

No. 130316

IN THE SUPREME COURT OF ILLINOIS

MIKE ONTIVEROZ,

Petitioner-Appellee,

v.

CHODRI, M.A. KHOKHAR; and
JEAN KACZMAREK, in her official
capacity as DuPage County Clerk,

Respondents-Appellant.

DuPage County Clerk's Appeal from the Illinois Third District Appellate Court, No. 3-22-0446, which appeal was taken from the 18th Judicial Circuit Court, DuPage County, Illinois, No. 2021 MR 000548, the Honorable Anne Therieau Hayes, Presiding

**RESPONDENT-APPELLANT'S, DUPAGE COUNTY CLERK'S,
BRIEF AND ARGUMENT IN SUPPORT OF APPEAL**

Sean Conway, ARDC No. 6292594
Patrick K. Bond, ARDC No. 6193855
Mary E. Dickson ARDC No. 6206817
Special Assistant DuPage County State's
Attorneys
BOND, DICKSON & CONWAY
400 S. Knoll Street, Unit C
Wheaton, IL 60187
(630) 681-1000
seanconway@bond-dickson.com
Attorneys for the Respondent-Appellant
Jean Kaczmarek, DuPage County Clerk

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CYNTHIA A. GRANT
SUPREME COURT CLERK

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NATURE OF THE ACTION

This matter involves an election contest, over which Illinois courts have limited and special statutory jurisdiction under section 23-20 of the Election Code. 10 ILCS 5/23-20. On the last day and minutes for filing, Petitioner, Mike Ontiveroz, (“Petitioner”) filed an unverified Petition (the “Petition”) for an election contest in connection with the April 6, 2021 Consolidated Election (the “Election”) for the Office of Village President for the Village of Glendale Heights (the “Office”). The unverified Petition filed, consisting of two Counts, also failed to allege a cognizable or sufficiently pled ground for contesting the Election, under section 23-20.

The Trial Court entered judgment on the pleadings in favor of Respondent, Jean Kaczmarek, DuPage County Clerk (the “Clerk”) as to Count I, finding that Petitioner failed to allege a cognizable ground for an election contest. The Trial Court additionally dismissed Count II, finding that Petitioner failed to sufficiently plead grounds for an election Contest, leaving Petitioner without any sufficiently pled challenge to the Election, within the 30-day limitation period provided in section 23-20 of the Election Code. The Trial Court additionally dismissed this case on jurisdictional grounds finding that Petitioner failed to timely file a *verified* election contest Petition, within the 30-day limitation period as required under section 23-20. The Trial Court’s ruling that it lacked subject matter jurisdiction over Petitioner’s election contest is proper and should be affirmed.

Petitioner filed a timely Notice of Appeal to the Third District Appellate Court (the “Appellate Court”) for review of the Trial Court’s rulings. Upon its review, the Appellate Court determined that Petitioner was not required to file a *verified* election

contest petition, within the 30-day limitation period under section 23-20 of the Election Code. The Appellate Court additionally determined that Petitioner sufficiently pled grounds for an election contest in the original Petition. Additionally, the Appellate Court questioned whether election contest proceedings are special statutory proceedings considering this Court's decision in *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 770 N.E.2d 177 (2002). The Appellate Court determined that the original Petition satisfied the requirements of section 23-20 of the Election Code and sufficiently conferred jurisdiction on the Trial Court. The Appellate Court's determinations are erroneous, as a matter of this Court's long-established precedent and as a matter of law.

STATEMENT OF THE ISSUES

Whether Petitioner's original election contest Petition conferred subject matter jurisdiction on the Trial Court, under the requirements of section 23-20 of the Election Code. 10 ILCS 5/23-20.

STATEMENT OF JURISDICTION

The Court has appellate jurisdiction over Petitioner's appeal pursuant to Illinois Supreme Court Rule 303. Petitioner timely appealed from the final order of the Trial Court dated October 14, 2022. The Clerk timely filed its Petition for Leave to Appeal on December 21, 2023, which was allowed by this Court on March 27, 2024. However, this Court must determine whether the Trial Court had subject matter jurisdiction over Petitioner's election contest case, considering the statutory requirements in section 23-20 of the Election Code.

STATUTES INVOLVED**10 ILCS 5/23-4**

The circuit courts in the respective counties may hear and determine contests of the election of mayors of cities, presidents of county boards, presidents of villages, in reference to the removal of county seats and in reference to any other subject which may be submitted to the vote of the people of the county.

10 ILCS 5/23-20

The person desiring to contest such election shall, within thirty (30) days after the person whose election is contested is declared elected, file with the clerk of the proper court a petition, in writing, setting forth the points on which he will contest the election, which petition shall be verified by affidavit in the same manner as complaints in other civil cases may be verified. Copies of such petition shall be delivered by mail to each proper clerk or board of election commissioners who is a custodian of any ballots involved in the contest. The petition shall allege that the petitioner voted at the election, and that he believes that a mistake or fraud has been committed in specified precincts in the counting or return of the votes for the office or proposition involved or that there was some other specified irregularity in the conduct of the election in such precincts, and the prayer of the petition shall specify the precincts in which the recount is desired.

10 ILCS 5/23-23.2

A court hearing an election contest pursuant to this Article or any other provision of the law shall grant a petition for a recount properly filed where, based on the facts alleged in such petition, there appears a reasonable likelihood the recount will change the results of the election.

STATEMENT OF THE FACTS

The Clerk declared the official election results for the Election on April 27, 2021. (C 684). Petitioner filed his Petition for election contest on May 27, 2021 at 11:53 p.m., which was the last day to file an election contest petition for the Election. (C 23). Although Petitioner styled his Petition as “Verified Petition for Election Contest + Equitable Relief,” the Petition filed on May 27, 2021 was not, in fact, verified. (C 23-

54). Petitioner did not file a motion to amend the original Petition within the 30-day limitation period. Instead, on June 1, 2021, Petitioner untimely filed a Motion to Supplement the original Petition with undated verifications and without notice to the Clerk. (C 55-61). Petitioner obtained a summons directed at the Clerk on the same day. (C 64-65). On June 2, 2021, (1) prior to the Clerk being served; (2) prior to the Clerk appearing in the matter; (3) without the Clerk being given any notice; and (4) without the Clerk being given an opportunity to object, the Court entered an *ex parte* order granting Petitioner's Motion to Supplement the original Petition with verifications. (C 66). Petitioner served the originally filed Petition, with the untimely verifications attached, on the Clerk's agent on June 7, 2021 (C 103).

Upon motion of the Clerk, the Trial Court granted judgment on the pleadings in favor of the Clerk as to Count I of the Petition, on December 29, 2021. (C 252). Count I alleged that private third parties had engaged in voter and election interference. (C 25-31). Count I was void of any allegations directed at the Clerk's conduct of the Election or the Clerk's counting of votes. *Id.* The Trial Court found that Count I did not allege a cognizable ground for an election contest. (C 252). Additionally, the Trial Court dismissed Count II of the Petition. *Id.* Count II alleged various irregularities concerning voting, with focus on vote by mail voting. (C 31-39). The Trial Court found that Count II did not sufficiently plead grounds for an election contest. (C 252). The Trial Court's rulings left no legally sufficient claim standing. *See id.* Petitioner was granted leave to replead Count II of the Petition, which he did. (C 252). Upon repleading, the Trial Court again dismissed Count II of the Petition for insufficient pleading, leaving no legally sufficient claim standing in the Petition for election contest. (C 487). Additionally,

neither the original Petition nor any amendment included an allegation that the Petitioner voted in the Election. (C 23-39; 255-282; 489-524).

Upon examining the original Petition in the Circuit Court Clerk's file, the Clerk discovered that the original Petition, when filed, was not, in fact, verified as it appeared to be when it was served on the Clerk. (C 741-787). The Clerk filed an additional motion to dismiss on jurisdictional grounds under section 23-20 of the Election Code arguing that: (1) Petitioner did not file a *verified* Petition within the 30-day statutory limitation period; and (2) Petitioner did not file any legally sufficient claim for an election contest within the 30-day limitation period. *Id.*

On October 14, 2022, the Trial Court entered a final order dismissing Petitioner's case on the basis of subject matter jurisdiction, under section 23-20 of the Election Code. (C 848).

Petitioner filed a timely Notice of Appeal and on November 16, 2023, the Appellate Court reversed the final order of the Trial Court, concluding that the original Petition satisfied the requirements of section 23-20 of the Election Code and conferred subject matter jurisdiction on the Trial Court. *Ontiveroz v. Khokhar*, 2023 IL App (3d) 220446, 229 N.E.3d 997.

ARGUMENT

I. STANDARD OF REVIEW

This Appeal involves pure issues of law concerning statutory construction and the Trial Court's subject matter jurisdiction over Petitioner's election contest; therefore, this Court's review is *de novo*. *Illinois State Treasurer v. Illinois Workers' Comp. Comm'n*, 2015 IL 117418, ¶ 13, 30 N.E.3d 288, 293; *Blount v. Stroud*, 232 Ill. 2d 302, 308, 904

N.E.2d 1, 6 (2009).

II. THE TRIAL COURT LACKED SPECIAL STATUTORY JURISDICTION OVER PETITIONER'S ELECTION CONTEST, DUE TO PETITIONER'S FAILURE TO FILE A VERIFIED PETITION WITHIN THE 30-DAY LIMITATION PERIOD, AS REQUIRED UNDER SECTION 23-20 OF THE ELECTION CODE.

The Appellate Court correctly noted that Petitioner failed to file any verification of the Petition within the 30-day limitation period provided in section 23-20 of the Election Code. *Ontiveroz*, 2023 IL App (3d) 220446, ¶ 4, 229 N.E.3d at 1000 (“Although the original petition was titled a verified petition, no verification affidavits were attached to the original petition.”). Based on an unprecedented construction of section 23-20, the Appellate Court determined that a *verified* petition for election contest is not required to be filed within the 30-day limitation period. The Appellate Court’s construction of section 23-20 is in direct conflict with: (1) this Court’s long-established precedent; (2) the plain language in section 23-20; and (3) the intent and purpose of section 23-20. The Appellate Court’s construction of section 23-20 cannot stand.

A. The Appellate Court’s Construction of Section 23-20 is in Direct Conflict with this Court’s Long-Established Precedent.

It is settled, “[w]hen this court has declared the law on any point, it alone can overrule and modify its previous opinion, and the lower judicial tribunals are bound by such decision and it is the duty of such lower tribunals to follow such decision in similar cases.” *Yakich v. Aulds*, 2019 IL 123667, ¶ 13, 155 N.E.3d 1093, 1095. The Appellate Court’s novel construction of section 23-20, as not requiring a verified petition to be filed within the 30-day limitation period, is in direct conflict with this Court’s long and consistent construction of the verification requirement.

For over a century, this Court has emphasized that statutory election contest filing and pleading requirements are jurisdictional requirements, which must be strictly followed. *Pullen v. Mulligan*, 138 Ill. 2d 21, 32, 561 N.E.2d 585, 589 (1990) (“Courts have no inherent power to hear election contests, but may do so only when authorized by statute and in the manner dictated by statute.”); *Whitley v. Frazier*, 21 Ill. 2d 292, 294, 171 N.E.2d 644, 645–46 (1961) (“Where petition is unverified and the 30-day period expires before motion is made to amend, there is no longer jurisdiction to cure the defect.”); *Doelling v. Bd. of Ed. of Cmty. High Sch. Dist. No. 88, Washington Cnty.*, 17 Ill. 2d 145, 146, 160 N.E.2d 801, 802 (1959) (“By the requirements of sections 23-20 and 23-24 of the Election Code..., the petition must be verified and it must be filed within 30 days after the result of the election has been determined.”); *Flake v. Pretzel*, 381 Ill. 498, 501, 46 N.E.2d 375, 377 (1943) (“For example, the requirement that the person desiring to contest an election shall file a statement, verified by affidavit, is jurisdictional, and if the statement is not sworn to the court has no jurisdiction of the cause.”); *Armstrong v. Wilkinson*, 346 Ill. 322, 322, 179 N.E. 97, 97 (1931) (finding court without jurisdiction to allow the filing of sufficient verified affidavit 13 days beyond the 30-day limit to file election contest); *Daugherty v. Carnine*, 261 Ill. 366, 370, 103 N.E. 1003, 1004 (1913) (“[T]his court has uniformly held that the making of the affidavit is a condition precedent to the right to a writ of error, and that a writ sued out in that class of cases without the filing of such affidavit does not given the party a right to a review.”); *Allerton v. Hopkins*, 160 Ill. 448, 458, 43 N.E. 753, 756 (1896) (“The statute having provided a method of contesting an election, that method must be followed throughout.”); *Hall v. Thode*, 75 Ill.

173, 175 (1874) (“These [election contest] proceedings are purely statutory, having no vigor outside of the statute.”) (alteration added).

It is established that “[c]ircuit courts may exercise jurisdiction over election cases only as provided by statute” and that “when a court exercises special statutory jurisdiction, that jurisdiction is limited to the language of the act conferring it, and the court has no powers from any other source.” *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 14, 23 N.E.3d 351, 357 *citing* Ill. Const. art. VI, § 9; *see also*, *Pullen*, 138 Ill. 2d 21, 561 N.E.2d 585.

Moreover, “[i]n the exercise of special statutory jurisdiction, if the mode of procedure prescribed by statute is not strictly pursued, no jurisdiction is conferred on the circuit court.” *Bettis*, 2014 IL 117050, ¶ 14, 23 N.E.3d at 357. The issue of subject matter jurisdiction may be raised at any time, in any court, either directly or collaterally and cannot be waived. *Sandholm v. Kuecker*, 2012 IL 111443, 962 N.E.2d 418; *Currie v. Lao*, 148 Ill. 2d 151, 157, 592 N.E.2d 977, 979 (1992); *Sims v. Mun. Officers Electoral Bd. for Vill. of Riverdale*, 2021 IL App (1st) 210168, ¶ 16, 190 N.E.3d 901, 906 (as to election cases, the issue of subject matter jurisdiction cannot be waived).

Section 23-4 of the Election Code provides that “the circuit courts in the respective counties may hear and determine contests of the election of ... presidents of villages.” 10 ILCS 5/23-4. Section 23-20 of the Election Code provides for the procedure in filing an election contest in circuit court and provides in pertinent part:

The person desiring to contest such election shall, within thirty (30) days after the person whose election is contested is declared elected, file with the clerk of the proper court a petition, in writing, setting forth the points on which he will contest the election, which petition shall be verified by affidavit in the same manner as complaints in other civil cases may be verified.

...

The petition shall allege that the petitioner voted at the election, and that he believes that a mistake or fraud has been committed in specified precincts in the counting or return of the votes for the office or proposition involved or that there was some other specified irregularity in the conduct of the election in such precincts, and the prayer of the petition shall specify the precincts in which the recount is desired.

10 ILCS 5/23-20.

This Court first interpreted the jurisdictional nature of the statutory verification requirement for election contests over a century ago in *Daugherty*. 261 Ill. 366, 103 N.E. 1003. In *Daugherty*, this Court concluded that the trial court lacked jurisdiction over petitioner's election contest due to petitioner's failure to file a sufficient verified affidavit with his election contest petition, as required by statute. *Id.* at 371, 1004. In reaching this conclusion, this Court examined nearly identical statutory language in the predecessor to section 23-20 of the Election Code, which provided:

The person desiring to contest such election shall, within thirty days after the person whose election is contested is declared elected, file with the clerk of the proper court a statement, in writing, setting forth the points on which he will contest the election, which statement shall be verified by affidavit in the same manner as bills in chancery may be verified.

Id. at 369, 1004 *citing* 23 Section 113 of chapter 46 of Hurd's Statutes of 1911. This Court explained that "the jurisdiction of courts over election contests must be exercised only in accordance with the limitations of the statute" and that "[t]his doctrine has never been departed from in this state." *Id.*

This Court next interpreted the statutory verification requirement for election contests in *Armstrong*. 346 Ill. 322, 179 N.E. 97. In *Armstrong*, the petitioner filed his election contest petition without a sufficient verified affidavit, as required by statute. *Id.* Upon leave of court, the petitioner filed a sufficient affidavit 13 days beyond the 30-day

statutory limitation to file the election contest. *Id.* at 324, 98. Again, in examining nearly identical statutory language in the predecessor to section 23-20 of the Election Code, this Court concluded that the trial court lacked jurisdiction due to petitioner’s failure to file a sufficient affidavit within the 30-day statutory time limitation. *Id.* Petitioner’s filing of a sufficient affidavit 13 days beyond the 30-day statutory limitation did not confer jurisdiction on the court. *Id.*

This Court next interpreted the statutory verification requirement for election contests in *Doelling*. 17 Ill. 2d 145, 160 N.E.2d 801. In *Dolling*, the petitioners failed to file their election contest petition with a verified affidavit, within the 30-day limitation period, as required by section 23-20 of the Election Code. The petitioners sought leave of court to file their verified affidavit beyond the 30-day limitation period, which request was denied by the trial court on jurisdictional grounds. *Id.* This Court affirmed the trial court’s rulings denying petitioners leave to file their verified affidavit beyond the 30-day limitation period and dismissing the petition. *Id.* In reaching its conclusion, this Court reiterated that “[i]t has been said that ‘the requirement that the person desiring to contest an election shall file a statement, verified by affidavit, is jurisdictional, and if the statement is not sworn to the court has no jurisdiction of the cause’ ”. *Id. quoting Flake v. Pretzel*, 381 Ill. 498, 501, 46 N.E.2d 375, 377.

Finally, while *Whitley* involved a challenge to the sufficiency of pleading, this Court reiterated its conclusion in *Doelling* that, under section 23-20 of the Election Code, where “an election contest petition is unverified and the 30-day period expires before motion is made to amend, there is no longer jurisdiction to cure the defect.” 21 Ill. 2d at 294, 171 N.E.2d at 645–46.

The Appellate Court did not address any of this this Court’s long and consistent precedent concerning the construction of the verification requirement in section 23-20, including *Doelling*, which the Appellate Court cited only for the correct proposition that “a petitioner's failure to comply with the applicable statutory prerequisites prevents the trial court from obtaining subject matter jurisdiction over the election contest.” *Ontiveroz*, 2023 IL App (3d) 220446, ¶ 29, 229 N.E.3d at 1009. Instead, the Appellate Court reached its own novel construction of the verification requirement in section 23-20, which stands directly at odds with *Doelling*. 17 Ill. 2d at 146, 160 N.E.2d at 802.

Based on this Court’s long and consistent construction of the verification requirement in section 23-20, the Appellate Court ‘s novel construction of section 23-20 cannot stand. *See Yakich*, 2019 IL 123667, ¶ 13, 155 N.E.3d at 1095.

B. The Appellate Court’s Construction of Section 23-20 is in Direct Conflict with the Plain Language of Section 23-20.

This Court’s long and consistent interpretation of section 23-20 is firmly supported by the basic tenants of statutory construction. “When construing a statute, this court's primary objective is to ascertain and give effect to the intent of the legislature.” *United States v. Glispie*, 2020 IL 125483, ¶ 9, 181 N.E.3d 719, 722. “The plain language of the statute is the best indicator of legislative intent.” *Id.* Concerning procedural filing requirements in matters of special statutory jurisdiction, it is necessary, proper and mandated to apply a strict construction. *ESG Watts, Inc. v. Pollution Control Bd.*, 191 Ill. 2d 26, 32, 727 N.E.2d 1022, 1026 (2000).

This Court has explained that “[i]n addition to the statutory language, it is proper to consider the reason for the law, the problem sought to be remedied, the goals to be achieved, and the consequences of construing the statute one way or another.” *Glispie*,

2020 IL 125483 at ¶ 10, 722. Significantly, “when the legislature chooses not to amend a statute after judicial construction, [this Court] presume[s] that it has acquiesced in this court's construction of the statute and declaration of legislative intent.” *Id.* (alteration added) *citing People v. Johnson*, 2019 IL 123318, ¶ 14, 160 N.E.3d 31. This Court presumes “not only that the General Assembly acts with full knowledge of previous judicial decisions, but also that its silence on this issue in the face of decisions consistent with those previous decisions indicates its acquiescence to them.” *Id.*

The plain language of section 23-20 provides that “[t]he person desiring to contest such election shall, within thirty (30) days after the person whose election is contested is declared elected, file with the clerk of the proper court a petition, in writing, setting forth the points on which he will contest the election, *which petition shall be verified by affidavit in the same manner as complaints in other civil cases may be verified.*” 10 ILCS 5/23-20 (emphasis added). Section 23-20 plainly requires that a verified petition be filed within the 30-day limitation, as this Court has consistently construed. There can be no other construction of section 23-20.

Without addressing and in direct conflict with this Court’s long-established construction of the verification requirement in section 23-20, the Appellate Court reached its own unprecedented construction of the verification requirement. The Appellate Court concluded that an election contest petition need only be verified at some indeterminant time and that section 23-20 “contains no additional requirement that the verification affidavits be attached to the petition or that they be filed with the trial court prior to expiration of the 30-day period.” *Ontiveroz*, 2023 IL App (3d) 220446, ¶ 31, 229 N.E.3d at 1010. Yet, section 23-20 clearly provides that, within the 30-day limitation period, an

election contest petition shall be filed with the clerk of the court, which petition shall be verified by affidavit in the same manner as complaints in other civil cases may be verified. 10 ILCS 5/23-20.

Although not material to this issue, the Appellate Court also struggled to ascertain the meaning of the term “verified” noting there is no definition of “verified” in the Election Code or a helpful dictionary definition. *Ontiveroz*, 2023 IL App (3d) 220446, ¶ 31, 229 N.E.3d at 1010. Yet, section 23-20 plainly instructs that the petition be verified “in the same manner as complaints in other civil cases may be verified.” Section 1-109 of the Code of Civil Procedure provides a clear and unambiguous manner in which complaints may be verified in civil cases. 735 ILCS 5/1-109.

The Appellate Court then compared an entirely unrelated statute applicable to the filing of certificates of merit in healing art malpractice cases to section 23-20 of the Election Code. *Ontiveroz*, 2023 IL App (3d) 220446, ¶ 32, 229 N.E.3d at 1010. The Appellate Court observed that section 2-622 of the Code of Civil Procedure requires a plaintiff file a certificate of merit “attached to the original and all copies of the complaint” and that the failure to attach the required certificate “shall be grounds for dismissal.” *Id.*

The Appellate Court further observed that this identical language is not contained in section 23-20 of the Election Code. *Id.* Therefore, the Appellate Court concluded that “the legislature knows how to specifically require that certain documents, such as various affidavits, be attached to and filed with a particular pleading or other filing and did not do so with regard to election contest petitions filed pursuant to section 23-20 of the Election Code.” *Id.*

The Appellate Court’s focus on the operative language of section 2-622 of the Code of Civil Procedure is unwarranted and misguided. There is no need for the legislature to add any such language to section 23-20 because section 23-20 has been subject to this Court’s judicial construction for over a century – a construction that requires a verified petition to be filed within the statutory 30-day period. *Armstrong*, 346 Ill. 322, 179 N.E. 97; *Doelling*, 17 Ill. 2d 145, 160 N.E.2d 801; *Whitley*, 21 Ill. 2d 292, 171 N.E.2d 644; *Glispie*, 2020 IL 125483, ¶ 9, 181 N.E.3d 719, 722.

Moreover, in codifying section 23-20 in the Election Code in 1943, the legislature could have, but did not, amend the verified affidavit requirement in section 23-20 to the extent the legislature disagreed with this Court’s interpretation reached in *Daugherty* and *Armstrong*. See 10 ILCS 5/23-20.; see also, 261 Ill. 366, 103 N.E. 1003; 346 Ill. 322, 179 N.E. 97. The same is true concerning the legislature’s amendments to section 23-20 in 1951 and 1957 or with any amendment to the Election Code since *Doelling*. In this regard, courts may presume that the legislature acts “with full knowledge of previous judicial decisions” and that the legislature’s “silence on this issue in the face of decisions consistent with those previous decisions indicates its acquiescence to them.” *Glispie*, 2020 IL 125483, ¶ 9, 181 N.E.3d at 722; see also, *People v. Agnew*, 105 Ill. 2d 275, 280, 473 N.E.2d 1319, 1322 (1985) (“[W]hen the legislature amends a statute, but leaves unchanged portions which have been judicially construed, the unchanged portions will retain the construction given prior to the amendment.”).

The Appellate Court’s construction of section 23-20 of the Election Code, aided by reference to an inapplicable, unrelated statute, is in direct conflict with the plain

language of section 23-20, as long construed by this Court. The Appellate Court's construct cannot stand for this additional reason.

C. The Appellate Court's Construction of Section 23-20 is in Direct Conflict with the Intent and Purpose of Section 23-20.

Significantly, the Appellate Court's departure from this Court's established precedent is contrary to the policy underlying the statutory requirements set forth in section 23-20. "Election contests are unlike the typical litigation brought before the courts." *DiFranco v. Fallon*, 2023 IL App (1st) 220785, ¶ 50 *citing Carey v. Elrod*, 49 Ill. 2d 464, 470, 275 N.E.2d 367 (1971). Election contests "are intended to be disposed of promptly and the public has an interest in the stability and finality of election results." *Id. citing Waupoose v. Kusper*, 8 Ill. App. 3d 668, 671, 290 N.E.2d 903 (1972) (29 C.J.S. Elections § 467 (Aug. 2023 Update); *Doelling*, 17 Ill. 2d at 146, 160 N.E.2d 801. Moreover "election contests are meant to afford a simple and speedy means of contesting elections to stated offices and to achieve a full and fair litigation of election disputes in an expeditious manner." *Id. citing* 26 Am. Jur. 2d *Elections* § 384 (May 2023 Update). Accordingly, section 23-23 of the Election Code provides that election contests "shall have preference in the order of hearing to all other cases." 10 ILCS 5/23-23.

Allowing a losing candidate to file an unverified petition for election contest beyond the 30-day limitation period, undermines the stability and finality of election results, as well as the expedient disposition of any contest. *See generally, Zahray v. Emricson*, 25 Ill. 2d 121, 124, 182 N.E.2d 756 (1962) ("the proceeding cannot be employed to allow a party, on mere suspicion, to have the ballots opened and subjected to scrutiny to find evidence upon which to make a tangible charge"). The Appellate Court's unprecedented interpretation of section 23-20 would allow for unverified claims of

election grievances to serve as the basis for the opening and recounting of ballots. Under the Appellate Court's construction, a petitioner need not even sign the original petition, as was the case here when the original Petition was filed in the final minutes of last day and signed only by Petitioner's Attorney. (C 23-39). According to the Appellate Court's construction, a petitioner need only make a verified affidavit in support of the petition, at some indeterminate time in the election contest, undermining the fundamental purpose of this statutory requirement. Not only does the Appellate Court's novel construction contradict the plain language of section 23-20, such construction allows for protracted election contest controversies that serve to undermine the stability and finality of elections. *Doelling*, 17 Ill. 2d at 146, 160 N.E.2d at 802. ("In election contests there must be finality and to this end the legislature added the provision making the verification of the petition a jurisdictional requirement."). The Appellate Court's interpretation of section 23-20 of the Election Code cannot stand for this additional reason.

D. Election Contests Brought Under the Election Code Remain Special Statutory Proceedings Subsequent to *Belleville Toyota*.

Finally, the Appellate Court correctly noted that the Clerk served as "the election authority responsible for *administering* and overseeing the election" contested by Petitioner. *Ontiveroz*, 2023 IL App (3d) 220446, ¶ 1, 229 N.E.3d at 999 (emphasis added). Yet, in a footnote, the Appellate Court questioned whether special statutory jurisdiction applies to election contest proceedings, given this Court's determination in *Belleville Toyota, Inc.* *Id.* at n. 7, 1009. The Appellate Court noted that "[t]he parties have not raised or addressed that particular issue in this appeal, and we take no position on that issue at this time." This Court has often explained that "courts of review have an independent duty to consider jurisdiction even if a jurisdictional issue is not raised by the

parties.” *People v. Lewis*, 234 Ill. 2d 32, 36–37, 912 N.E.2d 1220, 1223 (2009) *citing Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill.2d 209, 213, 902 N.E.2d 662 (2009); *People v. Smith*, 228 Ill.2d 95, 104–06, 885 N.E.2d 1053 (2008). Therefore, the Appellate Court should have resolved its own question on the applicability of special statutory jurisdiction to election contest proceedings, as opposed to simply raising the potential question, which will, undoubtedly, create significant confusion in subsequent election contest matters.

It is axiomatic that statutory election contest proceedings, brought under section 23-20 of the Election Code, involve circuit court review of the election authority’s administration of an election. 10 ILCS 5/23-20; *see also*, Ill. Const. 1970, art. VI, § 9 (“Circuit Courts shall have such power to review administrative action as provided by law.”). In *Bettis*, 2014 IL 117050, ¶ 14, 23 N.E.3d at 357, this Court explained that “Circuit courts may exercise jurisdiction over election cases only as provided by statute.” *Id. citing Pullen*, 138 Ill.2d 21, 32, 561 N.E.2d 585 (1990).

As the Appellate Court correctly noted, the Clerk was the election authority responsible for administering the Election. *Ontiveroz*, 2023 IL App (3d) 220446, ¶ 1, 229 N.E.3d at 999 (emphasis added). It was the administrative duty of the Clerk to count the ballots and declare and certify the official results for the Election. *See* 10 ILCS 5/19A-25.5 (as to counting of early voting ballots); § 19-15 (as to counting vote by mail ballot); § 20-15 (as to counting absentee and military overseas ballots); § 24B-13 (as to counting Election Day ballots); § 22-17 and § 22-18 (as to declaration and certification of official results in consolidated elections). Upon proper petition, section 23-20 of the Election Code expressly permits circuit court review of sufficiently alleged fraud or

mistake in the counting of ballots or other irregularities in the Clerk's administrative conduct of the Election. 10 ILCS 5/23-20. Section 23-23.2 of the Election Code further provides the circuit court the authority to order the Clerk to recount ballots where "based on the facts alleged in such petition, there appears a reasonable likelihood the recount will change the results of the election." 10 ILCS 5/23-23.2.

In its question on the applicability of special statutory jurisdiction to election contest matters, the Appellate Court noted that an election contest is not an action for judicial review of an electoral board proceeding or other agency proceeding. *Ontiveroz*, 2023 IL App (3d) 220446 at n. 7, 229 N.E.3d at 1009. Yet there is no authority for the proposition that "administrative action", as contemplated in Article VI, Section 9 of the Illinois Constitution, is limited to the circuit court's review of an electoral board decision or other agency proceeding subject to Administrative Review Law. *See generally*, 735 ILCS 5/3-101, *et seq.* To the contrary, "administrative action", under Article VI, Section 9 of the Illinois Constitution, includes administrative conduct beyond the specific administrative proceedings identified in the Appellate Court's footnote *See Glass v. Dep't of Corr.*, 2023 IL App (4th) 230116, *appeal denied*, 226 N.E.3d 13 (Ill. 2024) (finding that final implementation of state agencies' COVID-19 vaccination-or-testing policy constituted "administrative action" under Article VI, Section 9 of the Illinois Constitution).

In *Glass*, the appellate court determined that the circuit court lacked subject matter jurisdiction, under Article VI, Section 9 of the Illinois Constitution, to review the state agencies' final implementation of a COVID-19 vaccination-or-testing policy in a judicial action brought under the Health Care Right of Conscience Act and the

Department of Public Health Act. 2023 IL App (4th) 230116. In reaching this conclusion, the court determined that the administrative implementation of a COVID-19 vaccination-or-testing policy was an “administrative action” under the Illinois Constitution’s exception to the broad grant of jurisdiction to the circuit court on all judiciable matters. *Id.* The court determined that neither the Health Care Right of Conscience Act nor the Department of Public Health Act authorized judicial review of the agencies’ implementation of a COVID-19 vaccination-or-testing policy. *Id.* The court concluded that absent statutory authority, the circuit court lacked subject matter jurisdiction to judicially review the implementation of a COVID-19 vaccination-or-testing policy under Article VI, Section 9 of the Illinois Constitution. *Id.*

To determine whether the implementation of a COVID-19 vaccination-or-testing policy was an “administrative action”, the court relied on the definition of “administrative action” in Black’s Law Dictionary which provides that an administrative action is “[a] decision or an implementation relating to the government's executive function or a business's management.” Black's Law Dictionary (11th ed. 2019) (definition of “administrative action”); *see also, Glass*, 2023 IL App (4th) 230116, ¶ 19.

Here, there can be no question that the Clerk’s administration of the Election, culminating in her declaration and certification of the official results, constitutes a “decision or an implementation relating to the government's executive function or a business's management.” *See id.* Section 23-20 of the Election Code provides the circuit court statutory authority to review the Clerk’s administrative action, as a matter of special statutory jurisdiction. As this Court made clear in *Pullen*, “[c]ourts have no inherent power to hear election contests, but may do so only when authorized by statute and in the

manner dictated by statute.” 138 Ill. 2d at 32, 561 N.E.2d at 589; *see also, DiFranco*, 2023 IL App (1st) 220785, ¶ 40, 228 N.E.3d at 424 (“Thus, it appears the Election Code does not give the circuit court authority to remove a person occupying public office through an election contest.”). To eliminate any future confusion presented by the question of the Appellate Court, this Court should conclude that election contest proceedings remain special statutory proceedings falling within the Illinois Constitution’s limited exception to the broad grant of jurisdiction to the circuit court on all justiciable matters, under Article VI, Section 9 of the Illinois Constitution.

Accordingly, this Court should reaffirm its long, consistent construction of section 23-20 of the Election Code as requiring a verified petition for election contest to be filed within the 30-day limitation period to confer subject matter jurisdiction on the circuit court. Upon the Court’s confirmation, it need not address any further jurisdictional issue presented in this Appeal. This Court should affirm the Trial Court’s dismissal of Petitioner’s election contest for lack of subject matter jurisdiction and reverse the Opinion and Order of the Appellate Court, on this basis.

II. ALTERNATIVELY, THE TRIAL COURT LACKED SPECIAL STATUTORY JURISDICTION OVER PETITIONER’S ELECTION CONTEST, DUE TO PETITIONER’S FAILURE TO SUFFICIENTLY ALLEGE ANY GROUNDS FOR AN ELECTION CONTEST IN THE ORIGINAL PETITION, WITHIN THE 30-DAY LIMITATION PERIOD, AS REQUIRED UNDER SECTION 23-20 OF THE ELECTION CODE.

When no legally sufficient claim is filed within the 30-day limitation period, the circuit court is without jurisdiction to allow an amendment to the election contest petition. *Ross v. Kozubowski*, 182 Ill. App. 3d 687, 696, 538 N.E.2d 623, 629 (1st Dist. 1989); *see also, Andrews v. Powell*, 365 Ill. App. 3d 513, 525, 848 N.E.2d 243, 253 (4th Dist. 2006) (“Amendments to petitions to contest filed beyond the statute of limitations

are not proper where the original petition cannot withstand a motion to dismiss.”); *Vill. of Hinsdale v. DuPage Cnty. Court*, 281 Ill. App. 571, 588 (2d Dist. 1935). As the court in *Ross* stated:

The rule is that where a petition to contest an election is properly filed within the time prescribed by the statute and it sets forth one or more sufficient grounds of contest, amendments to the petition may be allowed even after the expiration of the time within which the original petition was required to be filed; but where the original petition does not set forth one or more sufficient grounds for contest, no amendments to the petition filed after the expiration of the time within which the original petition was required to be filed will confer jurisdiction. In other words, a legally sufficient petition must be filed within the time prescribed by the statute in order to confer jurisdiction upon the court to thereafter hear and determine the cause.

Id., quoting, *Vill. of Hinsdale*, 281 Ill. App. at 588.

Count I of the original Petition alleged that private third parties had engaged in voter and election interference and was void of any allegations directed at the Clerk’s conduct of the Election or counting of votes. (C 25-31). The Trial Court properly concluded that Count I did not allege a cognizable ground for an election contest and entered judgement on the pleadings in favor of the Clerk on Count I, which ruling was affirmed by the Appellate Court. (C 252); *Ontiveroz*, 2023 IL App (3d) 220446, ¶ 24.

The Trial Court also dismissed Count II of the original Petition finding that Count II did not sufficiently plead grounds for an election contest thereby leaving no legally sufficient claim in the original Petition. (C 252). Because Petitioner failed to file a legally sufficient claim for an election contest within the 30-day limitation period in section 23-20, he left the Trial Court without jurisdiction over his case. *Ross*, 182 Ill. App. 3d at 696, 538 N.E.2d at 629; *see also, Andrews*, 365 Ill. App. 3d at 525, 848 N.E.2d at 253; *Vill. of Hinsdale*, 281 Ill. App. at 588.

The Appellate Court concluded that Petitioner did sufficiently plead grounds for an election contest in Count II. *Ontiveroz*, 2023 IL App (3d) 220446, ¶ 34. Accordingly, the Appellate Court concluded that sufficiency of pleading did not present a jurisdictional barrier. *Id.* The Appellate Court’s conclusion in this regard is in error.

In Count II, Petitioner raised a number of grievances concerning the Election as to: (1) the lack of Election Judge’s initials on ballots cast; (2) postmarks or Clerk’s stamps missing from vote by mail ballots; (3) an incorrect voter signature on a vote by mail envelope; (3) vote by mail ballots allegedly being counted without corresponding vote by mail envelopes; (4) alleged unregistered voters at address listed that voted; (5) alleged voters that did not request vote by mail ballot; and (6) the Clerk’s alleged failure to comply with the Election Code for processing vote by mail ballots. (C 31-39). Petitioner requested a recount of ballots on these bases. (C 38).

As to each grievance, Petitioner alleged no facts to support that any of these alleged irregularities would likely change the result of the Election, as is required for an election contest. 10 ILCS 5/23-23.2; *see generally, In re Contest of Election for Offices of Governor & Lieutenant Governor Held at Gen. Election on November 2, 1982*, 93 Ill. 2d 463, 490, 444 N.E.2d 170, 182 (1983); *Zahray*, 25 Ill. 2d at 124, 182 N.E.2d 756; *McCaslin v. Moore*, 67 Ill. App. 2d 355, 357, 214 N.E.2d 18, 19 (2d Dist. 1966). The Appellate Court determined, in cursory manner, that Petitioner “provided sufficient information to establish that the results of the election would have been different if those mistakes or irregularities had not occurred.” *Ontiveroz*, 2023 IL App (3d) 220446, ¶ 33, 229 N.E.3d at 1011. Yet, the Appellate Court failed to identify exactly what information was provided in the original Petition leading to its cursory conclusion that the alleged

irregularities would have likely affected the outcome of the Election. *Id.* Moreover, Petitioner offered no argument in this regard in his opening Brief in the Appellate Court and scant argument in this regard in his Reply Brief.

A. Alleged Lack of Election Judge’s Initials on Ballots Cast.

The original Petition alleges that two ballots were not initialed by Election Judges. However, Petitioner failed to identify for whom these ballots were cast, as he must, to establish a factual basis for his claim that discounting these ballots would change the result of the Election. *See Andrews*, 365 Ill. App. 3d at 522, 848 N.E.2d at 251 (“[T]he burden of proving for whom the illegal votes were cast, and that they were sufficient in number to change the results of the election, falls on the petitioner.”). Without identifying for whom these ballots were cast, simply discounting these ballots would not likely change the result of the Election.

B. Alleged Missing Postmarks or Clerk’s Stamps.

Vote by mail ballots may be returned without postmarks under section 19-6 of the Election Code. 10 ILCS 19-6 (“Election authorities shall accept any vote by mail ballot returned, including ballots returned with insufficient or no postage.”). 10 ILCS 5/19-6. Petitioner identified no irregularity in this regard. Additionally, Petitioner did not allege for which candidate these voters cast their ballot, which is required for the recount requested. *See Andrews*, 365 Ill. App. 3d at 522, 848 N.E.2d at 251. Accordingly, Petitioner’s allegations in this regard were entirely speculative and do not serve as a basis for an election contest.

Even if this were a cognizable irregularity, without identifying from whom these ballots were cast, it is possible that Petitioner was the Candidate for whom these alleged

vote by mail ballots were cast. In that case, discounting these ballots would not change the result of the Election.

C. Alleged Incorrect Voter Signature on Vote by Mail Ballot Envelopes.

The original Petition alleged that the signatures on two vote by mail ballot envelopes associated with identified voters do not match the signatures in their vote by mail applications. First, there is no requirement under the Election Code for an exact signature match on these records and Petitioner alleged no irregularity in this regard. Additionally, Petitioner did not allege for which Candidate these voters cast their ballot, which is required. *See Andrews*, 365 Ill. App. 3d at 522, 848 N.E.2d at 251. Even if this were a cognizable irregularity, without any more alleged facts, it is entirely possible that Petitioner was the Candidate for whom these alleged vote by mail ballots were cast. In that case, discounting these ballots would not change the result of the Election. Petitioner's allegations in this regard are entirely speculative and cannot serve as a basis for the recount requested.

D. Vote by Mail Ballots Allegedly Counted Without Corresponding Vote by Mail Envelopes.

The original Petition alleged that 16 specific voters had their vote by mail ballots counted without the corresponding envelopes and claims that this is an election irregularity. However, Petitioner does not allege for which Candidate these voters cast their ballot, as is required. *See Andrews*, 365 Ill. App. 3d at 522, 848 N.E.2d at 251. Even if this were a cognizable irregularity, without any more alleged facts, it is entirely possible that Petitioner was the Candidate for whom these alleged vote by mail ballots were cast. Therefore, discounting these ballots would not change the result of the Election. Moreover, Petitioner makes no allegation of fraud on this basis. *See Goree*,

169 Ill. App. 3d at 700, 523 N.E.2d at 1081. Petitioner's allegations in this regard are entirely speculative and cannot serve as a basis for the recount requested.

E. Alleged Unregistered Voters at Address Listed that Voted.

The original Petition alleged that the addresses of four (4) specific voters do not match their addresses provided in their registration records. Petitioner ignores the possibility these voters may have changed their registration address, as is authorized under the same-day registration provisions of the Election Code. 10 ILCS 5/5-50. Additionally, Petitioner does not allege for which Candidate these voters cast their ballot, as required. *See Andrews*, 365 Ill. App. 3d at 522, 848 N.E.2d at 251. Even if this were a cognizable irregularity, without any more alleged facts, it is entirely possible that Petitioner was the Candidate for whom these alleged vote by mail ballots were cast. Therefore, discounting these ballots would not change the result of the Election. Petitioner's allegations in this regard are entirely speculative and cannot serve as a basis for the recount requested.

F. Alleged Voters That Did Not Request Vote by Mail Ballot.

The original Petition alleged that 7 specific voters voted by mail without submitting a vote by mail application for the Election. Petitioner makes no allegation of fraud. Petitioner's allegations do not establish a basis for invalidating a voter's vote by mail ballot in this regard. *Goree*, 169 Ill. App. 3d at 700, 523 N.E.2d at 1081.

Additionally, Petitioner does not allege for which Candidate these voters cast their ballot; nor does he allege that he received more or less vote by mail votes than his opponent. In this regard Petitioner pled no facts to establish that this purported irregularity would likely alter the result of the Election in his favor. Accordingly,

Petitioner's allegations in this regard are entirely speculative and cannot serve as a basis for the recount requested.

G. Clerk's Alleged Failure to Comply with the Election Code for Processing Vote by Mail Ballots.

The original Petition alleged that the Clerk did not report the unofficial results of the vote by mail ballot totals in a manner consistent with the Election Code. Petitioner made no allegation that this alleged circumstance likely altered the outcome of the Election in any way. 10 ILCS 5/23-23.2. Petitioner next makes an unintelligible claim as to 8 provisional voters. Petitioner does not allege for which Candidate these voters cast their ballot, as required. *See Andrews*, 365 Ill. App. 3d at 522, 848 N.E.2d at 251. Petitioner next alleges that 7 voters were subject to voter challenges. Petitioner fails to acknowledge that challenged voters are authorized to vote according to the procedures in sections 17-9 and 17-10 of the Election Code. 10 ILCS 5/17-9; 17-10. Petitioner does not allege for which Candidate these voters cast their ballot, as required. *See Andrews*, 365 Ill. App. 3d at 522, 848 N.E.2d at 251. Finally, even if these were cognizable irregularities, without any more alleged facts, it is entirely possible that Petitioner was the Candidate for whom these alleged ballots were cast. Therefore, discounting these ballots would not change the result of the Election. Petitioner's allegations in this regard are entirely speculative and cannot serve as a basis for the recount requested.

H. Directory Provisions of the Election Code.

It is established that "[m]any statutory provisions governing elections are directory, and not mandatory." *Thomas v. Marcin*, 51 Ill. App. 3d 82, 83, 366 N.E.2d 416, 417 (1st Dist. 1977) (dismissing election contest petition because the regulations prohibiting electioneering are directory). It is also settled that "pleadings in an election

contest that charge violations of directory provisions of the election code rather than mandatory provisions without alleging that the violations were fraudulent, are subject to dismissal.” *Goree v. LaVelle*, 169 Ill. App. 3d 696, 700, 523 N.E.2d 1078, 1081 (1st Dist. 1988). And “fraud in Illinois is never presumed, it must be pleaded ... with specificity and must apprise the opposite party of what they are called to answer.” *Id.*

The court in *Marcin* explained that:

[T]he determination of whether a provision of the Election Code is mandatory or directory has depended upon: (1) whether the statutory scheme expressly or impliedly provides that the failure to follow the provision shall render an election void; (2) whether the failure interfered in any way with the result of the election; (3) whether any person legally entitled to vote was not permitted to do so; (4) whether any person voted who was not a resident of the territory sought to be organized; (5) whether the polling place was chosen for any improper motive; and (6) whether any fraud occurred in or as a result of the selection of the polling place.

Marcin, 51 Ill. App. 3d at 84, 366 N.E.2d at 417. The Clerk acknowledges that the requirement that an election judge initial an in-precinct ballot is mandatory and not directory. *McDunn v. Williams*, 156 Ill. 2d 288, 311, 620 N.E.2d 385, 397 (1993).

However, the balance of Petitioner’s alleged deviations from the Election Code implicate directory vote by mail regulations, without any allegation of fraudulent conduct. None of the Election Code regulations referred to by Petitioner expressly or impliedly provide that failure to follow them shall render an election void or provide a basis to overturn an election. Indeed, as recognized in *McDunn*, this Court has held that an election judge’s failure to initial a vote by mail (absentee) ballot implicates directory provisions of the Election Code. *See id.*, citing *Craig v. Peterson*, 39 Ill. 2d 191, 201, 233 N.E.2d 345, 351 (1968). The original Petition contains no factual allegations that the alleged deviations from the Election Code impacted the result of the Election, given Petitioner’s

failure to identify the Candidate for which the alleged defective ballots were cast. The Petition contains no allegations that a person was legally entitled to vote but not permitted to do so. The Petition contains no allegation that a voter was not a resident of the Village of Glendale Heights. The Petition contains no allegations as to whether polling places were chosen through an improper or fraudulent motive. Accordingly, apart from Petitioner's allegations as to uninitialed in-precinct Ballots, the Petition contains no allegations to suggest that there were any deviations from mandatory provisions of the Election Code under the *Marcin* factors. *Marcin*, 51 Ill. App. 3d at 84, 366 N.E.2d at 417. Absent allegations of fraud, Petitioner's grievances in this regard do not serve as cognizable bases for an Election Contest, as a matter of law. *Id.*

Accordingly, the Appellate Court's cursory determination concerning the sufficiency of pleading in the original Petition is not supported by the actual allegations in the original Petition or by established law. This Court should affirm the Trial Court's dismissal of Petitioner's election contest for lack of subject matter jurisdiction and reverse the Opinion and Order of the Appellate Court, on this alternative basis.

III. ALTERNATIVELY, THE TRIAL COURT LACKED SPECIAL STATUTORY JURISDICTION OVER PETITIONER'S ELECTION CONTEST, DUE TO PETITIONER'S FAILURE TO ALLEGE THAT HE VOTED IN THE ELECTION, AS REQUIRED UNDER SECTION 23-20 OF THE ELECTION CODE.

In a footnote, the Appellate Court observed that "[t]he language of the original petition was somewhat ambiguous as to whether petitioner had actually voted in the election at issue, another requirement of the statute." *Ontiveroz*, 2023 IL App (3d) 220446 at. n. 8. To the contrary; neither the original Petition nor the amended Petitions contained an allegation that Petitioner voted in the Election. (C 23-39; 255-282; 489-

524). While it is true that the Clerk did not specifically address this jurisdictional issue, this Court has often emphasized that “courts of review have an independent duty to consider jurisdiction even if a jurisdictional issue is not raised by the parties.” *Lewis*, 234 Ill. 2d at 36–37, 912 N.E.2d at 1223. Additionally, matters of jurisdiction may be addressed at any time in any court. *Sandholm*, 2012 IL 111443, 962 N.E.2d 418; *Sims*, 2021 IL App (1st) 210168, ¶ 16, 190 N.E.3d at 906 (as to election cases, the issue of subject-matter jurisdiction cannot be waived).

Under section 23-20, the Petitioner was required to allege that he voted in the Election to confer jurisdiction on the Trial Court. 10 ILCS 5/23-20; *Burton v. Powell*, 26 Ill. App. 3d 563, 564, 325 N.E.2d 789, 790 (1st Dist. 1975). There is no such allegation in the original Petition or the amended Petitions. (C 23-39; 255-282; 489-524).

Accordingly, the Trial Court lacked subject matter jurisdiction for this additional reason. *See Adams v. McCormick*, 216 Ill. 76, 74 N.E. 774 (1905) (finding that petition failing to allege that the petitioner is an elector of the county properly dismissed); *Blanck v. Pausch*, 113 Ill. 60, 64 (1885) (finding that petitioner’s failure to allege that he was a voter required dismissal of election contest). This Court should affirm the Trial Court’s dismissal of Petitioner’s election contest for lack of subject matter jurisdiction and reverse the Opinion and Order of the Appellate Court, on this alternative basis.

CONCLUSION

The Appellate Court’s Opinion and Order is in direct conflict with this Court’s precedent concerning the jurisdictional nature of the verification and pleading requirements for election contest proceedings under section 23-20 of the Election Code. This Court should reaffirm its sound and consistent construction of section 23-20 based

on the plain language and purpose of the statute, for the sake of the Parties as well as for election authorities, Illinois courts and litigants confronted with future election contest proceedings. In doing so, this Court should affirm the Trial Court's dismissal based on its lack of subject matter jurisdiction and reverse the Appellate Court's Opinion and Order in this regard.

Dated: May 2, 2024

**JEAN KACZMAREK,
DUPAGE COUNTY CLERK**

By: /s/ Sean Conway (electronic signature)
Sean Conway, One of the
County Clerk's Attorneys

Sean Conway, ARDC No, 6292594
Patrick K. Bond, ARDC No. 6193855
Mary E. Dickson, ARDC No. 6206817
Special Assistant DuPage County State's Attorneys
BOND, DICKSON & CONWAY
400 S. Knoll Street, Unit C
Wheaton, IL 60187
(630) 681-1000
seanconway@bond-dickson.com
Attorneys for the Appellant
Jean Kaczmarek, DuPage County Clerk

CERTIFICATE OF COMPLIANCE

I, Sean Conway, an attorney, hereby certify hereby certifies that this Brief conforms to the requirements of Rules 341(a) and (b). The length of this Brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) 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 30 pages.

/s/ Sean Conway (electronic signature)
Sean Conway

Sean Conway, ARDC No. 6292594
Patrick K. Bond, ARDC No. 6193855
Mary E. Dickson, ARDC No. 6206817
Special Assistant DuPage County State's Attorneys
BOND, DICKSON & CONWAY
400 S. Knoll Street, Unit C
Wheaton, IL 60187
(630) 681-1000
seanconway@bond-dickson.com

No. 130316

IN THE SUPREME COURT OF ILLINOIS

MIKE ONTIVEROZ,

Petitioner-Appellee,

v.

CHODRI, M.A. KHOKHAR; and
JEAN KACZMAREK, in her official
capacity as DuPage County Clerk,

Respondents-Appellant.

NOTICE OF FILING

To: Andrew Finko
166 W. Washington St., Suite 400
Chicago, IL 60602
Finkolaw@Fastmail.FM

Chodri Ma Khokar
1570 President Lane
Glendale Heights, IL 60139
Cmak1570@gmail.com

PLEASE TAKE NOTICE that on the 2nd day of May, 2024, we caused to be electronically filed with the Clerk of the Supreme Court, 200 E. Capitol, Springfield, Illinois 62701, Appellant's, DuPage County Clerk, Brief and Argument on Appeal with Appendix, a copy of which is attached hereto and hereby served upon you electronically.

/s/ Sean Conway (electronic signature)
Sean Conway, One of the Attorneys
for Appellant, DuPage County Clerk

CERTIFICATE OF SERVICE

The undersigned attorney served the individuals set forth in the Notice of Filing via electronic mail to the email addresses provided in the Service List on May 2, 2024 the Appellant's, DuPage County Clerk, Brief and Argument on Appeal. Under penalties as provided for by law pursuant to Section 1-109 of the Civil Code of Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Sean Conway (electronic signature)

Sean Conway

IN THE SUPREME COURT OF ILLINOIS

MIKE ONTIVEROZ,

Petitioner-Appellee,

v.

CHODRI, M.A. KHOKHAR; and
JEAN KACZMAREK, in her official
capacity as DuPage County Clerk,

Respondents-Appellant.

**APPENDIX TO BRIEF AND ARGUMENT FOR RESPONDENT-APPELLANT,
DUPAGE COUNTY CLERK**

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Sean Conway, ARDC No, 6292594
Patrick K. Bond, ARDC No. 6193855
Mary E. Dickson, ARDC No. 6206817
Special Assistant DuPage County State’s Attorneys
BOND, DICKSON & CONWAY
400 S. Knoll Street, Unit C
Wheaton, IL 60187
(630) 681-1000
seanconway@bond-dickson.com
Attorneys for the Appellant
Jean Kaczmarek, DuPage County Clerk

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5/13/2024 2:36 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

Appeal No. 130316

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UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

IN THE MATTER OF
MIKE ONTIVEROZ

Plaintiff

2021MR000548
CASE NUMBER

FILED

22 Oct 14 PM 12: 08

Candice Adams

CLERK OF THE

18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

Defendant

ORDER

After hearing, the court finds Petitioner's Motion to Vacate as moot as the court lacks subject matter jurisdiction for the reasons stated of record.

The court grants Respondent, Jean Kaczmarek, DuPage County Clerk, section 2-619(a)(1) Motion to Dismiss or Alternatively, Request for Modification of the Court's June 24, 2022 Dismiss Order and further grants the request to modify the order of June 24, 2022 to indicate the dismissal is with prejudice for lack of subject matter jurisdiction for the reasons stated of record.

Case closed.

Submitted by: JUDGE ANNE THERIEAU HAYES

DuPage Attorney Number:

Attorney for:

Address:

City/State/Zip:

Phone number:

Entered: *CAW* File Date: 10/14/2022

JUDGE ANNE THERIEAU HAYES

Validation ID : DP-10142022-1208-0838

Date: 10/14/2022

2023 IL App (3d) 220446

Opinion filed November 16, 2023

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2023

MIKE ONTIVEROZ,)	Appeal from the Circuit Court
)	of the 18th Judicial Circuit,
Petitioner-Appellant,)	Du Page County, Illinois.
)	
v.)	Appeal No. 3-22-0446
)	Circuit No. 21-MR-548
CHODRI M. A. KHOKHAR and JEAN)	
KACZMAREK, in Her Official Capacity)	
as Du Page County Clerk,)	Honorable
)	Anne Therieau Hayes,
Respondents-Appellees.)	Judge, Presiding.

JUSTICE PETERSON delivered the judgment of the court, with opinion.
Justices Hettel and Albrecht concurred in the judgment and opinion.

OPINION

¶ 1 Petitioner, Mike Ontiveroz, filed a two-count second amended verified petition to contest the results of the April 2021 election for Glendale Heights village president. Respondent, Du Page County Clerk Jean Kaczmarek (Clerk), the election authority responsible for administering and overseeing the election, filed motions for judgment on the pleadings (735 ILCS 5/2-615(e) (West 2020)) on count I of the petition and for involuntary dismissal (*id.* § 2-

619(a)(1)) of count II of the petition.¹ Following full briefing and hearings on the matter, the trial court granted the Clerk's two motions. Petitioner appeals. We affirm the trial court's ruling on count I, reverse the trial court's ruling on count II, and remand the case to the circuit court of Du Page County for further proceedings on count II.

¶ 2 I. BACKGROUND

¶ 3 On April 6, 2021, an election was held in Glendale Heights, Du Page County, Illinois, for the position of Village President. Four people were listed on the ballot as candidates for that position: petitioner, Chodri M. A. Khokhar (the person who won the election), Linda Jackson (the long-time Village President), and Edward Pope. Prior to the election, however, Jackson and Pope were disqualified as candidates by a ruling of the Illinois Supreme Court. See *Corbin v. Schroeder*, 2021 IL 127052, ¶¶ 1-2, 48. Despite that ruling, Jackson's and Pope's names remained on the ballot because there was not sufficient time to remove the names, even though Jackson and Pope were no longer valid candidates. The election proceeded, and Khokhar was elected to the position, defeating petitioner by two votes. On April 27, 2021, the Clerk certified the election results: of the 2039 ballots cast, Khokhar received 475 votes and petitioner received 473 votes.

¶ 4 On May 27, 2021, the thirtieth day after the election results had been certified and the last day to file an election contest petition (see 10 ILCS 5/23-20 (West 2020)), petitioner filed his original petition in the instant case to contest the election results. The original petition was electronically filed at 11:53 p.m. Although the original petition was titled a verified petition, no verification affidavits were attached to the original petition. The original petition contained two

¹The other respondent in this case, Chodri M. A. Khokhar (the person who won the election), was initially defaulted in the trial court for failing to appear. The default judgment, however, was later vacated and Khokhar was granted leave to adopt the pleadings and other filings of the Clerk relating to the Clerk's motion for judgment on the pleadings and another motion the Clerk had filed.

counts: count I for voter disenfranchisement and count II for deviations from the Election Code (*id.* § 1-1 *et seq.*). In general, as to both counts of the original petition, petitioner alleged that he was a registered voter in Glendale Heights and was a duly qualified candidate for the position of village president “voted upon at the April 6, 2021 consolidated election.” More specifically, in count I, petitioner alleged that he and other voters were disenfranchised and deprived of their constitutional right to a fair election because disqualified candidate Jackson and her campaign supporters had misled voters to believe that only write-in votes for the position would be counted and that Jackson could still be elected to the position through write-in votes. Petitioner asked the trial court to order that a new election be conducted or that petitioner and Khokhar be awarded a certain percentage of the in-person votes that were apparently cast for the disqualified candidates. In count II, petitioner alleged that several of the ballots cast were invalid due to various deviations from the Election Code. Petitioner described those deviations in detail, listed the precincts where the deviations took place, and identified the number of ballots that were affected or the proportional reductions that would apply to the vote totals if the deviations were found to have occurred. In addition, as to many of the deviations, petitioner also alleged that when the invalid votes were eliminated or proportional reductions were taken, “the results of the election would be changed, such that [petitioner] would have received more votes and would have been proclaimed the winner and the elected Village President.” Petitioner asked the trial court to order a recount of the election results in certain precincts with the alleged invalid votes eliminated or a proportional reduction taken in the number of votes each candidate received. Ultimately, petitioner sought under both counts to be declared the rightful winner of the election for Village President (either as the main remedy or as an alternative remedy).

¶ 5 On June 1, 2021, five days after the original petition had been filed but before respondents had been served or had filed appearances in the case, petitioner filed a motion to supplement the original petition and to add the missing verification pages. Petitioner's attorney stated in the motion and/or the accompanying affidavit that the original petition had been verified by three people (the names of those three people were specifically listed in the motion and the affidavit) before the petition had been filed. However, "for reasons not known," the verification pages were not included when the petition was compiled into a portable document format (PDF) file for filing, even though petitioner's attorney had selected the verification pages in the computer program to be added to the PDF file. Petitioner's attorney did not notice the PDF compilation error until after the petition had been accepted for electronic filing and after the 30-day filing period had ended. The day after petitioner's motion to supplement was filed, the trial court granted the motion in an *ex parte* proceeding.

¶ 6 Later that same month (June 2021), both respondents were served with the original election contest petition. The Clerk subsequently filed an appearance and an answer to the petition. In her answer, the Clerk denied or claimed insufficient knowledge as to many of the allegations contained in the petition and also denied that petitioner was entitled to the relief requested. As for Khokhar, although he was served with the original petition, he did not file an appearance, answer, or any motions at that time.

¶ 7 In September 2021, the Clerk filed a motion for judgment on the pleadings, pursuant to section 2-615(e) of the Code of Civil Procedure (735 ILCS 5/2-615(e) (West 2020)), as to both counts of the original election contest petition. As to count I, the Clerk asserted in the motion that judgment on the pleadings was warranted because petitioner's claim—that certain private parties (Jackson and her campaign supporters) had sought to influence voters through false representations

about the status of Jackson's candidacy on election day—did not satisfy the statutory grounds for an election contest, since petitioner did not allege mistake or fraud in the counting or return of votes or that there was some other specified irregularity in the conduct of the election. The Clerk asserted further as to count I that a private party's attempt to influence voters did not constitute a cognizable ground for an election contest as a matter of law. As to count II, the Clerk contended that judgment on the pleadings was proper because petitioner's claim, which pertained mainly to supposed deviations from the vote-by-mail requirements of the Election Code, failed to allege fraud in the conduct of the election, failed to allege that the claimed deviations altered the results of the election, failed to identify for which candidate the alleged defective ballots were cast, and generally implicated provisions of the Election Code that were only directory in nature. Petitioner filed a response and opposed the Clerk's motion for judgment on the pleadings, and the Clerk filed a reply.

¶ 8 In December 2021, a hearing was held on the Clerk's motion. Of relevance to this appeal, during the oral arguments on the motion, the Clerk's attorney pointed out that count I of petitioner's original petition was brought under section 23-20 of the Election Code and was based solely upon the conduct of Jackson's campaign supporters (and Jackson, presumably) and not upon any conduct of the Clerk. The Clerk's attorney stated further that petitioner had not cited any case law that supported petitioner's claim on count I and that the cases that petitioner had cited were cases involving civil rights claims and were not cases that were brought under section 23-20 of the Election Code.

¶ 9 In response to those assertions, petitioner's attorney stated in his oral argument to the trial court the following as to count I of the original petition:

“Now, Count [I] was the additional add-on count, and it is alleging a constitutional argument. I don’t believe it’s appropriate for the clerk to ask for judgment on the allegations in Count [I] at this point without offering or supporting facts.

The caselaw does allow—and the Cherry case was the—I think the seminal case that sort of had a you know, sham candidate was running, *Smith v. Cherry*, 489 F 2d 1098. That’s a 7th Circuit 1973. And that case allowed—it allowed the count to go forward based on a private party interfering with the election.

I do have a few others on the—you know, some citations. I’m not going to read the case citations, but there are a number of cases which have allowed that type of an allegation, and it’s not prohibited by the Election Code.

The Circuit Court certainly has jurisdiction to entertain additional counts that would be relevant in the same petition as the election contest. And, you know, I would not want to risk perhaps some collateral estoppel if I had not raised related claims or causes of action in the alternative within this complaint, and I think Illinois Code of Civil Procedure certainly allows alternative pleadings.”

¶ 10 After the oral arguments had concluded, the trial court made its ruling. The trial court granted the Clerk’s motion for judgment on the pleadings on count I of the original petition, finding that a private party’s attempt to influence voters was not a cognizable ground for an election contest under section 23-20 of the Election Code. As to count II, however, the trial court denied the Clerk’s motion for judgment on the pleadings, indicating that there were still factual issues that existed in the case. On its own motion, the trial court dismissed count II without prejudice pursuant to section 2-615(a) of the Code of Civil Procedure (*id.* § 2-615(a)) and granted petitioner leave to file an

amended petition to make changes to count II because, according to the trial court, petitioner's response brief had contained additional facts and/or additional allegations that were not contained in the original petition and so that the trial court could be clear regarding what the petitioner's arguments were as to the deviations from the Election Code. The trial court also struck the Clerk's answer to the original election contest petition.

¶ 11 In February 2022, petitioner filed his amended verified petition for election contest. In the amended filing, petitioner again set forth count I for voter disenfranchisement to preserve that count for possible appellate review and noted that the trial court had already entered judgment for the Clerk on that count. As to count II for deviations from the Election Code, petitioner made some slight changes to his allegations. The Clerk subsequently filed a section 2-615(a) motion to dismiss the amended petition. Targeting count II, the only active count, the Clerk asserted in the motion that the allegations in the amended petition were insufficient or inadequate to establish grounds for an election contest because, among other things, the allegations did not establish a likely change in the election results. Petitioner filed a response and opposed the motion to dismiss, and the Clerk filed a reply.

¶ 12 In March 2022, a status hearing was held on the Clerk's motion to dismiss. The trial court set a briefing schedule and a hearing date on the motion. The trial court also granted petitioner's oral motion for a default judgment against Khokhar because of Khokhar's failure to appear in the case. Later that same month, however, Khokhar filed a self-represented motion to vacate the default judgment and to be allowed to adopt "the pleadings" filed by the Clerk. The trial court subsequently granted Khokhar's request, vacated the default judgment, and allowed Khokhar to adopt the pleadings/filings of the Clerk, relative to the prior motion for judgment on the pleadings and the pending motion to dismiss.

¶ 13 In June 2022, a hearing was held on the Clerk's motion to dismiss.² After the attorneys made their oral arguments, the trial court took the case under advisement. At a later status hearing, the trial court announced its ruling. The trial court denied the Clerk's motion to dismiss and, on the court's own motion, directed petitioner to file a second amended petition to make changes to count II in accordance with the trial court's comments (to clarify some of the allegations and to make the allegations more specific and more concise).³ The trial court required petitioner to file the second amended petition within seven days and indicated that the petitioner would not be allowed to file any further petitions in this case. A status hearing was scheduled for 14 days later (7 days after the second amended petition was due to be filed) and was set for 11 a.m. to accommodate the schedule of petitioner's attorney. The written order that was entered, however, incorrectly listed the time of the status hearing as 9 a.m. On the status hearing date, when neither petitioner nor his attorney were present in court when the case was called and the trial court was unaware that the second amended petition had already been submitted for filing, the trial court dismissed petitioner's count II with prejudice.

¶ 14 Unbeknownst to the trial court, petitioner had electronically submitted his second amended verified petition for filing earlier that day. In the second amended petition, petitioner again set forth count I for voter disenfranchisement to preserve that count for possible appellate review and noted that the trial court had already entered judgment on the pleadings for the Clerk on that count. As to count II for deviations from the Election Code, petitioner made some additional changes to his allegations as he had previously been directed to do by the trial court. Most notably, petitioner

²For the purpose of consistency, we will continue to refer to the filings and conduct of the Clerk as the "Clerk's" filings and conduct, even though we recognize that Khokhar subsequently adopted those filings and conduct as his own.

³The written order that was later entered incorrectly indicated that the Clerk's motion to dismiss had been granted without prejudice, rather than denied as the trial court had orally ruled.

alleged in count II of the second amended petition that during the discovery recount, petitioner and his representatives had observed two in-precinct votes for Khokhar that “did not contain judges” (presumably, an election judge’s initials) and that should be removed from Khokhar’s vote total.

¶ 15 A few weeks after the dismissal order was entered, petitioner filed motions to vacate the dismissal and to correct the record. In the motions, petitioner’s attorney pointed out the scheduling error that had taken place and indicated that he had been delayed in filing the second amended petition because he had come down with COVID-19. Petitioner’s attorney had communicated that delay to the Clerk’s attorney prior to the status hearing when the dismissal order was entered. At the status hearing, the Clerk’s attorney told the trial court that petitioner’s attorney was allegedly ill and was asking for additional time but that the Clerk’s attorney was objecting to that request. The Clerk filed a response and opposed the motion to vacate. In the response, the Clerk asserted for the first time that subject matter jurisdiction was lacking in this case because petitioner had failed to file a verified election contest petition within the time frame allowed by statute and had also failed to file a legally-sufficient claim for an election contest within that same statutory time period. Petitioner filed a reply in support of his motion to vacate the dismissal and asserted, among other things, that the Clerk’s claim of lack of jurisdiction was not appropriately before the trial court at that time. On the hearing date, the trial court continued the hearing on the motion to vacate, directed the Clerk to file a separate motion regarding her claim of lack of jurisdiction, and set a briefing schedule and hearing date on the jurisdiction issue.

¶ 16 The Clerk subsequently filed a motion to dismiss the election contest petition pursuant to section 2-619(a)(1) of the Code of Civil Procedure (*id.* § 2-619(a)(1)) due to lack of subject matter

jurisdiction.⁴ Petitioner filed a response and opposed the motion, and the Clerk filed a reply. A hearing was held on the Clerk's motion to dismiss in October 2022. After listening to the oral arguments of the attorneys, the trial court took the matter under advisement. At a later status hearing, the trial court announced its ruling. The trial court found that subject matter jurisdiction was lacking for both of the reasons asserted by the Clerk and granted the Clerk's section 2-619 motion to dismiss count II of the second amended petition. Petitioner appealed.

¶ 17 II. ANALYSIS

¶ 18 A. Grant of the Clerk's Motion for Judgment on the Pleadings on Count I

¶ 19 As his first point of contention on appeal, petitioner argues that the trial court erred in granting the Clerk's motion for judgment on the pleadings on count I, the voter-disenfranchisement count, of petitioner's second amended petition.⁵ Petitioner asserts that the Clerk's motion should not have been granted because count I was a separate cause of action against the Clerk for civil rights violations (based upon the Clerk's failure to take action to stop the knowing and willful misdirection of voters and electioneering that was occurring) that was properly joined with petitioner's election contest claim in count II. Thus, according to petitioner, whether count I fit within an election contest action under section 23-20 of the Election Code was not a valid basis upon which the trial court could grant the Clerk's motion for judgment on the pleadings. Petitioner asserts further that count I was sufficient to state a cause of action for civil rights violations and

⁴The Clerk's motion was somewhat ambiguous and did not specifically indicate which version of the petition (amended or second amended) or which count (I, II, or both) the Clerk was seeking to have dismissed for lack of subject matter jurisdiction. We will treat the Clerk's motion as being directed at count II of the second amended petition because the second amended petition was the active petition before the trial court at the time and because it appears from the record that the trial court only made its ruling on jurisdiction as to count II of the petition.

⁵For the convenience of the reader, we have rearranged the order in which petitioner's arguments have been presented in this appeal.

that it was error for the trial court to grant the Clerk's motion for judgment on the pleadings on count I based largely upon the trial court's incorrect belief that an election contest under section 23-20 of the Election Code was the only remedy available to petitioner. At a minimum, petitioner maintains that the trial court should have granted petitioner leave to amend count I and should have provided petitioner with clarity as to the specific facts that the trial court believed were not sufficiently alleged. For all the reasons stated, therefore, petitioner asks that we reverse the trial court's grant of the Clerk's motion for judgment on the pleadings on count I of petitioner's second amended petition and that we remand this case for further proceedings on that count.

¶ 20 The Clerk argues that the trial court's ruling on count I was proper and should be upheld.⁶ The Clerk asserts that judgment on the pleadings was correctly granted in her favor on count I of the second amended petition because count I did not contain any allegations of error in the counting or return of the votes for the position at issue or any allegations as to a specified irregularity in the conduct of the election. As for petitioner's specific assertion on appeal—that his claim in count I was a separate claim for civil rights violations that was properly joined to his election contest claim—the Clerk contends that petitioner's assertion in that regard has been forfeited because petitioner failed to make that assertion in the trial court. Rather, according to the Clerk, petitioner clearly brought count I in this case as his first alleged ground for contesting the election and seeking a recount of votes under the Election Code as petitioner made no allegation in count I that the Clerk had engaged in misconduct, that she had violated petitioner's civil rights, or that she had refused to act after being faced with a knowing and willful misdirection of voters and electioneering. Thus, for all the reasons set forth, the Clerk asks that we affirm the trial court's

⁶As in the trial court proceedings, in this appeal, Khokhar again requested, and was allowed, to adopt the arguments of the Clerk as his own.

ruling granting the Clerk's motion for judgment on the pleadings on count I of petitioner's second amended petition.

¶ 21 Pursuant to section 2-615(e) of the Code of Civil Procedure, "[a]ny party may seasonably move for judgment on the pleadings." 735 ILCS 5/2-615(e) (West 2020). A section 2-615(e) motion for judgment on the pleadings is like a motion for summary judgment but is limited to the pleadings. *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 157 (2010). A judgment on the pleadings should be granted when the pleadings show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *M.A.K. v. Rush-Presbyterian-St.-Luke's Medical Center*, 198 Ill. 2d 249, 255 (2001); *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005). In ruling upon such a motion, a trial court will consider only those facts that are apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record. *M.A.K.*, 198 Ill. 2d at 255; *Gillen*, 215 Ill. 2d at 385. All well-pleaded facts and all reasonable inferences from those facts must be taken as true. *M.A.K.*, 198 Ill. 2d at 255; *Gillen*, 215 Ill. 2d at 385. A trial court's grant of a motion for judgment on the pleadings is subject to a *de novo* standard of review on appeal. *M.A.K.*, 198 Ill. 2d at 255; *Gillen*, 215 Ill. 2d at 385. When *de novo* review applies, the appellate court performs the same analysis that the trial court would perform. *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 43. Therefore, on review of a trial court's order granting judgment on the pleadings, the appellate court must determine whether any issues of material fact existed and, if there were no such issues, whether the movant was entitled to judgment as a matter of law. See *Gillen*, 215 Ill. 2d at 385.

¶ 22 No such determination is necessary in the present case, however, because, after a thorough review of the record of the trial court proceedings, we find that petitioner has forfeited his argument

on this issue in several respects. First, petitioner failed to raise this specific argument in the trial court and has, therefore, forfeited this argument on appeal. See *Roy Zenere Trucking & Excavating, Inc. v. Build Tech, Inc.*, 2016 IL App (3d) 140946, ¶ 36 (recognizing that an issue not raised in the trial court is forfeited and may not be raised for the first time on appeal). By our view of the record, although petitioner referenced civil and other constitutional rights at times, it does not appear that petitioner was asserting in the trial court proceedings that his claim in count I was a separate claim against the Clerk for civil rights violations that had been properly joined with his election contest claim in count II, as petitioner now asserts on appeal. Indeed, as the Clerk correctly notes, petitioner did not make a single allegation in count I that would support his current assertion. Petitioner did not allege in count I that the Clerk had violated his civil rights, that she had engaged in any misconduct in conducting the election, or that she had refused to act, despite being faced with knowing and willful misdirection of voters and electioneering. Instead, it appears from the allegations contained in count I and petitioner's written and oral arguments at the hearing on the motion for judgment on the pleadings that count I was exactly what the trial court recognized it to be—an attempt to bring an election contest under section 23-20 of the Election Code based upon alleged election interference by a private party. Thus, petitioner's new assertion on appeal—that count I was a civil rights claim against the clerk—has been forfeited. See *id.*

¶ 23 Second, although petitioner contends on appeal that the trial court should not have granted the Clerk's motion for judgment on the pleadings on count I without at least granting petitioner leave to amend, it does not appear from the record before us that petitioner ever sought leave from the trial court to file an amended count I or to present the trial court with a proposed amended count I for the trial court to consider. Because petitioner chose to stand in the trial court on the version of count I that he had originally filed, he cannot now assert on appeal that the trial court

should have granted him leave to amend that count. See *McMath v. Katholi*, 191 Ill. 2d 251, 255 (2000) (indicating that a party cannot complain on appeal about an alleged error that occurred in the trial court when to do so would be inconsistent with the position that the party took in the trial court proceedings).

¶ 24 Third and finally, although the Clerk asserted in her response brief in this appeal that petitioner had forfeited his argument on this issue, petitioner elected not to contest or even address that assertion in his reply brief. We are inclined to conclude, therefore, that the Clerk's forfeiture argument on this issue is well taken. See 2 Timothy J. Storm, *Illinois Appellate Practice Manual* § 30.2 (updated Mar. 2022) (recognizing that an appellant may and should reply to the arguments contained in the appellee's response brief, regardless of whether those arguments were raised in the appellant's opening brief). Thus, for all three of the reasons stated, we find that petitioner has forfeited his claim of error as to the trial court's grant of the Clerk's motion for judgment on the pleadings on count I of the second amended petition (as carried over from the original petition), and we affirm the trial court's ruling on that count.

¶ 25 B. Grant of the Clerk's Motion to Dismiss Count II

¶ 26 As his second point of contention on appeal, petitioner argues that the trial court erred in granting the Clerk's section 2-619 motion to dismiss count II of petitioner's second amended petition, which alleged deviations from the Election Code. Petitioner asserts that the Clerk's motion to dismiss should not have been granted because, contrary to the trial court's finding, petitioner filed a verified election contest petition within the 30-day time period as required by the controlling statute. In making that assertion, petitioner acknowledges that due to a technical error, the verification affidavits were inadvertently not attached to the original verified election contest petition when the original petition was initially filed. Petitioner claims, however, that the filing

error did not prevent petitioner from complying with the controlling statute, even though the original petition was filed on the last day of the 30-day period. This is because the verification affidavits had been signed before the original petition was filed and (1) the controlling statute did not require that the affidavits be attached to or filed with or at the same time as the original petition, (2) the case law precedent allows election contest petitions to be amended after the 30-day filing deadline has expired, (3) the Clerk was barred from relitigating the verification issue under the law of the case doctrine since the trial court had already granted petitioner's motion to supplement the original petition and to attach the verification affidavits, (4) the trial court's ruling was contrary to Illinois policy favoring resolution of controversies upon the substantive rights of the parties (the merits) rather than upon technical issues, (5) the original petition was superseded by the amended petition and was no longer part of the trial court record when the Clerk first raised concerns about the verification affidavits, and (6) the Clerk's late-raised argument regarding the verification affidavits was barred by the doctrine of *laches*. For all of the reasons stated, therefore, petitioner asks that we reverse the trial court's grant of the Clerk's motion to dismiss count II of petitioner's second amended petition and that we remand this case for further proceedings on that count.

¶ 27 The Clerk argues that the trial court's ruling on count II was proper and should be upheld. More specifically, the Clerk asserts that the trial court correctly determined that subject matter jurisdiction was lacking in this case and properly granted the Clerk's motion to dismiss count II on that basis. The Clerk contends that subject matter jurisdiction was lacking for two reasons. First, the Clerk asserts, subject matter jurisdiction was lacking in this case because petitioner failed to file a verified election contest petition within 30 days after the official election results had been declared as required by the controlling statute. In making that assertion, the Clerk recognizes that petitioner filed his original petition within the required 30-day time period but contends that the

original petition did not constitute a verified election contest petition because petitioner failed to attach the verification affidavits to the petition. According to the Clerk, petitioner's arguments to the contrary are not supported by the controlling statute or the existing case law on this issue and do not apply in the present case. Second, and in the alternative, the Clerk asserts that even if the original petition is deemed to be a verified petition, subject matter jurisdiction was still lacking in this case because the original petition was not legally sufficient, and, as a result, petitioner failed to file a legally sufficient election contest petition within the required 30-day time period. The Clerk maintains, therefore, that the trial court had no jurisdictional basis upon which to allow petitioner to supplement or amend the original petition after the 30-day period had expired. Thus, for both of the reasons set forth, the Clerk asks that we affirm the trial court's grant of the Clerk's section 2-619 motion to dismiss count II of petitioner's second amended petition.

¶ 28 Section 2-619 of the Code of Civil Procedure allows a litigant to obtain an involuntary dismissal of an action or claim based upon certain defects or defenses. See 735 ILCS 5/2-619 (West 2022); *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). The statute's purpose is to provide litigants with a method for disposing of issues of law and easily proven issues of fact early in a case, often before discovery has been conducted. See *Van Meter*, 207 Ill. 2d at 367; *Advocate Health & Hospitals Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (2004). In a section 2-619 proceeding, the moving party admits the legal sufficiency of the complaint (the original petition in this case) but asserts an affirmative defense or other matter to defeat the nonmoving party's claim. *Van Meter*, 207 Ill. 2d at 367. Section 2-619 lists several different grounds for which an involuntary dismissal may be granted. See 735 ILCS 5/2-619(a)(1) to (a)(9) (West 2022). Under subsection (a)(1), the subsection that applies in this case, a litigant may obtain an involuntary dismissal of a claim asserted against him based upon a lack of subject matter

jurisdiction. *Id.* § 2-619(a)(1). In ruling upon a section 2-619 motion to dismiss, the court must construe all of the pleadings and supporting documents in the light most favorable to the nonmoving party. *Van Meter*, 207 Ill. 2d at 367-68. On appeal, a dismissal pursuant to section 2-619 is reviewed *de novo*. *Id.* at 368. An issue of statutory construction, which is also involved in this case, is subject to a *de novo* standard of review on appeal as well. *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶ 50. As noted above, when *de novo* review applies, the appellate court performs the same analysis that the trial court would perform. *Direct Auto Insurance Co.*, 2013 IL App (1st) 121128, ¶ 43. A trial court's grant of a section 2-619 motion to dismiss may be affirmed on any basis supported by the record. See *McDonald v. Lipov*, 2014 IL App (2d) 130401, ¶ 14.

¶ 29 Historically, election contests have been viewed as matters of special statutory jurisdiction.⁷ See, e.g., *Pullen v. Mulligan*, 138 Ill. 2d 21, 32-33 (1990). Under such an approach, a petitioner's failure to comply with the applicable statutory prerequisites prevents the trial court from obtaining subject matter jurisdiction over the election contest. See, e.g., *Doelling v. Board of Education of Community High School District No. 88, Washington County*, 17 Ill. 2d 145, 146 (1959). In this particular case, the Clerk claims that subject matter jurisdiction was lacking because petitioner failed to comply with the requirements of the controlling statute—section 23-20 of the Election Code. Section 23-20 provides, in pertinent part:

⁷A potential question exists as to whether special statutory jurisdiction continues to apply in an election contest or similar proceeding that is filed directly in the trial court, such as the one in the present case, and is not brought for administrative review of an electoral board or other administrative body's ruling. In its more recent decisions, none of which are in the context of an election challenge, our supreme court has generally eliminated the concept of special statutory jurisdiction, other than for matters of administrative review. See, e.g., *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 333-41 (2002); *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶¶ 26-49. The parties have not raised or addressed that particular issue in this appeal, and we take no position on that issue at this time.

“The person desiring to contest such election shall, within thirty (30) days after the person whose election is contested is declared elected, file with the clerk of the proper court a petition, in writing, setting forth the points on which he will contest the election, which petition shall be verified by affidavit in the same manner as complaints in other civil cases may be verified. *** The petition shall allege that the petitioner voted at the election, and that he believes that a mistake or fraud has been committed in specified precincts in the counting or return of the votes for the office or proposition involved or that there was some other specified irregularity in the conduct of the election in such precincts, and the prayer of the petition shall specify the precincts in which the recount is desired.” 10 ILCS 5/23-20 (West 2020).

¶ 30 We must construe the provisions of section 23-20 to determine whether that section requires that the verification affidavits be filed with the election contest petition and, if so, whether the verification affidavits must be filed before the required 30-day period expires. The principles of statutory construction are well established. The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Gaffney*, 2012 IL 110012, ¶ 56. The most reliable indicator of that intent is the plain and ordinary meaning of the language of the statute itself. *Id.* In determining the plain meaning of statutory terms, a court should consider the statute in its entirety and keep in mind the subject the statute addresses and the apparent intent of the legislature in enacting the statute. *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009); 5 ILCS 70/1.01 (West 2020) (in construing a statute, “[a]ll general provisions, terms, phrases and expressions shall be liberally construed in order that the true intent and meaning of the General Assembly may be fully carried out”). If the statutory language is clear and unambiguous, it must be applied as written,

without resorting to further aids of statutory construction. *Gaffney*, 2012 IL 110012, ¶ 56. A court may not depart from the plain language of the statute and read into it exceptions, limitations, or conditions that are not consistent with the express legislative intent. *Id.* However, if the language of a statute is ambiguous, in that it is susceptible to more than one reasonable interpretation, a court may consider extrinsic aids to determine the meaning of the statutory language. See *Williams v. Illinois State Scholarship Comm'n*, 139 Ill. 2d 24, 51 (1990).

¶ 31 In the present case, after considering the applicable provisions of the Election Code and the Code of Civil Procedure, the principles of statutory construction, the case law on this issue, and the facts of this particular case, we find that petitioner's original election contest petition was a verified petition for the purpose of section 23-20 of the Election Code and that it was timely filed within the applicable 30-day period as required by section 23-20. We reach that conclusion for two reasons. First, the plain language of section 23-20 compels such a result. As to this particular issue, the statutory language of section 23-20 is clear and unambiguous—it requires only that an election contest petition “be verified” and contains no additional requirement that the verification affidavits be attached to the petition or that they be filed with the trial court prior to expiration of the 30-day period. See 10 ILCS 5/23-20 (West 2020). In reaching that conclusion, we note that the Election Code does not provide a definition of “verified” for the purpose of determining whether an election contest petition complies with section 23-20. Nor have we found the dictionary definition of that term to be particularly helpful here, as the Clerk does not dispute that the verification affidavits that were eventually filed by petitioner were sufficient in form and language. Because the statutory language of section 23-20 is clear and unambiguous, it must be enforced as written. See *Gaffney*, 2012 IL 110012, ¶ 56. We cannot read into section 23-20 additional requirements or conditions that the legislature did not express, including those suggested by the Clerk in this appeal. See *id.*

¶ 32 Second, even if we were to find that the statutory language of section 23-20 is ambiguous as to this particular issue, we would still have to conclude that the statute does not require that the verification affidavits be attached to the petition or that they be filed with the trial court prior to the expiration of the 30-day period. As petitioner rightly notes, the legislature knows how to specifically require that certain documents, such as various affidavits, be attached to and filed with a particular pleading or other filing and did not do so with regard to election contest petitions filed pursuant to section 23-20 of the Election Code. For example, in section 2-622 of the Code of Civil Procedure, which pertains to certificates of merit in healing art malpractice cases, the legislature required that the plaintiff file a certificate of merit “attached to the original and all copies of the complaint” and that the failure to attach the required certificate “shall be grounds for dismissal under Section 2-619.” See 735 ILCS 5/2-622(a), (g) (West 2020). No such requirement is contained in section 23-20 of the Election Code. Based upon the lack of any such language in section 23-20, we also would have concluded, therefore, that the legislature intended that an election contest petitioner was not required to attach the verification affidavits to the election contest petition or to file the verification affidavits with the trial court prior to the expiration of the 30-day time period. Compare 10 ILCS 5/23-20 (West 2020) (requiring that the petition in an election contest case be verified but containing no requirement that the verification affidavits be attached to or filed with the petition), with 735 ILCS 5/2-622(a), (g) (West 2020) (requiring that a certificate of merit in a healing arts malpractice case be attached to the original and all copies of the complaint and that the failure to attach the certificate shall constitute grounds for dismissal).

¶ 33 Having found that petitioner’s original petition was verified as required by section 23-20 of the Election Code, we now turn to address the Clerk’s other assertion on this issue—that subject matter jurisdiction was lacking because petitioner failed to file a legally sufficient election contest

petition within the 30-day time period. We find no merit to that contention. As noted above, petitioner alleged in count II of his original petition that various mistakes or irregularities (deviations from the Election Code) had occurred in the election in certain precincts in either the counting or return of the votes or the manner in which the election was conducted. Petitioner specifically described in detail what those mistakes or irregularities were and specifically identified the precincts where those mistakes or irregularities took place. Petitioner also provided sufficient information to establish that the results of the election would have been different if those mistakes or irregularities had not occurred. Taking the well-pled allegations and the reasonable inferences therefrom in the original petition as true, as we would be required to do in ruling upon a section 2-615 motion to dismiss (see 735 ILCS 5/2-615(a) (West 2020); *Heastie v. Roberts*, 226 Ill. 2d 515, 531 (2007)), we find that petitioner sufficiently alleged an election contest claim in count II of his original petition. See *O'Neal v. Shaw*, 248 Ill. App. 3d 632, 634 (1993) (indicating that when a court considers the legal sufficiency of an election contest petition, it must determine whether the complaint contains specific factual allegations which, if proven, would establish fraud or a violation of the Election Code, the number of ballots affected and the precinct where the ballots were counted, and that the result of the election would have been different had the improper ballots not been counted).⁸ The Clerk's argument to the contrary in this appeal is based solely upon her assessment that the trial court had concluded on two separate occasions that petitioner's count II was legally insufficient. Although an argument could be made that the trial court never actually reached that conclusion on either occasion, we have no reason to decide that particular aspect of this case because our standard of review on this issue is *de novo* and we, thus, give no deference

⁸The language of the original petition was somewhat ambiguous as to whether petitioner had actually voted in the election at issue, another requirement of the statute. See 10 ILCS 5/23-20 (West 2020). The Clerk, however, has never raised an issue as to that ambiguity.

to the trial court's rulings in that regard. See *Johnson v. Fuller Family Holdings, LLC*, 2017 IL App (1st) 162130, ¶ 37.

¶ 34 Finally, because we have determined that petitioner filed a legally-sufficient verified election contest claim in count II of his original petition within the 30-day time period, as required by section 23-20 of the Election Code (the controlling statute), we reject the Clerk's argument that the trial court had no jurisdictional basis upon which to allow petitioner to supplement or amend count II of that petition. See *DeFabio v. Gummersheimer*, 307 Ill. App. 3d 381, 386 (1999) (determining that an amended election contest petition related back to the timely-filed, legally-sufficient original petition), *aff'd*, 192 Ill. 2d 63, 69 (2000). Accordingly, we find that the trial court erred in granting the Clerk's section 2-619 motion to dismiss count II of petitioner's second amended petition, and we remand this case for further proceedings on that count. Having reached that conclusion, we need not address petitioner's other arguments on this issue.

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, we affirm the trial court's ruling granting the Clerk's motion for judgment on the pleadings on count I of petitioner's second amended petition, we reverse the trial court's ruling granting the Clerk's motion to dismiss count II of petitioner's second amended petition, and we remand this case to the circuit court of Du Page County for further proceedings on count II.

¶ 37 Affirmed in part and reversed in part.

¶ 38 Cause remanded.

Ontiveroz v. Khokhar, 2023 IL App (3d) 220446

Decision Under Review: Appeal from the Circuit Court of Du Page County, No. 21-MR-548; the Hon. Anne Therieau Hayes, Judge, presiding.

**Attorneys
for
Appellant:** Andrew Finko, of Chicago, for appellant.

**Attorneys
for
Appellee:** Chodri Ma Khokhar, of Glendale Heights, appellee *pro se*.
Sean Conway and Patrick K Bond, Special Assistant State's
Attorneys, of Bond, Dickson & Conway, of Wheaton, for other
appellee.

Candice Adams
e-filed in the 18th Judicial Circuit Court
DuPage County
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IN THE CIRCUIT COURT OF THE 18th JUDICIAL CIRCUIT
DuPAGE COUNTY, ILLINOIS

Mike Ontiveroz,)
)
Petitioner-Candidate,)
v.) No. 2021MR000548
)
Chodri M. A. Khokhar, and)
Jean Kaczmarek, as DuPage County Clerk,)
)
Respondents.)

Verified Petition for Election Contest + Equitable Relief

NOW COMES the Petitioner-Candidate, Mike Ontiveroz, through his attorney, and files his verified election contest petition contesting the canvass and proclamation of results made by Respondent, Jean Kaczmarek, declaring Respondent, Chodri M. A. Khokhar, as the winner of the April 6, 2021 consolidated election for the office of Village President for the Village of Glendale Heights, and that ballots be recounted and other election related documents be examined, and that Petitioner-Candidate be proclaimed the winner of said election, and further states as follows.

Introduction

1. Respondent, Jean Kaczmarek (“Clerk”) in her capacity as the DuPage County Clerk and election authority for DuPage County administered the April 6, 2021 consolidated election in the Village of Glendale Heights, IL at which voters of Glendale Heights voted for their Village President.

2. The April 6, 2021 election for Village President in Glendale Heights however was unique not only for the removal of two candidates by the Supreme Court, but for the willful and malicious actions of one of those removed

candidates, Linda Jackson, who rejected the Supreme Court's decision, and then engaged in a campaign to mislead and deceive in-person voters on April 6, 2021 at all polling locations in Glendale Heights.

3. Linda Jackson and her campaign supporters falsely directed voters on April 6, 2021 that their votes for a candidate upon the printed ballot would not be counted, and instead, she fraudulently and without a basis in fact or law, directed voters to instead write in her name as a candidate for Village President, even though she was represented by election law attorneys at two law firms.

4. Linda Jackson was a candidate who was removed from the ballot for insufficient signatures, and was not a valid write-in candidate under the Election Code, and her campaigns actions to direct voters to vote for her tainted the election of the Village President since she was a sham candidate.

Parties

5. Petitioner-Candidate, Mike Ontiveroz ("Ontiveroz"), is a registered voter in Glendale Heights, IL and a duly qualified candidate for the office of Village President for the Village of Glendale Heights voted upon at the April 6, 2021 consolidated election.

6. Respondent, Chodri M. A. Khokhar ("Khokhar") was a candidate for the office of Village President who appeared on the ballot as a candidate for the office of Village President for the Village of Glendale Heights voted upon at the April 6, 2021 consolidated election.

7. Respondent, Jean Kaczmarek ("Clerk") is named in her official capacity as the DuPage County Clerk, and the election authority overseeing the April 6, 2021 consolidated election in Glendale Heights, and the election authority that

performed the official count of the ballots and rendered a final proclamation of results for the April 6, 2021 consolidated election in DuPage County.

8. Ontiveroz and Khokhar were the only duly qualified candidates for the office of Village President upon the ballot for whom voters could cast a vote, and on April 27, 2021 the Clerk reported the votes for each candidate, out of 2,039 ballots cast, as follows:

Khokhar **475 votes**

Ontiveroz **473 votes**

Count I - Disenfranchised Voters

1-8. Ontiveroz incorporates par. 1-8 above as his paragraphs 1-8 of Count I as if fully stated.

9. At all relevant times before the electoral board, circuit court, appellate court, and Supreme Court, Linda Jackson was represented by election law attorneys from two law firms, and through her attorneys she filed a motion for reconsideration of the Supreme Court's decision.

10. On April 2, 2021, the Supreme Court entered its order that reversed the appellate court's decision, circuit court's order, and the electoral board decision that overruled an objection to Jackson's nomination papers, expressly holding that Jackson was not a duly qualified candidate. *Corbin v. Schroeder*, 2021 IL 127052.

11. Jackson and her attorneys knew or should have known that Jackson could not be a write-in candidate, and was barred from filing a Declaration of intent to be a write-in candidate by operation of the Election Code, 10 ILCS 5/17-16.1 which states as follows:

Sec. 17-16.1. Write-in votes shall be counted only for persons who have

filed notarized declarations of intent to be write-in candidates with the proper election authority or authorities not later than 61 days prior to the election. However, whenever an objection to a candidate's nominating papers or petitions for any office is sustained under Section 10-10 after the 61st day before the election, then write-in votes shall be counted for that candidate if he or she has filed a notarized declaration of intent to be a write-in candidate for that office with the proper election authority or authorities not later than 7 days prior to the election.

12. On April 2, 2021 Jackson embarked upon her campaign to disenfranchise voters by using social media express her contempt for the Supreme Court's decision, misled voters by telling them that the only way "to make sure YOUR vote counts" was by writing in a candidate's name, instead of selecting and voting for one of the candidates that were printed upon the ballot. Please see Exhibit A, attached.

13. On April 3, 2021 Jackson and her campaign workers walked door to door in many neighborhoods in Glendale Heights and distributed a flyer that disparaged the Supreme Court's decision and Ontiveroz, directed voters to write in her name, and made false statements of fact and law about the voting process, in part as follows (emphasis in original):

One of the opposing candidates, Ontiveroz and his team, have pursued every avenue to win this election by default. In my opinion this is dirty politics and a blatant attempt to buy his way into the office of Village President. As a result, the voting process has been compromised and it is up to you to make sure that YOUR vote counts. Don't let them steal YOUR right to vote for the candidate of YOUR choice.

Please see Exhibit B, attached.

14. On April 4, 2021 the Supreme Court issued its order to suppress all votes for Jackson and Pope. *Corbin v. Schroeder*, 2021 IL 127052.

15. On April 5, 2021, Jackson, through her attorneys, filed a petition for

rehearing before the Supreme Court.

16. On April 6, 2021, at approximately 10:20 AM the Supreme Court issued its order that directed the DuPage Clerk to suppress all votes for Jackson and Pope at the April 6, 2021 election. *Corbin v. Schroeder*, 2021 IL 127052.

17. On April 6, 2021, Jackson and her campaign workers were at all precincts in Glendale Heights handing out flyers and also telling voters that no votes would be counted for any candidate whose name was printed upon the ballot. Please see Exhibit C, attached.

18. Many voters who elected to vote in person on April 6, 2021 relied upon the statements and flyers from the Jackson campaign, and relied upon such false information to their detriment, and were misdirected from voting from the two duly qualified candidates who appeared upon the ballot, namely Ontiveroz and Khokhar.

19. The Clerk reported that 2,039 ballots were cast in the April 6, 2021 election, but only 948 votes were reflected for the election of Village President. Please see Exhibit D, Canvass and Election Abstract from the Clerk.

20. In two candidate election for Village Clerk where there was no voter interference, misdirection, or interference, the DuPage Clerk reported 2,039 ballot cast, with 1,901 voted reflected for the two candidates. (Exh. D)

21. For the election of Village President, there were 1,091 voters that were misled by Jackson and her campaign workers, and disenfranchised.

22. On and after issuance of the Supreme Court's April 2, 2021 order, Jackson was a sham candidate since she knew and should have known that her nomination papers were found by the Supreme Court to be insufficient to warrant

ballot placement, and that she was not eligible to be a write in candidate.

23. Jackson's deception regarding the ballot clearly debased the rights of all voters in the election, and such an abridgment of the right to vote is impermissible. *Smith v. Cherry*, 489 F.2d 1098, 1102 (7th Cir.1973) (per curiam)

24. Jackson's willful, intentional, malicious, and vindictive voter misdirection and disenfranchisement in relation to the consolidated election on and after April 2, 2021 violated Ontiveroz's constitutional rights, and the rights of all voters in Glendale Heights. *Smith v. Cherry*, 489 F.2d 1098 (7th Cir.1973) (per curiam).

25. Just as explained by the court in *Smith v. Cherry* voters were "tricked" into voting for Jackson, and were thus disenfranchised:

Organization Voters and Swing Voters were both "tricked" into voting for Palmer when they thought they were voting for Cherry. But the impact of this deception fell unequally on the two groups of voters, because the Organization Voters would have voted for Palmer anyway, whereas the Swing Voters would have voted against him.

By deceiving the Swing Voters, the conspiracy allegedly enabled Palmer to win an election he could not have won had he openly been on the ballot. The conspiracy defeated Smith, who allegedly would have won an honest election against Palmer. Thus the conspiracy worked "in favor of the ins and against the outs." *Shakman v. Democratic Organization*, 435 F.2d 267, 270 (7th Cir.1970). Swing Voters and Smith Voters were "denied an equal opportunity to win votes" (*Williams v. Rhodes*, 393 U.S. 23, 31, 89 S.Ct. 5,) and suffered an unequal burden on their right "to cast their votes effectively." *Id.* at 30, 89 S.Ct. 11. The Smith Voters were denied an equal opportunity "to associate for the advancement of political beliefs" with the Swing Voters. *Id.* at 30, 89 S.Ct. 10. These claims of deliberate discrimination against Swing Voters and Smith Voters stated a cause of action for violation of rights protected by the equal protection clause. *White v. Snear*, 313 F.Supp. 1100, 1104 (E.D.Pa.1970).

Other groups of voters were affected by the conspiracy. Presumably there were some voters who would have voted for Palmer but not for Cherry. Taking as true the allegation of the complaint that only Cherry had a reasonable chance to defeat Smith, this group of voters must have been small. Similarly, there must have been voters who had no preference and did

not vote in what they thought was a Cherry-Smith race, but would have voted in an open Palmer-Smith race. Doubtless there are other groups of voters with different combinations of preferences. We find it unnecessary at this stage to resolve the possible claims of all possible groups of voters incidentally affected by the discrimination aimed at the Swing Voters and the Smith Voters.

Smith v. Cherry, 489 F.2d 1098 (7th Cir.1973) (per curiam).

26. On April 6, 2021, Ontiveroz received 407 in-person votes at precinct locations, and Khokhar received 262 in-person votes. (Exh. D)

27. Applying proportional allocation of disenfranchised votes based upon the ratio of in-person votes at precincts locations yields the following ratio:

Khokhar 262 / 669 in-person votes yield 0.3916 (39.16% of in person votes)

Ontiveroz 407 / 669 in-person votes yield 0.6084 (60.84% of in person votes)

28. If every disenfranchised voter had instead selected from one of the two duly qualified candidates, and based upon the ratio of voters who voted in person at a precinct location on April 6, 2021, then Khokhar could have potentially received up to 427.236 additional votes, and Ontiveroz could have received up to 663.764 additional votes. Please see summary attached as **Exhibit E**.

29. Pursuant to the foregoing analysis (Exh. E) for example, even if only 5% of the disenfranchised voters had voted for one of the two duly qualified candidates then Khokhar would have received 21.362 additional votes, and Ontiveroz would have received 33.189 additional votes, that would have resulted in an outcome of total votes as follows:

Khokhar	496.362 votes
Ontiveroz	506.189 votes

30. Ontiveroz and all voters in Glendale Heights denied their constitutional rights to a fair election, and the election result that was canvassed and proclaimed by the Clerk for the office of Village President of Glendale Heights was so fundamentally defective and corrupted that it failed to obtain and determine a free, fair and untrammelled expression of the voters' choice and must be declared null and void.

31. In the alternative, Ontiveroz respectfully requests this honorable court exercise its equitable and declaratory authority to issue an order that Jackson's interference with the election denied the constitutional rights of Ontiveroz and all voters in Glendale Heights to a fair election, and that Jackson's misdeeds and interference with the election would have yielded Ontiveroz at least 5% or more of the votes from the voters who were misled and disenfranchised by Jackson's election-day deception, and directing the DuPage Clerk to amend her proclamation of results to declare Ontiveroz to be the winner.

Wherefore, Petitioner, Mike Ontiveroz, through his attorney respectfully requests entry of findings and an order as follows:

(a) Linda Jackson's actions on and after April 2, 2021 resulted in the election for Village President to be so fundamentally defective and corrupted that it failed to obtain and determine a free, fair and untrammelled expression of the voters' choice and the results proclaimed for the office of Village President for Glendale Heights are found null and void;

(b) Finding that both Khokhar and Ontiveroz would have garnered far more votes from voters at precincts on election day, had Jackson not interfered with the election for the office of Village President;

(c) Entering an order declaring the election for the office of Village President to be null and void, and ordering a special election between Ontiveroz and Khokhar be held in Glendale Heights for the office of Village President;

(d) In the alternative, entering an order that both Ontiveroz and Khokhar would have received a sizeable percentage of the votes from voters who were disenfranchised on April 6, 2021 by Jackson's actions, and declaring Ontiveroz being elected to the office of Village President for Glendale Heights;

(e) In the alternative, any other relief that this honorable court deems just and appropriate to effect a free, fair and untrammelled expression of the voters' choice.

Count II - Deviations from the Election Code

1-31. Petitioner repeats paragraphs 1-31 above as if fully stated herein as paragraphs 1-31 of Count II.

32. The result of the April 6, 2021 election for Village President for Glendale Heights is not accurate, due to irregularities and deviations from the Election Code through actions of the Clerk in counting ballots that were not initialed by judges, by allowing mail in ballots to be counted that were not delivered in compliance with the Election Code, allowing voters who did not reside at their stated address to vote, counting all provisional votes, counting all assisted votes even though affidavits were not provided, counting challenged signature rulings even though not resolved, and otherwise.

33. This petition is based upon observations made by Ontiveroz and his campaign at a discovery recount pursuant to 10 ILCS 5/22-9.1, and the following deviations are representative of errors that would be discovered through a full

examination and recount of all ballots in the following precincts: Bloomingdale 15, Bloomingdale 22, Bloomingdale 47, Bloomingdale 63, Bloomingdale 97, Milton 72, and Milton 118.

Lack of Judge's Initials on Ballots Cast April 6, 2021

34. In discovery proceedings, Petitioner and his representatives observed that Bloomingdale precincts 52 and 63 had at least two ballots that did not contain the initials of an election judge upon them, as required under 10 ILCS 5/17-9 and 10 ILCS 5/19-8.

35. On information and belief, additional ballots will be discovered in precincts Bloomingdale 15, Bloomingdale 22, Bloomingdale 47, Bloomingdale 63, Bloomingdale 97, Milton 72, and Milton 118.

36. The ballots that did not contain initials should be removed and not counted, and at least two votes removed from Khokhar's total votes.

Postmark or Clerk's Received Stamp Missing from VBM Ballots

37. The Election Code allows vote by mail ballots to be delivered to the Clerk's office in person or by proxy, or to be mailed to the Clerk through the USPS. 10 ILCS 5/19-8.

38. Dozens of vote by mail ballots did not contain a postmark and/or the Clerk's stamp to identify the date the envelope was processed through the USPS and when it was received by the Clerk, including the following partial list of voters:

BL- 022	Ahmad	Saad	1775 Arlington Ln
BL- 063	Abdullah	Zahida	73 Vantroba Dr
BL- 063	Abdullah	Jamil	73 Vantroba Dr
BL- 022	Begum	Touhmina	212 Polo Club Dr

BL- 063	Chowdhury Nazma		1446 President St
BL- 063	Chowdhury Tanzina		1446 President St
BL- 095	Butnik	Robert	30 Hale Ct
BL- 095	Cadiz	Gregoria	12 Mill Pond Dr
BL- 095	Khan	Khaliq	43 Campbell Dr
BL- 052	Kumar	Gurmeet	1760 Devon Ave
BL- 063	Shameem	TausifM	1455 President St
BL- 063	Abdullah	Zahida	73 Vantroba Dr
BL- 063	Abdullah	Jamil	73 Vantroba Dr
BL- 022	Azizuddin	Asra	426 Polo Club Dr
BL- 063	Trost	Cassandra	26 Joseph Ln
BL- 022	Raza	Syed	225 Polo Club Dr
BL- 022	Raza	Syed S	225 Polo Club Dr
BL- 022	Raza	Syeda Anjum	225 Polo Club Dr
BL- 042	Shafiuddin	Saleha	2118 Cardinal Dr

39. All vote by mail envelope should be examined, and envelopes that do not contain a USPS postmark and the official stamp of the Clerk identifying the date and manner the envelope containing the VBM ballot was received by the Clerk should be disqualified, and the proportionate reduction of votes attributed to each candidate as shown on Exhibit E.

40. When all such proportional reductions are taken, the results of the election would be changed, such that Ontiveroz would have received more votes and would have been proclaimed the winner and the elected Village President.

Incorrect Voter Signature on VBM Envelope

41. A voter is required by the Election Code to personally seal his or her ballot inside his or her vote by mail envelope, and his or her signature upon the envelope must be that of the voter whose ballot is enclosed.

42. At least two vote by mail ballots were not signed by the voter who requested the ballot and was issued the vote by mail ballot and envelope, and a proportionate reduction should be made for all such envelopes, including but limited to votes cast by since their envelopes were not duly signed:

BL- 022 Rahman Bilquis 1810 Arlington Ln

BL- 022 Rahman Nida 1810 Arlington Ln

Vote By Mail Ballots Counted Without Corresponding VBM Envelopes

43. The secrecy of the ballots is integral to the electoral process, and VBM ballots that are cast without being first sealed into the authorized VBM envelope, and delivered or mailed through the USPS to the election authority, are in derogation of the Election Code and are not valid.

44. Through a FOIA request, the Clerk produced a list of voters who voted by mail (though she redacted all information except for the names), which is attached as **Exhibit F**.

45. Numerous VBM envelopes were not used by voters, or otherwise discarded or lost, preventing a determination whether the VBM ballot was properly delivered, and timely delivered or placed into the USPS.

BL- 014 Glogowski Gerald John 1548 Larry Ln

BL- 014 Szklanecki Louis P 1573 Charles Dr

BL- 014 Uddin Asif Z 1578 Ardmore Ave

BL- 022 Hothi Kuldish K 1793 Arlington Ln
 BL- 047 Mohammed Sufyaan 1875 Marci Ct
 BL- 047 Zaidi Iffat 1946 Slayton Ln
 BL- 052 Ali Mir 1770 Devon Ave
 BL- 052 Hasan Najma 1771 Devon Ave
 BL- 052 Hasan Nasreen 1771 Devon Ave
 MI- 118 Ali Mir I 405 Greenbriar Dr
 MI- 118 Ali Mir Yousuf 405 Greenbriar Dr
 MI- 118 Chaudhry Hafeezan Bibi 1144 Coventry Cir
 MI- 118 Myers Steven E 462 Coventry Cir
 MI- 118 Nizamuddin Mohammed 446 Coventry Cir
 MI- 118 Siddiqui Mohammad 360 Windsong Cir
 BL- 015 Kaur Manjit 509 Darlene Ln

46. At the recount for Precinct Bloomingdale 63 the Clerk reported that there were 32 VBM votes cast, but there were only 30 VBM envelopes with two additional ballots being reported that should not have been counted.

47. When all such envelopes are counted and proportional reductions are taken, the results of the election would be changed, such that Ontiveroz would have received more votes and would have been proclaimed the winner and the elected Village President.

Unregistered Voters at Address Listed that Voted

48. A voter must be registered at the address contained in the official records of the Clerk on April 6, 2021, and voters who were not duly registered should not have been allowed to vote, including:

Ahmed, Madiha 183 Bloomingdale / 2138 Almond , GH

Mohammed Abdul M 203 Ahmed Ct / 47 Stonefield

Mohammed, Nazar 425 Polo Club Dr

Rizvi Syed voted by mail

48. When all such votes are counted and proportional reductions are taken, the results of the election would be changed, such that Ontiveroz would have received more votes and would have been proclaimed the winner and the elected Village President.

Did Not Request VBM Ballot

49. Voters may request vote by mail ballots, either through use of the Clerk's form or through her website, which is required to vote by mail.

50. Numerous voters did not submit a vote by mail application request, but were reported as having voted by mail, including but not limited to the following:

BL- 047 Mohammed Sufyaan 1875 Marci Ct

BL- 052 Ali Mir 1770 Devon Ave

BL- 095 Patel Dhirajkumar C 49 Campbell Dr

MI- 118 Ali Mir I 405 Greenbriar Dr

MI- 118 Ali Mir Yousuf 405 Greenbriar Dr

MI- 118 Nizamuddin Mohammed 446 Coventry Cir

MI- 118 Siddiqui Mohammad U 360 Windsong Cir

51. When all such votes are examined, counted, and proportional reductions are taken, the results of the election would be changed, such that Ontiveroz would have received more votes and would have been proclaimed the

winner and the elected Village President.

Clerk Did Not Comply with Election Code for Processing VBM ballots

52. The Election Code, 10 ILCS 5/19-8 states in part as follows:

(g-10) All vote by mail ballots determined to be valid shall be added to the vote totals for the precincts for which they were cast in the order in which the ballots were opened.

53. The Clerk did not process and count VBM ballots in accordance with the Election Code, and unofficial reports that were posted to her website showed totals for Ontiveroz and Khokhar going down and being adjusted periodically between April 6, 2021 and April 20, 2021, in derogation of the Election Code.

54. On information and belief, the foregoing VBM irregularities are indicative of ballots being counted without corresponding envelopes, and late submissions, and otherwise.

Provisional Voters

55. The Clerk allowed all provisional voters, even though the Election Code required the provisional voters to turn in their mail in ballots in order to be allowed to vote.

56. All such votes are in derogation of the Election Code, including but not limited to:

BL63 Cory Williams, 131 E Fullerton

BL-63 Jawad Abdullah

BL-14 Alyssa M. Nicholas

BL-22 William G. Litaua

BL-95 Moazzam Hasan

BL-95 Meyaz Hasan

BL-95 Asim Quresri

BL-95 Osman M Atcha

57. All such votes should be reviewed and if found to be contrary to the Election Code, proportional deductions taken.

Challenged Voters

58. Voters were challenged based upon their signatures not matching the signature in the official Clerk's database, including votes cast by the following voters:

Jay D Bruhl 0020097 Signature Issue

Sujinder Kumar 0020052 Signature Issue

Riazuddin Mohammed 0020006 Signature Issue

Bilquis Rahman 0020022 Signature Issue

Syed Raza 0020022 Signature Issue

Anam Siddiqi 0020022 Signature Issue

Tahir Anis Siddiqui Jr 0020028 Signature Issue

59. All such votes should be reviewed and if found to be contrary to the Election Code, proportional deductions taken.

WHEREFORE, Petitioner, through his attorney respectfully requests entry of an order as follows:

A. Order a full and complete recount of all of the ballots and votes that were cast and that should have been cast in Precincts BL-15, BL-22, BL-47, BL-63, BL-97, MI-72, and MI-118, to determine the validity of the Clerk's proclamation, such recount to include, but not be limited to, an examination of the relevant voting devices, punch card ballots, voters' applications for ballots, precinct binder

cards (and their computerized equivalent), affidavits, and all other materials from said precincts;

B. Enter an order declaring Petitioner Ontiveroz elected to the office of Village President for the Village of Glendale Heights;

C. Grant such other and further relief as shall appear to the Court to be just and appropriate.

Respectfully submitted,

By: /s/ Andrew Finko
Attorney for Petitioner, Mike Ontiveroz

Andrew Finko (Atty #23180)
166 W. Washington St.
Suite 400
Chicago, IL 60602
Ph (773) 480-0616
Fx (773) 453-3266
Em Finkolaw@Fastmail.FM

EXHIBIT A

Proven Leadership & Experience Matters!



Write in Candidate
LINDA JACKSON
For Village President
Please Vote April 6th

Dear Residents,

I regret to inform you due to the recent decision by the Supreme Court, my name is to be removed from the ballot due to a clerical error. However, my name will still appear on the ballot, so if you want to cast your vote for me, you **MUST** write in my name, **LINDA JACKSON** for it to count!


One of the opposing candidates, Ontiveroz and his team, have pursued every avenue to win this election by default. In my opinion, this is dirty politics and a blatant attempt to buy his way into the office of Village President. As a result, the voting process has been compromised and it is up to you to make sure that **YOUR** vote counts. Don't let them steal **YOUR** right to vote for the candidate of **YOUR** choice.

If you have any questions, my campaign will have a representative outside every polling location to assist you on how to cast your vote for me. Please look out for my team members identified by my election sign! Please make sure that you also ask the election judge how to make **YOUR** vote for Linda Jackson count!











Please inform your neighbors and friends! I need your help in passing the word. Thank you all for your continued support!


Sincerely,
Linda Jackson




EXHIBIT B

 Linda Jackson for Glendale Hei... [Contact Us](#) [Like](#) [Message](#) [Search](#) [More](#)



About [See All](#)

-  Proven Leadership & Experience Matters
-  On Tuesday, April 6, 2021 please vote for:
Linda Jackson, Village President
Marie Schmidt, Village Clerk
We appreciate your time, confidence, and t... [See More](#)
-  184 people like this including 1 of your friends

-  186 people follow this
-  [Send Message](#)
-  lindajackson4mayor@gmail.com
-  [Community](#) · [Political Candidate](#)
-  [Safety Information](#)
- 

 [Create Post](#)



 Photo/Video  Check in  Tag Friends

PINNED POST

 **Linda Jackson for Glendale Heights Village President** [More](#)
April 2 at 6:37 PM · 

SUPREME COURT UPDATE: I regret to inform you but due to the recent decision of the Supreme Court Judge, my name is to be removed from the ballot. I received this news at 3:50 pm today and have since filed as a write-in candidate. However, you will see my name on the ballot because the county will not reprint the ballots. You will not see a space for a write-in candidate either. The voting process has been very convoluted and it is up to you to make sure that YOUR vote counts. The DuPage County Election Board, cannot advise me how to make my votes count as they have never dealt with this before. My campaign will have someone at every poling location so look for them to get instructions on how to vote for me. Please make sure that you ALSO ask the election judge how to make YOUR vote for Linda Jackson count!

Please inform your neighbors and friends! I need your help in passing the word. Thank you all for your continued support!

  17 28 Comments 21 Shares

130316

A 049

EXHIBIT C

GUIDE TO MAKE YOUR VOTE COUNT.

VILLAGE OF GLENDALE HEIGHTS

FOR VILLAGE PRESIDENT

(Vote for ONE)

- Linda Jackson
- Chodri Ma Khokhar
- Mike Ontiveroz
- Edward Pope

X Linda Jackson

(write-in)

↓ ↓ ↓
**DO NOT USE THIS SECTION TO
CAST YOUR VOTE - IT WILL BE
DISQUALIFIED**

↓ ↓ ↓ ↓ ↓
**USE THIS SECTION TO WRITE IN LINDA JACKSON'S
NAME WITH LINE AND (WRITE-IN) TEXT
TO MAKE YOUR VOTE COUNT!**

Paid for by Citizens to Elect Linda Jackson.

EXHIBIT D

VILLAGE OF GLENDALE HEIGHTS

Election Abstract

2021 Consolidated General Election

Tuesday, April 6, 2021

Village of Glendale Heights Village President

Vote for ONE Reg Vtrs: 18,413

Precincts 33

Total votes: 948

Ballots Counted: 2,039

	20006	20014	20015	20016	20021	20022	20023	20025	20027	20028	20042	20047	20048	20050	20052	20057	20063	20064	20076	20084
Chodri Ma Khokhar	17	5	7	5	2	51	13	24	11	9	6	19	8	22	34	2	42	4	16	8
Mike Ontiveroz	29	15	3	21	1	23	12	28	17	24	20	13	24	51	27	2	15	2	12	9
Registered Voters	773	600	645	656	38	870	530	690	770	584	681	584	708	974	916	736	629	545	605	652
Ballots Counted	128	68	25	56	4	118	54	109	122	69	54	61	69	122	120	11	121	18	69	28

	20085	20088	20091	20094	20095	20096	20097	20104	50042	50070	50072	50118	50119	Total
Chodri Ma Khokhar	0	21	5	21	27	3	15	0	0	5	13	52	8	475
Mike Ontiveroz	0	21	9	20	22	3	6	5	0	3	4	20	12	473
Registered Voters	0	594	499	657	550	588	440	47	0	140	865	511	336	18,413
Ballots Counted	0	107	41	85	104	17	54	7	0	14	44	108	32	2,039

Village of Glendale Heights Village Clerk

Vote for ONE Reg Vtrs: 18,413

Precincts 33

Total votes: 1,901

Ballots Counted: 2,039

	20006	20014	20015	20016	20021	20022	20023	20025	20027	20028	20042	20047	20048	20050	20052	20057	20063	20064	20076	20084
Marie A. Schmidt	73	48	14	26	0	51	28	50	92	37	29	30	39	67	71	6	66	10	41	11
Kim Darlin	46	14	10	28	4	49	24	55	27	27	22	25	28	44	42	5	50	6	23	16
Registered Voters	773	600	645	656	38	870	530	690	770	584	681	584	708	974	916	736	629	545	605	652
Ballots Counted	128	68	25	56	4	118	54	109	122	69	54	61	69	122	120	11	121	18	69	28

	20085	20088	20091	20094	20095	20096	20097	20104	50042	50070	50072	50118	50119	Total
Marie A. Schmidt	0	57	26	47	57	9	35	4	0	6	19	27	20	1,096
Kim Darlin	0	44	15	32	43	7	15	3	0	7	17	65	12	805
Registered Voters	0	594	499	657	550	588	440	47	0	140	865	511	336	18,413
Ballots Counted	0	107	41	85	104	17	54	7	0	14	44	108	32	2,039

130316

April 27, 2021

Canvass of Votes for the Consolidated General Election

April 6, 2021

VILLAGE OF GLEN ELLYN

Village of Glen Ellyn Village President

Vote for ONE	Prec Cntd 40	Rg Voters 21,356	Ballots Cntd 5,349	25.05 %	Votes
Mark Senak		Civic Betterment Party			3,117 60.00 %
Pete Ladesic		Independent			2,078 40.00 %

Village of Glen Ellyn Village Clerk

Vote for ONE	Prec Cntd 40	Rg Voters 21,356	Ballots Cntd 5,349	25.05 %	Votes
Caren I. Cosby		Civic Betterment Party			3,667 100.00 %

Village of Glen Ellyn Village Trustee

Vote for not more than THREE	Prec Cntd 40	Rg Voters 21,356	Ballots Cntd 5,349	25.05 %	Votes
Gary Fasules		Civic Betterment Party			3,509 28.84 %
Kelley M. Kalinich		Civic Betterment Party			3,321 27.30 %
Anne M. Gould		Civic Betterment Party			3,273 26.90 %
Jeremy Boynton		Independent			2,064 16.96 %

Village of Glen Ellyn Library Trustee

Vote for not more than THREE	Prec Cntd 40	Rg Voters 21,356	Ballots Cntd 5,349	25.05 %	Votes
Susan Stott					3,003 31.58 %
Erin C. Micklo					2,960 31.13 %
Maryanne Deaton					3,547 37.30 %

VILLAGE OF GLENDALE HEIGHTS

Village of Glendale Heights Village President

Vote for ONE	Prec Cntd 33	Rg Voters 18,413	Ballots Cntd 2,039	11.07 %	Votes
Chodri Ma Khokhar					475 50.11 %
Mike Ontiveroz					473 49.89 %

Village of Glendale Heights Village Clerk

Vote for ONE	Prec Cntd 33	Rg Voters 18,413	Ballots Cntd 2,039	11.07 %	Votes
Marie A. Schmidt					1,096 57.65 %
Kim Darlin					805 42.35 %

Village of Glendale Heights Village Trustee - District 2

Vote for ONE	Prec Cntd 8	Rg Voters 3,279	Ballots Cntd 437	13.33 %	Votes
Mohammad Asim Siddiqi					210 55.26 %
Sufiyan Mohammed					170 44.74 %

Village of Glendale Heights Village Trustee - District 5

Vote for ONE	Prec Cntd 6	Rg Voters 2,687	Ballots Cntd 178	6.62 %	Votes
Chester Pojack					143 100.00 %

Village of Glendale Heights Village Trustee - District 6

Vote for ONE	Prec Cntd 7	Rg Voters 3,420	Ballots Cntd 440	12.87 %	Votes
No Candidate					0 0.00 %
w/ Mary Schroeder					34 55.74 %

EXHIBIT E

Proportional Reduction of Votes + Disenfranchised Voters (based only upon 4/6 in-person voters, Village-wide)

Precinct	Ballots Cast *	Total Votes	Khokhar Votes	Ontiveroz Votes	Khokhar % (loss of vote)	Ontiveroz % (loss of vote)	Disenfranchised Voters	Khokhar Potential (0.39)**	Ontiveroz Potential (0.61)**
20006	128	46	17	29	0.370	0.630	82	32.111	49.889
20014	68	20	5	15	0.250	0.750	48	18.797	29.203
20015	25	10	7	3	0.700	0.300	15	5.874	9.126
20016	56	26	5	21	0.192	0.808	30	11.748	18.252
20021	4	3	2	1	0.667	0.333	1	0.392	0.608
20022	118	74	51	23	0.689	0.311	44	17.230	26.770
20023	54	25	13	12	0.520	0.480	29	11.356	17.644
20025	109	52	24	28	0.462	0.538	57	22.321	34.679
20027	122	28	11	17	0.393	0.607	94	36.810	57.190
20028	69	33	9	24	0.273	0.727	36	14.098	21.902
20042	54	26	6	20	0.231	0.769	28	10.965	17.035
20047	61	32	19	13	0.594	0.406	29	11.356	17.644
20048	69	32	8	24	0.250	0.750	37	14.489	22.511
20050	122	73	22	51	0.301	0.699	49	19.188	29.812
20052	120	61	34	27	0.557	0.443	59	23.104	35.896
20057	11	4	2	2	0.500	0.500	7	2.741	4.259
20063	121	57	42	15	0.737	0.263	64	25.062	38.938
20064	18	6	4	2	0.667	0.333	12	4.699	7.301
20076	69	28	16	12	0.571	0.429	41	16.056	24.944
20084	28	17	8	9	0.471	0.529	11	4.308	6.692
20085	0	0	0	0	0.000	0.000	0	0.000	0.000

Precinct	Ballots Cast *	Total Votes	Khokhar Votes	Ontiveroz Votes	Khokhar % (loss of vote)	Ontiveroz % (loss of vote)	Disenfranchised Voters	Khokhar Potential (0.39)**	Ontiveroz Potential (0.61)**
20088	107	42	21	21	0.500	0.500	65	25.454	39.546
20091	41	14	5	9	0.357	0.643	27	10.573	16.427
20094	85	41	21	20	0.512	0.488	44	17.230	26.770
20095	104	49	27	22	0.551	0.449	55	21.538	33.462
20096	17	6	3	3	0.500	0.500	11	4.308	6.692
20097	54	21	15	6	0.714	0.286	33	12.923	20.077
20104	7	5	0	5	0.000	1.000	2	0.783	1.217
50042	0	0	0	0	0.000	0.000	0	0.000	0.000
50070	14	8	5	3	0.625	0.375	6	2.350	3.650
50072	44	17	13	4	0.765	0.235	27	10.573	16.427
50118	108	72	52	20	0.722	0.278	36	14.098	21.902
50119	32	20	8	12	0.400	0.600	12	4.699	7.301
Totals:	2039	948	475	473			1091	427.236	663.764

* Based upon Village-wide proportion of voters who voted in-person on election day (see below) but were disenfranchised by Linda Jackson and her campaign supporters who fraudulently directed voters to attempt a write-in vote for Linda Jackson rather than voting for ballot-qualified candidates.

Election day in-person voting proportion:

Khokhar	262	0.3916
Ontiveroz	<u>407</u>	0.6084
Total:	669	

** Ballots cast is from official canvass showing total ballots 2,039, and individual precinct ballot totals.

EXHIBIT F

VOTED BY MAIL - Page 1

Syed G Abbas	Coralee A Bruhl	George A Flammond	Khaliq Khan
Tariq Abdallah	Susan L Bucek	Steven L Galus	Sadaf Arousa Khan
Zahida Abdullah	Alan J Bucek	Pavel Germanovich	Rezia Sharmin Khan
Jamil Abdullah	Robert P Butnik	Donna L Germany	Shakeel Pasha Khan
M Abraarulhaq	Gregoria A Cadiz	Gerald John Glogowski	Chodri Ma Khokhar
Uzma Adnan	Justo F Cadiz	Karen M Glyzewski	Durreshuah Khokhar
Mian Pervez Ahmad	Eapen P Chacko	Jennifer L Gomez	Linda L Kirsch
Saad Ahmad	Hafeezan Bibi	Silviano A Gomez	Sonam B Kotadia
Madiha Ahmad	Chaudhry	Colette M Gradman	Linda Koziol
Maqsood Ahmed	Muhammad Islam	Jacqueline S Gron	Rubeena Kulsoom
Nafeesa Tul Ain	Choudhary	Charles J Guilfoyle	Gurmeet K Kumar
Nadeem Alam	Nazma S Chowdhury	Christine P Gurney	Linda S Kunicki
Sameen Alam	N A Chowdhury	John A Hadac	Leonard J Kunicki
Mir Ali	Tanzina S Chowdhury	Abigail L Hanvey	Kirpal K Lall
Sahba Ali	C M Christides	Dynishia F Hardy	Onkar Lall
Mustaque Ahmad Ali	Laura C Collins	Nimra Haris	Michele Lambke
Samina Ali	Robert M Czarnik	Najma Hasan	M A Lateef
Theodore Allen	Dilbagh Singh Dandona	Nasreen Hasan	Jennifer L Linkinhoker
Linda Alongi	Malinder K Dandona	Masroor Hasan	Mark Linkinhoker
Barbara J Anderson	Stewart Danko	Syed Fouad Hashim	Willard F Lipnica
Hira Ashraf	Richard Dazzo	Qazi A Hassan	J Long
Hussan Asif	John M Dean	Joanne F Hoffmann	Elizabeth J Malak
Fazal Aslam	Yevheniya Dean	Kuldish K Hothi	Kerry L Mc Laren
Nadia Aslam	William P Diamond	Dilbag S Hothi	Amal Meftah
Syed H Aziz	Sharon A Diamond	Kurt Hsiung	Tariq Mehmood
Asra Azizuddin	Daniel S Driggett	Mohinder K Hundal	George P Meller
Ebrahim A Baggia	Sandra S Driggett	Balraj S Hundal	Linda M Meller
Shireen Sultana Baig	Rodrigue B Dube	Azim A Husain	Nayal A Merchant
Saadat Baig	Carmen S Dube	Obaid Husain	Mumtaz Merchant
Sherjil Baig	Charles C Dunkirk	Nancy Domingo Ignacio	Asma Rajmohammed
Rasheed Baig	Soon I Dunkirk	Marllon X Ignacio	Merchant
Mirza Liaquat Baig	Asha Sarah Eapen	Margaret M Jenisch	Nimra Merchant
Touhmina Begum	Herman H Engel	Brian P Kaley	Kay I Miller
Shafia Begum	Ben Y Estacio	Sheila Kaptur	Donald A Miller
Sandra Beiza	Evelyn Alas Estacio	Manjit Kaur	Sadeq Mohammed
Edward M Bisconti	Nancy Ewing Hayes	Mary Ellen Kelly	Riazuddin Mohammed
Mary M Bisconti	Fatima Farhat	Richard L Kelly	Raza Mohammed
Dennis Jack Bosnyak	Sharon Lee Farm	Sarah Khaliquzzaman	Ata Mohammed

VOTED BY MAIL - Page 2

Nazar Mohammed	Rita Noltemeyer	Mir Razvi	A Sonani
Sufiyan Mohammed	Firoz Noorani	Michael Reich	Robert W Starinsky
Aseena Mohammed	Shabnam Firoj Noorani	Nancy Reich	Christine A Starinsky
Abdullah Mohammed	Helen D Nuti	Donna F Resuali	Nazia Suleman
Farhan Moizuddin	Thomas F O Brien	Robert A Resuali	Yaseen Suleman
John Moore	Dhirajkumar C Patel	Christopher R Ritchie	Shehwei Sultana
Asma Moosa	Premila Patel	Jaime Rivera	Mohsin Syed
Alice M Morris	Sankabhai D Patel	Syeda N Rizvi	Aneesuddin Syed
Laurel Mortenson	M S Patel	Syed M Rizvi	Raihan A Syed
A Wayne Mortenson	K M Patel	David Diego Rodriguez	Aiman Fatima Syeda
Mohammed Mortoja	Anthony F Pecoraro	John M Romano	Louis P Szklanecki
Shaila Mortoja	Kristin E Peterman	Natalie Lytell Rossi	Amina Tabassum
Tasfia Mortoja	Patricia A Peterman	Nicholas Lee Rossi	Neeta Talwar
Elaine B Mullany	Harvey A Peterson	Yasir Sajid	Sunil Talwar
James E Mullany Jr	Margaret E Peterson	Ramsha Sajjad	Israel C Trejo
Omeer Muqtader	Nancy C Phillips	Diane Saverson	Cassandra A Trost
Obeid S Muqtader	Kyle Phillips	Deidre L Searcy	Asif Z Uddin
Syed A Muqtader	Andrea M Pinto	Gulab Shafi Uddin	Andrew Valentin
Amy J Murphy	Lincoln Pinto	Saba Shafiuddin	Diane Valentin
Miyanjibhai Musabji	James J Plazyk	Saleha Shafiuddin	Juan Valentin
Maluk Musabji	Paulette J Plazyk	Uzma Shaikh	Syed Hassam Vasty
Steven E Myers	Chester L Pojack	Nafisabann Shaikh	Johanna L Wall
Mark Mytych	Virginia J Pojack	Yasmeenabanu J Shaikh	Shirley Ann Warfield
Vir Nagpal	Jose Pushpamangalam	Sayeeda Shameem	Christian S Whittemore
Sumana Naqvi	Huma Quadri	Tausif M Shameem	Irene Wilson
Nazar A Naqvi	Lynn L Radtke	Safiya Shameem	Nelson Wilson
Shabbir Naqvi	Nida Rahman	Habib Siddiqi	Harvey A Wirtz
Muhammad Adnan	Bilquis Rahman	Perveen Begum	Melina Noel Wright
Nasir Sr	Ashikur Rahman	Siddiqui	Matthew A Wycislak
Leslie J Neri	M D Rahman	Mohammad Siddiqui	Syeda Yasmeen
Abel Nevarez	Linda R Rajca	Erum Siddiqui	Iffat Zaidi
Ramandeep K Nijjar	Rashid Rana	Anis Siddiqui	Alamdar Zaidi
Sondeep S Nijjar	Shafia Rashid	Harcharn Singh	Abid A Zaidi
Safia Nizamuddin	Syeda Anjum Raza	Gyanila Arjun Singh-	Ali Zaidi
Mohammed	Syed S Raza	Naqvi	Hajar Zayer
Nizamuddin	Syed Raza	Julia Skarzynska	
Richard O Noltemeyer	Alia Razvi	Vandana A Sonani	
Jr	Mir A Razvi	Krishna Arjun Sonani	