Why Governor Rauner Must Veto SB 3319

Illinois ***(ECWd) –***

On January 10, 2017, the last (and lame-duck) day of the session, the 99th Illinois General Assembly passed SB 3319. This bill arose from a failure of DuPage County Election Commission to follow Illinois Election Code Law. See our ***first article reciting the particulars here.***

We again wrote about the fundamental meaning and potential implications of this lawlessness in ***this article***.

One lawsuit had already been filed because of this failure to follow the Illinois Election Code, and that fact was not disclosed to the members of the General Assembly. If Governor Rauner signs SB 3319 more lawsuits may follow which will probably end up in the Illinois Supreme Court. The only winners then will be the litigation lawyers and the bond lawyers.

It has been stated many times that we are not lawyers, and, we are not. We do not give legal advice. We do, however, have a First Amendment right to express our opinions on legal matters as do all citizens. We are just a couple of Southern Illinois hayseeds who have had some success in exposing corruption and lawlessness in Illinois. In many cases, perpetrated by lawyers. And boy, there's a lot of corruption and lawyers in Illinois!

The Speaker of the House, the President of the Senate, and the people in the Legislative Reference Bureau in Springfield (who draft these bills for the General Assembly) are lawyers. Why can't they get it right?

One of the fundamental pillars of the United States

Constitution is the Doctrine of Separation of Powers.* Nowhere in the U.S. Constitution is the Doctrine of Separation of Powers enunciated. It is directly reflected from The Federalist Papers in the U.S. Constitution in Articles I, II and III which created the legislative, executive and judiciary departments. James Madison wrote, in:

Federalist 47

> *"The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."*

So, attempting to avoid tyranny, in 1789 the Founders created a federal system with a procedure of checks and balances which are generally referred to as the Separation of Powers Doctrine. They guaranteed each state a Republican Form of Government in Article IV, Section 4. And, in 1818 the State of Illinois was created along the same model with the Illinois constitution closely paralleling the federal constitution. And then in 1868 the 14th Amendment was enacted and made the Due Process Clause and the Bill of Rights applicable to the state's laws.

In our previous article we referred to Article IV, Section 13 of the Illinois Constitution:

> *"The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination."*

Again, James Madison describes more tyranny by quoting Montesquieu, in:

Federalist 47:

> *"Were the power of judging joined with the legislative, the*

> *life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator."*

So, what does the Separation of Powers Doctrine have to do with SB3319?

A progression of errors has occurred. The DuPage County Election Commission erred by not following Illinois Election Code law and put millions of dollars of bonds at risk of litigation. Again they erred by opining that the error was not fatal. A third error was suggesting the Illinois General Assembly violate Article IV, Section 13, of the Illinois Constitution by passing a special law to make their error legal. And finally, they did partially get it right by suggesting the correct venue. But it would be a fool's errand to ask a circuit court judge to rule that their violation of the statute was a lawful act which followed the law in its entirety and conformed to the will of the legislature when the General Assembly enacted the Illinois Election Code 10 ILCS 5/12-5.

By going the legislative route the Illinois General Assembly has compounded the errors and done what James Madison described in:

Federalist 48:

> *"The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments."*

And true to form in Illinois, that is exactly what the General Assembly did. On the last day of the session, after gutting shell bill SB3319, which was submitted as a Higher Education Student Assistance bill, the Legislature replaced the bill

with a 3rd amendment (total replacement from the original bill) that provides a special carve-out effective to action that took place in the November 2016 election.

The amendment, the text of which ultimately became the only text of SB 3319, was never reproduced and placed on the desk of each member as required in our Illinois Constitution.

> *"A bill shall be read by title on three different days in each house. A bill and each amendment thereto shall be* ***reproduced and placed on the desk of each member before final passage****. (Illinois Constitution, Article IV, Section 8(d)).*"

We contend the Speaker's certification signature was defective because the procedural requirements for passage outlined in the Illinois Constitution had not been met. Specifically, the amendment was not reproduced and placed on the desk of each member before final passage.

> *"The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met. (Illinois Constitution, Article IV, Section 8(d)).*"

We contend SB 3319 is constitutionally unlawful and violates the Doctrine of Separation of Powers because the Illinois Constitution, Article IV, Section 13 says that the applicability of the law is a matter for judicial determination and not a matter for the legislative department to handle as they did on January 10, 2017.

SB3319 is also procedurally flawed as stated above and was passed in violation of Illinois Constitutional requirements.

Governor Rauner should veto SB 3319, which appears to be yet another lawless act in Illinois by state and county lawyers and officials. The DuPage County Officials should admit error

and properly notice up the bond issue for the next appropriate election.

How hard is that?

***For a historic primer on Separation of Powers read Justice Thomas' concurrence here**.

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