterprises, Inc. v Dunkin*, 2017 IL App (2d) 160811, ¶ 14 (the trial court lost jurisdiction to enter an order admitting exhibits into evidence after notice of appeal is filed); *Marston v. Walgreen Co.*, 389 Ill. App. 3d 337, 340 (2009) (the trial court lacked jurisdiction to allow a motion to intervene "which substantively altered the nature of the appeal").

The Rule 304(a) finding obtained by Plaintiffs on March 22 substantively altered the nature of pending Rule 307 appeal. In their request for a stay and Rule 307 petition, Plaintiffs asked for a stay/TRO extension so they could file and pursue a Rule 304(a) appeal. (A. 158; 169). While Plaintiffs had not obtained a Rule 304(a) finding at that point, they argued that the relief sought in the pending Rule 304(a) appeal should be tied to their right to pursue a Rule 304(a) appeal. The Circuit Court's 304(a) finding altered the pending Rule 307 appeal, because it enabled them to obtain the relief they sought in the Rule 307 appeal—a stay/TRO pending the disposition of a 304(a) appeal, which was relief that Plaintiffs *never requested* from the Circuit Court at any point. This relief could not have been granted in the Rule 307 appeal had the 304(a) finding not been entered by the Circuit Court.

As such, the Rule 304(a) finding by the Circuit Court altered the 307 appeal, presenting a new case to this Court. Under the rule set forth in *Jill Knowles Enterprises*, if the Circuit Court lacked jurisdiction to enter the Rule 304(a) finding, the finding would be a nullity and therefore insufficient to confer jurisdiction. If there is no jurisdiction, this appeal must be dismissed, and as discussed later in this brief, the stay/TRO entered by this Court on April 1, 2019, would have to be lifted.

II. Count I was Properly Dismissed Because the State Agency Historic Preservation Act does Not Create a Cause of Action against the County or PBC

In the event this Court determines there is jurisdiction for this appeal and reaches the merits of Plaintiffs claims, it should affirm the Circuit Courts' dismissal. Plaintiffs' claims under the State Agency Historic Resources Preservation Act in Count I fail for two reasons. First, the Act does not provide a cause of action against the County Board or PBC. Furthermore, application of the statute to interfere with the Chief Judge's administrative authority over the judicial facilities would be a violation of separation of powers principles.

A. The State Agency Historic Preservation Act Does Not Provide a Basis for Suing the County or PBC

Much of Plaintiffs' brief pertains to whether the demolition of the Courthouse is an "undertaking" under the State Agency Historic Resources Preservation Act and interpreting the complex provisions of the statute. While much of Plaintiffs' statutory interpretation is incorrect, Plaintiffs' claims under the statute fail for a far simpler reason—the statute only creates obligations for state agencies, and because the County Board and PBC are not state agencies, they cannot violate the statute. As discussed below, the dismissal of Count I can be affirmed on this basis alone. But even if this glaring problem was overlooked, Count I was properly dismissed because the obligations under the statute are not triggered by the permit application to the IEPA, and because the language of Section 4(a) of the statute does not apply to this case.

1. The State Agency Historic Preservation Act Does Not Create a Cause of Action Against Non-State Agencies

In Count I of their Complaint, Plaintiffs have claimed that the County and PBC "have and continue to violate the [State Agency Historic Resources] Preservation Act." (C. 34). Plaintiffs' arguments are contrary to relevant principles of statutory construction. The County and PBC cannot violate the State Agency Historic Resources Preservation Act. By the statute's plain terms, it only applies to state agencies. The brief of Plaintiffs and the amicus brief of the IDNR extensively discuss the consultation obligations under the statute, but Section 4 is clear that those obligations only apply to a state "agency." 20 ILCS 3420/4(c). The County and PBC are not state agencies and have no obligations under the statute; therefore they cannot be sued for violating it.

The consultation obligations set forth in the State Agency Historic Resources Preservation Act only apply to a State "agency." 20 ILCS 3420/4(c). The statute defines "agency" as having the same meaning as in Section 1-20 of the Illinois Administrative Procedure Act." 20 ILCS 3420/3(b). The definition of "agency" under the Illinois Administrative Procedure Act specifically excludes "units of local government and their officers." 5 ILCS 100/1-20. The definition of agency also excludes the circuit court. *Id.* Courts have uniformly held that counties and their officers do not meet the definition of agency and thus are exempt from the requirements of the Administrative Procedure Act. See, e.g., *Macon Cty. v. Bd. of Educ. of Decatur Sch. Dist. No. 61*, 165 Ill. App. 3d 1, 8 (4th Dist. 1987). Thus, as the Circuit Court correctly held, because the County Board and PBC are local governmental units and not State agencies, they are not bound by the requirements of the Act. (R. 71-72).

Because the statute only applies to state agencies, and not local governments, the County and PBC cannot be liable for alleged violations of the State Agency Historic Resources Preservation Act. While there is no Illinois case law addressing this issue, caselaw interpreting the analogous National Historic Preservation Act (NHPA) is instructive. Similar to the Illinois statute, the NHPA requires federal agencies consider the effect of undertakings on historic properties. 54 U.S.C.A. § 306108. Federal courts have held that a plaintiff cannot sue parties who are not federal agencies under the NPHA, because "[b]y its terms, only a federal agency can violate" the NPHA. *Vieux Carre Prop. Owners, Residents & Assocs., Inc. v. Brown*, 875 F.2d 453, 457–58 (5th Cir. 1989) (affirming dismissal of non-federal agencies who were sued for violations of the NHPA). See also *W. Mohegan Tribe & Nation of New York v. New York*, 246 F.3d 230, 232 (2d Cir. 2001) ("[T]he law makes it clear that violations of the NHPA can only be committed by a federal agency."); *Pres. Coal. of Erie Cty. v. Fed. Transit Admin.*, 356 F.3d 444, 455 (2d Cir. 2004) (discussing cases).

This reasoning is persuasive and should be followed, because like the NHPA, only a State agency can violate the State Agency Historic Resources Preservation Act. The statute thus creates no cause of action against the County and PBC.

Plaintiffs do not explain how they can pursue claims under the statute against the County Board and PBC, who are not state agencies. There is no statutory language creating any obligations under the statute for parties who are not state agencies. See generally 20 ILCS 3420/4. To imply that there is a right of action against a non-state agency, Plaintiffs attempt a sleight of hand—citing Section 4(c) of the statute, Plaintiffs claim that under the statute, "Neither the State agency permitting the undertaking, nor the

permit applicant, may proceed until the consultation process has concluded." (Appellants' Brief p. 22). The statute contains no language to this effect. Plaintiffs are attempting to add language to a statute which is not present, which is impermissible. See *People v. Smith*, 2016 IL 119659, ¶ 28 ("No rule of construction authorizes this court to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions or limitations the legislature did not include.").

Furthermore, interpreting the State Agency Historic Resources Preservation Act in the manner proposed by Plaintiffs would contravene legislative intent. "It is well settled that this court's primary objective in construing a statute is to give effect to the intent of the legislature." *Id.* ¶ 27. Here, the Act contains an express statement of legislative intent, stating that the purpose of the statute is to protect historic resources that are (1) "under the[] control" of State agencies, (2) "State-owned," or (3) affected by "State projects." 20 ILCS 3420/1. None of these situations apply here, as the demolition of the Courthouse involves no State project, is not State owned, and is not under the control of any State agency. Thus, the purposes of the Act are not furthered by Plaintiffs' attempts to use it to impose obligations on the County Board and PBC, who are not subject to the statute.

Finally, Plaintiffs argue that this Court must give deference to the agency's interpretation of its authority over the demolition of the Courthouse. (Appellants' Brief pp. 23-24). Initially, it is unclear what exactly Plaintiffs are arguing merits deference—they point to no rule or decision issued by the agency that interprets the statute. Notably, the amicus brief filed by the IDNR itself does not argue there is some sort of agency

interpretation warranting deference here. Presumably, Plaintiffs are arguing that the agency's assertion that the County and PBC are bound by the State Agency Historic Resources Preservation Act is entitled to deference. That argument fails, for two reasons.

First, Plaintiffs have forfeited this argument, as they never raised the issue of deference to the agency in the Circuit Court. Plaintiffs never argued below that the court was bound to defer to SHPO's or IDNR's interpretation of the State Agency Historic Preservation Act. Thus, their arguments on appeal are forfeited. See *Lazenby v. Mark's Const., Inc.*, 236 Ill. 2d 83, 92 (2010) (holding that "issues raised for the first time on appeal are forfeited").

Second, Plaintiffs do not point to any ambiguity in the statute that would allow the IDNR to reach an interpretation that non-agencies are bound by the State Agency Historic Resources Preservation Act. As discussed above, the statute only binds state agencies, and non-agencies cannot violate the Act. Because the statute is not ambiguous on this point, no deference to the agency is warranted. See *Boaden v. Dep't of Law Enf't*, 171 Ill. 2d 230, 239 (1996) ("As we find that the statute is not ambiguous, we decline to defer to the [agency's] interpretation."). As held by the Illinois Supreme Court, "deference to administrative expertise will not serve to license a governmental agency to expand the operation of a statute." *Id.*

While the IDNR is apparently concerned with the Circuit Court's ruling to the extent it exempts local government buildings from the application of the statute (IDNR Amicus Brief p. 1), that broad issue does not need to be reached in order to affirm the dismissal of Count I. Regardless of whether the demolition of the Courthouse triggers the IEPA's and IDNR's obligations under the statute, those obligations do not create an

independent cause of action against the County Board and PBC, which is what Plaintiffs have asserted in Count I. The County Board and PBC cannot violate the statute. For this reason, Count I of Plaintiffs' complaint fails as a matter of law.

2. The Submission of the NOI to the IEPA Does Not Create a Cause of Action Against the County Board or PBC under the State Agency Historic Preservation Act

Even if the statute created a right of action against non-agencies, Plaintiffs' claims in Count I still fail because the Act does not apply under the unique facts of this case.

In connection with the contemplated demolition of the Courthouse, the County submitted a NOI to use the IEPA's NPDES general storm water permit for construction activities. (C. 355-56). Plaintiffs and the *amicus* brief filed by the IDNR argue that this application makes the demolition an "undertaking" under the State Agency Historic Resources Preservation Act. Plaintiffs further argue that this means that the County and PBC cannot proceed with demolition until the consultation process set forth in the statute is complete. Plaintiffs' argument is based on both a misreading of the statute and a misunderstanding of the unique nature of the general storm water permit at issue. Regardless of whether the demolition of the Courthouse is an "undertaking," it does not mean the Act creates a barrier to demolition. Quite simply, because the IEPA does not need to approve the County and PBC's NOI to use the IEPA general storm water permit, the statute is not triggered.

Plaintiffs argue that the consultation process required by the State Agency Historic Resources Preservation Act is triggered any time a state agency is "involved" in a project that will have an adverse effect on a historic resource. (Appellants' Brief p. 20-21). But there is no "involvement" language in the Act. Plaintiffs are attempting to

expand the scope of the statute by changing its language, which is impermissible. *Smith*, 2016 IL 119659, ¶ 28 (stating that a court cannot "rewrite a statute to add provisions or limitations the legislature did not include"). Mere involvement of a state agency does not trigger the obligations under the Act.

Instead, Section 4 of the statute provides that obligations for state agencies are triggered under three specific scenarios. Under Section 4(a) of the statute, notice must be given to the IDNR to review for adverse effects on historic resources in one of three ways: "[1] prior to the approval of the final design or plan of any undertaking by a State agency, or [2] prior to the funding of any undertaking by a State agency, or [3] prior to an action of approval or entitlement of any private undertaking by a State agency...." 20 ILCS 3420/4(a). None of these scenarios is present under the unique facts of this case.

Initially, Plaintiffs and the *amicus* offer no argument on the second and third scenarios. It is undisputed that there is no funding of an undertaking by a state agency, as only PBC bonds are at issue to fund the demolition of the Courthouse. (C. 23, 36). In their Complaint, Plaintiffs emphasized the language providing that consultation must occur "prior to an action of approval or entitlement of any private undertaking by a State agency." (C. 14). They have abandoned that argument, conceding to the Circuit Court this language would not apply because the project is not a private undertaking. (C. 1122). The demolition of the Courthouse is not a "private undertaking" requiring agency approval because it is on public land using public revenue. See 20 ILCS 3420/3(i) (defining private undertaking).

Plaintiffs, and the IDNR in its amicus brief, now claim that the State Agency Historic Resources Preservation Act is triggered because of the language requiring notice

"prior to the approval of the final design or plan of any undertaking by a State agency." But that language is not applicable either, for three reasons.

First, due to the unique nature of the IEPA's general stormwater permit, the IEPA does not need to issue any "approval" for an applicant to move forward and use the permit. Rather, an applicant simply submits the application documents to use the statewide general stormwater permit for construction activities, and after 30 days the applicant may proceed to discharge stormwater unless the IEPA informs the applicant they may not. (C. 1163). The permit provides:

> "Unless notified by the Agency to the contrary, dischargers who submit an NOI and stormwater pollution prevention plan (SWPPP) in accordance with the requirements of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit in 30 days after the date the NOI and SWPPP are received by the Agency." (C. 1163).

Thus, no approval is necessary for the County and PBC to use the stormwater permit in connection with the demolition; they could move forward unless the IEPA told them they could not. Plaintiffs alleged in their Complaint that the IEPA could not issue the permit until consultation is completed (C. 28), but the IEPA does not need to "approve" the issuance of the permit. There is no provision of the State Agency Historic Resources Preservation Act that states that an agency must affirmatively deny a permit that essentially automatically issues; an agency simply must consult before approval. 20 ILCS 3420/4(a). Plaintiffs have never alleged that IEPA notified the County Board and PBC that their NOI was deficient and that they could not move forward (C. 7-370), and

the SHPO's letter would not qualify, since the SHPO is not the "agency" that can inform the applicant the NOI is defective. (C. 1163, 1176).[3]

Thus, there is no "approval of the final design or plan" as required by the State Agency Historic Resources Preservation Act. IEPA's failure to object to the County and PBC's NOI does not constitute an approval. Again, while there is no Illinois case law on point, federal cases interpreting the federal NHPA may be helpful. Federal courts have held that a failure to object does not constitute an "approval" in the context of the NHPA, regardless of the definition of undertaking. See *Historic Green Springs, Inc. v. U.S. E.P.A.*, 742 F. Supp. 2d 837, 854 (W.D. Va. 2010). See also *Sheridan Kalorama Historical Ass'n v. Christopher*, 49 F.3d 750, 755 (D.C. Cir. 1995) (stating that the court was reluctant to conclude that "failure to disapprove" meant "approve" in the NPHA context).

Because of the unique nature of the IEPA's general stormwater permit at issue here, the State Agency Historic Resources Preservation Act was not triggered because no IEPA approval was required. The Circuit Court correctly recognized that requiring historic consultation every time a party gives notice that it will use the State's general stormwater permit would "bootstrap" the statute into a great number of situations where it should not apply. (R. 71-72).

Second, the Circuit Court recognized that the language "approval of a final plan or design of an undertaking by a state agency" is inapplicable to the demolition of the

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[3] While Plaintiffs cite language from IEPA's website suggesting that an applicant may not proceed without a "sign off" from IDNR (Appellants' Brief p. 13), this language does not appear in the permit itself, or in any regulation cited by Plaintiffs. Plaintiffs cite no law providing that a statement on an agency website takes precedence over the terms of the actual permit, which was published pursuant to IEPA regulations.

Courthouse. The IEPA is not approving the PBC's plan or design for the Courthouse site, it is merely allowing the use of a general storm water permit. Where the subject matter of what the agency is permitting does not have any effect on the historic resource, it would be an irrational application of the statute to say that the permit triggers consultation. (R. 71-72). The whole point of consultation is to see if the adverse effect on a historic resource can be avoided. 20 ILCS 3420/4(c). If the consulting agency cannot do anything within its permitting power to change the effect of the undertaking, the consultation process would be pointless. When construing a statute, the court should consider the goals sought to be achieved by the General Assembly. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 45. The General Assembly would not have intended a consultation process where the consulting agency can do nothing to protect a historic resource. Such a result would be irrational.

Therefore, the Circuit Court was correct to conclude that because nothing in the IEPA general stormwater discharge permit would influence the adverse effect on the Courthouse, it would be irrational to find the statute applies.

Third, the statutory language referring to "approval of a final plan or design of an undertaking by a State agency" must be referring to undertakings by a State agency itself; otherwise, the language discussing the "action of approval or entitlement of a private undertaking" language would already be covered by the statute, and therefore would be completely superfluous. A court "must construe the statute to avoid rendering any part of it meaningless or superfluous." *Solon v. Midwest Med. Records Ass'n, Inc.*, 236 Ill. 2d 433, 440–411 (2010). Plaintiffs' proposed interpretation of the Act is impermissible.

Accordingly, the State Agency Historic Resources Preservation Act does not prevent the County Board and PBC from proceeding with demolition.

B. Using the State Agency Historic Preservation Act to Override the Chief Judge's Determination about the County's Judicial Facilities Would Violate the Separation of Powers

Like its exclusion of local governments, the General Assembly also excluded "circuit court" from the definition of an agency that is subject to the State Agency Historic Resources Preservation Act. 20 ILCS 3420/2(b); 5 ILCS 100/1-20. Here, the undertaking to demolish the Courthouse is being done, in part, pursuant to the Chief Judge's administrative authority to provide for appropriate places of holding court under the Illinois Constitution. In its Administrative Order, the Chief Judge determined that the Courthouse should be demolished pursuant to his constitutional authority. (C. 884-93). That decision is not subject to interference by the IDNR, an arm of the executive branch, as such interference would violate separation of powers principles.

The Illinois Constitution provides the Chief Judge with authority over judicial facilities. The Chief Judge has administrative authority to determine appropriate time and place to hold court. See 1970 Ill. Const. Art. VI, § 7(c). Moreover, the Illinois Supreme Court has held there is "no basis to doubt . . . the inherent power of the courts to protect themselves and require production of the facilities, personnel and resources reasonably necessary to enable them to perform their judicial functions with efficiency, independence, and dignity." *Knuepfer v. Fawell*, 96 Ill. 2d 284, 292 (1983).

Under separation of powers principles, "No branch shall exercise powers properly belonging to another." See 1970 Ill. Const. Art. II, §1. In addition, separation of powers

principles mandate that "[a] statute cannot conflict with court rules or unduly infringe upon inherent judicial powers." *Morawicz v. Hynes*, 401 Ill. App. 3d 142, 150 (2010).

In the Chief Judge's Administrative Order, the Court noted the close proximity of the Courthouse to the new judicial facilities in the Annex. (C. 892). The Chief Judge found that due to the Courthouse's proximity to the Annex, it could be used for possible violence against the judicial personnel using the Annex. (*Id.*). Moreover, the Courthouse's decrepit condition constituted a risk to those passing by. (*Id.*). Thus, the Chief Judge determined that to protect the judicial facilities under his control, the Courthouse should be demolished pursuant to his constitutional authority. (C. 885). This is the kind of order that the Supreme Court decided was within a Chief Judge's inherent authority in *Knupefer*—a decision designed to ensure that judicial facilities were adequate so that the court proceedings in them could be properly carried out. *Knuepfer*, 96 Ill. 2d at 294-95. Although the *Knupefer* case dealt with the production and not destruction of judicial facilities, the rationale of the Chief Judges' orders in both cases are the same—ensuring that facilities are adequate enough to protect the integrity and independence of the court.

In fact, both the County Board and the the Circuit Court are in agreement that the demolition of the Courthouse is necessary to protect the judicial facilities in the Annex. As urged by the Supreme Court in *Knuepfer*, "the public interest requires the . . . branches in our system of government work cooperatively and in harmony." *Id.* Plaintiffs are attempting to disrupt that agreement reached by the judicial and legislative branches of government in Rock Island County by asserting that an executive branch

agency can override their decisions. But to allow that would violate separation of powers.

To allow an administrative agency to override the Chief Judge's Administrative Order by subjecting it to the requirements of the State Agency Historic Resources Preservation Act would intrude on the independence of the judiciary and thus violate separation of powers. See, e.g., 1999 Ill. Atty. Gen. Op. 005 (Ill. A.G.), 1999 WL 170864 (stating that to require the judiciary to submit to the requirements of the Administrative Procedure Act would violate separation of powers principles). The courts have a duty to "preserve the integrity and independence of the judiciary and to protect the judicial power from encroachment by the other branches of government." *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 438 (1997). To allow the IDNR to override the Chief Judge's administrative authority to protect the judicial facilities in the Annex—when the legislative branch and judicial branch are both in agreement demolition is necessary—would be unconstitutional. For this additional reason, Count I of Plaintiffs' Complaint fails as a matter of law.

III. Count II was Properly Dismissed Because Approval of the Rock Island City Council was Not Needed to Demolish the Courthouse under the PBC Act

The Circuit Court properly determined that the demolition of the Courthouse was not subject to approval of the Rock Island City Council under the PBC Act. The site selection procedures under the PBC Act were not required because the PBC can work in the area surrounding the Annex and the Courthouse location was for the County's use.

A. The Site Selection Procedures Advocated by Plaintiffs were Not Necessary Because the PBC Has the Authority to Demolish Buildings in the "Area"

In Count II of their Complaint, Plaintiffs argued that the Courthouse was on a different site than the Annex or Jail, and that under Section 14(a)(2) of the PBC Act, approval of the Rock Island City Council was needed before the PBC could perform demolition work. (C. 34-35). The Circuit Court rejected this argument, finding that whether the Courthouse was on the same site was irrelevant. (R. 72-73). Instead, what was relevant was the statute's distinction between a "site" and "area." (*Id.*). Section 14(c) of the PBC Act expressly grants the PBC the authority to "demolish, repair, alter or improve any building or buildings within the area or areas ...." 50 ILCS 20/14(c). The PBC's authority to demolish buildings was not limited to buildings on the site, and therefore Count II failed. (R. 72-73).

The Circuit Court's ruling is correct. The PBC has the statutory authority to demolish buildings in the area. The PBC and County entered into an intergovernmental agreement providing that the PBC's area was being expanded to cover the Courthouse. (C. 880). Because the Courthouse is indisputably within the area of the Jail and Annex and the PBC was exercising its statutory demolition authority, then selecting a new site was not required. Plaintiffs' arguments that section 14(a)(2) of the PBC Act prevents demolition work on the Courthouse should all be rejected.

Initially, Plaintiffs argue that under the PBC Act, "site" and "area" mean the same thing. (Appellants' Brief p. 32). This is contrary to principles of statutory construction. When the General Assembly uses different terms, it means different things. See *In re S.R.*, 349 Ill. App. 3d 1017, 1022 (2004) ("When the General Assembly uses a particular phrase in one provision and different language in another, we must assume that it intended different results for each."). Contrary to Plaintiffs' arguments, site and area are

not synonyms. "Area," as the term is naturally used, is broader than site, and would include spaces around or in the vicinity of the site.[4]

To interpret area and site to mean the same thing would be contrary to the language of the PBC Act. The statute itself has different provisions for expanding a site versus an area. While Plaintiffs argue that to expand a site Section 14(a)(2) requires a referendum or approval by ¾ majority of the governing body of the county seat, the statute provides a different procedure to expand an area. An "area" may be expanded by a resolution of the PBC without outside approval. See 50 ILCS 20/14(a)(2) ("Except where approval of the site or sites has been obtained by referendum, the area or areas may be enlarged by the Board of Commissioners, from time to time, as the need therefor arises."). This statutory distinction would not be necessary if site and area meant the same thing. Plaintiffs' interpretation would render this language meaningless, which is impermissible. *Solon v. Midwest Med. Records Ass'n, Inc.*, 236 Ill. 2d 433, 440–41 (2010) ("We construe the statute to avoid rendering any part of it meaningless or superfluous.").

Furthermore, interpreting site and area to mean the same thing would make the statute burdensome and unworkable. The PBC Act contemplates the PBC doing all kinds of work in the "area" in addition to demolishing buildings, such as constructing roads, waterpipes, and sewers. 50 ILCS 20/14(c)-(d). It would be inconvenient and unworkable if every time the PBC wanted to connect an outside road or pipe to its site, the PBC

[4] If a person says "I am from the Chicago area" it would be unreasonable to interpret that statement as meaning the person *must be* from within the city limits of Chicago. The phrase could easily mean the person is from communities in the vicinity of Chicago but outside its city limits.

would have to seek approval of voters or a separate government body. Accordingly, Plaintiff's interpretation should be rejected. *People v. Bradford*, 2016 IL 118674, ¶ 25 (holding that a court must presume the legislature did not intend "absurd, inconvenient, or unjust results" and should reject interpretations that render a statute "unworkable").

Next, Plaintiffs argue that because they alleged in their Complaint that the Courthouse was not on a properly selected site, a factual inference must be drawn in their favor that the Courthouse is not within the "area" of the Jail and Annex. (Appellants' Brief p. 32). This argument should be rejected. Plaintiffs are only entitled to reasonable inferences on a motion to dismiss, and a court "is not required to draw unwarranted or unreasonable inferences in order to sustain a pleading." *Fahey v. State & Madison Prop. Ass'n*, 200 Ill. App. 3d 437, 440 (1990). It would simply be unreasonable to conclude the Courthouse was not within the area of the Jail and Annex. The close proximity of the Courthouse to the Annex was established by the exhibits to Plaintiffs' own pleadings. (C. 343). Furthermore, the Circuit Court was requested to take judicial notice of the fact that the Courthouse was approximately 40 feet away from the Annex. (C. 884).

Plaintiffs' suggestion that a remand is necessary to resolve a factual dispute whether the Courthouse is in the area is a transparent attempt to delay the demolition further. (Appellants' Brief p. 33). Plaintiffs do not identify what the factual dispute could possibly be. The buildings sit where they sit; their location is not the subject of reasonable dispute. Any reasonable interpretation of the statutory term "area" would

include a building as close in proximity as the Courthouse is to the Jail and Annex. This was a question of law that the Circuit Court properly resolved against the Plaintiffs.[5]

The PBC expanded the area of its work to the Courthouse, which it could do under Section 14(a)(2). The PBC planned to demolish the Courthouse under the PBC Act's express grant of authority to demolish buildings in the area under Section 14(c). Neither of these acts required approval of the Rock Island City Council. The site selection procedures advocated by Plaintiffs were simply not necessary. Count II was properly dismissed for this reason.

B. Even if the Courthouse Constituted a New Site for the PBC, Approval from the Rock Island City Council was Not Needed Because the Site was For the County

While the County Board contends that the selection of a new site was not required to demolish the Courthouse, even if the Courthouse were on a new site, approval of the Rock Island City Council would not be required. Section 14(a)(2) exempts the County from having to get approval of the City Council because the site is for the County's use. The statute provides:

> "Where the original resolution for the creation of the Commission has been adopted by the governing body of the county, the site or sites selected, and in the case of a project for an Airport Authority, the site or sites selected, the project and any lease agreements, are subject to approval by a majority of the members of the governing

[5] Plaintiffs also argue that the Annex project was invalid because the Annex site was never approved by referendum or the Rock Island City Council. (Appellants' Brief p. 30 n. 5). Plaintiffs ignore the fact that, as ruled by the Circuit Court in the 2015 *quo warranto* action, the Annex is not a separate building but is a "totally integrated and connected" part of the Jail building. (C. 1028). Plaintiffs do not dispute that the Jail site was properly selected under the PBC Act. The Annex was not built on a new site, and Plaintiffs offer no argument on why another site selection process would have been necessary when the Annex was built on the Jail site already approved for PBC use.

> body of the county and to approval by 3/4 of the members of the governing body of the county seat, ***except that approval of 3/4 of the members of the governing body of the county seat is not required where the site is for a county or*** (in the case of a county having a population of at least 20,000 but not more than 21, 000 as determined by the 1980 federal census) a municipal project and is outside the limits of the county seat, in which case approval by 3/4 of the members of the governing body of any municipality where the site or sites will be located is required...." 50 ILCS 20/14(a)(2) (emphasis added).

Thus, if the site is for the county, approval of 3/4 of the governing body of the county seat is not required (the language above following "or" refers to getting approval from a municipality where the site is located for a PBC to construct a "municipal project" in certain counties). The case cited by Plaintiffs, *Lake Cty. Pub. Bldg. Comm'n v. City of Waukegan*, 273 Ill. App. 3d 15 (1995), does not command a contrary interpretation. *Lake County* dealt with the application of local building codes and did not address whether the municipality had to approve the site selected by the PBC, so the language relied on by Plaintiffs is mere *dicta*. *Id.* at 26. The plain language of the statute exempts sites for a county from having to get approval from the county seat. 50 ILCS 20/14(a)(2

There is no dispute that the Courthouse site is for the County—after demolition security features for the Annex, as well as landscaping, will be constructed. (C. 900). Because the site is for the County's use, it was not required to get approval from the Rock Island City Council. Count II fails to state a claim for this additional reason.

IV. Count III was Properly Dismissed Because the County Board Determined that Demolition was Necessary for the Annex Project, which was Lawfully a Part of the PBC's Purpose

The Circuit Court properly rejected Plaintiffs' arguments that the demolition of the Courthouse is not within the purpose of the PBC. The demolition of the Courthouse

is lawfully within the purpose of the PBC to provide for a good and sufficient jail, because it was necessary to the completion of the Annex project. A court of competent jurisdiction determined in a *quo warranto* proceeding that the construction of the Annex was lawfully within the purpose of the PBC. (C. 1028-29). The County Board made a legislative determination that the demolition was necessary to secure and maintain the Annex. (C. 895). The Circuit Court properly determined that because the Annex was within the PBC's purpose, the demolition of the Courthouse that the Annex replaced was also within the PBC's purpose. (R. 73-74).

A. Building the Annex Was Lawfully Within the PBC's Purpose

As an initial matter, the construction of the Annex was within the PBC's purpose of a "good and sufficient jail." Plaintiffs alleged in their Complaint that the construction of the Annex was an illegal expansion of the PBC's purpose (C. 33), although they do not appear to pursue this argument on appeal. To the extent Plaintiffs are claiming the Annex was outside the purpose of the PBC, this argument should be rejected because a court of competent jurisdiction has already ruled to the contrary. In 2015, the State's Attorney Appellate Prosecutor, as representative of the People of the State of Illinois, brought a *quo warranto* action to challenge the legality of building the Annex. (C. 56-58). The case was referred to a judge outside of Rock Island County, and the court determined that construction of the Annex was within the existing purpose of the PBC. (C. 1028-29). Plaintiffs are bound by the court's *quo warranto* decision under principles of *res judicata* and collateral estoppel.

When the State's Attorney brings a *quo warranto* action regarding a matter of public interest, they act as "representatives of the people." *Henderson v. Miller*, 228 Ill.

App. 3d 260, 266 (1992). The State's Attorney or Attorney General has the exclusive authority and prerogative to seek vindication of the public rights using a *quo warranto* proceeding. *People v. Wood*, 411 Ill. 514, 523-24 (1952). Thus, the State's Attorney Appellate Prosecutor was the representative of all interested parties, including Plaintiffs, regarding the issues raised in the *quo warranto* proceeding. The judgment of the court in the *quo warranto* action binds Plaintiffs. See *Restatement (Second) of Judgments* § 41 (1982) (stating that a non-party is bound by a judgment obtained by "an official or agency invested by law with authority to represent the person's interests").

When a *quo warranto* action brought by the representative of the people results in a judgment that a governmental action was legal, that judgment is *res judicata* and cannot be collaterally attacked in a different lawsuit. See *Matter of Emmett-Chalmers Fire Prot. Dist.,* 58 Ill. App. 3d 897, 904 (3d Dist. 1978). In *Emmett-Chalmers*, the McDonough County State's Attorney brought a *quo warranto* action, in which the court held that a fire protection district was legally created. *Id.* Subsequently, individual petitioners filed a lawsuit seeking to be disconnected from the fire protection district, and in doing so challenged the legality of the district's existence. *Id.* Even though the petitioners were not parties in the *quo warranto* suit, the appellate court held that *res judicata* barred them from challenging the legality of the district. *Id.* See also *People ex rel. Lewis v. Whittaker*, 254 Ill. 537, 541-42 (1912) (holding that prior *quo warranto* action brought by the State's Attorney barred subsequent legal challenge brought by plaintiffs who were not named parties in the first suit).

Plaintiffs offer nothing to dispute the validity of the Circuit Court's *quo warranto* ruling that the Annex was within the PBC's purpose, other than labeling it "sham

litigation." (Appellants' Brief p. 34). It is a serious charge to insinuate, as Plaintiffs do, that the Chief Judge, State's Attorney Appellate Prosecutor who filed the *quo warranto* action, and Circuit Judge who issued the *quo warranto* decision, all contrived a "sham" ruling that the Annex was valid. To support this charge, Plaintiffs offer no evidence other than their conclusory allegation. Plaintiffs' accusation is well beyond the bounds of acceptable advocacy. See *Talamine v. Apartment Finders, Inc.*, 2013 IL App (1st) 121201, ¶ 9 (stating that while judges are not exempt from just criticism, it is unacceptable to file pleadings containing unjust criticism, insulting language, or ascribing offensive conduct against judges). Certainly, their allegations of a "sham" do not legitimately call the validity of the *quo warranto* decision into question.

Accordingly, it is conclusively established that the construction of the Annex is lawfully within the PBC's existing purpose of providing for a good and sufficient jail. The Circuit Court correctly recognized this. (R. 73-74). Plaintiffs are collaterally estopped from arguing otherwise in this case.

Plaintiffs, however, argue that because the *quo warranto* ruling did not address the issue of whether the demolition of the Courthouse was within the PBC's purpose, the decision is of no value. (Appellants' Brief p. 35). But Plaintiffs misunderstand the import of the *quo warranto* decision. As will be discussed below, because the Annex is indisputably within the PBC's purpose, the County Board was allowed to make a legislative judgment that demolition of the Courthouse was needed to provide for the security and maintenance of the Annex.

B. The County Board Determined That Demolition was Necessary to Protect and Maintain the Annex, and that Determination was within the Purpose of the PBC

The County Board determined that demolition of the Courthouse is "necessary for the maintenance and security" of the Annex. (C. 895). Similarly, the County Board and the PBC both determined that the Courthouse's decrepit state and lack of security poses a risk to the safety and maintenance of the Annex, as well as those using it. (C. 898). The County Board determined it was in the best interests of the citizens of Rock Island County to demolish the Courthouse and improve the site to protect and enhance the Annex being constructed. (C. 898). Thus, the County and PBC have legislatively determined that the demolition is a necessary component of the Annex project. That makes demolition within the scope of the PBC's purpose.

The County Board and PBC's legislative findings are entitled to great deference. "Courts are not empowered to 'adjudicate' the accuracy of legislative findings. The legislative fact-finding authority is broad and should be accorded great deference by the judiciary." *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 75 (2008) (internal quotations omitted). Illinois courts grant the same deference to legislative fact finding done by municipalities in their municipal ordinances. *Indep. Voters of Illinois Indep. Precinct Org. v. Ahmad*, 2014 IL App (1st) 123629, ¶¶ 38, 41. Deference to the County Board's decision is especially warranted here because "the county board is itself the judge of the necessity of building the courthouse" and the necessity of keeping it in repair. *Coles County v. Goehring*, 209 Ill. 142, 166 (1904). As held by the Illinois Supreme Court, decisions relating to the courthouse and county jail are for the County. *Id.*

Thus, the County Board made the legislative decision that the demolition of the Courthouse was a necessary part of the lawful Annex project. That was a rational decision for the County Board to make, given the proximity of the two buildings and the security concerns. That makes the demolition of the Courthouse within the purpose of the PBC as well. Plaintiffs cannot use this proceeding to attempt to substitute their own judgment for the judgment for the officials with statutory and constitutional authority to make these findings.

Further, the demolition is not an expansion of the PBC's purpose because it is carried out using the express powers granted to the PBC by the PBC Act. The Act grants the PBC power to demolish buildings within the area. 50 ILCS 20/14(c). The PBC Act also grants the PBC the express power to "maintain and operate" buildings and improvements so as to effectuate the purposes of the Act. *Id.* Nothing in the Act states that by exercising these powers, the PBC would be engaging in a new purpose. The PBC's exercise of its express power of demolition in order to provide for the maintenance and security of the Annex falls within its existing purpose and statutory power.

Plaintiffs argue that the fact that Courthouse is not structurally connected to the Annex or Jail means that its demolition would be a new purpose. (Appellants' Brief p. 37). This argument does not comport with the language of the PBC Act and would lead to absurd results. As discussed above, the PBC Act expressly grants the PBC authority to work in the area. See 50 ILCS 20/14(c), (d). Nothing in the statute states that the PBC's work must be confined to a specific building or else it goes beyond its established purpose. *Id.* The PBC's ability to perform work on the lawful Annex project does not end at the walls of the building itself.

Furthermore, the Circuit Court correctly recognized that construction and demolition are not different purposes, and that if a building is constructed by a PBC it would be within the purpose to demolish the building it replaces. (R. 74). To determine otherwise would require a County to create multiple PBCs—one for construction and another for demolition. (*Id.*). This burdensome process would create an absurd result that is not what the General Assembly intended. *Bradford*, 2016 IL 118674, ¶ 25 (holding that a court must presume the legislature did not intend "absurd, inconvenient, or unjust results" and should reject interpretations that render a statute "unworkable").

The County Board, with its statutory authority over the jail and courthouse, has determined that demolition of the Courthouse is necessary to the maintenance and security of the Annex. Maintaining and securing this building fits within the existing purpose of providing for a good and sufficient jail and is done pursuant to express authority in the PBC Act. Thus, the County and the PBC's actions do not improperly expand the purpose of the PBC. Count III was properly dismissed.

V. Plaintiffs Lack Standing

Plaintiffs' appeal should also be rejected because they lack standing to challenge whether the County Board's decision to demolish its Courthouse violates either the State Agency Historic Resources Preservation Act or the PBC Act. Plaintiffs consist only of five not-for-profit organizations, one of which is a bondholder, and one additional bondholder. (C. 8-9). Plaintiffs erroneously include Diane Oestreich as a party to this appeal. Although she is identified in the caption of Plaintiffs' brief and appendix as a party, Diane Oestreich is not a party. She was not a party to the original Complaint and the Circuit Court never granted Plaintiffs leave to file their Amended Complaint adding

Oestreich as a party. In the proposed Amended Complaint, Oestreich is alleged to be the only Plaintiff who owns property and pays real estate and sales taxes in Rock Island County. (C. 421).

The County Board challenged Plaintiffs' standing in its 2-619 Motion to Dismiss (C. 1031-32), which is the proper way to raise the issue. *Glisson v. City of Marion,* 188 Ill. 2d 211, 220 (1999). The doctrine of standing is intended to assure that the issues are raised only by those parties with a real interest in the outcome of the controversy. *Chicago Teacher's Union Local 1 v. Board of Education of City of Chicago,* 189 Ill. 2d 200, 206 (2000). Plaintiffs challenge the County Board's decisions regarding its Courthouse by virtue of their assertion of an interest in assuring public officials follow the law for disposing of private property, relying on *Lombard Historical Commission v. Village of Lombard,* 366 Ill. App.3d 715, 718 (2006), and with respect to Plaintiff National Trust, a congressional charter enabling it to sue to the extent necessary to enable it to carry out the functions vested in it by Congress under 54 U.S.C. §312102(a), citing *Landmark's Preservation Counsel of Illinois v. City of Chicago*, 531 N.E. 2d 9, 14 (Ill. 1988). (C. 8-9). The Complaint does not allege Plaintiffs have standing as taxpayers.

The cases relied on by Plaintiffs do not grant them standing. In *Lombard Historical Commission*, the Appellate Court held that a self-proclaimed concern about a matter of public interest, as Plaintiffs allege here, does not grant standing. 366 Ill. App. 3d at 717. The Appellate Court relied on the Supreme Court's decision in *Landmark's Preservation Counsel* where the Supreme Court refused to recognize standing of several groups who sought to challenge a Chicago ordinance removing Landmark status from the building located in the city. 125 Ill. 2d at 175. In *Lombard,* the Court held parties in that

case had standing as taxpayers to seek to prevent the Village from demolishing its building in a manner they claimed was inconsistent with a Village ordinance. But unlike the plaintiffs in *Lombard,* in this case, there is no Plaintiff alleged to be a taxpayer of Rock Island County.

However, even if the Complaint could be construed as alleging Plaintiffs are taxpayers of Rock Island County, taxpayer standing is a narrow doctrine requiring a distinct and palpable injury. The doctrine does not permit courts to engage in review of legislative decisions regarding government funds and property. *Illinois Association of Realtors v. Stermer*, 2014 IL App (4th) 130079 ¶ 26-33. Thus, even if Diane Oestreich were a party to an action, she would not have standing to challenge the County Board's decisions with respect to its Courthouse.

Nor does the National Trust have standing to challenge the County Board's decision with respect to its Courthouse. *Landmarks v. City of Chicago* is distinguishable because there is no allegation in the Complaint that the National Trust has deemed the Courthouse of national historic significance. 125 Ill. 2d at 177. All that Plaintiffs allege is that the Director of the IDNR determined the Courthouse is eligible for listing in the National Register. (C. 13). Moreover, the National Trust has no standing to challenge the disposition of a County facility, where the County has decided that demolition is required to secure and maintain its Annex and Jail.

Accordingly, because none of the Plaintiffs have standing, the dismissal of Plaintiffs' Complaint should be affirmed.

VI. This Court Should Vacate the TRO/Stay Entered in Appeal No. 3-19-0146

On April 1, 2019, in Appeal No. 3-19-0146, Plaintiffs were granted a stay/extension of the TRO entered by the Circuit Court preventing demolition of the Courthouse. (C. 1200). That stay/TRO is only in effect until further order of the Court in the present appeal. (*Id.*). Presumably, there was a desire to give Plaintiffs a chance to argue their 304(a) appeal on the merits, which is what Plaintiffs requested when they asked for a stay. However, the Court should now vacate the stay/TRO and allow demolition to proceed, for three reasons.

First, as discussed above, all three counts of the Plaintiffs' Complaints at issue in this appeal fail on the merits. Plaintiffs cannot state a valid claim for relief and their Complaint was properly dismissed with prejudice. If the Circuit Court's ruling is affirmed, it would necessarily require the stay/TRO to be vacated, because if the Plaintiffs' do not state a valid claim for relief, they have not right to a stay or TRO. See *Keefe-Shea Joint Venture v. City of Evanston*, 364 Ill. App. 3d 48, 60 (2005) (holding that when plaintiffs' claims fail on the merits and are dismissed, any temporary injunctive relief should be vacated, because "[a] preliminary injunction cannot survive the dismissal of a complaint"). Accordingly, if this Court affirms in this appeal, it should vacate its April 1, 2019 Order in Appeal No. 3-19-0146 or otherwise lift the stay/TRO.

Second, as discussed earlier in this brief, it appears there is no jurisdiction for Plaintiffs' Rule 304(a) appeal because Plaintiffs' delay in requesting a 304(a) finding meant no such finding was entered after the case was already up on appeal on Plaintiffs' Rule 307 Petition. If there is no jurisdiction for this appeal, then the appeal must be dismissed and closed. Because maintaining the stay/TRO in the Court's order in Appeal

No. 3-19-0146 was expressly conditioned on the result in this appeal, if this appeal is dismissed for lack of jurisdiction it necessarily means that stay/TRO should be vacated or lifted.

Finally, the stay/TRO entered in Appeal No. 3-19-0146 should be vacated because there was never jurisdiction to enter it in the first place. The Circuit Court's TRO entered March 8, 2019 expired on its own terms on March 19, 2019, at the hearing on Defendants' Motions to Dismiss. (R. 36). Rule 307 does not grant jurisdiction when a TRO has expired under its own terms. *Ritchie Multi-Strategies Global, LLC By and Through Ritchie Capital Management, LLC v. Huizenga Managers Fund, LLC*, 2019 IL App (1st) 182664, ¶ 17 (holding that a TRO that has expired can no longer be dissolved because a court cannot dissolve which no longer exists). Because the Circuit Court's TRO expired under its own terms on March 19, 2019 (R. 36) and there was never jurisdiction based on a proper 304(a) finding, there was no jurisdiction giving the Court the ability to grant the stay/TRO in its April 1, 2019 Order in Appeal No. 3-19-0146.

Accordingly, the stay/TRO in the Court's April 1, 2019 Order should be vacated.

CONCLUSION

WHEREFORE, Defendant Rock Island County Board respectfully requests that this court AFFIRM the judgment of the Circuit Court and VACATE or LIFT the stay/TRO entered on April 1, 2019 in Appeal No. 3-19-0146.

In the alternative, Defendant requests that the Court DISMISS THE APPEAL for lack of subject matter jurisdiction and VACATE or LIFT the stay/TRO entered on April 1, 2019 in Appeal No. 3-19-0146.

ROCK ISLAND COUNTY BOARD,
Defendant-Appellee,

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CERTIFICATE OF COMPLIANCE

Pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, William P. Rector, certifies that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342 (a), is 12,392 words.

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CERTIFICATE OF SERVICE

Pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, William P. Rector, certifies that on August 2, 2019, this Brief of Defendant-Appellee, Rock Island County Board, was filed with the Clerk of the Appellate Court of Illinois, Third District, using the electronic filing system, and that the undersigned served an electronic copy of this Brief of Defendant-Appellee by causing it to be emailed to counsel of record at:

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