No. 127253

IN THE SUPREME COURT OF ILLINOIS

BYRON SIGCHO-LOPEZ, Petitioner-Appellant, v. ILLINOIS STATE BOARD OF ELECTIONS and 25TH WARD REGULAR DEMOCRATIC ORGANIZATION, a political party committee, Respondents-Appellees.	Appeal from the Appellate Court of Illinois, First District, No. 1-20-0561 There heard on Appeal from the Petition for Administrative Review of Decision and Final Order of Illinois State Board of Elections State Board of Elections Case No. 19 CD 094

BRIEF OF 25TH WARD REGULAR DEMOCRATIC ORGANIZATION RESPONDENT-APPELLEE

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ISSUE PRESENTED FOR REVIEW

Respondent-Appellee 25th Ward Regular Democratic Organization (the "Committee") submits that the "Issues Presented" section contained in the brief ("Appellant Brief") of Petitioner-Appellant Byron Sigcho-Lopez (the "Complainant") is "unsatisfactory" (S.Ct. R. 341(i)), and therefore presents its own statement of the sole issue as follows:

Does Section 9-8.10 of the Illinois Election Code, 10 ILCS 5/9-8.10, prohibit a political committee from paying the legal fees of a candidate or officeholder which were incurred in connection with a federal investigation in which he cooperated with the government's efforts?

APPLICABLE STANDARD OF REVIEW

The Committee submits that, inasmuch as Complainant has not submitted a correct statement of the "Issues Presented", he necessarily has provided an "unsatisfactory" statement of the applicable standard of review (S.Ct. R. 341(i)), and therefore presents its own statement of the applicable standard of review as follows:

1. The Supreme Court reviews the decision of the Illinois State Board of Elections and not that of the Appellate Court. *Cooke v. Illinois State Board of Elections*, 2021 IL 125386, ¶48.

2. An issue of statutory interpretation presents a pure question of law subject to *de novo* review. *Id.*

3. The Illinois State Board of Election's application of the statute to the facts is a mixed question of fact and law that will not be reversed unless it is deemed "clearly

erroneous." *Id.*, at ¶50. "The standard of review is deferential, providing for reversal only when the reviewing court has a definite and firm conviction that a mistake has been made." *Id.*, quoting *Cook County Republican Party v. Illinois State Board of Elections,* 232 Ill. 2d 231, 245, (2009).

STATEMENT OF FACTS

The Committee submits that the "Statement of Facts" contained in the Appellant Brief is unsatisfactory as it fails to comply with the requirements of Supreme Court Rule 341(h)(6) that it be "without argument or comment" (S.Ct. R. 341(h)(6)) and thereby fails to "contain the facts necessary to an understanding of the case." *Id.* The Committee therefore submits the following Statement of Facts:

1. The Committee was formed as a political party committee on July 20, 2000, and Form D-1, Statement of Organization, was filed with the Illinois State Board of Elections (the "Board"). (C-30) In the section of the Statement of Organization titled "Candidate(s) the Committee is Supporting or Opposing," Daniel Solis ("Solis") is the sole candidate listed. (C-30) As of February 19, 2020, the Committee remains active. (R-23).[1]

2. Beginning in June 2016, the Federal Bureau of Investigation ("FBI") and the Department of Justice ("DOJ") asked Solis, then Alderman of the 25th Ward of the City of Chicago and Chairman of the Committee on Zoning, Landmarks & Building Standards, to work at their direction to assist with their federal investigation of alleged

[1] The Court may take judicial notice that, as of the date of this brief, the Committee remains listed as "Active" on the State Board of Elections website. https://www.elections.il.gov/CampaignDisclosure/CommitteeDetail.aspx?ID=wVWzfTkXe9txNVdJMsHQ6Q%3d%3d&T=637729313054278945.

public corruption of city and state elected officials, and also of other private citizens. Solis thereafter acted at the direction of the FBI and DOJ, including recording conversations with other public officials. That assistance is ongoing and has assisted in the indictment of at least one public official and other individuals on federal corruption charges. (E-13-14, C-26)

3. The law firm of Foley & Lardner LLC was retained by Solis when the FBI made its request for assistance. (R 14-15) On May 21, 2019, the Committee made an expenditure of $220,000 to the law firm of Foley & Lardner LLC for legal fees related to Solis's cooperation with the FBI (C-61) (the "Legal Fees"), which expenditure was reported on the Committee's Form D-2 Quarterly Report filed with the Board. (C-36)

4. Solis has not been charged with, indicted or convicted of any criminal wrongdoing. (R-20-21)

5. On October 21, 2019, Complainant, Solis's successor as Alderman of the 25th Ward of the City of Chicago, filed a Complaint with the Board (the "Complaint") alleging that the Committee violated section 9-8.10(a)(3) of the Illinois Election Code, 10 ILCS 5/9-8.10(a)(3), when it paid the Legal Fees. (C-4, C-59) The Complaint further alleges that legal fees in general are a prohibited "debt" pursuant to the cited section. (C-4)

6. In an interview following Complainant's announcement that he had filed the Complaint, the Chicago Sun-Times reported that "[Board] spokesperson Matt Dietrich stated that there was nothing in state statute to prohibit elected officials from using campaign cash to pay legal fees. House Speaker Michael Madigan and [Alderman Edward] Burke have made similar payments in recent weeks, records show." (E-5)

7. On January 14, 2020, following a closed preliminary hearing before a hearing officer of the Board, Hearing Officer Andy Nauman recommended that the Complaint "be found **not to have been filed upon justifiable grounds** and this Complaint **be dismissed.**" (C-63, emphasis in original) Mr. Nauman further wrote that "I believe money spent on defenses as presented in this case can be an acceptable use of campaign funds. More importantly, since 5/9-8.10 does not contain a specific prohibition against using campaign funds for legal expenses, I am of the opinion these types of expenditures can be made." (C-63). With respect to Complainant's allegation that the Legal Fees were an inappropriate debt under section 9-8.10(a)(3), Mr. Nauman found that "the word 'debt' has to be restricted to the specific type of debt identified in that subsection – which for (a) (3) is personal loans and for (a)(4) is expenses relating to a personal residence." (C-63)

8. On February 18, 2020, Board Legal Counsel Jordan A. Homer advised the Board that she concurred with Hearing Officer Nauman's report and recommendation. (C-66)

9. On February 19, 2020, following a Closed Preliminary Hearing before the Board meeting in executive session, the Board voted 8-0 "to accept the recommendations of the Hearing Officer and the General Counsel to find that the Complaint was not filed on justifiable grounds and the matter be dismissed." (R-33) In the course of the Closed Preliminary Hearing, Board Chair Charles W. Scholz asked Acting General Counsel Bernadette Matthews to confirm the Board policy on the expenditure of campaign funds for legal fees in similar situations. Ms. Matthews responded that "...this issue is brought up consistently, questioned consistently. And at this point in time with no prohibition on

the books against it, it is just generally accepted as something that can be considered an expenditure." (R-25) Finally, Board Member William M. McGuffage stated that "...the expenditure of funds for a criminal defense is not prohibited under that statute" (R-22). As Member William R. Haine stated, "But I'm saying based upon the statute that governs our conduct, we don't have the authority. It's ultra vires. We don't have any authority to add to what the General Assembly says are the prohibited uses." (R-21)

10. On March 16, 2020, in open session, the Board voted 8-0 to confirm the decision made in closed session and dismiss the Complaint. (R-39)

11. On April 9, 2021, the Appellate Court of Illinois First District affirmed the Board's final order, dismissing the Complaint. Justice Hoffman delivered the judgment of the court, with opinion. Justices Cunningham and Rochford concurred in the judgment and opinion. *Byron Sigcho-Lopez v The Illinois State Board of Elections and 25th Ward Regular Democratic Organization*, 2021 IL App (1st) 200561 ("*Sigcho-Lopez*").

12. The Appellate Court's opinion included the following conclusions of law:

a. The Legal Fees fit within the definition of "expenditure" contained within section 9-1.5(A)(1) of the Illinois Election Code. *Id.* at ¶14.

b. The payment of legal fees by a political committee is not a *per se* prohibited expenditure under section 9-8.10(a) of the Illinois Election Code. *Id.* at ¶16.

c. The word "debts" as used in section 9-8.10(a)(3) of the Illinois Election Code, and included in the list of expenditures which are prohibited, "does not refer to all debts but only debts of a personal nature that do not defray the customary and reasonable expenses of an officeholder in connection

with the performance of governmental and public service functions." *Id.* at ¶21.

d. To determine if a debt is "personal" the appropriate standard is the "irrespective test," which, in the context of legal fees, looks to see if such fees would exist irrespective of a candidate's campaign activities or an individual's duties as an officeholder. Since "allegations of misconduct in the discharge of an officeholder's official duties would not exist independent of the individual's status as an elected official, [t]he payment of legal fees incurred in defense of such allegations by a political committee can therefore qualify as an expenditure to defray a reasonable expense of an officeholder in connection with the performance of a governmental function as permitted pursuant to section 9-8.10(c) of the campaign disclosure statute." *Id.* at ¶27.

e. The Legal Fees were not a personal debt and the Committee's payment of such fees was not an expenditure prohibited by section 9-8.10(a)(3) of the campaign disclosure statute. *Id.* at ¶28 .

f. Applying the "clearly erroneous" standard of review, the Board's dismissal of the Complaint was not clearly erroneous, and accordingly, should be affirmed. *Id.* at ¶31.

13. On September 29, 2021, the Supreme Court allowed Complainant's Petition for Leave to Appeal.

ARGUMENT

INTRODUCTION

In full compliance with the Illinois Election Code (the "Code"), and in accordance with longstanding policy of the Illinois State Board of Elections (the "Board"), one of only two agencies created by the Constitution of the State of Illinois and the sole agency charged under Article III, section 5 of the Constitution with supervision over the administration of the Code, the 25th Ward Regular Democratic Organization (the "Committee"), a committee registered with the Board, made and reported an expenditure to a law firm, Foley & Lardner LLP, for legal fees incurred by now former 25th Ward Alderman Daniel Solis ("Solis"), a candidate/office holder supported by the Committee, in connection with Solis's assistance in a continuing federal investigation. This assistance contributed to the indictment of a currently sitting Chicago alderman and other individuals.

Complainant Sigcho-Lopez, a political rival of Solis and his successor as 25th Ward Alderman ("Complainant"), filed a complaint ("the Complaint") against the Committee, challenging the expenditure. Although both the Complaint and Complainant's briefs before the Board, the Appellate Court and this Court include many wild, speculative, and unsubstantiated statements concerning Solis's purported activities and motivations for seeking legal assistance, the only publicly available official documents relevant to this case confirm that Solis was acting at the direction of federal law enforcement with respect to the federal investigation. *United States v. Burke,* Case No. 19 CR 322 (N.D. Ill.), Dkt.30, May 30, 2019 ¶ 1.j. (E-13-14.)

In a unanimous 8-0 ruling by the Board (R-33, R-39), as affirmed in a unanimous ruling by the Appellate Court, both bodies confirmed that the Code permitted the expenditure made by the Committee, and that, accordingly, the Complaint was not filed on justifiable grounds. (C-63. *Sigcho-Lopez* at ¶31). In particular, both the Board and the Appellate Court looked at the language set forth in section 9-8.10(a) of the Code, which sets forth a list of prohibited expenditures by political committees, and section 9-8.10(c) of the Code, which specifically permits expenditures tied to the performance of governmental and public service functions.

Subsequent to the Appellate Court's decision, but prior to the granting of the Petition for Leave to Appeal, this Court, for the first time, issued an opinion interpreting sections 9-8.10(a) and 9-8.10(c) of the Code. *Cooke, supra.* In particular, this Court reviewed two subsections included in the list of prohibited expenditures set forth in section 9-8.10(a), section 9-8.10(a)(2) and section 9-8.10(a)(9). This Court also focused on the relationship of section 9-8.10(a)(9), which prohibited certain expenditures regarding motor vehicles, to the permitted governmental and public service expenditures provision of section 9-8.10(c). *Id.* ¶¶ 61-62. It is an indication of the weakness of Complainant's position that, now, as this Court returns to a further review of section 9-8.10(a), this time examining section 9-8.10(a)(3), and a further review of section 9-8.10 (c), *Cooke* is not cited even once in the Appellant Brief, not even in Complainant's "standard of review" section. It is a concession by Complainant that the Committee's expenditure, and the Appellate Court's affirmation of its legality, are entirely consistent with *Cooke*.

Instead, Complainant focuses his entire attention on the Appellate Court's decision to utilize a common sense "irrespective test," originally developed by the Federal Election Commission for federal candidates and later codified into federal law and finally affirmed by a federal appeals court, to determine if a non-federal political expenditure is for a prohibited "personal" use. *Sigcho-Lopez* at ¶27. Under that test, as adapted by the Appellate Court, the court looks to see if a challenged expenditure would have occurred "irrespective of the candidate's election campaign or individual's duties as a holder of [public] office." *Sigcho-Lopez* at ¶25. While the Committee believes that the Board's decision can be affirmed based upon the plain language of the Code without reaching the question of the irrespective test, the incorporation by the Appellate Court of this test is entirely consistent with the Code, *Cooke*, and existing law.

Ultimately, Complainant, who argues with no sense of irony that this Court should uphold the separation of powers and recognize that "courts are not the law-making branch of government," (Appellant Brief at p. 13), now asks this Court to insert words into section 9-8.10(a) which do not currently exist, in order to make legal fees a prohibited expenditure. Instead of taking his grievance to his representative or state senator, the appropriate forum to request a change in the law, Complainant chose to appeal the Board's and the Appellate Court's decisions, arguing that the expenditure violates the "spirit" of the Code, and that it also violated the "letter" of the Code, reading into the Code letters which are not there. (Appellant Brief at p. 1). Complainant charges that the Appellate Court's decision will create a "moral hazard," *id.* at pages 9 and 14, a soapbox argument that may be suitable in a legislative setting, but has no place or foundation in the interpretation of a statute. Indeed, several members of the Board,

acknowledging the existence of the Board's longstanding policy and interpretation of the Code to permit the payment of legal fees such as were incurred in this case, urged Complainant to go to the General Assembly to get the law changed, recognizing that the Board had no authority to do anything other than properly apply it to this case (R 21-22).

Complainant has acknowledged the Board's longstanding policy concerning legal fees, but requests this Court to reverse the policy and **retroactively** punish not only the Committee, but scores of committees which acted in good faith reliance on the plain language of the Code and the Board's policy in all types of legal proceedings. The Committee respectfully requests that the Court affirm the Board's and the Appellate Court's decision and dismiss the Complaint.

1. THE DECISION OF THE GENERAL ASSEMBLY NOT TO DESIGNATE LEGAL FEES IN THE ELECTION CODE'S ELEVEN SPECIFIED CATEGORIES OF PROHIBITED EXPENDITURES REQUIRES THE CONCLUSION THAT SUCH LEGAL FEES ARE PERMITTED EXPENDITURES.

Section 9-8.10(a) of the Code, 10 ILCS 5/9-8.10(a), lists eleven categories of expenditures which political committees registered with the Board are forbidden to make. Legal fees are not included in any of these categories, nor is there stated a prohibition against the payment of legal fees in any other section of the Code.

A fundamental axiom of statutory construction, taught to every first year law student, is the maxim *expressio unius est exclusio alterius* which means that "the enumeration of an exception in a statute is considered to be an exclusion of all other exceptions." *Schultz v Performance Lighting, Inc.*, 2013 IL 115738, ¶17.

This rule is so engrained in our legal system that the framers of the Bill of Rights, concerned that *expressio unius* might be wielded as a weapon to limit individual rights

only to those specifically set out in the first eight amendments to the United States Constitution, included the Ninth Amendment, which states that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." *U.S. Const. Amend. IX. See Griswold v. Connecticut,* 381 U.S. 479, 488 (1965), (J. Goldberg, concurring).

As this Court has explained, "[t]his rule is based on logic and common sense as it expresses the learning of common experience that when people say one thing they do not mean something else." *Schultz v Performance Lighting, Inc., supra*, at ¶17 (internal citations and quotation marks omitted). The Appellate Court noted the Committee's citation of *Schultz* with approval, stating that "[i]t follows that the payment of legal fees by a political committee is not a *per se* prohibited expenditure." *Sigcho-Lopez* at ¶16.

As applied to the Election Code, the rule of *expressio unius* must prevail. Section 1A-1 of the Code, 10 ILCS 5/1A-1, which implemented the State Constitution's creation, in Article III, Section 5, of the Board, directs that the Board "shall perform only such duties as are or may hereafter be prescribed by law." As Board Member Haine correctly stated during the closed Board hearing, "[W]e do not have the authority to add or subtract to what the General Assembly has authorized to be the proper use of campaign funds....It's ultra vires. We don't have any authority to add to what the General Assembly says are the prohibited uses." (R 20-21) The rest of the Board agreed, twice voting 8-0 to dismiss the Complaint. (R-33, R-39)

Application of the *expressio unius* rule is particularly necessary in a situation where ignoring the rule leads to the imposition of retroactive penalties on the Committee and the many other Illinois political committees which have reviewed the plain language

of section 9-8.10, found no mention of prohibited legal fees, and acted accordingly. Complainant asks this Court to read into section 9-8.10(a) a prohibited category which simply does not exist.

The plain language of section 9-8.10(a) is clear, with no ambiguity which would allow legal fees to be slipped in as a prohibited expenditure. But even if ambiguity could be found, "to the extent there is any ambiguity, penal statutes and statutes that create 'new liabilities' should be strictly construed in favor of persons sought to be subjected to their operation and will not be extended beyond their terms." *Schultz, supra*, at ¶12.

Section 9-8.10(b) provides for fines up to the amount of the prohibited expenditure, plus $500, and, indeed, Complainant asks the Board to fine the Committee $220,500 pursuant to this section. (C-11) It would be grossly unfair – and contrary to the law - for this Court to impose a retroactive penalty of this magnitude through a wholly new interpretation of the Election Code.

In a telling concession of the weakness of his position, Complainant does not even try to address in his brief the insuperable barrier of the *expressio unius* rule, even though the Committee relied upon the issue successfully at each level of these proceedings. Nor does Complainant contest the Appellate Court's statement that legal fees are not *per se* prohibited expenditures.

Nevertheless, Complainant requests this Court to add an additional exception to the list of prohibited expenditures. Like scores of other political committees, the Committee paid for legal services incurred by a candidate it supports. This expenditure was not prohibited by the Election Code, and "logic and common sense," in addition to the statute itself, require the conclusion that the General Assembly could have included it

in its list of proscribed activities if it so desired. The ruling of the Board should be affirmed solely on this ground.

2. LEGAL FEES ARE NOT PERSONAL DEBTS FOR PURPOSES OF SECTION 9- 8.10(a)(3) OF THE CODE, AND THE "IRRESPECTIVE TEST" SHOULD BE APPLIED TO DETERMINE IF AN EXPENDITURE IS FOR PERSONAL USE.

A. Legal Fees are Not Personal Debts. Unable to argue that legal fees are a prohibited use of campaign funds, Complainant argues that legal fees are instead "debts" prohibited by section 9-8.10(a)(3). When Complainant made this argument before the Board, a Board member described it as "original." (R-20) And indeed it is, since no reasonable person reading the plain language of section 9-8.10(a)(3) would ever imagine that the legislature contemplated legal fees when it prohibited payment of "debts other than loans" and "personal loans."

The Hearing Officer correctly wrote in his recommendation, as affirmed by the Board's 8-0 vote, that "I do not believe the word 'debt' in 5/9-8.10(a) (3) refers to all debt but only to debt from personal loans. I base this opinion on the fact that since 5/9-8.10(a) (3) and 5/9-8.10(a) (4) both start off with the same wording and they both specifically identify items later on, that the word 'debt' has to be restricted to the specific type of debt identified in that subsection – which for (a)(3) is personal loans and for (a)(4) is expenses relating to a personal residence....[M]oney spent on a legal defense is separate and different than debts related to personal loans..." (C-63)

A review of subsection 9-8.10(a)(3) confirms the Hearing Officer's reasoning. Subsection 9-8.10 (a)(3) states, "Nothing in this section authorizes the use of campaign funds to repay personal loans." Solis did not borrow any money from the Committee or from anyone else. There was no "loan" to repay.

In the Appellate Court, Complainant argued that the word "debt," as used in section 9-8.10(a)(3) applies to any "sum of money that you owe someone." (Complainant's Reply Brief before the Appellate Court at page 2) Under Complainant's broad and tortured reading of section 9-8.10(a)(3), any expenditure could be considered a prohibited "debt," even a campaign worker's purchase of pizza for volunteers during a late night session to address post cards, for which he was later reimbursed. Complainant tried to get around this obviously ridiculous conclusion by arguing before the Board and the Appellate Court that the Legal Fees were not an "expenditure" under the Code, an argument which the Appellate Court dismissed as "circular," *Sigcho-Lopez* at ¶12, and which Complainant quite prudently does not pursue before this Court.

Even assuming, *arguendo*, that the Legal Fees were a debt, and even assuming they were paid through an imputed "personal loan," the relevant question is whether they were expended for "personal" use. The legislative history for section 9-8.10 is informative. As Representative Jack Kubik, the floor manager of House Bill 672, later P.A. 90-737, which created section 9-8.10, stated, "Representative, what we're trying to accomplish here is to restrict the use of money for strictly personal use." *State of Ill. 90th G.A. House of Rep. Transcription Debate, May 22, 1998, p. 179.* Engaging in a colloquy with other Representatives, Kubik responded to a series of questions regarding hypothetical purchases, discussing, for example, the permissibility of buying flowers for a constituent (not personal use/permitted), giving a campaign manager a Christmas gift (not personal use/permitted), sending flowers on the occasion of a constituent's death (not personal use/permitted), buying a suit (personal use/forbidden), buying a patriotic shirt for a parade (not personal use/permitted), taking campaign staff or other legislators

out for dinner (not personal use/permitted), or using a campaign cell phone to call a spouse (not personal use/permitted). (*Id.*, pp. 178-80) These were clearly common sense answers.

Reviewing this legislative history, and incorporating some of the wording of section 9-8.10(c), the Appellate Court concluded that "section 9-8.10(a)(3)…prohibits only a political committee's expenditures for satisfaction or repayment of personal debts and not the payment of debts incurred by an officeholder in connection with the performance of governmental and public service functions." *Sigcho-Lopez* at ¶23.

To determine whether the debt was personal or in connection with governmental and public service functions, the Appellate Court adopted the reasoning used in similar situations when expenditures made by federal political committees were reviewed, as more fully explained in the following section.

B. The Appellate Court Correctly Adopted the Reasoning of the Federal "Irrespective Test" to Determine if a Political Expenditure is for Personal Use. It is common sense that, as the hearing officer explained, legal fees are not in the same category as the prohibited purchases and loans which the Code contemplates. Moreover, hiring a lawyer in response to a direction from law enforcement to assist in an ongoing investigation is different than using campaign funds to pay off a mortgage for a personal residence. Complainant's wildly subjective "I know it when I see it" interpretation of the Code, wherein the meaning of personal use has no objective standard, is neither reasonable nor fair, particularly when violation can lead to fines, forfeitures, and sanctions.

As the Appellate Court concluded, if a rational standard is to be established for what constitutes the type of "strictly personal use" which Representative Kubik stated was the purpose of section 9-8.10's prohibitions, the common sense "irrespective test" is the appropriate place to begin. Originally developed through advisory opinions and regulations by the Federal Election Commission ("FEC") for federal candidates, then enacted into law by the United States Congress and affirmed by the United States Court of Appeals, the "irrespective test" deals with the precise question of whether legal fees are prohibited personal payments made by a political committee, the same question asked of the Committee in this case.

As codified under 52 U.S.C. § 30114 (b) (1) of the Federal Election Campaign Act, political contributions "shall not be converted by any person to personal use," a statement almost identical to Representative Kubik's statement of legislative intent concerning section 9-8.10. Under the federal statute, a contribution is converted to personal use:

> if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including-
>
> (A) a home mortgage, rent, or utility payment;
> (B) a clothing purchase;
> (C) a noncampaign-related automobile expense;
> (D) a country club membership;
> (E) a vacation or other noncampaign-related trip;
> (F) a household food item;
> (G) a tuition payment;
> (H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and
> (I) dues, fees, and other payments to a health club or recreational facility."
> *52 U.S.C. § 30114 (b)(2).*

The enactment of section 52 U.S.C. § 30114 (b)(2) was an adoption by Congress of the FEC's "irrespective test," which, as the FEC explains in layperson terms on its website, means: "Under the 'irrespective test,' personal use is any use or expense of any person that would exist irrespective of the candidate's campaign or responsibilities as a federal officeholder. More simply, if the expense would exist even in the absence of the candidacy or even if the officeholder were not in office, then the personal ban applies. Conversely, any expense that results from campaign or officeholder activity falls outside the personal use ban." (E-12)

Regulations promulgated by the FEC list "legal expenses" as a category of expenditures which would be reviewed on a case-by-case basis to determine if the irrespective test applied. 11 C.F.R. § 113.1 (g) (1) (ii) (1) (A). In an Explanation and Justification accompanying the regulations, the FEC stated:

> Treating legal expenses other than those incurred in ensuring compliance with the election laws as *per se* personal use is too narrow a rule. A committee or a candidate could incur other legal expenses that arise out of campaign or officeholder activities but are not related to compliance with the FECA or other election laws. For example, a committee could incur legal expenses in its capacity as the employer of the campaign staff, or in its capacity as a contracting party in its dealings with campaign vendors. Consequently, the Commission has decided that issues raised by the use of campaign funds for a candidate's or committee's legal expenses will have to be addressed on a case by case basis. However, legal expenses will not be treated as though they are campaign or officeholder related merely because the underlying legal proceedings have some impact on the campaign or the officeholder's status. Thus, legal expenses associated with a divorce or charges of driving under the influence of alcohol will be treated as personal, rather than campaign or officeholder related."
> Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7868 (Feb. 9, 1995)

In *FEC v. Craig for U.S. Senate*, 816 F.3d 829 (D.C. Cir. 2016), the U.S. Court of Appeals for the District of Columbia Circuit looked at the "irrespective test" when considering campaign funds which were used to pay former Idaho Senator Larry Craig's

legal fees in three situations: 1) legal fees incurred when he tried to withdraw a guilty plea he had entered for disorderly conduct in an airport restroom; 2) legal fees incurred when he appeared before the Senate Ethics Committee to answer charges of ethics violations; and 3) public relations fees incurred in responding to press inquiries. The FEC had argued that the 2nd and 3rd situations were proper, but the legal fees for disorderly conduct in the restroom would have occurred irrespective of Craig's status.

That Court, in a unanimous decision written by Chief Judge Merrick Garland, affirmed. It approved the FEC's use of the irrespective standard and agreed with the FEC's interpretations that "legal expenses associated with a divorce or charges of driving under the influence of alcohol will be treated as personal rather than campaign or officeholder related," 816 F.3d at 838, but "legal expenditures made in response to charges of campaign or official misconduct are not personal." *Id.* at 842.

In the event this Court, as did the Appellate Court, deems it necessary to determine if the expenditures were for personal use, the irrespective test should be adopted. Applying the test, it is clear that there was no personal use.

According to the Superseding Indictment issued by the Special December 2017 Grand Jury in *United States v. Burke, et al.*:

> Alderman A [Solis] was Alderman of the Twenty-Fifth Ward in Chicago and Chairman of the Committee on Zoning, Landmarks & Building Standards. As Chairman of the Committee on Zoning, Landmarks & Building Standards, Alderman A had authority over which matters would be considered by that Committee. Alderman A was an employee and agent of the City of Chicago, and was paid a salary by the City of Chicago. Alderman A's Aldermanic office was located within City Hall. The Post Office project was located within Alderman A's ward. Unbeknownst to Burke and others, **Alderman A was cooperating with the Federal Bureau of Investigation, and acted at the direction of law enforcement in connection with Burke's efforts to obtain business for his private law firm from Company A.**

United States v. Burke, Case No. 19 CR 322 (N.D. Ill.), Dkt.30, May 30, 2019 ¶1.j., (emphasis added). (E-13-14, C-26.)

Complainant has continually misrepresented the nature of the Legal Fees, stating that it is "undisputed in this case that the $220,000 in legal fees Solis owed Foley & Lardner, LLC for defending him against criminal allegations or public corruption...." (Appellant Brief page 10). Solis incurred the Legal Fees only after the FBI and DOJ requested his assistance in an ongoing federal investigation, and only in connection with that investigation. Applying the "irrespective test" to the instant situation, it is clear that had Solis not been an Alderman and Chairman of the Zoning Committee, he would never have been contacted by the FBI to provide assistance. Alderman Burke and others met with Solis because he was an Alderman, and the discussions made public in the *Burke* Superseding Indictment and other pleadings happened only because Solis was an Alderman, acting in his capacity as an Alderman. Moreover, in a *Chicago Sun-Times* article attached by Complainant to his Complaint, federal investigators are reported as having sworn in an affidavit that, concerning an ongoing investigation of House Speaker Michael Madigan, "Solis had agreed to take action **in his official capacity as Alderman** for private benefits directed to Michael Madigan." (C-18, emphasis added)

The FBI approached Solis because of his official position and his ability to communicate with other officials. The Legal Fees were incurred because of Solis' official position as an alderman and committee chairman, and would never have been incurred if Solis were a private citizen. Accordingly, the Legal Fees do not fit within the personal expenditures prohibition of Code section 9-8.10(a)(3), and the judgment of the Board dismissing the Complaint should be affirmed.

Without any citation to statute or case law, Complainant makes the blanket statement that applying the irrespective test would necessarily commit Illinois courts to adopt "all existing and, perhaps, future FEC rulings using the 'irrespective test,' including rulings that are arguably at odds with the practices of the Board and the text of the Campaign Disclosure Act." (Appellant Brief, p. 13.) There is absolutely no authority for this amazing interpretation of the law. With the exception of the Illinois Common Law Act, 5 ILCS 50/1, which made "[t]he common law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British parliament made in aid of, and to supply the defects of the common law, prior to the fourth year of James the First, …the rule of decision," no Illinois law requires this Court to adopt all the interpretations that accompany the adoption of another jurisdiction's legal principles. The Appellate Court adopted the reasoning of the irrespective test. It did not incorporate the federal statute.

Finally, as a policy matter, Complainant's argument assumes that all persons faced with allegations of public corruption must be guilty and therefore not entitled to the use of campaign funds to pay their defense fees. In Complainant's world, even innocent officeholders caught in the web of an investigation solely because of their public positions must drain their personal resources as the price of public service. As the Committee's counsel stated to the Board, "And anyone who thinks that the FBI comes and asks you something and you shouldn't get a lawyer to talk to, they truly are naïve." (R- 12-13) One hopes that Complainant, an elected official himself, never has to make that choice.

3. PAYMENT FOR LEGAL SERVICES RELATED TO COOPERATION WITH LAW ENFORCEMENT OFFICIALS IS AN APPROPRIATE EXPENDITURE UNDER SECTION 9-10-8(c) OF THE CODE AND IS CONSISTENT WITH THIS COURT'S OPINION IN *COOKE V. ILLINOIS STATE BOARD OF ELECTIONS*.

In both the Complaint and in the Appellant Brief, Complainant makes many wild and speculative statements concerning Solis's purported activities. However, the publicly available pleadings in the *Burke* case repeatedly reference Solis's assistance at the behest of law enforcement agencies. For example, the Superseding Indictment language quoted in section 2.B., *supra*, makes it clear that Solis was cooperating with a federal investigation and acting at the direction of law enforcement after June 2016. *See, e.g., United States v. Burke,* Case No. 19 CR 322 (N.D. Ill.), Dkt.30, May 30, 2019.

Section 9-8.10(c) of the Code states: "Nothing in this section prohibits the expenditure of funds of a political committee controlled by an officeholder or by a candidate to defray the customary and reasonable expenses of an officeholder in connection with the performance of governmental and public service functions." (E-13-14, C-26.)

Solis was requested by the FBI to cooperate in a continuing federal investigation and was directed to take actions, including to record conversations, with certain public officials. Cooperation with law enforcement certainly fits within the category of "governmental and public service functions." It is unreasonable to think that, upon receiving a request from the FBI to assist in an investigation, an officeholder would not seek legal advice and representation. Even without reference to other sections of section 9-8.10, the Legal Fees fit within the governmental and public service functions

exemption of section 9-8.10(c), and the Board's decision should be affirmed and the Complaint dismissed.

The Appellate Court referred to section 9-8.10(c) to aid in its analysis of section 9-8.10(a)(3), stating that "[g]iving effect to both section 9-8.10(a)(3) and section 9-8.10(c) leads us to conclude that the word 'debts' in section 9-8.10(a)(3) does not refer to all debts but only debts of a personal nature that do not defray the customary and reasonable expenses of an officeholder in connection with the performance of governmental and public service functions." *Sigcho-Lopez* at ¶21. The Appellate Court went on to state that, because "allegations of misconduct in the discharge of an officeholder's official duties would not exist independent of the individual's status as an elected official, [t]he payment of legal fees incurred in defense of such allegations by a political committee can therefore qualify as an expenditure to defray a reasonable expense of an officeholder in connection with the performance of a governmental function as permitted pursuant to section 9-8.10(c) of the campaign disclosure statute." Id. at ¶27. This reasoning echoes that of Chief Judge Merrick Garland's statement in *FEC v. Craig* that "legal expenditures made in response to charges of campaign or official misconduct are not personal." *FEC v. Craig, supra*, at 842.

Subsequent to the Appellate Court's decision, this Court handed down its opinion in *Cooke v. Illinois State Board of Elections*, 2021 IL 125386, which reviewed sections 9-8.10(a)(2) and 9-8.10(a)(9) and analyzed the relationship between section 9-8.10(a)(9) and section 9-8.10(c).

In *Cooke*, this Court examined the propriety of a political committee paying for gas and expenses of motor vehicles not owned or leased by that committee, in apparent

violation of section 9-8.10(a)(9). That section contained detailed provisions concerning the use of motor vehicles owned and leased by a committee, with specific provisions regarding mileage reimbursement (as opposed to payment for gas and repairs) for vehicles not owned or leased by the committee.[2] The committee argued that, even if it had violated section 9-8.10(a)(9), the challenged expenses should be permitted under section 9-8.10(c) as being part of the customary and reasonable expenses of an officeholder in connection with the performance of governmental and public service functions.

The Board of Elections split 4-4 on its interpretation of section 9-8.10(a)(9) and, under section 1A-7 of the Code, which requires at least 5 votes for any action, dismissed the challenge for failure to achieve a majority either way, thereby finding no violation. The Appellate Court reversed, holding that section 9-8.10(a)(9) was the exclusive provision regarding repair and maintenance of motor vehicles, and, disregarding the committee's section 9-8.10(c) argument, found that the committee had violated the section. *Cooke v. Illinois State Board of Elections,* 2019 IL App (4th) 18050 ¶68.

On appeal, this Court took a more nuanced approach to the interplay between section 9-8.10(a)(9) and section 9-8.10(c). While this Court affirmed the Appellate Court's decision regarding the section 9-8.10(a)(9) violation, it emphasized the specificity of that section, "which exhaustively delineates what types of expenditures may be made for a vehicle used for campaign or governmental purposes when a committee owns, leases, or does not own the vehicle." *Cooke v. Illinois State Board of Elections*, 2021 IL 125386 ¶60. This Court also stated that "we note that the plain language does

[2] Section 9-8.10(a)(9) has since been amended to permit the challenged activity. P.A. 102-0015.

not even mention the word 'gasoline,'" and accordingly refused to accept the committee's argument that repairs and maintenance necessarily included fueling a vehicle. *Id.* Comparing the hyper-specific wording of section 9-8.10(a)(9) to the more general statements in section 9-8.10(c), this Court found that "[w]here there are two statutory provisions, one of which is general and designed to apply to cases generally, and the other is particular and relates to only one subject, the particular provision must prevail." *Id.* at ¶67, *quoting Murray v. Chicago Youth Center,* 224 Ill. 2d 213, 233 (2007).

Using this Court's reasoning in *Cooke*, it is clear that the Board's and the Appellate Court's application of section 9-8.10(c) to assist in the interpretation of section 9-8.10(a)(9) was correct. Unlike *Cooke*, the specificity in section 9-8.10(a)(3) relates only to the procedures necessary for the execution of loan and credit agreements[3] and not to the amorphous meaning of "debt," which all parties, including the Appellate Court, concede could not refer to all debts. The use made by the Appellate Court to add the standards of 9-8.10(c) was completely appropriate for a rational understanding of the section.

Furthermore, unlike *Cooke*, where the Board deadlocked on its interpretation of section 9-8.10(a)(9), here the Board unanimously agreed upon the inapplicability of legal

[3] "The repayments shall be made by check written to the person who made the loan or credit agreement. The terms and conditions of any loan or credit agreement to a committee shall be set forth in a written agreement, including but not limited to the method and amount of repayment, that shall be executed by the chair or treasurer of the committee at the time of the loan or credit agreement. The loan or agreement shall also set forth the rate of interest for the loan, if any, which may not substantially exceed the prevailing market interest rate at the time the agreement is executed."

fees to the prohibitions set forth in section 9-8.10(a)(3), a decision backed by a years-long and publicly announced policy and an interpretation entitled to deference.

Moreover, just as this Court in *Cooke* refused to add the word "gasoline" to section 9-8.10(a)(9), the Court should deny Complainant's attempts to add the words "legal fees" to section 9-8.10(a)(3). This is not a situation of the general being trumped by the specific. It is a situation where a provision which is ambiguous was aided by applying the language of another provision. "The words and phrases in a statute should be construed in light of other relevant provisions and not in isolation." *Alford v. Shelton (In re Estate of Shelton)*, 2017 IL 121199 ¶36. The process that both the Board and the Appellate Court undertook was entirely consistent with *Cooke*.

4. THE COURT SHOULD ACCORD DEFERENCE TO THE BOARD'S LONGSTANDING INTERPRETATION OF SECTION 9-8.10.

As noted in the Statement of Facts, *supra*, the Board's spokesperson, Matt Dietrich, the Board's Acting General Counsel, Bernadette Matthews, and Board Members all affirmed the existence of the policy permitting legal fees to be paid through political committee expenditures. Mr. Dietrich stated that "there was nothing in state statute to prohibit elected officials from using campaign cash to pay legal fees." (E-5) Ms. Matthews confirmed that "at this point in time with no prohibition on the books against it, it is just generally accepted as something that can be considered an expenditure." (R-25) Board Member William M. McGuffage, a member of the Board since May, 1998, stated that "…the expenditure of funds for a criminal defense is not prohibited under that statute." (R-22)

While this Court "is not bound by an administrative agency's interpretation of a statute," *Bonaguro v. County Officers Electoral Board*, 158 Ill. 2d 391, 398 (1994), "in

instances where statutory ambiguities must be resolved or there is reasonable debate about a statute's meaning, the Board's determination is wholly relevant." *Nissan N. Am., Inc. v. Motor Vehicle Review Bd.,* 2014 IL App (1st) 123795, ¶16. "[E]ven when review is *de novo*, an agency's construction of the law may be afforded substantial weight and deference if the meaning of the terms used in a statute is doubtful or uncertain. Courts accord such deference in recognition of the fact that agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the legislature's intent." *Ill. Landowners Alliance, NFP v. Ill. Commerce Comm'n,* 2017 IL 121302 ¶46, *quoting Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 387 n.9 (2010).

In regard to "experience and expertise," the Board stands apart from most other agencies. First, as previously noted, the Board is one of only two agencies created not by statute, but by the Illinois Constitution itself in Article III, Section 5. Moreover, the implementing legislation for the Board mandates that "Members [of the Board] shall be persons who have extensive knowledge of the election laws of this State." 10 ILCS 5/1A-2. Board Members are required to be divided equally between residents of Cook County and residents of the rest of the State and be affiliated with different parties. *Id.* When, as here, all eight Members of the Board unanimously agree upon an interpretation of the Code, their decision should not be lightly dismissed.

Complainant is asking this Court to legislate language into section 9-8.10 which simply does not exist, effectively creating a new law. Complainant further demands that the Committee pay a fine of $220,500 for a previously unknown violation. The Committee and scores of other political committees have acted pursuant to the Board's

reading of the plain language of the section. The Board's policy regarding the use of committee funds for legal expenses has been clear and its interpretation of section 9-8.10 (a) has never, until now, been challenged. Unlike the situation in *Corbin v. Schroeder*, 2021 IL 127052, where this Court recently rejected a reliance theory based upon a Village Clerk's failure to distinguish between partisan, non-partisan and independent candidates in calculating signature requirements, the Committee had a right to rely on a policy formulated by those constitutionally and statutorily charged with understanding and administering the election laws. Accordingly, the Board's decision should be affirmed and the Complaint dismissed.

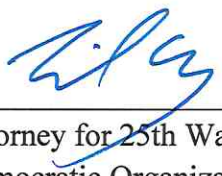
CONCLUSION

The 25th Ward Regular Democratic Organization made and reported a wholly legal expenditure to Foley & Lardner LLP for legal fees incurred by Daniel Solis in connection with his assistance, at the direction of federal law enforcement, in a continuing federal investigation, which assistance would not have been requested but for Solis's public office. Nothing in the Illinois Election Code prohibited the expenditure. To the extent that any ambiguity exists in section 9-8-10(a) of the Election Code, which describes expenditures which are prohibited, the Court should defer to the interpretation provided by the State Board of Elections, which is charged with the enforcement of the Election Code and which has a long standing policy authorizing the type of expenditure at issue here. If necessary, the Court should follow the reasoning adopted by federal courts relating to federal candidates in similar circumstances and apply the "irrespective test," the use of which clearly demonstrates that the expenditure was not for personal use,

but arose solely because of Solis's public positions of Alderman and committee chairman. Complainant, a political rival of Solis and his successor as Alderman, acknowledges the existence of the Board's interpretation of section 9-8-10(a), as well as acknowledging the many other political committees which have acted in reliance upon the Board's policy. Complainant nevertheless seeks a retroactive penalty for acts which were legal when done, a penalty which goes against both Illinois case law and fundamental fairness.

Complainant seeks to end a practice he dislikes. He has that right, but his remedy is with the General Assembly, not this Court. The Board of Elections, in two unanimous 8-0 votes, found the expenditure to be legal and dismissed the Complaint. The Appellate Court, in a similarly unanimous decision, affirmed. The 25th Ward Regular Democratic Organization respectfully requests that the Court affirm the Board's decision and dismiss the Complaint.

Respectfully submitted,



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No. 127253

IN THE SUPREME COURT OF ILLINOIS

BYRON SIGCHO-LOPEZ,	)	
	)	Appeal from the Appellate Court
Petitioner-Appellant,	)	of Illinois, First District,
	)	No. 1-20-0561
v.	)	
	)	There heard on Appeal from the
ILLINOIS STATE BOARD OF	)	Petition for Administrative Review
ELECTIONS and 25TH WARD REGULAR	)	of Decision and Final Order of
DEMOCRATIC ORGANIZATION, a	)	Illinois State Board of Elections
political party committee,	)	
	)	State Board of Elections
Respondents-Appellees.	)	Case No. 19 CD 094

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Illinois Supreme Court Rules 341 (a) and (b). The length of this brief, excluding the pages and words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 28 pages in length.

Signature of Attorney

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Print Name of Attorney

Attorney for (check applicable designation) ___Appellant _X__Appellee ___Amicus

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No. 127253

IN THE SUPREME COURT OF ILLINOIS

BYRON SIGCHO-LOPEZ, Petitioner-Appellant, v. ILLINOIS STATE BOARD OF ELECTIONS and 25TH WARD REGULAR DEMOCRATIC ORGANIZATION, a political party committee, Respondents-Appellees.	)	Appeal from the Appellate Court of Illinois, First District, No. 1-20-0561 There heard on Appeal from the Petition for Administrative Review of Decision and Final Order of Illinois State Board of Elections State Board of Elections Case No. 19 CD 094

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PLEASE TAKE NOTICE that on December 8, 2021, we filed with the Clerk of the Supreme Court of Illinois the Brief of 25th Ward Regular Democratic Organization, Respondent-Appellee, a true and correct copy of which is attached and served upon you.

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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for 25th Ward Regular Democratic Organization, Respondent-Appellee, certifies that on December 8, 2021, he caused to be served a copy of the foregoing Notice of Filing and Brief of 25th Ward Regular Democratic Organization, Respondent-Appellee, by Odyssey eFile, upon:

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information and belief

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