E-FILED
Transaction ID: 1-24-0417
File Date: 3/1/2024 3:23 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

Nos. 24-0417 & 24-0431 (consol.)

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BUILDING OWNERS AND MANAGERS ASSOCIATION, et al.,

Plaintiffs-Appellees,

v.

COMMISSION OF THE BOARD OF ELECTIONS of the CITY OF CHICAGO, et al.,

Defendants-Appellants,

and

CITY OF CHICAGO,

Intervenor-Nonparty-Appellant.

Appeal from the Circuit Court of Cook County, Illinois
County Department, County Division
No. 2024 COEL 001
The Honorable Kathleen Burke, Judge Presiding

BRIEF AND APPENDIX OF INTERVENOR/NONPARTY APPELLANT

MARY B. RICHARDSON-LOWRY
Corporation Counsel
of the City of Chicago
2 N. LaSalle Street, Suite 580
Chicago, Illinois 60602
(312) 742-0115
stephen.collins@cityofchicago.org
appeals@cityofchicago.org

MYRIAM ZRECZNY KASPER
Deputy Corporation Counsel
SUZANNE M. LOOSE
Chief Assistant Corporation Counsel
STEPHEN COLLINS
Assistant Corporation Counsel
Of Counsel

ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

On November 7, 2023, the Chicago City Council passed a resolution authorizing a referendum to be submitted to Chicago voters at the general primary election on March 19, 2024. The referendum asks voters whether they approve of substituting the current flat rate real property transfer tax with a sliding scale that decreases the rate for the first $1 million of the transfer price for every property purchased in the City, while implementing higher rates only on the portions of any transfer prices over $1 million and $1.5 million. C. 24. About two months after City Council passed the resolution, on January 5, 2024, plaintiffs filed a complaint seeking an injunction to prevent Chicago voters from voting on the measure. Plaintiffs named as defendants the Board of Election Commissioners of the City of Chicago, as well as the Board's chair and two commissioners (collectively, "the Board"). They did not name the City of Chicago.

On January 16, 2024, plaintiffs filed a motion for judgment on the pleadings. On February 9, 2024, the Board filed its response to that motion, as well as a motion to strike it and a motion to dismiss the complaint. On the same date, the City filed a petition to intervene, along with a combined response to plaintiffs' motion for judgment on the pleadings and a motion to dismiss the complaint. After briefing on the motions, the court, on February 23, 2024, made an oral ruling denying the City's motion to intervene and the Board's motion to dismiss, and granting the plaintiffs' motion for judgment

on the pleadings. On February 26, 2024, the circuit court entered written orders to the same effect, entering judgment in plaintiffs' favor and enjoining the Board from counting any votes cast on the referendum question at the March 19, 2024 election.

The City and Board appeal. This court has expedited the appeal. All questions are raised on the pleadings.

ISSUES PRESENTED

1. Whether the circuit court abused its discretion in denying the City's motion to intervene, and whether, in any event, the City has standing to appeal all aspects of the judgment even as a non-party.

2. Whether the circuit court lacked jurisdiction (a) to enter an order interfering with an election that is part of the legislative process; and (b) to enter any order when a necessary party, the City, had not been joined in the case.

3. Whether the circuit court erred in granting judgment on the pleadings because plaintiffs' claims fail as a matter of law.

4. Whether the circuit court erred by granting plaintiffs injunctive relief.

JURISDICTION

The circuit court entered final judgment for plaintiff on February 26, 2024. C. 336-37. The City filed a timely notice of appeal on the same date.

C. 347-48. This court has jurisdiction under Ill. Sup. Ct. R. 303.

STATUTORY PROVISIONS INVOLVED

The Illinois Municipal Code, 65 ILCS 5/8-3-19(d):

> (d) Except as provided in subsection (i), no home rule municipality shall impose a new real estate transfer tax after the effective date of this amendatory Act of 1996 without prior approval by referendum. Except as provided in subsection (i), no home rule municipality shall impose an increase of the rate of a current real estate transfer tax without prior approval by referendum. A home rule municipality may impose a new real estate transfer tax or may increase an existing real estate transfer tax with prior referendum approval. The referendum shall be conducted as provided in subsection (e). An existing ordinance or resolution imposing a real estate transfer tax may be amended without approval by referendum if the amendment does not increase the rate of the tax or add transactions on which the tax is imposed.

The Illinois Municipal Code, 65 ILCS 5/8-3-19(g):

> (g) A home rule municipality may not impose real estate transfer taxes other than as authorized by this Section. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.

STATEMENT OF FACTS

The Illinois Municipal Code requires home rule municipalities to obtain voter approval through a referendum before they can impose or increase a real estate transfer tax. 65 ILCS 5/8-3-19(d). If a majority of electors voting on the proposition vote in favor of it, the municipality may impose or increase the real estate transfer tax. Id. § 5/8-3-19(e).

On November 7, 2023, the Chicago City Council passed Resolution

Number R2023-4166, C. 11, which initiated and authorized a "public question" to be submitted to the voters of Chicago at the regularly scheduled general primary election on March 19, 2024. C. 23-24. The resolution was effective immediately upon its passage. C. 24. The question asks voters whether they approve of decreasing the real property transfer tax for the first $1 million of the transfer price for every property purchased in the City, while implementing higher rates only on the portions of any transfer prices over $1 million and $1.5 million. C. 24. The extra revenue the new plan generates will go toward combatting homelessness in Chicago, including by providing housing and services. C. 24. In the form submitted to the voters, the question states as follows:

> Shall the City of Chicago impose:
>
> (1) a real estate transfer tax decrease of 20% to establish a new transfer tax rate of $3 for every $500 of the transfer price, or fraction thereof, for that part of the transfer price under $1,000,000 to be paid by the buyer of the real estate transferred unless the buyer is exempt from the tax solely by operation of state law, in which case the tax is to be paid by the seller; AND
>
> (2) a real estate transfer tax increase of 166.67% to establish a new transfer tax rate of $10 for every $500 of the transfer price or fraction thereof, for that part of the transfer price between $1,000,000 and $1,500,000 (inclusive) to be paid by the buyer of the real estate transferred unless the buyer is exempt from the tax solely by operation of state law, in which case the tax is to be paid by the seller; AND
>
> (3) a real estate transfer tax increase of 300% to establish a new transfer tax rate of $15 for every $500

> of the transfer price, or fraction thereof, for that part of the transfer price exceeding $1,500,000 to be paid by the buyer of the real estate transferred unless the buyer is exempt from the tax solely by operation of state law, in which case the tax is to be paid by the seller?

> The current rate of the real estate transfer tax is $3.75 per $500 of the entire transfer price, or fraction thereof, and the revenue is used for general corporate purposes. The revenue from the increase (the difference between revenue generated under the increased rate and the current rate) is to be used for the purpose of addressing homelessness, including providing permanent affordable housing and the services necessary to obtain and maintain permanent housing in the City of Chicago.
>
> ☐ Yes
> ☐ No

C. 24.

Approximately two months after the resolution passed, on January 5, 2024, plaintiffs filed their complaint in this case. C. 10. Plaintiffs are individuals, companies and organizations that own or have interests in purchasing, investing in, developing, leasing, renting, or selling commercial real estate and apartment buildings throughout Chicago valued at over $1 million. C. 10-13. Plaintiffs did not sue the City. The only defendants named in the complaint are "the Board of Election Commissioners [of the City of Chicago]" as "the election authority statutorily charged with administering elections within the City of Chicago, including the March 19, 2024, Primary Election," C. 13; and three individual defendants, sued solely in their official capacities as the Board's chair, secretary, and commissioners. C. 13.

The complaint alleged, in count I, that the resolution violates the Illinois Municipal Code, 65 ILCS 5/8-3-19, "because it not only proposes to (greatly) increase the real estate transfer tax rate on some transfers but it also proposes to decrease the real estate transfer tax rate on other transfers (as not permitted by Section 8-3-19)." C. 16. Count I further alleges that the resolution "is a textbook example of logrolling," because "it combines a popular idea (lowering taxes) with an unpopular idea (raising taxes) in order to carry the unpopular idea to passage." C. 16. In count II, the complaint alleged that the proposed referendum violates article III, section 3 of the Illinois Constitution, which provides that "'elections shall be free and equal,'" C. 17 (quoting Ill. Const. art. III, § 3), because it "is a compound question combining three separate questions," C. 18. Count III of the complaint alleged that the referendum was "vague, ambiguous, and not self-executing." C. 18. According to plaintiffs, the "referendum's reference to 'addressing homelessness' is insufficient to identify precisely what would be approved by the voters," because it does not provide "further explanation to the voters as to what will, and will not, be done with the funds raised, and who will make those decisions." C. 18. The reference to "addressing homelessness" will require additional action . . . to decide precisely how the additional revenue will be used." C. 18. The complaint further references a draft ordinance calling for creation of a fund to receive revenues from the increased transfer tax, setting forth the eligible uses and non-eligible uses for the funds,

creating a Board "to make recommendations regarding the percentage of funds to be expended annually on the eligible uses," and empowering the City's Budget Director to determine what percentage of the fund should be used annually; these items are "not included in the proposition to be put to the voters," which plaintiffs allege shows that the resolution is not self-executing. C. 19. In count IV, the complaint sought to enjoin the referendum from appearing on the ballot. C. 20. Finally, the complaint sought a declaration that the resolution is unconstitutional and unlawful, and an order enjoining the Board from certifying the referendum question and from printing the question on ballots. C. 20.

On January 16, 2024, plaintiffs filed a motion for judgment on the pleadings. C. 48, 52. The circuit court entered a briefing schedule on the motion, ordering that defendants file a response by February 9, 2024, and that plaintiffs reply by February 13, 2024. C. 72.

On February 9, 2024, the Board filed a response to plaintiffs' motion for judgment on the pleadings, C. 237, and a motion to dismiss, C. 186. In the meantime, the ballots had already been printed. The Board asserted that it was not the proper defendant because it "is a ministerial body responsible for election administration and record keeping," and has "no role either in drafting or revising referenda." C. 240. In addition, the Board argued that the Illinois Election Code imposes "a nondiscretionary, ministerial duty to comply with the City Clerk's ballot certification," C. 238, and that the Board

has no "statutory authority to determine whether the language and form of referenda are legal," C. 240.

The Board's motion to dismiss, C. 186, reiterated these points and asserted that relief against the Board was improper because "the Board has no interest in—and is in fact neutral—as to the legality or constitutionality of the challenged Referendum. The Board and its named members merely act as an election administration and record-keeping body." C. 189. In particular, the Board explained that it lacks any statutory authority to block a referendum or remove it from the ballot. C. 192. The Board also submitted an affidavit of its Executive Director, who averred that the Board "and its members have a long history of taking neutral positions on referenda initiated by ordinance or resolution through the Chicago City Council and I believe [the Board] is not authorized by statute to make decisions regarding whether such referenda are lawful." C. 236. The Board's motion to dismiss also argued that the circuit court lacked jurisdiction over the case, based on settled Illinois law holding that "'courts can neither dictate nor enjoin the passage of legislation.'" C. 190 (quoting Fletcher v. City of Paris, 377 Ill. 89, 96 (1941)); see also C. 190-91, 193-94.

Also on February 9, 2024, the City filed a petition to intervene as of right pursuant to 735 ILCS 5/2-408(a)(2), C. 130, along with a combined motion to dismiss and response to plaintiffs' motion for judgment on the pleadings, C. 134. The petition to intervene argued that the Board "has no

role in addressing whether a resolution complies with the authorizing statute or the Illinois Constitution," that the City has a direct interest in this suit, that the City is a necessary party and that orders entered without a necessary party before the court are void, that its interests would be materially affected by any judgment entered in its absence, C. 131-33, and that "[t]he City should not have to rely on [the Board] to represent the City's interest," C. 131.

In its motion to dismiss and response to plaintiffs' motion for judgment on the pleadings, the City argued that the complaint should be dismissed with prejudice for lack of jurisdiction because the circuit court lacked the power to enjoin the referendum. C. 138-40 (citing, <u>e.g.</u>, <u>Fletcher</u>, 377 Ill. at 92-93). The City also argued that, contrary to plaintiffs' claim, nothing in the plain language of 65 ILCS 5/8-3-19(d) prohibits a municipality from including a decrease in transfer tax in a resolution to be submitted to the voters by referendum. C. 141-43 (quoting 65 ILCS 5/8-3-19(d)) (an existing tax "'may be amended without approval by referendum if the amendment does not increase the rate of the tax or add transactions on which the tax is imposed.'"). In addition, the resolution was not improper "logrolling" as the plaintiffs contended, because it did not improperly combine multiple unrelated subjects; it merely explained how the current flat transfer tax would be amended to include graduated rates for the transfers of properties both over and under $1 million. C. 142-43. For similar reasons, the

resolution did not violate the "free and equal" elections provision of article III, section 3 of the Illinois Constitution, either. C. 143. Moreover, plaintiffs' claim that the referendum was not self-executing was unsupportable because the constitutional provision that a referendum be self-executing applies only to binding referenda concerning the manner of selection and terms of office of its officers, and the referendum here was not brought pursuant to that provision. C. 144 (citing Ill. Const. art. VII, § 6(f)). Finally, the City explained why plaintiffs did not meet the criteria for injunctive relief, C. 145-46, and asserted that the motion for judgment on the pleadings was procedurally improper because the Board had not yet answered the complaint, C. 147.

Plaintiffs opposed the City's petition to intervene. C. 291. Plaintiffs asserted that the petition was not timely and would "necessarily delay the *agreed upon* schedule for prompt resolution of the case," C. 291 (emphasis in original); that the City's "purported interest" was adequately represented by the Board since the Board filed a motion to dismiss and responded to plaintiffs' motion for judgment on the pleadings, C. 294-95; that the City would not be bound by any order or judgment in the case, C. 295; and that the City was not a necessary party because it does not administer elections, produce ballots, or tally votes, C. 295-96.

On February 14, 2024, the circuit court held a hearing on the pending motions. R. 2-60. Then, on February 23, 2024, the circuit court made an

oral ruling denying the City's motion to intervene, denying the Board's motion to dismiss, and granting plaintiffs' motion for judgment on the pleadings. The circuit court read the parties' filings into the record but did not give reasons for its rulings. See Report of Proceedings, 2/23/24.[1] Also on February 23, 2024, the City filed a motion for stay in the circuit court. C. 324. On February 26, 2024, the circuit court entered a written order denying the City's petition to intervene. C. 335. The court also entered its judgment. C. 336-37. The judgment order states that the Board's motion to dismiss is denied; that for the reasons stated in open court and on the record, plaintiffs' motion to expedite consideration of their motion for judgment on the pleadings and plaintiffs' motion for judgment on the pleadings are granted; and that the Board "is ordered not to count and suppress any votes cast on the referendum question at the March 19, 2024 primary election, and not to publish any tallies or results of any votes cast on the referendum question." C. 336. The City filed a notice of appeal on February 26, 2024. C. 347. On February 27, 2024, the circuit court denied the City's motion to stay. A12. The Board filed a notice of appeal on February 27, 2024.

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[1] We received the transcript of the February 23, 2024 hearing on February 29, 2024, after the circuit court had already transmitted the record to this court. That transcript will be provided to this court as soon as possible.

ARGUMENT

The judgment of the circuit court cannot stand. Settled Illinois Supreme Court precedent holds that courts have no authority to enjoin the legislative process – yet that is precisely what the circuit court did here. The court, moreover, granted plaintiffs all the relief they sought while at the same time refusing to allow the City to be heard, despite the City's vital and obvious interest in the outcome of the proceeding, and despite express statements by the only named defendant, the Board, that its responsibilities were ministerial and that it had no authority to weigh in on the legality of the referendum. The City of Chicago respectfully urges this court to swiftly reverse the circuit court's judgment so that Chicagoans may have their votes counted on this important measure, and not suppressed on the basis of claims that have no merit whatsoever.

I. THE CITY MAY CHALLENGE ON APPEAL BOTH THE DENIAL OF INTERVENTION AND THE JUDGMENT FOR PLAINTIFFS.

At the outset, we explain that the City unquestionably has standing to appeal as to all aspects of the judgment. The circuit court's denial of leave to intervene was a gross abuse of discretion, given the City's extraordinary interest in the litigation and the Board's express statement that it had no authority to weigh in on the legality of the referendum. And regardless, even nonparties have standing to appeal when they are directly impacted by the judgment, as the City obviously is here.

A. The Circuit Court Abused Its Discretion In Denying Leave To Intervene.

The City moved to intervene as of right pursuant to 735 ILCS 5/2-408(a)(2). Section 5/2-408(a)(2) states, in relevant part, that "[u]pon timely application anyone shall be permitted as of right to intervene in an action . . . when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action." 735 ILCS 5/2-408(a)(2). A circuit court's decision to grant or deny intervention is reviewed for abuse of discretion. In re County Treasurer, 2017 IL App (1st) 152951, ¶ 15. "When a petitioner seeks to intervene as a matter of right, 'the trial court's discretion is limited to determining timeliness, inadequacy of representation and sufficiency of interest; once these threshold requirements have been met, the plain meaning of the statute directs that the petition be granted.'" Id. (citation omitted). All of the threshold elements were met here. The circuit court's denial of intervention was a clear abuse of discretion.

To start, the City's interest in this litigation is more than "sufficient." It is paramount. Indeed, the City was a necessary party. "A necessary party is one whose participation is required to (1) protect its interest in the subject matter of the controversy which would be materially affected by a judgment entered in its absence; (2) reach a decision protecting the interests of the parties already before the court; or (3) allow the court to completely resolve the controversy." Zurich Insurance Co. v. Baxter International, Inc., 275 Ill.

App. 3d 30, 37 (2d Dist. 1995). The City would be – indeed, is already – materially affected by the judgment for plaintiffs. In ordering the Board "to not count" and to "suppress any votes cast" on the referendum, the circuit court has literally stopped the City's legislative process, because without a referendum the transfer tax cannot be amended in the manner City Council proposes. If that does not describe a "sufficient" interest, it is difficult to imagine what would.

What is more, the circuit court entered its judgment without substantive opposition from the only defendant in the case, the Board. The Board could not and did not adequately represent or protect the City's interests. In fact, the Board took the position, and still takes the position, that it is not the proper defendant and that it *has no authority* to weigh in on the legality of the referendum. E.g., C. 238, 192. The Board explained that it "is a ministerial body responsible for election administration and record keeping," and has "no role either in drafting or revising referenda," C. 240; that under the Election Code, it has "a "nondiscretionary, ministerial duty to comply with the City Clerk's ballot certification," C. 238; that it has no "statutory authority to determine whether the language and form of referenda are legal," C. 240; that it "has no interest in—and is in fact neutral—as to the legality or constitutionality of the challenged Referendum" and "merely act[s] as an election administration and record-keeping body," C. 189; and that it lacks any statutory authority to block a referendum or

remove it from the ballot, C. 192. And the Board's own Executive Director averred that the Board "and its members have a long history of taking neutral positions on referenda initiated by ordinance or resolution through the Chicago City Council and I believe [the Board] is not authorized by statute to make decisions regarding whether such referenda are lawful." C. 236. It is plain that the City's interests were not adequately represented, so intervention should have been allowed.

Finally, the City's petition to intervene was timely. It was filed on February 9, 2024. C. 130. That was the same date that the court had ordered for the Board's response to plaintiffs' motion for judgment on the pleadings. C. 72. And the Board did file its response that day, along with a motion to dismiss. C. 237, 186. The City's petition delayed nothing. Although plaintiffs urged that the petition was untimely because it was filed 35 days after they filed suit and would "necessarily delay the *agreed upon* schedule for prompt resolution of the case," C. 291; the petition fit precisely into the schedule the parties were already following and even attached a combined motion to dismiss and response to plaintiffs' motion for judgment on the pleadings. Indeed, plaintiffs' argument that the petition was untimely was particularly misguided given the City's status as a necessary party. This court has deemed a petition filed even after judgment timely where the party's intervention was necessary to protect its rights. E.g., Pekin Insurance Co. v. Rada Development, LLC, 2014 IL App (1st) 133947, ¶¶ 23-24; see also Zurich

Insurance Co. v. Raymark Industries, Inc., 144 Ill. App. 3d 943, 946 (1st Dist. 1986) (joinder of necessary parties is jurisdictional and may be raised at any time).

In short, the City's petition to intervene amply satisfied all the requirements for intervention as of right. The circuit court's order denying intervention was a gross abuse of discretion and should be reversed.

B. The City Has Nonparty Standing To Challenge The Judgment.

"[I]t is settled law that a non-party may bring an appeal when that person has a direct, immediate and substantial interest in the subject matter, which would be prejudiced by judgment or benefited by its reversal." Citicorp Savings of Illinois v. First Chicago Trust Co., 269 Ill. App. 3d 293, 299 (1st Dist. 1995); accord MidFirst Bank v. McNeal, 2016 IL App (1st) 150465, ¶ 19; Marcheschi v. P.I. Corp., 84 Ill. App. 3d 873, 878 (1st Dist. 1980). The City may appeal as a non-party from all aspects of the judgment here.

This case is on all fours with Citicorp. There, the sheriff sold a home at a mortgage foreclosure sale. 269 Ill. App. 3d at 295. The bank filed a motion to approve the sheriff's report of sale, and the homeowners sought to prevent the confirmation. Id. The circuit court vacated the sale. Id. at 296. The buyer moved to intervene, which the circuit court denied. Id. The circuit court subsequently reinstated the homeowners' mortgage and dismissed the case. Id.

The buyers appealed, and the homeowners argued that because the buyers were denied the right to intervene, "they only have standing to challenge the court's ruling denying intervention." 269 Ill. App. 3d at 296. This court rejected this argument. The court first held that the circuit court had erred in denying the buyers leave to intervene, id. at 298-99, but additionally held that "*regardless of the decision by the trial court to deny intervention*," the buyers had nonparty standing to appeal the circuit court's order, id. at 299 (emphasis added). As this court explained, "it cannot be disputed that the [buyers] were adversely affected by the trial court's order or that they will have the right to the property should the sale be confirmed." Id. This was "sufficient to allow the [buyers] to bring this appeal." Id.; see Marcheschi, 84 Ill. App. 3d 873 at 877-78 (nonparty with direct interest in stock that circuit court ordered to be sold at judicial sale had standing to prosecute appeal; nonparty's interest "was prejudiced by the trial court's judgment and . . . would be restored by a reversal of that order").

Here, too, it cannot seriously be disputed that the City was adversely affected by the circuit court's judgment. If that judgment is affirmed, the referendum votes will not be counted and the City will lack the approval it needs in order to amend its real estate transfer tax ordinance. As in Citicorp, then, the City has nonparty standing to challenge the entire judgment, "regardless of the decision by the trial court to deny intervention." 269 Ill. App. 3d at 299.

Importantly, moreover, the court in Citicorp ruled that it was unnecessary to remand the case to allow the buyers to make their arguments in the circuit court as intervenors, since the buyers had "fully briefed the issues" and were not disputing the circuit court's factual findings. 269 Ill. App. 3d at 300. The court stated, "We therefore elect to resolve the issues without remandment in the interests of judicial economy and pursuant to our powers to do so under [Illinois] Supreme Court Rule 366." Id. The same result should follow here.

In sum, whether because intervention was erroneously denied or because the City has nonparty standing to appeal from all aspects of the judgment, the City is properly before this court and this court may resolve all of the issues presented.

II. THE CIRCUIT COURT LACKED JURISDICTION.

The circuit court's judgment is plagued by two jurisdictional defects, warranting reversal.

First, courts lack subject matter jurisdiction to enjoin the legislative process. E.g., Fletcher, 377 Ill. at 92-93. In Fletcher, the city passed an ordinance that could not become effective unless voters first approved it by referendum. Id. at 91, 95, 99. The plaintiffs sought to enjoin the city from holding the election or expending city funds in connection with the election. Id. at 91. The supreme court affirmed the dismissal of the complaint, ruling that "[t]he courts have no more right to interfere with or prevent the holding

of an election which is one step in the legislative process for the enactment or bringing into existence a city ordinance, than they would have to enjoin the city council from adopting the ordinance in the first instance." Id. at 96. The court explained, "The courts have no such control over legislation by municipalities in this State." Id. at 99.

Similarly, in Slack v. City of Salem, 31 Ill. 2d 174 (1964), the plaintiff sought a declaratory judgment and injunctive relief to prevent a referendum election to approve the issuance of revenue bonds, alleging that the authorizing statute and ordinance calling for the election were unconstitutional. Id. at 175. The supreme court directed the circuit court to dismiss the complaint. Id. at 178. The court explained that "[t]he referendum election that is sought to be enjoined in this case is, like the referendum involved in [Fletcher], a part of the legislative process. Unless the proposal to issue bonds is favorably acted upon by the voters at the referendum election that is sought to be enjoined, the City of Salem cannot issue any bonds under the Act." Id. at 177. The court ruled that "[t]his court has no power to render advisory opinions, and until the legislative process has been concluded, there is no controversy that is ripe for a declaratory judgment. Indeed, the constitutional issues upon which the opinion of this court is sought may never progress beyond the realm of the hypothetical. It follows that the circuit court was without jurisdiction to pass upon the constitutional issues sought to be raised." Id. at 178; accord Sachen v. Illinois

State Board of Elections, 2022 IL App (4th) 220470, ¶ 27 (relying on Fletcher and Slack to reject petition seeking to enjoin use of public funds to place a proposed amendment to the Illinois Constitution on the ballot on the ground that proposed amendment was unlawful).

The court in Sachen discussed an "'exception' to the rule in Fletcher" that Coalition for Political Honesty v. State Board of Elections, 65 Ill. 2d 453 (1976), and similar cases have recognized, Sachen, 2022 IL App (4th) 220470, ¶ 30, but that exception does not apply here. In Coalition, the court determined that a petition to amend the Illinois Constitution did not follow the Constitution's specific requirements for proposed amendments initiated by a petition. 65 Ill. 2d at 472. The court distinguished Fletcher and Slack, stating that the case before it was "not concerned with an election or legislative referendum, but rather, with the question whether proposed amendments to our constitution satisfy the Constitution's own requirements for its amendment." Id. at 460. Unlike in Coalition, this case does not concern a petition proposing a constitutional amendment or raise a question whether the requirements for constitutional amendments were satisfied.

Rather, this case concerns a referendum that was legislatively initiated and part of the legislative process, as in Fletcher and Slack. Indeed, plaintiffs acknowledge that City Council's resolution is part of the legislative process required for "a home rule municipality to impose or increase a real estate transfer tax." C. 11. As the supreme court has made clear, the courts

have no authority to interfere with a step in the legislative process for a city ordinance. The circuit court should have rejected the plaintiffs' attempt to interfere with the legislative process, on an issue that has yet to be approved by the voters, and should have dismissed the complaint in its entirety for lack of jurisdiction.

A second jurisdictional defect fatal to the judgment is that the City, a necessary party, was not before the circuit court as a party. A circuit court lacks authority to enter orders without jurisdiction over a necessary party. See, e.g., Lurkins v. Bond County Community Unit No. 2, 2021 IL App (5th) 210292, ¶ 9; Certain Underwriters at Lloyd's London v. The Burlington Insurance Co., 2015 IL App (1st) 141408, ¶ 15; Zurich Insurance, 144 Ill. App. 3d at 946. In Lurkins, the plaintiff sought an injunction preventing the local school district and its superintendent from enforcing the Governor's Executive Order requiring masks at public schools during the COVID-19 pandemic. 2021 IL App (5th) 210292, ¶ 3. The appellate court reversed the circuit court's temporary restraining order, concluding that the Governor and State agencies responsible for enforcing the mask mandate were necessary defendants because they had an interest "that would be materially affected by a judgment entered in their absence, and their participation is required to protect that interest." Id. ¶ 9. The court held that the temporary restraining order, entered without jurisdiction over necessary parties, was void. Id.; accord Certain Underwriters at Lloyd's London, 2015 IL App (1st) 141408,

¶ 15; Zurich Insurance, 144 Ill. App. 3d at 946. Here, too, because the circuit court refused to join the City in the case, its orders and judgment are void.

III. THE CIRCUIT COURT ERRED BY ENTERING JUDGMENT ON THE PLEADINGS.

Apart from these jurisdictional defects, plaintiffs' action fails on the merits of their claims as well. This court "review[s] the circuit court's grant of judgment on the pleadings de novo. State Farm Fire & Casualty Co. v. Young, 2012 IL App (1st) 103736, ¶ 11. Plaintiffs are not entitled to that relief. First, the referendum complies with the Illinois Municipal Code. Second, the referendum does not violate the Free and Equal Elections Clause of the Illinois Constitution. Third, plaintiffs' claim that the referendum lacks clarity and must be self-executing fails. We address each of these points in turn.

A. The Referendum Complies With The Municipal Code.

Plaintiffs' claim in count I that the referendum violates the Illinois Municipal Code, C. 15, fails as a matter of law. Under the pertinent provisions of the Code, "no home rule municipality shall impose an increase of the rate of a current real estate transfer tax without prior approval by referendum." 65 ILCS 5/8-3-19(d). At the same time, "[a]n existing ordinance or resolution imposing a real estate transfer tax may be amended without approval by referendum if the amendment does not increase the rate of the tax or add transactions on which the tax is imposed." Id. Plaintiffs allege in their complaint that the referendum violates section 8-3-19 because

it proposes to "increase the real estate transfer tax rate on some transfers" and also "to decrease the real estate transfer tax rate on other transfers." C. 16. According to plaintiffs, a referendum proposing a decrease in the tax rate is "not permitted by" section 8-3-19. Id.; see also C. 56 (arguing for judgment on the pleadings on the ground that section 8-3-19 "does not permit a corresponding decrease in the [real estate transfer] tax by referendum").

But the Municipal Code contains no such prohibition. Subsection (d) states that a home rule municipality "may" amend a real estate transfer tax without a referendum if it does not increase the rate of the tax. 65 ILCS 5/8-3-19(d). "[T]he legislature's use of the word 'may' indicates that the statute is permissive as opposed to mandatory." People v. Harris, 2022 IL App (1st) 192509, ¶ 20. So, while subsection (d) makes clear that City would be allowed to decrease the tax without a referendum, it does not require that any decrease be accomplished without a referendum. If the General Assembly intended to impose such a requirement, it would have used mandatory language, like it did earlier in the same subsection. See 65 ILCS 5/8-13-19(d) ("no home rule municipality *shall* impose a new estate transfer tax . . . without prior approval by referendum"; "no home rule municipality *shall* impose an increase of the rate of a current real estate transfer tax without prior approval by referendum") (emphasis added).

Plaintiffs also rely on the home rule preemption provision of section 8-3-19, but that provision does not help them. It states that "[a] home rule

municipality may not impose real estate transfer taxes other than as authorized by this Section," and that it "is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution." 65 ILCS 5/8-3-19(g). As we have explained, the referendum fully comports with subsection (d). Accordingly, the City is acting precisely "as authorized" by section 8-3-19. Plaintiffs attempt to read into the statute a prohibition against using a referendum to decrease a real property transfer tax, C. 16, but the Code does not contain such a prohibition, and there can be no home rule preemption absent express language. "[I]f the legislature intends to limit or deny the exercise of a home rule unit's powers, it must provide an express statement to that effect." Lintzeris v. City of Chicago, 2023 IL 127547, ¶ 22. The Home Rule Note Act codifies this principle by providing that a law does not preempt home rule authority "unless there is specific language limiting or denying the power or function and the language specifically sets forth in what manner and to what extent it is a limitation on or denial of the power or function of a home rule unit." 5 ILCS 70/7. The Illinois Municipal Code does not specifically preempt home rule authority to include proposed tax decreases in a referendum, so the City remains free to do so.

Along similar lines, nothing in section 8-3-19 prohibits the coupling of a proposed decrease in tax rate for some transactions with a proposed increase others. Plaintiffs attempt to read into section 8-3-19 an unstated

prohibition against "logrolling." C. 16. This "disfavored practice" consists of "bundling unpopular legislation with more palatable bills, so that the well-received bills would carry the unpopular ones to passage." Wirtz v. Quinn, 2011 IL 111903, ¶ 13 (internal quotation marks and citations omitted). Plaintiffs' complaint relies on Wirtz to allege that the referendum is an example of logrolling, C. 16, but that case is inapposite. Wirtz referred to logrolling to explain the meaning of the Illinois Constitution's single subject clause. Wirtz, 2011 IL 111903, ¶ 13. That clause provides that "[b]ills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject." Ill. Const. 1970, art. IV, § 8(d).

Critically, the single subject clause does not apply to municipal ordinances. The supreme court has explained that the single subject requirement "simply limits the types of bills that the General Assembly can pass into law," and does not limit the powers of local governments. Geja's Cafe v. Metropolitan Pier & Exposition Authority, 153 Ill. 2d 239, 257 (1992). Thus, the clause "applies only to acts of the state legislature and not to city ordinances." City & Suburban Distributors-Illinois, Inc. v. City of Chicago, 157 Ill. App. 3d 791, 795 (1st Dist. 1987). So to the extent plaintiffs imply that the referendum's supposed "logrolling" violates the single subject rule, black-letter law precludes such a claim.

If plaintiffs mean to suggest that section 8-3-19 somehow

independently creates a single-subject rule for municipal legislation, that argument likewise finds no support in the plain language of the statute. Nothing in section 8-3-19 remotely resembles the language of the single subject rule in the Illinois Constitution. Plaintiffs argued in the circuit court that "[g]iven the prohibition against logrolling imposed on the General Assembly by the Illinois Constitution, it makes perfect sense that the General Assembly would impose similar restrictions on municipalities governing their deliberations." C. 57. That blithe assumption notwithstanding, a statute's plain language is the best evidence of what the General Assembly intended. <u>E.g.</u>, <u>In re Donald A.G.</u>, 221 Ill. 2d 234, 246 (2006).

And regardless, no improper "logrolling" occurs when legislation addresses matters that are closely related to each other. As the Illinois Supreme Court explained in <u>Wirtz</u>, the dispositive issue in considering whether an act complies with the single subject rule is "whether the provisions in the act have a natural and logical connection to a single subject." 2011 IL 111903, ¶ 15 (internal quotation marks and citation omitted). A piece of legislation violates the single subject rule only "when it contains unrelated provisions that by no fair interpretation have any legitimate relation to a single subject." <u>Id.</u> The word "subject" is construed "liberally in favor of upholding the legislation." <u>Id.</u> ¶ 14.

The act at issue in <u>Wirtz</u> is illustrative. It had 13 separate provisions,

each of which either created a new law, amended an existing statute, or specified when the act took effect. 2011 IL 111903, ¶¶ 19-31. For example, one provision added a law authorizing various kinds of establishments to conduct video gaming and imposing a tax on gaming income, a portion of which was to go to the Capital Projects Fund. Id. ¶ 19. Another section amended the University of Illinois Act to require the University to conduct a study on the effect on Illinois families of purchasing lottery tickets, id. ¶ 25. And another section amended the Motor Fuel Tax Law so that more of its proceeds would go the Grade Crossing Protection Fund. Id. ¶ 24. The court held that all the provisions had a "natural and logical connection" to the subject of capital projects, and thus did not violate the single subject rule. Id. ¶ 33 (citation omitted).

Here, the provisions in the referendum are even more closely related. They explain how a single tax – the real estate transfer tax – would be amended to include graduated rates. C. 24. In other words, rather than applying one tax rate across the board, the rate would operate on a sliding scale. The referendum's component parts so plainly have a "natural and logical connection" to one another, it would make no sense to separate them, rather than explain how the tax will apply to each of the three graduated sections. Indeed, the full impact of the tax would be misleading if all its components were not included in the referendum. The effect on any given transfer cannot be understood without knowing about the decrease in the tax

rate that applies to the first $1 million of the purchase price. This decrease offsets the increase to the tax on the portions of any transfer prices that exceed $1 million. And together, the provisions of the referendum have a natural and logical connection to the legislation's goal of helping the homeless in Chicago. In short, far from combining unrelated subjects in a single referendum, the referendum is designed to give the voter the full picture of the graduated structure of the real estate transfer tax.

B. The Referendum Comports With The Free and Equal Elections Clause.

Plaintiffs' claim in count II – that the referendum violates the Free and Equal Elections Clause in the Illinois Constitution – is equally meritless. Article III, section 3 of the Illinois Constitution provides that "[a]ll elections shall be free and equal." Ill. Const. art. 3, § 3. This provision is meant to ensure "that the vote of every qualified elector shall be equal in its influence with that of every other one." O'Connor v. High School Board of Education, 288 Ill. 240, 247-48 (1919). Plaintiffs claim that the referendum violates this clause because it "is a compound question combining three separate questions." C. 18.

The claim has no basis in law. This court has flatly rejected the notion that the Free and Equal Elections Clause is violated just because "voters might want to vote "yes" to the first question but "no" to the second question in different parts of a proposition. Jones v. City of Calumet City, 2017 IL App (1st) 170236, ¶¶ 36-38; Alms v. Peoria County Election Commission,

2022 IL App (4th) 220976, ¶¶ 50-52. Instead, as the Illinois Supreme Court has made clear time and again, "it is only separate and *unrelated* questions that cannot be combined in a single proposition." Coalition for Political Honesty v. Illinois State Board of Elections, 83 Ill. 2d 236, 254 (1980) (emphasis added) (citing Village of Deerfield v. Rapka, 54 Ill. 2d 217, 223-24 (1973); Schoon v. Board of Education, 11 Ill. 2d 91 (1957); Roll v. Carrollton Community Unit School District No. 1, 3 Ill. 2d 148, 151-52 (1954); Routt v. Barrett, 396 Ill. 322 (1947)).

In Coalition, for example, the plaintiff challenged the submission of three separate questions about the General Assembly's House of Representatives in a single proposed constitutional amendment – asking whether its size should be reduced, cumulative voting should be abolished, and representatives should be elected from single-member districts. 83 Ill. 2d at 253. In upholding the amendment, the Illinois Supreme Court followed its precedent holding "that combining . . . questions *relating to the same subject* was not a violation of the 'free and equal' elections clause." Id. at 254 (internal quotation marks and citation omitted) (emphasis added); see id. at 256 (noting agreement that "separate questions may be combined in a single proposition as long as they are reasonably related to a common objective in a workable manner"). Similarly, in Village of Deerfield, the court upheld a "free and equal" elections challenge to a proposition combining the question whether land should be acquired for a recreational center and the question

whether bonds should be issued to pay for the purchase. 54 Ill. 2d at 223-24.

By contrast, this court found separate and unrelated questions in Clark v. Illinois State Board of Elections, 2014 IL App (1st) 141937, where a referendum asked a much wider array of questions on topics ranging from term limits for all members of the General Assembly, to decreasing the number of senators and increasing the number of representatives, to the requirements for overriding a governor's veto, to dividing senatorial districts into three representative districts instead of two. Id. ¶ 29. This court found these components could not be unified under the "extremely broad" goal of "increasing the responsiveness of the General Assembly and reducing the influence of partisan and special interests." Id.

Here, the components of the referendum are closely related and clearly geared toward a common objective in a workable manner. The proposals to decrease the tax at lower price points, and increase it at higher price points, are not stand-alone proposals. They work together to form a cohesive graduated taxation plan designed to increase affordable housing and fund programs to combat homelessness in Chicago. In fact, all the components must be presented together in order to accurately and fully inform the voters about the proposed legislation they are being asked to approve. Their combination does not violate the Free and Equal Elections Clause.

C. Plaintiffs' Claim That The Referendum Is Vague, Ambiguous, And Not Self-Executing Also Fails.

In count III, plaintiffs assert that "a municipal referendum must be

self-executing," meaning that the question must "'stand on its own'" because "'leaving gaps to be filled by the legislature or municipal body'" means that "just what was approved by the voters remains uncertain." C. 18 (quoting Lipinski v. Chicago Board of Election Commissioners, 114 Ill. 2d 95 (1986); Leck v. Michaelson, 111 Ill. 2d 523 (1986)). Plaintiffs do not say what constitutional provision, statute, or common law principle they rely upon for this purported rule of law. Their reliance on Lipinski and Leck is misplaced. Both of those cases concern article VII, section 6(f) of the Illinois Constitution, a provision that is inapplicable here. That provision gives home rule units the authority to provide for the manner of selection and terms of office of its officers, and "pertain[s] only to binding referenda, for it refers to approval, rather than consideration, of a change in the manner of selecting officers." Lipinski, 114 Ill. 2d at 105. For that reason, "[a] referendum submitted under the provisions of article VII, section 6(f), must be able to 'stand on its own terms.'" 114 Ill. 2d at 99 (quoting Leck, 111 Ill. 2d at 530). In Leck, the court held a referendum under that provision invalid because it was "vague and ambiguous" and required additional provisions "not clearly contemplated by the terms of [the referendum] proposition." 111 Ill. 2d at 528.

The referendum at issue here obviously does not concern the manner of selection and terms of office of its officers. And although the referendum is required for a transfer tax increase, it is not binding because it would not

require the City to amend the transfer tax. In addition, the referendum is pursuant to section 8-3-19 of the Illinois Municipal Code, and nothing in that statute requires a referendum to be "self-executing." On the contrary, it provides that "no home rule municipality shall impose an increase of the rate of a current real estate transfer tax without *prior approval* by referendum." 65 ILCS 5/8-3-19(d) (emphasis added). By definition, a referendum that seeks "prior approval" before a municipality can take some other action could never be "self-executing." The case law arising under Article VII, section 6(f), therefore, provides no grounds for plaintiffs' claim here.

In any event, the question set out in the referendum here does not leave gaps that create uncertainty. On the contrary, as we explain above, the referendum describes all the components of the graduated tax plan, giving a complete context to the nature of the amended tax the voters are being asked to approve.

IV. PLAINTIFFS ARE NOT ENTITLED TO AN INJUNCTION.

Last, plaintiffs sought an injunction, C. 20 (count IV), but they did not plead facts entitling them to injunctive relief. "In order to be entitled to a permanent injunction, the party seeking the injunction must demonstrate: (1) a clear and ascertainable right in need of protection; (2) that he or she will suffer irreparable harm if the injunction is not granted; and (3) that there is no adequate remedy at law." Kopchar v. City of Chicago, 395 Ill. App. 3d 762, 772 (1st Dist. 2009).

Plaintiffs identify no right that needs to be protected by an injunction. As we explain above, the courts lack authority to interfere with an election; so plaintiffs cannot possibly claim a right to an injunction that suppresses all votes cast on a referendum during such election. Nor have plaintiffs articulated how they would be irreparably harmed should Chicagoans' votes on the referendum be counted and reported. There is certainly no immediate harm, since no tax increase could take effect until it is approved by the voters, and then an ordinance is passed adopting it, and then plaintiffs have a pending sale or purchase of real estate that would be subject to the increase. None of this has happened yet. Under circumstances like these, a legal challenge to the referendum is "premature[ ] and circuitous[ ]." Fletcher, 377 Ill. at 99.

* * * *

This case concerns a measure of vital importance to Chicago and there is an urgent need for relief. The issues presented are questions of law. Should the court agree that the circuit court erred in denying the City leave to intervene, we respectfully urge the court, in the interest of judicial economy, to resolve all of those issues rather than order a remand. The court has the power to do so because, as we explain above, the City is a proper non-party appellant, and also pursuant to Ill. Sup. Ct. R. 366, which authorizes the court to "enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief"

that the case may require. Ill. Sup. Ct. R. 366; see Citicorp, 269 Ill. App. 3d at 299.

CONCLUSION

This court should reverse the circuit court's judgment.

Respectfully submitted,

MARY B. RICHARDSON-LOWRY
Corporation Counsel
of the City of Chicago

BY: s/ Myriam Zreczny Kasper
MYRIAM ZRECZNY KASPER
Deputy Corporation Counsel
2 North LaSalle Street - Suite 580
Chicago, IL 60602
(312) 744-3564
myriam.kasper@cityofchicago.org
appeals@cityofchicago.org

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) & (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents, 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 34 pages.

s/ Myriam Zreczny Kasper
MYRIAM ZRECZNY KASPER, Attorney

CERTIFICATE OF FILING/SERVICE

I certify under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and that the foregoing Brief was served on all counsel of record via File & Serve Illinois on March 1, 2024.

s/ Myriam Zreczny Kasper
MYRIAM ZRECZNY KASPER, Attorney

APPENDIX

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

Building Owners and Managers Association, *et al.*,

Plaintiffs,

v.

Board of Election Commissioners of the City of Chicago, *et al.*,

Defendants.

No. 24 COEL 001

ORDER

THIS MATTER coming to be heard on Defendants' Motion to Dismiss the Complaint, Plaintiffs' Motion to Expedite Consideration of Plaintiffs' Motion for Judgment on the Pleadings, and Plaintiffs' Motion for Judgment on the Pleadings, the Court being duly advised in the premises, IT IS HEREBY ORDERED:

1. For the reasons stated in open court and on the record, Defendants' Motion to Dismiss the Complaint is Denied.

2. For the reasons stated in open court and on the record, Plaintiffs' Motion to Expedite Consideration of Plaintiffs' Motion for Judgment on the Pleadings is Granted.

3. For the reasons stated in open court and on the record, Plaintiffs' Motion for Judgment on the Pleadings is Granted.

4. The Defendant Board is ordered to not count and suppress any votes cast on the referendum question at the March 19, 2024 primary election, and not to publish any tallies or results of any votes cast on the referendum question.

5. The proceedings before the Court were transcribed, a copy of the transcript was ordered and will be filed with the Court. The transcript is incorporated by reference herein.

6. This is a final, appealable Order.

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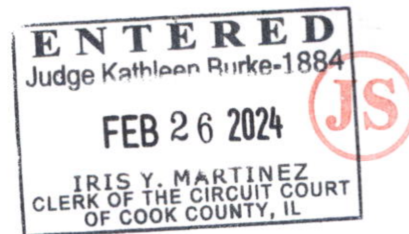
Judge Kathleen Burke 1884



Michael Kasper
151 N. Franklin, Suite 2500
Chicago, IL 60606
312.704.3292
mjkasper60@mac.com
Atty. No. 33837

Michael T. Del Galdo
Cynthia S. Grandfield
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Avenue
Berwyn, Illinois 60602
(708) 222-7000 (t)
delgaldo@dlglawgroup.com
grandfield@dlglawgroup.com

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

Building Owners and Managers Association, *et al.*,	)	
Plaintiffs,	)	
v.	)	No. 24 COEL 001
Board of Election Commissioners of the City of Chicago, *et al.*,	)	
Defendants.	)	

ORDER

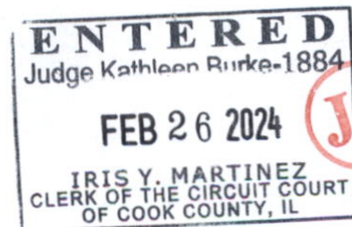
THIS MATTER coming to be heard on Petitioner City of Chicago's Petition for Leave to Intervene as a Matter of Right pursuant to 735 ILCS 5/2-408(a)(2), the Court being duly advised in the premises, IT IS HEREBY ORDERED:

For the reasons stated in open court and on the record, the Petition for Leave to Intervene as a Matter of Right pursuant to 735 ILCS 5/2-408(a)(2) is Denied.

Enter: Feb. 26, 2024

Judge

Kathleen Marie Burke
1884



Michael Kasper
151 N. Franklin, Suite 2500
Chicago, IL 60606
312.704.3292
mjkasper60@mac.com
Atty. No. 33837

Michael T. Del Galdo
Cynthia S. Grandfield
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Avenue
Berwyn, Illinois 60602
(708) 222-7000 (t)
delgaldo@dlglawgroup.com
grandfield@dlglawgroup.com

FILED
2/26/2024 12:59 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000001

**APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION**

Building Owners and Managers Association, et al.,	)	
Plaintiffs-Appellees,	)	Appeal from the Circuit Court of Cook County, Illinois, County Department, County Division
v.	)	
Commission of the Board of Elections of the City of Chicago, et al.,	)	Case No. 2024 COEL 001
Defendants,	)	Hon. Kathleen Burke, Judge Presiding
and	)	
City of Chicago,	)	
Intervenor/Nonparty-Appellant.	)	

NOTICE OF APPEAL

Intervenor/Nonparty-Appellant, CITY OF CHICAGO, by its attorney, the Corporation Counsel of the City of Chicago, hereby appeals to the Appellate Court of Illinois, First Judicial District, from the circuit court order entered on February 26, 2024 denying the City of Chicago's petition for leave to intervene as a matter of right pursuant to 735 ILCS 5/2-408(a)(2), and the circuit court order entered on February 26, 2024 granting plaintiffs' motion for judgment on the pleadings for the reasons stated in open court and on the record, and ordering the defendant Board of Election Commissioners of the City of Chicago "not to count and suppress any votes cast on the referendum question at the March 19, 2024 primary election, and not to publish any tallies or results of any votes cast on the referendum question."

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2/26/2024 12:59 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000001

By this appeal, the CITY OF CHICAGO will ask the appellate court to reverse the circuit court's judgment and orders and grant such other relief as it may be entitled to on this appeal.

Respectfully submitted,

MARY B. RICHARDSON-LOWRY
Corporation Counsel
of the City of Chicago

By: s/ Myriam Zreczny Kasper
MYRIAM ZRECZNY KASPER
Deputy Corporation Counsel
2 North LaSalle Street - Suite 580
Chicago, IL 60602
(312) 744-3564
myriam.kasper@cityofchicago.org
appeals@cityofchicago.org
Attorney No. 90909

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

Building Owners and Managers Association, et al.,	)	
Plaintiffs-Appellees,	)	Appeal from the Circuit Court of Cook County, Illinois, County Department, County Division
v.	)	
Commission of the Board of Elections of the City of Chicago, et al.,	)	Case No. 2024 COEL 001
Defendants,	)	Hon. Kathleen Burke, Judge Presiding
and	)	
City of Chicago,	)	
Intervenor/Nonparty-Appellant.	)	

NOTICE OF FILING NOTICE OF APPEAL

TO: Michael Kasper
151 N. Franklin,
Suite 2500
Chicago, IL 60606
mjkasper60@mac.com

Michael T. Del Galdo
Cynthia S. Grandfield
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Avenue
Berwyn, Illinois 60602
delgaldo@dlglawgroup.com
grandfield@dlglawgroup.com

Charles A. LeMoine
Rosa M. Tumialán
Molly Thompson
Taylor A. Brewer
233 South Wacker Drive, 61st Floor
Chicago, Illinois 60606-6399
clemoine@tresslerllp.com
rtumialan@tresslerllp.com
mthompson@tresslerllp.com
tbrewer@tresslerllp.com

PLEASE TAKE NOTICE that on February 26, 2024, I electronically filed with the Clerk of the Circuit Court of Illinois, Civil Appeals Division, Richard J. Daley Center, Chicago, Illinois, a **Notice of Appeal**, a copy of which is attached hereto and herewith served upon you.

Corporation Counsel
of the City of Chicago

By: s/ MYRIAM ZRECZNY KASPER
MYRIAM ZRECZNY KASPER
Deputy Corporation Counsel
2 North LaSalle Street - Suite 580
Chicago, IL 60602
(312) 744-3564
myriam.kasper@cityofchicago.org
appeals@cityofchicago.org
Attorney No. 90909

CERTIFICATE OF SERVICE/CERTIFICATE OF FILING

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct, and that the attached **Notice of Filing** and **Notice of Appeal** were filed and served electronically via *File & Serve Illinois* at the e-mail address(es) on the accompanying notice on February 26, 2024.

s/ MYRIAM ZRECZNY KASPER
MYRIAM ZRECZNY KASPER

Rules

OFFICE OF THE MAYOR

CITY OF CHICAGO

BRANDON JOHNSON
MAYOR

September 14, 2023

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

I transmit herewith, together with Aldermen Hadden, Ramirez-Rosa and Martin, a resolution seeking approval of a referendum question regarding the City's real estate transfer tax.

Your favorable consideration of this resolution will be appreciated.

Very truly yours,

Mayor

RESOLUTION

WHEREAS, the City of Chicago is a home rule unit under Article VII of the Constitution of the State of Illinois; and

WHEREAS, pursuant to Section 8-3-19 of the Illinois Municipal Code, 65 ILCS 5/8-3-19, a home rule municipality may impose or increase a tax or fee on the privilege of transferring title to real estate, on the privilege of transferring a beneficial interest in real property, and on the privilege of transferring a controlling interest in a real estate entity, with prior referendum approval; and

WHEREAS, the City of Chicago currently imposes a real estate transfer tax rate of $3.75 for every $500 of transfer price, or fraction thereof, the primary incidence of which is on the buyer, pursuant to Section 3-33-030(A) of the Municipal Code of Chicago ("Code") (the "City Portion"); and

WHEREAS, a supplemental tax at the rate of $1.50 per $500 of the transfer price, or fraction thereof, is imposed pursuant to Section 3-33-030(F) of the Code for the purpose of providing financial assistance to the Chicago Transit Authority (the "CTA Portion"); and

WHEREAS, the City seeks to change the City Portion of the real estate transfer tax by decreasing the current rate of $3.75 for every $500 of the transfer price, or fraction thereof, to $3 for every $500 of the transfer price, or fraction thereof, for that part of the transfer price under $1,000,000, and increasing the rate to $10 for every $500 of the transfer price, or fraction thereof, for that part of the transfer price between $1,000,000 and $1,500,000 (inclusive) and to $15 for every $500 of the transfer price, or fraction thereof, for that part of the transfer price exceeding $1,500,000; and

WHEREAS, the change would concern only the City Portion of the tax, and there would be no change to the rate of the CTA Portion of the tax; and

WHEREAS, the additional revenue over the amount generated from the current rate shall be deposited in a fund to be dedicated to combating homelessness, including providing permanent affordable housing and the services necessary to obtain and maintain permanent housing; and

WHEREAS, the City Council of the City of Chicago hereby finds it in the best interest of the City to impose such a change to the real estate transfer tax to address the City's significant problem with homelessness; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The foregoing recitals are incorporated herein by reference.

SECTION 2. In accordance with Section 8-3-19 of the Illinois Municipal Code, 65 ILCS 5/8-3-19, the City Council of the City of Chicago hereby initiates and authorizes the following public question to be submitted to the voters of the entire City of Chicago at the regularly scheduled general primary election next occurring after the effective date of this resolution on March 19, 2024:

Shall the City of Chicago impose:

(1) a real estate transfer tax decrease of 20% to establish a new transfer tax rate of $3 for every $500 of the transfer price, or fraction thereof, for that part of the transfer price under $1,000,000 to be paid by the buyer of the real estate transferred unless the buyer is exempt from the tax solely by operation of state law, in which case the tax is to be paid by the seller; AND

(2) a real estate transfer tax increase of 166.67% to establish a new transfer tax rate of $10 for every $500 of the transfer price or fraction thereof, for that part of the transfer price between $1,000,000 and $1,500,000 (inclusive) to be paid by the buyer of the real estate transferred unless the buyer is exempt from the tax solely by operation of state law, in which case the tax is to be paid by the seller; AND

(3) a real estate transfer tax increase of 300% to establish a new transfer tax rate of $15 for every $500 of the transfer price, or fraction thereof, for that part of the transfer price exceeding $1,500,000 to be paid by the buyer of the real estate transferred unless the buyer is exempt from the tax solely by operation of state law, in which case the tax is to be paid by the seller?

The current rate of the real estate transfer tax is $3.75 per $500 of the entire transfer price, or fraction thereof, and the revenue is used for general corporate purposes. The revenue from the increase (the difference between revenue generated under the increased rate and the current rate) is to be used for the purpose of addressing homelessness, including providing permanent affordable housing and the services necessary to obtain and maintain permanent housing in the City of Chicago.

☐ Yes

☐ No

SECTION 3. The City Clerk of the City of Chicago shall certify the public question referenced herein to the Chicago Board of Election Commissioners in accordance with Article 28 of the Election Code.

SECTION 4. This resolution shall be in full force and effect upon its passage.

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT – COUNTY DIVISION

BUILDING OWNERS AND MANAGERS ASSOCIATION, et al.,	)	
Plaintiffs,	)	
v.	)	**No. 2024COEL000001**
BOARD OF ELECTION COMMISSIONERS of the City of Chicago and its Members MARISEL A. HERNANDEZ, Chair, WILLIAM J. KRESSE, Commissioner/Secretary, and JUNE A. BROWN,	)	**Hon. Kathleen Marie Burke**
	)	**Cal. 8**
Respondents.	)	

ORDER

This matter coming to be heard on The City of Chicago's Motion to Stay the Order Denying the Petition to Intervene and Enforcement of the Court's Judgment Pending Appeal ("City of Chicago's Motion to Stay"), and the Court having reviewed the Plaintiff's Response in Opposition to Proposed Intervenor's Motion to Stay, as well as the City of Chicago's Reply in Support of City of Chicago's Motion to Stay the Order Denying the Petition to Intervene and Enforcement of the Court's Judgment Pending Appeal finds as follows:

It is Hereby Ordered, that the City of Chicago's Motion to Stay is denied for the following reasons:

1. On February 26, 2024 this Court denied the City of Chicago's Petition for Leave to Intervene as a Matter of Right pursuant to 735 ILCS 5/2-408(a)(2). On that same day, the City of Chicago filed a Notice of Appeal to the Illinois Appellate Court stating, "the City of Chicago will ask the appellate court to reverse the

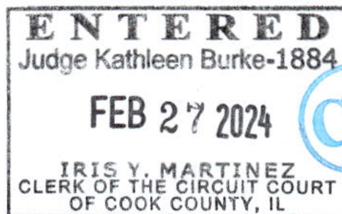
circuit court's judgment and orders and grant such other relief as it may be entitled to on this appeal." (Notice of Appeal, p. 2, February 26, 2024).

2. This Court does not have jurisdiction to hear such a motion because "when the notice of appeal is filed, the appellate court's jurisdiction attaches instanter, and the cause is beyond the jurisdiction of the trial court." *Daley v. Laurie*, 106 Ill. 2d 33, 37-38 (1985) (while taking notice that the defendant's Notice of Appeal preempted the defendant's motion for a new trial, causing the trial court to lose jurisdiction).

3. Pursuant to the Supreme Court Rule 305(d), the City of Chicago is not foreclosed from obtaining the necessary relief of a stay from the Appellate Court. Ill. Sup. Ct. Rule 305(d).

4. The City of Chicago's Motion to Stay is also denied because the City of Chicago as non-intervenor, and ultimately as a non-party under the facts of this case has no standing to seek a stay on the final merits.

Dated: 2-27-2024 ENTERED:



Kathleen Marie Burke 1884

Judge Kathleen Marie Burke

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