No. 127258

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

THE COUNTY OF McHENRY AND JOSEPH TIRIO, in his Official Capacity as the McHenry County Clerk,	)	Appeal from the Appellate Court of Illinois, Second District No. 2-20-0478
Defendants/Appellants,	)	Appeal from the Twenty-Second Circuit Court, McHenry County, IL
v.	)	Case No. 20CH248
McHENRY TOWNSHIP,	)	
Plaintiff/Appellee,	)	Trial Judge Kevin G. Costello

APPELLEE'S BRIEF

Robert T. Hanlon, ARDC 6286331
Law Offices of Robert T. Hanlon & Assoc., P.C.
131 East Calhoun Street
Woodstock, IL 60098
Phone: (815) 206-2200
Facsimile: (815) 206-6184
E-mail: robert@robhanlonlaw.com

Counsel for Plaintiff/Appellee

E-FILED
12/8/2021 6:02 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

PERTINENT PLEADINGS

POINTS AND AUTHORITIES

CASES: **PAGES**

STATUTES:

OTHER:

NATURE OF THE CASE

This case arose as a result of Defendant McHenry County Clerk Joseph T. Tirio looking beyond the scope of a ballot proposition and his refusal to place a ballot proposition to the voters approved by the McHenry Township Board of Trustees (hereinafter "TRUSTEES").

The issue presented to Circuit Court below was whether or not Defendant McHenry County Clerk Joseph T. Tirio ought to have removed the question from the ballot. The Circuit Court found application of the law to create an absurd result. However, as Plaintiff argued in the Appellate Court the result is only absurd if it presupposes a lack of understanding of the legislative process and the knowledge of the legislature.

The Appellate Court (2nd Dist.) reversed and McHenry County Clerk Joseph Tirio appeals to the Supreme Court.

STATEMENT OF THE ISSUES PRESENTED

A. THE TRIAL COURT ERRED IN GRANTING DEFENDANTS' MOTION TO DISMISS.

B. HOW IS THE WORD "SAME" DEFINED?

C. DEFENDANTS' ATTEMPT TO CONVOLUTE THE IDEA OF "SIMILAR" WITH THE IDEA OF "SAME".

D. THE TRIAL COURT ACTED AS A SUPER-LEGISLATURE.

E. EXCEPTION TO THE MOOTNESS DOCTRINE.

STATEMENT OF JURISDICTION

This is an appeal from the Trial Court's final order granting Defendants' Motion to Dismiss. The hearing was held on August 24, 2020, C 66-77, and an order was entered the same day. Id. Plaintiff filed its Notice of Appeal on August 25, 2020. C-434. The Appellate Court issued its opinion and decision on April 15, 2021. Defendants take timely appeal to this Court by filing their Petition for Leave to Appeal on May17, 2021. Jurisdiction exists under Supreme Court Rule 301.

APPLICABLE STATUTES

60 ILCS 1/24-15 & 10 ILCS 5/28-2(a), 5/28-2(c), 5/28-5 & 5/28-7

The Illinois Townships Code and the Illinois Election Code detail the referenda procedures. 60 ILCS 1/24-15 of the Illinois Townships Code authorizes the board of trustees of any township located in McHenry County to submit a proposition to dissolve the township to the electors at the next election ***"in accordance with the general election law." (Emphasis added)***

Referenda questions may be placed on the ballot by either signed petitions (10 ILCS 5/28-2(a)) or resolutions/ordinances of governing boards of political subdivisions (10 ILCS 5/28-2(c)).

Illinois Constitution, Article VII, Sections 1 & 5

Except as provided in Article 24, 1/24 et seq., of the Illinois Townships Code, in any case in which Article VII or paragraph (a) of Section 5 of the

Transition Schedule of the Constitution authorizes any action to be taken by or with respect to any unit of local government, as defined in Section 1 of Article VII of the Constitution, by or subject to approval by referendum, any such public question shall be initiated in accordance with this Section.

Any such public question may be initiated by the governing body of the unit of local government by resolution or by the filing with the clerk or secretary of the governmental unit of a petition signed by a number of qualified electors equal to or greater than at least eight percent (8%) of the total votes cast for candidates for Governor in the preceding gubernatorial election, requesting the submission of the ballot proposition for such action to the voters of the governmental unit at a regular election.

If the action to be taken requires a referendum involving two (2) or more units of local government, the ballot proposition shall be submitted to the voters of such governmental units by the election authorities with jurisdiction over the territory of the governmental units. Such multi-unit ballot propositions may be initiated by appropriate resolutions by the respective governing bodies or by petitions of the voters of the several governmental units filed with the respective clerks or secretaries.

This Section is intended to provide a method of submission to referendum in all cases of ballot propositions for actions which are authorized by Article VII of the Constitution by or subject to approval by referendum and supersedes any conflicting statutory provisions except those contained in

Division 2-5 of the Counties Code or Article 24 of the Illinois Townships Code.

Referenda provided for in this Section may not be held more than once in any 23-month period on the same ballot proposition, provided that in any municipality a referendum to elect not to be a home rule unit may be held only once within any 47-month period.

STATEMENT OF FACTS

Plaintiff, McHENRY TOWNSHIP (hereinafter "TOWNSHIP" or "Plaintiff"), is a local unit of government situated within McHenry County, Illinois. C6.

Defendant JOSEPH J. TIRIO (hereinafter "TIRIO") is the duly elected McHenry County Clerk and is the principal officer of the County of McHenry charged with the oversight of elections in McHenry County. Defendant is an officer of McHenry County, Illinois. C6.

Defendant, COUNTY OF McHENRY, is a unit of government situated within McHenry County, Illinois. C6.

On or about June 12, 2020, the McHenry Township Board (hereinafter "BOARD") conducted its regularly scheduled meeting and therein approved a resolution to place upon the ballot a question concerning the elimination of the TOWNSHIP effective February 8, 2021. C7.

The specific language of the ballot proposition to be placed on the ballot was:

> *"Shall the McHenry Township together with any road districts wholly within the boundaries of McHenry Township, be dissolved*

> *on February 8, 2021 with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County? All funds of the dissolved township and dissolved road district shall be used solely on behalf of the residents of the geographic area within the boundaries of the dissolved township. Proceeds from the Sale of park land, cemetery land, buildings, or facilities after transfer to the county must be utilized for the sole benefit of the geographic area of the dissolved township. The McHenry County Board shall not extend a property tax levy that is greater than 90% of the property tax levy extended by the dissolved township or road district for the duties taken on by McHenry County – Yes -NO"* C7.

On or about June 29, 2020, the McHenry Township Clerk delivered to the office of TIRIO all documents necessary for placement of a ballot proposition upon the ballot. C7. Said documents included, *inter alia:* A) proof of filing a Certification of the Proposition to Dissolve McHenry Township; B) Certification of Resolution Number 1120068 concerning the resolution for a proposition to be placed on the ballot; and C) a Certification of Ballot. C7.

On June 30, 2020, TIRIO objected to the initial filing on the basis that the language presented did not comply with the structure set forth in "section 1/24 1/24-30 of the McHenry Townships Code". C7. However, there is no "McHenry Townships Code." C7. In addition to the claim concerning the structure, TIRIO asserted that the ballot proposition was in violation of the Illinois Election Code with citation to 10 ILCS 5/28-7. C7. The stated reason was that the ballot proposition was "the same" as a prior referendum to

dissolve the TOWNSHIP which purportedly appeared on the March 2020 Ballot. C7.

In response to TIRIO'S letter of June 29, 2020, the BOARD held a meeting on July 6, 2020 to revise the language of the ballot proposition to be submitted to the voters which read:

> *"Shall the McHenry Township together with any road districts wholly within the boundaries of McHenry Township, be dissolved on February 8, 2021 with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County?*
>
> *Yes*
> *No" C8.*

On July 6, 2020, the second certification from the McHenry Township Clerk was delivered to TIRIO for a ballot proposition to dissolve the TOWNSHIP, effective February 8, 2021 and to be placed on the November 2020 Ballot. C8. This second resolution with the revised ballot proposition was approved by the TRUSTEES at its meeting on July 6, 2020, pursuant to provisions in the Illinois Townships Code (60 ILCS 1/24-15 through 1/24-35) as acknowledged by TIRIO. C8.

On or about July 6, 2020, the McHenry Township Clerk delivered to the office of TIRIO all documents necessary to have placed upon the ballot a referendum. C8. Said documents included, *inter alia:* A) proof of filing a Certification of the Proposition to Dissolve McHenry Township; B) Certification of Resolution Number 1120068 concerning the resolution for a proposition to be placed on the ballot; and C) a Certification of Ballot. C8.

The question "arises" under the Illinois Townships Code, as acknowledged by TIRIO in his July 7, 2020 letter, not the Illinois Election Code. C8.

Again, TIRIO refused to place the ballot proposition approved by the TRUSTEES on the General Election Ballot. C8.

In a written explanation of the refusal to place the referendum question as certified by the McHenry Township Clerk, TIRIO explained on July 7, 2020 the following:

> *"Dear Mr. Aylward:*
> *I am writing to acknowledge receipt on July 6, 2020, of a second certification from the McHenry Township Clerk's Office for a McHenry Township resolution for a referenda question to dissolve McHenry Township, effective February 8, 2021. This second resolution with a revised question was approved by the McHenry Township Board of Trustees at its meeting on July 6, 2020, pursuant to provisions in the Illinois Townships Code (60 ILCS 1/24-15 through 1/24-35). It was proposed for inclusion on the November 2020 General Election ballot for voters in McHenry Township. After reviewing the certification, the relevant sections of the Illinois Townships Code and the Illinois Election Code and, based on the authority granted election authorities in the Illinois Election Code (10 ILCS 5/28-5), I am writing to advise you that the proposed referendum question is prohibited and will not be placed on the November 2020 General Election ballot.*
> *The question, as newly worded, no longer violates the form of the question standard provided in Section 1/24-30 of the McHenry Townships Code as did the first certified resolution and question originally received by the McHenry County Clerk on June 29, 2020. 60 ILCS 1/24-30. However, as also explained in the McHenry County Clerk's Office July 1, 2020, response to that first proposed question, a referenda question to dissolve the McHenry Township must also comply with the Illinois Election Code timing requirements.*
> *The proposed dissolution referendum is prohibited from being printed on the November 2020 General Election so soon after it was printed on the March 2020 General Primary ballot. Section*

> *1/24-15 of the Illinois Townships Code states that a proposition to dissolve a township which is submitted by a board of trustees of a township must be in accordance with the general election law. 60 ILCS 1/24-15. Section 5/28-7 of the Illinois Election Code provides that referenda pursuant to this Section (cases authorized by Article VII of the Illinois Constitution) may not be held more than once in any 23-month period on the same proposition. 10 ILCS 5/28-7. Section VII of the Illinois Constitution is the genesis of authority to dissolve a township when approved by a referenda in the area in which township officers are elected. Ill. Const.Art. VII, §5. Because the same proposition to dissolve McHenry Township appeared on the March 2020 General Primary ballot with the sole change being the effective date seven and one-half months later, this same question is prohibited from being placed on the ballot again for a period of 23 months. Otherwise, an effective date change of even a single day would undermine the intent of and make Section 5/28-7 completely ineffective. For the above stated reason, the McHenry Township Board of Trustees' proposed referendum question to dissolve McHenry Township is prohibited from being placed on the November 2020 General Election ballot.*
> *Sincerely,*
> *Joseph J. Tirio" C9.*

However, the referendum previously submitted by the electors of the TOWNSHIP for consideration on the March 2020 Primary Ballot was:

> *"Shall the McHenry Township together with any road districts wholly within the boundaries of McHenry Township, be dissolved on June 21, 2020 with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County?*
>
> *Yes*
> *No" C10.*

Review of the language of the March referendum reveals it is not the "same" as the question presented by the BOARD. C10. The difference between the two proposed referendums (March 2020 proposition vs. the petition submitted for the general election) can easily be found in the date

that the respective petitions seek dissolution of the TOWNSHIP. C10. These two proposed referendums call for dissolution in different years and thus are not the same. C10.

TIRIO, exceeded his authority as McHenry County Clerk when he looked past the face of the proposed referendum and elected to infer meaning to the intent of the statute inferring "similarity" when the statute commands same his conduct with the word "same". TIRIO'S duty was limited to ascertaining if the language was the same or not. C10. Since it was not the same language, the section of the Illinois Election Code relied upon by TIRIO is inapplicable. C10.

TIRIO lacks the power to decide issues of content for referendum propositions. C10. Even if TIRIO had such a power, which he does not, the ballot proposition associated with the March 2020 Primary Ballot was not the same as the referendum advanced in the present proposition. C10.

TIRIO is a ministerial officer. C10. His examination of an instrument is not content based but rather he has an obligation only to look at the ballot proposition to ascertain if on its face it complies with the provisions for placement on the ballot. C11. TIRIO has no judicial power to interpret a statute. C11.

STANDARD OF REVIEW

The standard of review for dismissal of a complaint under Section 2-619 is *de novo*. *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, 1 13,965 N.E.2d 1092, 358 Ill.Dec. 613. The Appellate Court followed a de novo review.

ARGUMENT

A. THE TRIAL COURT ERRED IN GRANTING DEFENDANTS' MOTION TO DISMISS.

Plaintiff agrees that mandamus is an extraordinary remedy to enforce, as a matter of right, "the performance of official duties by a public officer where no exercise of discretion on his part is involved." *Madden v. Cronson*, 114 Ill. 2d 504, 514, 103 Ill. Dec. 729, 501 N.E.2d 1267 (1986). A *writ of mandamus* will not be granted unless the plaintiff can show a clear, affirmative right to relief, a clear duty of the defendant to act, and clear authority in the defendant to comply with the writ. *Noyola v. Board of Education*, 179 Ill. 2d 121, 133 (1997); *Orenic v. Illinois State Labor Relations Board*, 127 Ill. 2d 453, 467-68, 130 Ill. Dec. 455, 537 N.E.2d 784 (1989); *Chicago Bar Ass'n v. Illinois State Board of Elections*, 161 Ill. 2d 502, 507, 204 Ill. Dec. 301, 641 N.E.2d 525 (1994). "The writ will not lie when its effect is 'to substitute the court's judgment or discretion for that of the body which is commanded to act'." *Chicago Ass'n of Commerce & Industry v. Regional Transportation Authority*, 86 Ill. 2d 179, 185, 56 Ill. Dec. 73, 427 N.E.2d 153 (1981), quoting *Ickes v. Board of Supervisors*, 415 Ill. 557, 563,

114 N.E.2d 669 (1953). *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229, 710 N.E.2d 798, 813, 1999 Ill. LEXIS 666, *48-49, 238 Ill. Dec. 1, 16. Plaintiff has properly alleged and shown a clear affirmative right to the relief sought, a clear duty of TIRIO to place the ballot proposition on the ballot based on the statutory authority under Chapter 60 of the Illinois Compiled Statutes and under the Illinois Election Code as cited by Defendants. See 60 ILCS 1/24-15, 35. C48.

It is clear Defendants have acknowledged that there is a clear right of a Township Board to submit a question to the people for consideration. See 10 ILCS 5/28-2(c). C48. Plaintiff alleged the right to relief because it has a clear affirmative right to place a question to the people concerning its continued existence based upon the provisions of the Illinois Townships Code as well as the Illinois Election Code. C49.

However, Defendants' sole contest is that the question to be submitted to the voters is purportedly the same as the question submitted on the March ballot. However, this contention required TIRIO to look beyond the face of the proposed referendum and compare it with a separate independent document. This much TIRIO acknowledges that he did, in order to come to the legal conclusion that the language was the same as the prior ballot measure. However, this is not TIRIO'S function, as This Court has previously articulated. C50.

In *People ex rel. Giese v. Dillon*, 266 Ill. 272-76, 107 N.E. 583, 1914 Ill. LEXIS 2119 #1, the residents of La Salle filed a petition with the town clerk to have the question, "Shall this town become anti-saloon territory?" placed upon the ballot. *Dillon*, 266 Ill. at 273. When the clerk refused to place the question on the ballot, the residents filed a petition for a *writ of mandamus* to compel the clerk to place the question on the ballot. *Dillon*, 266 Ill. at 273. In response to the petition, the clerk argued that he was under no obligation to place the question on the ballot because the submitted petition did not comply with the law. *Dillon*, 266 Ill. at 274. Specifically, the clerk argued that (1) the signatures on the ballot were not those of legal voters and were not given in person, and (2) the sworn statements at the bottom of each page were neither signed by a resident of La Salle nor sworn to by an officer having authority to administer an oath. *Dillon*, 266 Ill. at 274. C50.

In affirming the Trial Court's granting of a writ of mandamus, this Court explained that the responsibility for determining whether an election petition apparently conforms to the law rests with the clerk. *Dillon*, 266 Ill. at 275-76. Specifically, the clerk's duty is to determine whether, upon the face of the petition, it is in compliance with the law. *Dillon*, 266 Ill. at 276. If the petition on its face appears to comply with the statutory requisites, the clerk may not look outside the petition to determine whether in fact it does comply; he must submit the question to the voters. *Dillon*, 266 Ill. at 276. The court went on to explain because the validity of signatures and the

authority of officers cannot be determined by examining the face of an election petition itself, the court concluded that the petition was in apparent conformity with the law and thus that the clerk was obligated to submit the question to the voters. *Dillon*, 266 Ill. at 276. *North v. Hinkle*, 295 Ill. App. 3d 84, 87-88, 692 N.E.2d 352, 355, 1998 Ill. App. LEXIS 118, *7-9, 229 Ill. Dec. 579, 582; *Dillon*, 266 Ill. 272, 273. This case is highly analogous to *Dillon*. In both cases, the clerk looked past the face of the petition and in both cases the decision concerning facial conformity was based on an extrinsic fact. Here, that fact is the March ballot question, in *Dillon* it was the legal voters and resident status. As such, under *Dillon*, the trial court was obligated to deny Respondent McHenry County Clerk, Joseph Tirio's, Motion to Dismiss Petition for Mandamus Pursuant to 735 ILCS 5/2-619.5 (hereinafter "Motion to Dismiss") and grant the requested mandamus relief. C51.

Although Defendants do not cite to any authority that trumps the authority stated above, they wish to have this Court dismiss the "Petition for Mandamus" (Actually, Complaint for Writ of Mandamus and Mandatory Injunctive Relief) on the basis that something outside the face of the "Petition" renders it improper. But, see *Dillon*. Defendants are simply incorrect. C51.

An argument that is undeveloped and unsupported by authority need not be considered by the court. *Commonwealth Edison Co. v. Illinois*

Commerce Com'n, 398 Ill.App.3d 510 (2nd Dist 2009). Because Defendants have not supplied any legal authority to support their position that TIRIO must look beyond the face of the petition in contrast to the authority shown above, they have waived the argument that TIRIO has a responsibility to look beyond the face of the petition. Defendants have waived the essence of the argument made by failing to provide authority that TIRIO is to look beyond the actual petition. Moreover, because Plaintiff supports its position with controlling authority, this ought to be the end of the argument. C52

Even if this Court were to ignore the above authority, the position of Defendants is without merit. C52.

B. HOW IS THE WORD "SAME" DEFINED?

Generally, the rules of statutory construction are applicable to the construction of a constitutional provision. *Baker v. Miller*, 159 Ill. 2d 249, 257, 636 N.E.2d 551, 554, 1994 Ill. LEXIS 76, *8-9, 201 Ill. Dec. 119, 122, *Chicago Bar Association v. State Board of Elections* (1990), 136 Ill. 2d 513, 526, 146 Ill. Dec. 126, 558 N.E.2d 89, citing *Coalition for Political Honesty v. State Board of Elections* (1976), 65 Ill. 2d 453, 464, 3 Ill. Dec. 728, 359 N.E.2d 138. As with statutory construction, the court must construe a constitutional provision so as to effectuate the intent of the drafters. *People v. Turner* (1964), 31 Ill. 2d 197, 199, 201 N.E.2d 415. The best indication of the intent of the drafters of a constitutional provision is the language which they voted to adopt. *Coryn v. City of Moline* (1978), 71 Ill. 2d 194, 200, 15 Ill. Dec.

776, 374 N.E.2d 211. And so it is with statutory construction. See *In re Marriage of Logston* (1984), 103 Ill. 2d 266, 277, 82 Ill. Dec. 633, 469 N.E.2d 167. Where the statutory language is clear and unambiguous, it will be given effect without resort to other aids for construction. *People ex rel. Baker v. Cowlin* (1992), 154 Ill. 2d 193, 197, 180 Ill. Dec. 738, 607 N.E.2d 1251. See also, *Baker v. Miller*, 159 Ill. 2d 249, 257, 636 N.E.2d 551, 554-555, 1994 Ill. LEXIS 76, *9-10, 201 Ill. Dec. 119, 122-123. C52.

Defendants acknowledge that there are different dates in the different propositions. See Defendants' Motion to Dismiss, page 7. Thus, even though Defendants contend that the propositions are "identical" they are not identical based on this fundamental acknowledgement. See Defendants' Motion to Dismiss, page 8. C52. This is the root of the issue in this case aside from the excessive use of power by TIRIO. A resolution of this issue in favor of the plain and ordinary meaning of the word resolves the dispute. C53.

Dictionary by Merriam-Webster, online, https://www.merriam-webster.com, defines the word "same" as:

1 a : resembling in every relevant respect
  b : conforming in every respect —used with *as*
2 a : being one without addition, change, or discontinuance: IDENTICAL
  b : being the one under discussion or already referred to
3 : corresponding so closely as to be indistinguishable
4 : equal in size, shape, value, or importance —usually used with *the* or a demonstrative (such as *that, those*) in all senses

C53.

Defendants take the position "same" deals with an implicit result or subsequent outcome absent the differences in the actual dates. See Defendants' Motion to Dismiss, pages 7-8. However, that position does not foot with the definition of the word "same" when compared to the prior ballot proposition. The ostensible difference is that neither ballot proposition has the same date for the dissolution of the TOWNSHIP. A voter could very well have taken the position that he wanted the TOWNSHIP to be dissolved in 2021, but not in June 2020 and thus voted against the ballot proposition. TIRIO's position is that we should skip examination of the language to determine if they are identical and look to the end result of the shutdown of the unit of government. That is, in essence, asking this Court to engage in linguistic gymnastics which would have the effect of striping the legislature of the ability to craft law to mean what they say. TIRIO'S effort further seeks to make TIRIO a mini judge to allow him to weight the intent of the respective statutes. Such a position would lead to more disputes not less. Since the language of the ballot propositions in all material respects are not "identical", the two propositions are not the "same". C53.

In examining the word "same", the United States District Court for the Northern District of Illinois looked to the term "same" and concluded it was analogous to "identical". See *Sadowski v. Tuckpointers Local 52 Health & Welfare Trust*, 281 F. Supp. 3d 710, 717, 2017 U.S. Dist. LEXIS 209291, *15-16, 2017 WL 6549759. C53.

As pled, a review of the language of the March electorate referendum reveals it is not the "same" as the question presented by the BOARD. See Complaint, paragraph 15. The difference between the two ballot propositions (March 2020 proposition vs. the petition submitted for the general election) can easily be found in the date that the respective ballot proposition seek dissolution of the TOWNSHIP. These two propositions call for dissolution in different years and thus are not the same ballot proposition. Because the TOWNSHIP pled this fact and Defendants brought their Motion to Dismiss with argument contrary to this fact, the trial court ought to have denied the Motion to Dismiss under the authority advanced by Defendants. C54.

As pled, TIRIO exceeded his authority as the McHenry County Clerk when he looked past the face of the ballot proposition and elected to infer meaning to the intent of the statute inferring similarity when the relied upon statutory and constitutional reference is "same", when his actual duty was limited to ascertaining if the ballot proposition was facially proper. TIRIO'S subsequent step of looking to see if the language was the same or not, was an error on his part. See *Dillon* referenced above. Since the language of the two propositions was not the exact same language, the section of the Illinois Election Code relied upon by TIRIO and McHenry County State's Attorney is inapplicable. C54.

The action of TIRIO in looking past the face of the Complaint usurped the whole power of the electoral objection process. That was not the province

of TIRIO. As the McHenry County Clerk, TIRIO lacks the power to decide issues of content for propositions. Even if TIRIO had such a power, which he does not, the ballot proposition associated with the March 2020 Primary Ballot referendum was not the same as the ballot proposition advanced in the present proposition. Thus, in consideration of the same statutory references cited by Defendants themselves, Defendants are simply in error. C54.

Moreover, TIRIO has no constitutional, statutory, or other legal authority to make conclusions of law as it relates to a referendum being placed on the ballot. Had there been any such authority, it likely would have appeared in Defendants' Motion to Dismiss. But, see *Commonwealth Edison Co. v. Illinois Commerce Com'n*, 398 Ill.App.3d 510 (2nd Dist 2009) on Waiver. C55.

The TOWNSHIP officers had a clear affirmative right to place a question to the people concerning its continued existence based upon the provisions of the Illinois Townships Code (Chapter 60 ILCS) and the Illinois Election Code (10 ILCS 5/28-2(c)). Those statutory provisions allow the BOARD to place the ballot proposition on the ballot. Thus, on its face, the ballot proposition is entitled to be presented to the voters. C55.

TIRIO'S attempts to serve as an extra-judicial determinate of the law are contrary to our system of law where courts make legal determinations. By stripping the power of the people to make a determination it may be appropriate to look at the motives likely behind the March 2020 primary. It

was in all likelihood a pre-emptive strike to strip the duly elected board from presenting the question in a presidential election year and have the question heard only in an election whereby a substantially fewer number of voters cast ballots.

C. DEFENDANTS' ATTEMPT TO CONVOLUTE THE IDEA OF "SIMILAR" WITH THE IDEA OF "SAME".

In the English language, the term "similar" carries with it a wholly different meaning than the term "same". Defendants believe the legislature must surely have intended a "similarity" as opposed to the word it used "same". Nevertheless, if the legislature intended "same" to mean "similar" it would have used the term "similar" and it did not. Thus, Defendants' position is without merit. See *Dictionary by Meriam-Webster*, online, *https://www.meriam-webster.com*.

Defendants look to the hypothetical examination of TIRIO. See Brief of Appellants at pg 23. It is unfortunate for Defendants that this hypothetical is not a fact raised in the court below or even an argument raised below. Rather in challenging the decision of the Appellate Court, Defendants channel a new argument before this Court. This is actually a red-haring type argument as and it presumes that the legislature did not realize the 23-month rule from the Election Code was unknown to the legislature. The legislature if it wanted to have a clerk go beyond a facial examination can provide for such an examination. The failing of the legislature to do so, only gives the citizens the outcome designed by the

legislature. The framework adopted by arguments of the Plaintiff and the Appellate Court are in conformity with over a hundred years of statutory construction. Once we look to outcomes as driving a decision we lose the rule of law. There is a rule and it must be applied. IF the legislature seeks a different rule it certainly may adopt a new rule to guide the courts with an interpretation it desires.

D. THE TRIAL COURT ACTED AS A SUPER-LEGISLATURE.

In addressing the arguments of the parties, Circuit Court Judge, K. Costello, injects *sua-sponte* the idea that proper application of the law would produce an absurd result. C.76. There, the Court below relied upon *Better Government Association v Office of the Special Prosecutor*, 2019 IL 122949. The contention of the Circuit Court was error because the court below undertook linguistic gymnastics to arrive at a super-legislative result. The contention that since the two proposals would always be different because the township consolidation statute mandates the language for a proposition with the only differences being the dates would run afoul of the Trial Court's logic.

The familiar and well-settled rule of statutory construction that requires any court ascertain and give effect to the intent of the legislature, which is best found in the plain language of the statute. *City of Decatur v. Page*, 339 Ill. App. 3d 316, 320, 789 N.E.2d 1269, 1272, 273 Ill. Dec. 837 (2003).

The position relied upon by the court below related to absurdity presupposes that the legislature was ignorant of its other Election Code provisions. However, as explained in Plaintiff's response on whether or not the two ballot propositions were the same, a voter may have desired terminating the Road District or Township on the date certain as a motive to the vote either for or against the provision seeking dissolution. Thus, the two statutes were not in conflict with each other, but in harmony. Importantly, it is clear that the outrage over waste in local government is what prompted the legislature to enact the Township Consolidation Act. The clear intent of the legislature in adopting 60 ILCS 1/24-15 was to make it easier to consolidate a township into a county. That is, the legislature was acting to ensure that the voters who are supposed to be the sovereign in our system could decide the future of how the government is to serve the people. It is the geniuses of the legislature that by including provisions mandating different dates, the proposition would never be the "same" and as a result the subsequent ballot proposition would not run afoul of the Election Code. The Circuit Court deemed this absurd. The Appellate Court rejected this contention.

However, the Trial Court rational was that the different dates would render the Election Code inapplicable. What appears lost on the Trial Court is the drafters were clearly aware of the provisions of the Election Code by its incorporation into the township consolidation statute. That is the statutory construct framework. The court below could not have come to the conclusion

of absurdity if it didn't impute an implied statutory construction from outside the plain and clear meaning of the language of the Election Code. In order to get to the point of absurdity, the Election Code would not have the word "same" within its text. A reasonable textual approach, as used in the legions of cases in Illinois, applies a fair and direct meaning to the words used by the legislature. Only by substituting the idea of similarity in lieu of the actual text of the Election Code can the super-legislative act of re-writing the statute arise. As stated by the Court in *Roselle Police Pension Bd. v. Vill. of Roselle:*

> '[W]e do not sit as a super legislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare.'" *Hayen v. County of Ogle*, 101 Ill. 2d 413, 421, 463 N.E.2d 124, 78 Ill. Dec. 946 (1984), quoting *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423, [*558] 96 L. Ed. 469, 472, 72 S. Ct. 405, 407 (1952). We must interpret and apply statutes in the manner in which they are written and cannot rewrite them to make them consistent with the court's idea of orderliness and public policy. *Henrich v. Libertyville High School*, 186 Ill. 2d 381, 394-95, 712 N.E.2d 298, 238 Ill. Dec. 576 (1998).

Roselle Police Pension Bd. v. Vill. of Roselle, 232 Ill. 2d 546, 557-558, 905 N.E.2d 831, 837, 2009 Ill. LEXIS 305, *15-16, 328 Ill. Dec. 942, 948.

The function of the court below was not to re-write the Election Code to provide a meaning the legislature did not intend or use to fit with its idea of orderliness. If the legislature intended a similarity standard for ballot propositions, the legislature could draft such a provision. It is not the province of the courts to dispense with the legislative process and become a

king without involvement of the democratic process. This is in essence what the Trial Court did when it framed its decision around the idea that the application of law would be absurd.

E. EXCEPTION TO THE MOOTNESS DOCTRINE.

1. Plaintiff's Complaint should not be dismissed because of the "public interest exception" to the mootness doctrine.

This case concerns a ballot question that was to be submitted to the voters in the November 2020 election. However, this matter was decided by the lower Court before the election, but prior to consideration by the Appellate Court and this Court. In the intervening period of time, the election took place making the relief sought in the complaint impossible. However, the BOARD may be predisposed to place a similar question on the ballot of the next presidential election and another effort will likely be undertaken to thwart the question being presented in a more voluminous election. As such it is possible that this issue will arise again. For the reasons that follow this appeal is not moot.

2. This Court ought to apply the public interest exception to the mootness doctrine to this case.

The Illinois Supreme Court has applied the public interest exception where matters of election had already taken place, much like Plaintiff's case at bar. In *Bonaguro v. County Officers Electoral Board*, 158 Ill. 2d 391, 395, 634 N.E.2d 712, 199 Ill. Dec. 659 (1994), Bonaguro sought judicial review of the electoral board's decision in the Circuit Court of Cook County. There the

Supreme Court noted, as did the Appellate Court, the obvious fact that the November 1992 election has already occurred, and also that Bonaguro won. However, they agreed with the Appellate Court that this cause was not moot, finding one exception to the mootness doctrine which allows a court to resolve an otherwise moot issue if the issue involves a substantial public interest. See *Bonaguro* at 395.

In the case at bar the election for which the proposition was to be placed before the voters was the November 2020 general election which occurred on November 3, 2020. Here, the question Plaintiffs sought to present to the voters was not presented and the election was concluded without voter consideration of the issue at the heart of this litigation.

Similarly, in *Cinkus v. Vill. of Stickney Municipal Officers Electoral Board*, 238 Ill. 2d 200, 886 N.E.2d 1011, 319 Ill. Dec. 887, 2008 Lexis 294 (2008), this Court addressed a preliminary mootness matter raised by stating the following:

> "Esposito invites us to declare this case moot. A case on appeal becomes moot where the issues presented in the trial court no longer exist because events subsequent to the filing of the appeal render it impossible for the reviewing court to grant the complaining party effectual relief. *In re A Minor*, 127 Ill. 2d 247, 255, 537 N.E.2d 292, 130 Ill. Dec. 225 (1989) (collecting cases). In this case, the April 17, 2007, election obviously has come and gone. Indeed, Cinkus filed his petition for leave to appeal on the day of the election. According to Esposito, Cinkus sought to have his name placed on the April 17, 2007, ballot and that is no longer possible.
>
> However, one exception to the mootness doctrine allows a court to resolve an otherwise moot issue if that issue involves a

> substantial public interest. The criteria for application of the public interest exception are: (1) the question presented is of a public nature; (2) an authoritative resolution of the question is desirable to guide public officers; and (3) the question is likely to recur. *Lucas v. Lakin*, 175 Ill. 2d 166, 170, 676 N.E.2d 637, 221 Ill. Dec. 834 (1997); *A Minor*, 127 Ill. 2d at 257. A clear showing of each criterion is necessary to bring a case within the public interest exception. *Bonaguro v. County Officers Electoral Board*, 158 Ill. 2d 391, 395, 634 N.E.2d 712, 199 Ill. Dec. 659 (1994). The present case meets this test. This appeal raises a question of election law, which inherently is a matter of public concern. Also, this issue is likely to recur in a future municipal election. Being in arrears of a debt owed to a municipality can involve common items, such as unpaid parking tickets or village utility bills. Thus, an authoritative resolution of the issue is desirable to guide public officers. Therefore, we decline to dismiss this appeal as moot. We proceed to additional preliminary matters.
> *Cinkus* at 6-7.

Applying *Cinkus* to the case at bar a parallel set of facts exists with the application of the mootness doctrine and its exceptions. In particular, the complained of relief sought placing a question on the ballot and the election has come and gone and therefore it is impossible for the sovereign to consider the question. However, the question here, involves a substantial public interest related to the powers of the county clerk in determining for himself whether or not the voters could consider a ballot proposition.

In *Goodman v. Ward*, 241 Ill.2d 398 (2011), the issue in the case was whether a candidate who seeks the office of circuit judge in a judicial subcircuit must be a resident of that subcircuit at the time he or she submits a petition for nomination to the office. In this case both the primary and general elections had passed, and the vacancy involved in the case had been

filled, there the court considered whether the case was moot. *See Goodman* at 403 & 404. The Court stated:

> The public interest exception permits a court to reach the merits of a case which would otherwise be moot if the question presented is of a public nature, an authoritative resolution of the question is desirable for the purpose of guiding public officers, and the question is likely to recur. *Bonaguro v. County Officers Electoral Board,* 158 Ill. 2d 391, 395, 634 N.E.2d 712, 199 Ill. Dec. 659 (1994). All three factors are present here. The instant appeal raises a question of election law which, inherently, is a matter of public concern *Lucas v. Lakin,* 175 Ill. 2d 166, 170, 676 N.E.2d 637, 221 Ill. Dec. 834 (1997). With the establishment and addition of subcircuits, disputes over residency requirements for subcircuit vacancies are likely to arise in future cases. Moreover, a definitive ruling by this court will unquestionably aid election officials and lower courts in deciding such disputes promptly, avoiding the uncertainty in the electoral process which inevitably results when threshold eligibility questions cannot be fully resolved before voters begin casting their ballots. We will therefore proceed to the merits of the appeal.
>
> *See Goodman* at 403-404.

Bonaguro, Cinkus, Goodman, and *Lucas v. Lakin,* 175 Ill. 2d 166, 170, 676 N.E.2d 637, 221 Ill. Dec. 834 (1997), stand for the proposition that this Court ought to apply the public interest exception to the mootness doctrine. The public interest exception should be used where all three criteria have been satisfied.

The requirements are addressed below. Plaintiff has satisfied all three criteria, therefore, the public interest exception should be applied here, and Defendant's Motion to Dismiss should have been denied in accord with the Appellate Court's opinion.

The Illinois Supreme Court in *People v. Shelby R. (In re Shelby R.)*, 2013 IL 114994, P40, 995 N.E.2d 990, 2013 Ill. LEXIS 858, 374 Ill. Dec. 493, 502, 2013 WL 5278442 stated:

> Since our formal adoption of the public interest exception in *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 622, 104 N.E.2d 769 (1952), this court has reviewed a variety of otherwise moot issues under this exception. See, e.g., *In re E.G.*, 133 Ill. 2d 98, 549 N.E.2d 322, 139 Ill. Dec. 810 (1989) (whether a minor has the right to refuse medical treatment); *Bonaguro v. County Officers Electoral Board*, 158 Ill. 2d 391, 634 N.E.2d 712, 199 Ill. Dec. 659 (1994) (whether a political party may fill a vacancy in nomination for judicial office by party resolution); *Roberson*, 212 Ill. 2d 430, 819 N.E.2d 761, 289 Ill. Dec. 265 (whether a defendant is entitled to a credit on a violation-of-bail-bond sentence for time spent in custody awaiting trial on the underlying charge that was dismissed); *In re Christopher K.*, 217 Ill. 2d 348, 841 N.E.2d 945, 299 Ill. Dec. 213 (2005) (whether the law of-the-case doctrine bars consideration of an extended juvenile jurisdiction motion after the denial of a discretionary transfer motion is affirmed on appeal); *Wirtz v. Quinn*, 2011 IL 111903, 953 N.E.2d 899, 352 Ill. Dec. 218 (whether an appropriations bill impermissibly contained substantive law).

The public interest exception to the mootness doctrine is narrowly construed, and "requires a clear showing of each of the following criteria: (1) the question presented is of a public nature; (2) an authoritative determination of the question is desirable for the future guidance of public officers; and (3) the question is likely to recur. *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253, ¶ 12, 965 N.E.2d 1103, 358 Ill. Dec. 624; *Felzak*, 226 Ill. 2d at 393." *Id.* at 16.

Here, all three criteria are met in this case as explained below, and thus the public interest exception should be applied to this case.

However, as a matter of waiver, TIRIO never raised the Mootness doctrine in the Trial Court and therefore waived any argument in conformity with the public interest exception. Points raised, but not argued or supported by citation to relevant authority fails to meet the requisites of Rule 341(e)(7), Supreme Court Rules, and therefore, are deemed waived. *Bear Kaufman Realty v. Spec Dev.*, 268 Ill. App. 3d 898, 206 Ill. Dec. 239, 645 N.E.2d 244, 1994 Ill. App. LEXIS 1315 (Ill. App. Ct. 1st Dist. 1994); Ill. Sup. Ct., R 341. Because they failed to argue the Mootness doctrine below it forfeited the argument here. Nevertheless, Plaintiff argued that the exception applies and that was argued in the Appellate Court as well.

a. The Question Presented is of a Public Nature.

The first requirement is whether "the question presented is of a public nature." *Id.* at 16. The question presented in this case raises a question regarding the power of an elected official to strike questions to be presented to the voters.

The Court in *Goodman v. Ward*, 241 Ill.2d 398, 404 (2011) held that the public interest exception permits a court to reach the merits of a case which would otherwise be moot if the question presented is of a public nature, an authoritative resolution of the question is desirable for the purpose of guiding public officers, and the question is likely to recur.

In this case, TIRIO relied upon a claim that the proposition was the same as an earlier proposition. By this very nature the issue has already

arisen more than once and there is no reason to believe that the issue will not be advanced again in the future as the 23-month time period claimed by TIRIO has yet to run. The essence of the question to be presented to the people go straight to the idea of self-governance and placing the power of the people to direct how they are to submit to being governed. Thus, without question, the first factor of a public nature is satisfied to apply the public interest exception.

b. An Authoritative Determination of the Question is Desirable for Future Guidance of Public Officers.

The second requirement for the public interest exception to the mootness doctrine is whether "an authoritative determination of the question is desirable for the future guidance of public officers." *Shelby R.* at 16. The Illinois Supreme Court in *Shelby* reviewed the second criteria at length and articulated:

> When considering whether the second criterion for application of the public interest exception has been satisfied, this court has emphasized the importance of examining the state of the law as it relates to the moot question. *In re Commitment of Hernandez*, 239 Ill. 2d 195, 202, 940 N.E.2d 1082, 346 Ill. Dec. 478 (2010); *Christopher K.*, 217 Ill. 2d at 360. Generally, we have "declined to apply the public interest exception when there are no conflicting precedents requiring an authoritative resolution." *Peters-Farrell*, 216 Ill. 2d at 292. Accord *In re J.T.*, 221 Ill. 2d 338, 351, 851 N.E.2d 1, 303 Ill. Dec. 103 (2006) (finding no need for an authoritative determination of moot issue where appellate court cases on that issue were uniform). Conversely, we have frequently cited the confused state of the law when deciding that an authoritative resolution of an otherwise moot question is desirable. See, *e.g.*, *In re Andrew B.*, 237 Ill. 2d 340, 347, 930 N.E.2d 934, 341 Ill. Dec. 420 (2010) ("second element [of public interest exception] is satisfied because our appellate court is

> divided on the issue"); *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 33, 749 N.E.2d 964, 255 Ill. Dec. 482 (2001) ("our case law *** is in conflict" and the governing principles are "in the state of some muddle" (internal quotation marks omitted)); *In re D.L.*, 191 Ill. 2d 1, 8, 727 N.E.2d 990, 245 Ill. Dec. 256 (2000) ("the relevant appellate court precedents are in conflict").
>
> *Shelby* at 19.

The Court in *Shelby R.* at 20-21, went on to state cases of first impression may be appropriate under this public interest exception:

> "Notwithstanding the significance of a conflict in the case law when determining whether a moot question should be decided under the public interest exception, the absence of a conflict does not necessarily bar our review. Case law demonstrates that even issues of first impression may be appropriate for review under this exception. In *Labrenz*, for example, we considered an issue of first impression involving the trial court's authority to appoint a guardian on behalf of an infant whose parents, for religious reasons, would not consent to certain medical treatment. Applying the public interest exception, we noted that in situations where a child's life is endangered, "public authorities must act promptly if their action is to be effective, and although the precise limits of authorized conduct cannot be fixed in advance, no greater uncertainty should exist than the nature of the problems makes inevitable."

The Court there citing to *Labrenz*, 411 Ill. at 623.

In the case at bar, the question is a case of first impression related to the application of prior law to the relatively new statute allowing for consolidation of Townships in McHenry County.

When addressing the issue of cases of first impression, the court considered various issues of first impression arising under our election law, as a basis for the public interest exception to the mootness doctrine. See, *e.g.*,

Wisnasky-Bettorf, 2012 IL 111253, 965 N.E.2d 1103, 358 Ill. Dec. 624; *Goodman v. Ward*, 241 Ill. 2d 398, 948 N.E.2d 580, 350 Ill. Dec. 300 (2011); *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 886 N.E.2d 1011, 319 Ill. Dec. 887 (2008).

There the court reasoned that consideration of such issues, though moot, would unquestionably aid election officials and lower courts in deciding election disputes promptly, avoiding uncertainty in the electoral process. *Goodman*, 241 Ill. 2d at 405. If this Court renders a decision on the issues in this, the decision would undoubtedly aid the elected Clerk, TIRIO, in determining if a proposition of the nature were to be placed on the ballot in future elections.

Accordingly, the second requirement of the public interest exception has been met.

c. The Question is Likely to Recur.

The third requirement for the public interest exception to the mootness doctrine is whether "the question is likely to recur." *Shelby R.* at 16. The question not only is likely to recur in the future, but this case's facts show that it is in fact likely to re-occur. Plaintiff seeks review of this question to aid the public body in determining if they should again engage in a public decision to place this case on upcoming ballots. It is for this primary reason that the third requirement has been met.

CONCLUSION

WHEREFORE, Plaintiff, McHENRY TOWNSHIP, prays that this Honorable Court affirm the Appellate Court and reverse the decision of the Circuit Court and order the question presented to Defendant, JOSEPH J. TIRIO, not individually, but in his Official Capacity as the McHenry County Clerk, to be placed on the ballot at the next presidential election.

Respectfully submitted,

By: */s/Robert T. Hanlon*
Robert T. Hanlon, ARDC 6286331

Attorney for Plaintiff/Appellee
Law Offices of Robert T. Hanlon & Assoc., PC
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200 (Office)
(815) 206-6184 (Fax)
robert@robhanlonlaw.com

No. 127258

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

THE COUNTY OF McHENRY AND JOSEPH TIRIO, in his Official Capacity as the McHenry County Clerk,	)	Appeal from the Appellate Court of Illinois, Second District No. 2-20-0478
Defendants/Appellants,	)	Appeal from the Twenty-Second Circuit Court, McHenry County, IL
v.	)	Case No. 20CH248
McHENRY TOWNSHIP,	)	
Plaintiff/Appellee,	)	Trial Judge Kevin G. Costello

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341 (a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341 (d) cover, the Rule 341 (h)(1) table of contents and statement of points and authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 32 pages.

Dated: December 8, 2021

Respectfully submitted,

By: */s/ Robert T. Hanlon*
Attorney for Plaintiff/Appellee

No. 127258

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

THE COUNTY OF McHENRY AND JOSEPH TIRIO, in his Official Capacity as the McHenry County Clerk,	)	Appeal from the Appellate Court of Illinois, Second District No. 2-20-0478
Defendants/ Appellants,	)	Appeal from the Twenty-Second Circuit Court, McHenry County, IL
v.	)	Case No. 20CH248
McHENRY TOWNSHIP,	)	
Plaintiff/Appellee,	)	Trial Judge Kevin G. Costello

NOTICE AND PROOF OF SERVICE

TO: Patrick D. Kenneally, State's Attorney
Norman D. Vinton, Chief, Civil Division
Carla N. Wyckoff, Asst. State's Attorney
McHenry County State's Attorney's Office
2200 North Seminary Avenue
Woodstock, IL 60098
pdkenneally@mchenrycountyil.gov
ndvinton@mchenrycountyil.gov
cnwyckoff@mchenrycountyil.gov

I HEREBY CERTIFY that the foregoing ***Appellee's Brief*** was electronically filed with the Clerk of the Illinois Supreme Court via the efileIL system through an approved electronic filing service provider and was served via email on all counsel of record at the email addresses above on December 8, 2021.

Under penalties as provide by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Dated: December 8, 2021

By: */s/ Robert T. Hanlon*
Attorney for Plaintiff/Appellee
Law Offices of Robert T. Hanlon
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200; (815) 206-6184 (Fax)
robert@robhanlonlaw.com

No. 127258

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

THE COUNTY OF McHENRY AND JOSEPH TIRIO, in his Official Capacity as the McHenry County Clerk,	)	Appeal from the Appellate Court of Illinois, Second District No. 2-20-0478
Defendants/Appellants,	)	Appeal from the Twenty-Second Circuit Court, McHenry County, IL
v.	)	Case No. 20CH248
McHENRY TOWNSHIP,	)	
Plaintiff/Appellee,	)	Trial Judge Kevin G. Costello

APPENDIX

Robert T. Hanlon, ARDC 6286331
Law Offices of Robert T. Hanlon & Assoc., P.C.
131 East Calhoun Street
Woodstock, IL 60098
Phone: (815) 206-2200
Facsimile: (815) 206-6184
E-mail: robert@robhanlonlaw.com

Counsel for Plaintiff/Appellee

E-FILED
12/8/2021 6:02 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

APPENDIX

(Tab A)

2-20-0478

APPEAL TO THE APPELLATE COURT OF ILLINOIS

JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT

MCHENRY COUNTY, ILLINOIS

MCHENRY TOWNSHIP

Plaintiff/Petitioner

Reviewing Court No: 2-20-0478
Circuit Court No: 2020CH000248
Trial Judge: KEVIN G COSTELLO

v.

10

COUNTY OF MCHENRY AND JOSEPH J TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICAL CAPACITY AS MCHENRY COUNTY CLERK

Defendant/Respondent

CERTIFICATION OF RECORD

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

1 Volume(s) of the Common Law Record, containing 79 pages
0 Volume(s) of the Report of Proceedings, containing 0 pages
0 Volume(s) of the Exhibits, containing 0 pages

I do further certify that this certification of the record pursuant to Supreme Court Rule 324, issued out of my office this 29 DAY OF SEPTEMBER, 2020

Katherine M. Keefe

(Clerk of the Circuit Court or Administrative Agency)

KATHERINE M. KEEFE, CLERK OF THE 22nd JUDICIAL CIRCUIT COURT ©
WOODSTOCK, ILLINOIS 60098

C 1

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

MCHENRY TOWNSHIP
Plaintiff/Petitioner

Reviewing Court No: 2-20-0478
Circuit Court No: 2020CH000248
Trial Judge: KEVIN G COSTELLO

v.

COUNTY OF MCHENRY AND JOSEPH J TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICAL CAPACITY AS MCHENRY COUNTY CLERK
Defendant/Respondent

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 2

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

DOCKET LISTING

Case Number	Entitlement	Filing Date	Case Status
20CH000248	MCHENRY TOWNSHIP VS COUNTY OF MCHENRY, ET AL	07/24/2020 DCN:	CLOSED

Charges

No charges associated with this case.

Judgments

No judgments associated with the case.

Future Scheduled Dates

10/12/2020	5:00 pm	AP	APPEAL - ROP DUE	NO JUDGE ASSIGNED
10/26/2020	5:00 pm	AP	APPEAL - RECORD DUE	NO JUDGE ASSIGNED

Related Cases

No related cases to this case.

Parties

APPELLANT	MCHENRY TOWNSHIP
ATTORNEY- APPELLANT	HANLON, ROBERT T & ASSOCIATES
ATTORNEY FOR DEFENDANT	MCHENRY COUNTY STATES ATTORNEY
ATTORNEY FOR PLAINTIFF	HANLON, ROBERT T & ASSOCIATES
DEFENDANT	COUNTY OF MCHENRY
DEFENDANT	TIRIO, JOSEPH J
PLAINTIFF	MCHENRY TOWNSHIP

Papers Filed

07/24/2020	COMPLAINT
08/03/2020	SUMMONS - SERVED
08/03/2020	SUMMONS - SERVED
08/05/2020	APPEARANCE
08/05/2020	APPEARANCE
08/05/2020	NOTICE - MOTION
08/05/2020	MOTION - DISMISS
08/05/2020	MEMORANDUM
08/10/2020	NOTICE - MOTION
08/10/2020	MOTION - SUBSTITUTION OF JUDGE/REC
08/11/2020	ORDER - REASSIGNMENT
08/11/2020	ORDER
08/13/2020	ORDER
08/19/2020	NOTICE - FILING
08/19/2020	RESPONSE
08/20/2020	NOTICE - FILING
08/20/2020	REPLY
08/24/2020	ORDER
08/24/2020	MEMORANDUM - OPINION AND ORDER
08/24/2020	NOTICE - APPEAL

Financial Journal Entries

Journal Type	Amount	Date	JrlTypeCode
COPIES COST	$9.50	08/21/2020	COPY

DOCKET LISTING

Case Number	Entitlement	Filing Date	Case Status
20CH000248	MCHENRY TOWNSHIP VS COUNTY OF MCHENRY, ET AL	07/24/2020	CLOSED
		DCN:	

Court Events

Date	Location	Judge	Reporter
08/10/2020	202	CHMIEL, MICHAEL J	
Reason:	MOTION - DISMISS		
Result:	CONTINUED - PLAINTIFFS MOTION - STATUS		
08/11/2020	MC	COWLIN, JAMES S	
Reason:	MOTION - REASSIGNMENT		
Result:	REASSIGNED		
08/11/2020	202	CHMIEL, MICHAEL J	
Reason:	MOTION - REASSIGNMENT		
Result:	ALLOWED - SUBSTITUTION OF JUDGE		
08/11/2020	202	CHMIEL, MICHAEL J	
Reason:	STATUS - CHECK		
Result:	STRIKE - FROM CALL		
08/11/2020	204	COSTELLO, KEVIN G	
Reason:	MOTION - DISMISS		
Result:	SET - DATE FOR HEARING		
08/21/2020	204	COSTELLO, KEVIN G	
Reason:	HEARING - MOTION DISMISS		
Result:	TAKEN - UNDER ADVISEMENT		
08/24/2020	204	COSTELLO, KEVIN G	
Reason:	ENTRY - ORDER		
Result:	ENTERED - ORDER		
08/24/2020	204	COSTELLO, KEVIN G	
Reason:	DECISION		
Result:	** DISMISSED - WITH PREJUDICE		
10/12/2020	AP	NO JUDGE ASSIGNED	
Reason:	APPEAL - ROP DUE		
Result:			
10/26/2020	AP	NO JUDGE ASSIGNED	
Reason:	APPEAL - RECORD DUE		
Result:			

** FILED ** Env: 9875831
McHenry County, Illinois
20CH000248
Date: 7/24/2020 10:41 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHENRY TOWNSHIP,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	Case No. 20CH000248
	)	
COUNTY OF MCHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE McHENRY COUNTY CLERK,	)	
	)	
Defendants.	)	

NOTICE
THIS CASE IS HEREBY SET FOR A SCHEDULING CONFERENCE IN COURTROOM TBD ON 10-23-2020, AT TBD. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED.

COMPLAINT FOR WRIT OF MANDAMUS AND MANDATORY INJUNCTIVE RELIEF

NOW COMES Plaintiff, McHENRY TOWNSHIP, by and through its attorney, LAW OFFICES OF ROBERT T. HANLON & ASSOCIATES, P.C., with its complaint against Defendants, COUNTY OF McHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE McHENRY COUNTY CLERK (hereinafter "TIRIO"), for a Writ of Mandamus or mandatory injunctive relief to be issued against Defendants to place upon the ballot in the next general election the referendum proposition authorized by the McHenry Township Board of Trustees and in support of this complaint, states as follows:

Parties

1. Plaintiff, McHENRY TOWNSHIP, is a local unit of government situated within the McHenry County, Illinois.

2. Defendant, JOSEPH J. TIRIO, is the duly elected McHenry County Clerk and is the principal officer of McHenry County charged with the oversight of elections in McHenry County. JOSEPH J. TIRIO is an officer of McHenry County.

3. Defendant, County of McHenry, is a unit of government situated within McHenry County, Illinois.

Received 07-24-2020 11:04 AM / Circuit Clerk Accepted on 07-24-2020 11:11 AM / Transaction #9875831 / Case #20CH000248

4. On or about June 12, 2020, the McHenry Township Board conducted its regularly scheduled meeting and therein approved a resolution to place upon the ballot a question concerning the elimination of McHenry Township effective February 8, 2021.

5. The specific language of the proposition to be placed on the ballot was:

> "Shall the McHenry Township together with any road districts wholly within the boundaries of McHenry Township, be dissolved on February 8, 2021 with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County? All funds of the dissolved township and dissolved road district shall be used solely on behalf of the residents of the geographic area within the boundaries of the dissolved township. Proceeds from the Sale of park land, cemetery land, buildings, or facilities after transfer to the county must be utilized for the sole benefit of the geographic area of the dissolved township. The McHenry county Board shall not extend a property tax levy that is greater than 90% of the property tax levy extended by the dissolved township or road district for the duties taken on by McHerny County – Yes -NO"

6. On or about June 29, 2020, the Clerk of McHenry Township delivered to the office of the McHenry County Clerk all documents necessary for placement of a proposition upon the ballot. Said documents included, *inter alia:* A) proof of filing a Certification of the Proposition to Dissolve McHenry Township; B) Certification of Resolution Number 1120068 concerning the resolution for a proposition to be placed on the ballot; and C) a Certification of Ballot.

7. On June 30, 2020, TIRIO objected to the initial filing on the basis that the language presented did not comply with the structure set forth in "section 1/24 1/24-30 of the McHenry Townships Code". However, there is no "McHenry Townships Code." In addition to the claim concerning the structure, TIRIO asserted that the referendum was in violation of the Election Code with citation to 10 ILCS 5/28-7. The stated reason was that the referendum was "the same" as a prior referendum to dissolve McHenry Township which purportedly appeared on the March 2020 Ballot.

Received 07-24-2020 11:04 AM / Circuit Clerk Accepted on 07-24-2020 11:11 AM / Transaction #9876831 / Case #20CH000248

8. In response to TIRIO'S letter of June 29, 2020 the McHenry Township Board held a meeting on July 6, 2020 to revise the language of the proposition to be submitted to the voters which read:

> "Shall the McHenry Township together with any road districts wholly within the boundaries of McHenry Township, be dissolved on February 8, 2021 with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County?
>
> Yes
>
> No"

9. On July 6, 2020, the second certification from the McHenry Township Clerk was delivered to the County Clerk for a referendum question to dissolve McHenry Township, effective February 8, 2021. To be placed on the November 2020 Ballot. This second resolution with the revised question was approved by the McHenry Township Board of Trustees at its meeting on July 6, 2020, pursuant to provisions in the Illinois Townships Code (60 ILCS 1/24-15 through 1/24-35) as acknowledged by TIRIO.

10. On or about July 6, 2020, the Clerk of McHenry Township delivered to the office of the McHenry County Clerk all documents necessary to have placed upon the ballot a referendum. Said documents included, *inter alia*: A) proof of filing a Certification of the Proposition to Dissolve McHenry Township; B) Certification of Resolution Number 1120068 concerning the resolution for a proposition to be placed on the ballot; and C) a Certification of Ballot.

11. The referendum question "arises" under the Township Code, as acknowledged by TIRIO in his July 7, 2020 letter, not the election code.

12. Again, TIRIO refused to place the proposition approved by the Trustees on the General Election ballot.

Received 07-24-2020 11:04 AM / Circuit Clerk Accepted on 07-24-2020 11:11 AM / Transaction #9875831 / Case #20CH000248

13. In a written explanation of the refusal to place the question as certified by the Township Clerk, McHenry County Clerk TIRIO explained on July 7, 2020 the following:

"Dear Mr. Aylward:

I am writing to acknowledge receipt on July 6, 2020, of a second certification from the McHenry Township Clerk's Office for a McHenry Township resolution for a referenda question to dissolve McHenry Township, effective February 8, 2021. This second resolution with a revised question was approved by the McHenry Township Board of Trustees at its meeting on July 6, 2020, pursuant to provisions in the Illinois Townships Code (60 ILCS 1/24-15 through 1/24-35). It was proposed for inclusion on the November 2020 General Election ballot for voters in McHenry Township. After reviewing the certification, the relevant sections of the Illinois Townships Code and the Illinois Election Code and, based on the authority granted election authorities in the Illinois Election Code (10 ILCS 5/28-5), I am writing to advise you that the proposed referendum question is prohibited and will not be placed on the November 2020 General Election ballot.

The question, as newly worded, no longer violates the form of the question standard provided in Section 1/24-30 of the McHenry Townships Code as did the first certified resolution and question originally received by the McHenry County Clerk on June 29, 2020. 60 ILCS 1/24-30. However, as also explained in the McHenry County Clerk's Office July 1, 2020, response to that first proposed question, a referenda question to dissolve the McHenry Township must also comply with the Illinois Election Code timing requirements.

The proposed dissolution referendum is prohibited from being printed on the November 2020 General Election so soon after it was printed on the March 2020 General Primary ballot. Section 1/24-15 of the Illinois Townships Code states that a proposition to dissolve a township which is submitted by a board of trustees of a township must be in accordance with the general election law. 60 ILCS 1/24-15. Section 5/28-7 of the Illinois Election Code provides that referenda pursuant to this Section (cases authorized by Article VII of the Illinois Constitution) may not be held more than once in any 23-month period on the same proposition. 10 ILCS 5/28-7. Section VII of the Illinois Constitution is the genesis of authority to dissolve a township when approved by a referenda in the area in which township officers are elected. Ill. Const.Art. VII, §5. Because the same proposition to dissolve McHenry Township appeared on the March 2020 General Primary ballot with the sole change being the effective date seven and one-half months later, this same question is prohibited from being placed on the ballot again for a period of 23 months. Otherwise, an effective date change of even a single day would undermine the intent of and make Section 5/28-7 completely ineffective.

For the above stated reason, the McHenry Township Board of Trustees' proposed referendum question to dissolve McHenry Township is prohibited from being placed on the November 2020 General Election ballot.

Sincerely,

Joseph J. Tirio McHenry County Clerk McHenry County Government Center 2200 N. Seminary Avenue Woodstock, Illinois 60098

14. However, the referendum proposition previously submitted by the electors of McHenry Township for consideration on the March 2020 Primary ballot was:

"Shall the McHenry Township together with any road districts wholly within the boundaries of McHenry Township, be dissolved on June 21, 2020 with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County?

Yes

No"

15. Review of the language of the March referendum reveals it is not the "same" as the question presented by the McHenry Township Board. The difference between the two propositions (March 2020 proposition vs. the petition submitted for the general election) can easily be found in the date that the respective petitions seek dissolution of McHenry Township. These two propositions call for dissolution in different years and thus are not the same proposition.

16. Defendant, TIRIO, exceeded his authority as the McHenry County Clerk when he looked past the face of the petition and elected to infer meaning to the intent of the statute inferring sameness, when his duty was limited to ascertaining if the language was the same or not. Since it was not the same language, the section of the election code relied upon by the Clerk is inapplicable.

17. The McHenry County Clerk lacks the power to decide issues of content for propositions. Even if the McHenry County Clerk had such a power, which he does not, the proposition associated with the March 2020 Primary ballot referendum was not the same as the referendum advanced in the present proposition.

Received 07-24-2020 11:04 AM / Circuit Clerk Accepted on 07-24-2020 11:11 AM / Transaction #9876831 / Case #20CH000248

18. The McHenry County Clerk has no constitutional, statutory, or other legal authority to make conclusions of law as it relates to a referendum being placed on the ballot.

19. Defendant, TIRIO'S, action in undertaking a content orientated objection to a question concerning the continued existence of a unit of government is not within the statutory powers of a County Clerk.

20. McHenry Township has a clear affirmative right to place a question to the people concerning its continued existence based upon the provisions of the Townships Act (Chapter 60 ILCS).

21. Defendant, TIRIO'S attempts to serve as an extra-judicial determinate of the law.

22. Without the issuance of a Writ of Mandamus, Plaintiff has no other mechanism to ensure that the People of McHenry Township decide the issue of whether or not McHenry Township is to continue as a public body on February 8, 2021.

23. There is no adequate remedy at law.

24. The McHenry County Clerk is a ministerial officer. His examination of an instrument is not content based but rather has an obligation only to look at the referendum question to ascertain if on its face it complies with the provisions for placement on the ballot. The McHenty County Clerk has no judicial power to interpret a statute.

WHEREFORE, Plaintiff, McHENRY TOWNSHIP, prays that this Honorable Court grant the following relief:

A. Issue a Writ of Mandamus compelling and ordering Defendants, County of McHenry and Joseph J. Tirio, McHenry County Clerk, to place upon the November 2020 ballot the following question to the voters of McHenry Township:

> "Shall the McHenry Township together with any road districts wholly within the boundaries of McHenry Township, be dissolved on February 8, 2021 with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County?
> Yes

No"

B. Enter a preliminary mandatory injunction commanding Defendants, County of McHenry and Joseph J. Tirio, McHenry County Clerk, to place upon the November 2020 ballot the following question to the voters of McHenry Township:

"Shall the McHenry Township together with any road districts wholly within the boundaries of McHenry Township, be dissolved on February 8, 2021 with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County?
Yes
No"

C. Enter a permanent mandatory injunction commanding Defendants, County of McHenry and Joseph J. Tirio, McHenry County Clerk, to place upon the November 2020 ballot the following question to the voters of McHenry Township:

"Shall the McHenry Township together with any road districts wholly within the boundaries of McHenry Township, be dissolved on February 8, 2021 with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County?
Yes
No"; and

D. For any such further relief as this Court deems equitable and just.

Dated this 23rd day of July, 2020.

Respectfully submitted,

McHENRY TOWNSHIP, Plaintiff

By: */s/Robert T. Hanlon*
Robert T. Hanlon, Plaintiff's Attorney

Robert T. Hanlon, Attorney No. 6286331
Law Offices of Robert T. Hanlon & Assoc., P.C.
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200; (815) 206-6184 (Fax)
robert@robhanlonlaw.com

Received 07-24-2020 11:04 AM / Circuit Clerk Accepted on 07-24-2020 11:11 AM / Transaction #9875831 / Case #20CH000248

SUMMONS – 30 DAY
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

(Name all parties)
McHENRY TOWNSHIP

Plaintiff(s)

vs.

COUNTY OF McHENRY AND
JOSEPH J. TIRIO, ET AL.,

Defendant(s)

Case Number 20CH000248

Amount Claimed $

SUMMONS

To each Defendant: COUNTY OF McHENRY, McHenry County Government Center,
2200 North Seminary Avenue, Woodstock, IL 60098

YOU ARE SUMMONED and required to file an answer in this case, or otherwise file your appearance, in the office of the Clerk of this court, McHenry County Government Center, 2200 N. Seminary Avenue, Woodstock, Illinois, 60098, within 30 days after service of this summons, not counting the day of service. **IF YOU FAIL TO DO SO, A JUDGMENT OR DECREE BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT.**

E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit http://efile.illinoiscourts.gov/service-providers.htm to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit http://www.illinoiscourts.gov/FAQ/gethelp.asp.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed. This summons may not be served later than 30 days after its date.

TWENTY-SECOND JUDICIAL CIRCUIT COURT McHENRY COUNTY ILLINOIS

Electronically Issued
DATE: 7/24/2020 10:41 AM
JBC

WI _____, 2020

Cle _____

Plaintiff's attorney or plaintiff if he is not represented by an attorney

Name Law Offices of Robert T. Hanlon
Attorney for Plaintiff
Address 131 East Calhoun Street
City, State Zip Woodstock, IL 60098
Telephone 815-206-2200
Email robert@robhanlonlaw.com

Prepared by Robert T. Hanlon
Attorney Registration No. 6286331

C 13

Sheriff of McHenry County, Woodstock, IL

2200 N Seminary Ave, Woodstock, IL 60098 (815) 334-4720

Civil Process Proof of Service

Court Case Number: 20CH248	Civil Paper Number: CV-20-003723
Case Name: MCHENRY TOWNSHIP VS COUNTY OF MCHENRY ET AL	
Court: MCHENRY COUNTY GOVERNMENT CENTER	
Paper Type: SUMMONS/COMPLAINT - OTHER	

Business Name: COUNTY OF MCHENRY
Contact Name:
Address: 2200 N SEMINARY AVE , WOODSTOCK, ILLINOIS 60098

Service Information

Date/Time:	Status:	Service Type:	Related To:
07/30/2020 09:38	Served	CORPORATE	COUNTY OF MCHENRY : Defendant

Comments:
SERVED TO CAROLYN GROBE, MCHENRY COUNTY STATE'S ATTORNEY LEGAL ADMINISTRATIVE SPECIALIST, AGE-63 W/F

Serving Officer Name:
LANG, WALTER SO6697

Deputy Signature:

Fee Information

Fee Type	Rate	Quantity	Fee Amount	Fee Date
50.1 NO FEES	$31.65	1	$31.65	7/29/2020
MILEAGE	$6.00	1	$6.00	7/29/2020

Total Fees	Total Payments	Total Balance
$37.65	$37.65	$0.00

** FILED ** Env: 9977667
McHenry County, Illinois
20CH000248
Date: 8/3/2020 3:26 PM
Katherine M. Keefe
Clerk of the Circuit Court

SUMMONS – 30 DAY
IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

(Name all parties)
McHENRY TOWNSHIP

Plaintiff(s)

vs.

COUNTY OF McHENRY AND
JOSEPH J. TIRIO, ET AL.,
Defendant(s)

Case Number 20CH000248

Amount Claimed $

SUMMONS

To each Defendant: JOSEPH J. TIRIO, McHenry County Clerk,
2200 North Seminary Avenue, Woodstock, IL 60098

YOU ARE SUMMONED and required to file an answer in this case, or otherwise file your appearance, in the office of the Clerk of this court, McHenry County Government Center, 2200 N. Seminary Avenue, Woodstock, Illinois, 60098, within 30 days after service of this summons, not counting the day of service. **IF YOU FAIL TO DO SO, A JUDGMENT OR DECREE BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT.**

E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit http://efile.illinoiscourts.gov/service-providers.htm to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit http://www.illinoiscourts.gov/FAQ/gethelp.asp.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed. This summons may not be served later than 30 days after its date.

TWENTY-SECOND JUDICIAL CIRCUIT COURT McHENRY COUNTY ILLINOIS

DATE: 7/24/2020 10:41 AM Electronically Issued

JBC

2020

Plaintiff's attorney or plaintiff if he is not represented by an attorney

Name Law Offices of Robert T. Hanlon
Attorney for Plaintiff
Address 131 East Calhoun Street
City, State Zip Woodstock, IL 60098
Telephone 815-206-2200
Email robert@robhanlonlaw.com

Prepared by Robert T. Hanlon
Attorney Registration No. 6286331

Received 07-24-2020 11:04 AM / Circuit Clerk Accepted on 07-24-2020 11:11 AM / Transaction #9875831 / Case #20CH000248
Page 1 of 2
Received 08-03-2020 03:48 PM / Circuit Clerk Accepted on 08-03-2020 04:17 PM / Transaction #9977667 / Case #20CH000248
Page 1 of 2

C 15

Sheriff of McHenry County, Woodstock, IL

2200 N Seminary Ave, Woodstock, IL 60098 (815) 334-4720

Civil Process Proof of Service

Court Case Number: 20CH248	Civil Paper Number: CV-20-003721
Case Name: MCHENRY TOWNSHIP VS MCHENRY COUNTY CLERK JOSEPH J TIRIO ET AL	
Court: MCHENRY COUNTY GOVERNMENT CENTER	
Paper Type: SUMMONS/COMPLAINT - OTHER	

Business Name: MCHENRY COUNTY CLERK
Contact Name: JOSEPH J TIRIO
Address: 667 WARE ROAD , WOODSTOCK, ILLINOIS 60098

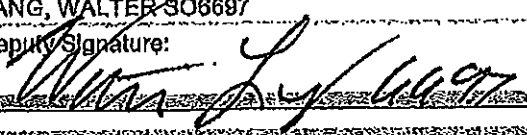
Service Information

Date/Time:	Status:	Service Type:	Related To:
07/30/2020 09:20	Served	CORPORATE	MCHENRY COUNTY CLERK : Defendant

Comments:
SERVED TO JOE TIRIO, COUNTY CLERK, AGE-64 W/M

Serving Officer Name:
LANG, WALTER-SO6697

Deputy Signature:



Fee Information

Fee Type	Rate	Quantity	Fee Amount	Fee Date
60.1 NO FEES	$31.65	1	$31.65	7/29/2020
MILEAGE	$6.00	1	$6.00	7/29/2020

Total Fees	Total Payments	Total Balance
$37.65	$37.65	$0.00

** FILED ** Env: 10003060
McHenry County, Illinois
20CH000248
Date: 8/5/2020 11:41 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHENRY TOWNSHIP,	)	
	)	
Plaintiff,	)	
Vs.	)	No. 20 CH 248
	)	
COUNTY OF McHENRY and JOSEPH J. TIRIO, not individually, but in his official Capacity as the McHenry County Clerk,	)	
	)	
Defendants.	)	

APPEARANCE

The undersigned, Carla N. Wyckoff, Assistant State's Attorney, enters her appearance on behalf of The County of McHenry and Joseph J. Tirio, McHenry County Clerk.

/s/ Carla N. Wyckoff
Carla N. Wyckoff
Assistant State's Attorney

Patrick D. Kenneally
McHenry County State's Attorney
Carla N. Wyckoff (6217072)
McHenry County Assistant State's Attorney
2200 N. Seminary Avenue
Woodstock, IL 60098
(815)334-4149
cnwyckoff@mchenrycountyil.gov

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248

CERTIFICATE OF SERVICE

I, Susan Rouse, the undersigned, a non-attorney, hereby certify that a copy of **Carla N. Wyckoff's Appearance** was served on

Robert T. Hanlon
Law Offices of Robert T. Hanlon & Associates
131 E. Calhoun St.
Woodstock, IL 60098
robert@robhanlonlaw.com

by emailing a copy to the email address listed above, on or before the hour of 4:30 p.m., on August 5, 2020.

/s/ Susan Rouse
Susan Rouse

** FILED ** Env: 10003060
McHenry County, Illinois
20CH000248
Date: 8/5/2020 11:41 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHENRY TOWNSHIP,	)	
	)	
Plaintiff,	)	
Vs.	)	No. 20 CH 248
	)	
COUNTY OF McHENRY and JOSEPH J. TIRIO, not individually, but in his official Capacity as the McHenry County Clerk,	)	
	)	
Defendants.	)	

APPEARANCE

The undersigned, Norman Vinton, Assistant State's Attorney, enters his appearance on behalf of The County of McHenry and Joseph J. Tirio, McHenry County Clerk.

/s/ Norman Vinton
Norman Vinton
Assistant State's Attorney

Patrick D. Kenneally
McHenry County State's Attorney
Norman Vinton, Chief, Civil Division (6204721)
McHenry County Assistant State's Attorney
2200 N. Seminary Avenue
Woodstock, IL 60098
(815)334-4149
ndvinton@mchenrycountyil.gov

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248

CERTIFICATE OF SERVICE

I, Susan Rouse, the undersigned, a non-attorney, hereby certify that a copy of **Norman Vinton's Appearance** was served on

Robert T. Hanlon
Law Offices of Robert T. Hanlon & Associates
131 E. Calhoun St.
Woodstock, IL 60098
robert@robhanlonlaw.com

by emailing a copy to the email address listed above, on or before the hour of 4:30 p.m., on August 5, 2020.

/s/ Susan Rouse
Susan Rouse

** FILED ** Env: 10003060
McHenry County, Illinois
20CH000248
Date: 8/5/2020 11:41 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHENRY TOWNSHIP,	)	
	)	
Plaintiff,	)	
Vs.	)	No. 20 CH 248
	)	
COUNTY OF McHENRY and JOSEPH J. TIRIO, not individually, but in his official Capacity as the McHenry County Clerk,	)	
	)	
Defendants.	)	

NOTICE OF MOTION

TO: ROBERT T. HANLON
LAW OFFICES OF ROBERT T. HANLON & ASSOCIATES
131 E. CALHOUN ST.
WOODSTOCK, IL 60098
robert@robhanlonlaw.com

PLEASE TAKE NOTICE that on **August 10, 2020 at 9:45 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before Judge Michael J. Chmiel in Court Room 202 of the McHenry County Circuit Court, 2200 N. Seminary Avenue, Woodstock, IL 60098, and then and there present **McHenry County's Motion to Dismiss Petition for Mandamus**, a copy of which is attached hereto and hereby served upon you and request an expedited briefing schedule and hearing date.

/s/ Carla N. Wyckoff
Carla N. Wyckoff
Assistant State's Attorney

Patrick D. Kenneally, McHenry County State's Attorney
Carla N. Wyckoff (6217072)
Norman D. Vinton (6204721)
McHenry County Assistant State's Attorneys
2200 N. Seminary Avenue
Woodstock, IL 60098
(815)334-4159 (phone)
(815)334-0872 (fax)
cnwyckoff@mchenrycountyil.gov
ndvinton@mchenrycountyil.gov

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248

CERTIFICATE OF SERVICE

I, Susan Rouse, the undersigned, a non-attorney, hereby certify that the Defendant's Motion to Dismiss Petition for Mandamus was served on:

Robert T. Hanlon
Law Offices of Robert T. Hanlon & Associates
181 E. Calhoun St.
Woodstock, IL 60098
robert@robhanlonlaw.com

via email, to the email address listed above, before the hour of 4:30 p.m., on August 5, 2020.

/s/ Susan Rouse
Susan Rouse

** FILED ** Env: 10003060
McHenry County, Illinois
20CH000248
Date: 8/5/2020 11:41 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)SS
COUNTY OF MCHENRY)

IN THE CURCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT, MCHENRY COUNTY, ILLINOIS

MCHENRY TOWNSHIP,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	20 CH 248
COUNTY OF MCHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE MCHENRY COUNTY CLERK,	)	
	)	
DEFENDANTS.	)	

RESPONDENT MCHENRY COUNTY CLERK, JOSEPH TIRIO'S MOTION TO DISMISS PETITION FOR MANDAMUS PURSUANT TO 735 ILCS 5/2-619.5

Respondent Joseph J. Tirio, McHenry County Clerk by and through his attorneys, State's Attorney Patrick D. Kenneally and his duly appointed assistants Norman D. Vinton, Chief, Civil Division, McHenry County State's Attorney's Office and Carla N. Wyckoff, pursuant to 735 ILCS 5/2-619.1, hereby move to dismiss the Petition for Mandamus and in support thereof states as follows:

1. A combined Section 2-615 and Section 2-619 Motion to Dismiss is properly brought pursuant to Section 2-619.1. 735 ILCS 5/2-619.1.

2. A Section 2-615 motion is a challenge asserting that the complaint fails to state a cause of action upon which relief can be granted. *Sherman v. Indian Trails Public Library District,* 363 Ill.Dec. 864, 975 N.E.2d 1173 (1st Dist. 2012).

3. The proper question is whether the well-pleaded facts of the complaint, taken as true and construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Loman v. Freeman,* 229 Ill.2d 104, 890 N.E.2d 542 (2008). However, a court should not accept as true, conclusions of law or conclusions of fact unsupported by allegations of specific facts upon which conclusions rest. *Dietz v. Illinois Bell Telephone Co.,* 154 Ill.App.3d 554, 507 N.E.2d 24 (1st Dist. 1987).

4. A Section 2-619 motion admits the legal sufficiency of a complaint and raises defects, defenses or other affirmative matter that defeats the claim. *Krilich v. American National Bank & Trust Co.,* 334 Ill.App.3d 554, 778 N.E.2d 1153 (2nd Dist. 2002).

5. "The term 'affirmative matter' as used in section 2-619(a)(9) has been defined as a type of defense that either negates an alleged cause of action completely or refutes crucial conclusions of law or conclusions of material fact unsupported by allegations of specific fact contained in or inferred from the complaint. *Krilich,* 334 Ill.App3d at 570.

6. A writ of mandamus commands a public officer to perform an official, nondiscretionary duty that the petitioner is entitled to have performed and that the

officer has failed to perform. *Chicago Bar Association v. Illinois State Board of Elections,* 161 Ill.2d 502, 641 N.E.2d 525 (1994).

7. Mandamus is appropriate only where there is a clear right to the requested relief, a clear duty to respondent to act and clear authority in respondent to act. *Owen v. Board of Education of Kankakee School District No. 111,* 261 Ill.App.3d 298, 632 N.E.2d 1073 (3rd Dist. 1994).

8. Section 5/28-7 of the Illinois Election Code prohibits the same public question that is authorized by Article VII of the Illinois Constitution from appearing on the ballot for voter decision within any 23-month period. 10 ILCS 5/28-7.

9. Section 28-5 of the Illinois Election Code authorizes county clerks as election authorities to notify local election officials if they receive a certified public question which is prohibited from being on the ballot and then the local election officials advise the governing board members who initiated the resolution or ordinance. 10 ILCS 5/28-5.

10. When taking all well-pleaded facts as true, the Petition fails to state a claim for mandamus because it fails to cite any valid legal authority which would impose a duty on Respondent to provide the relief sought.

11. Dismissal pursuant to Section 2-615 is proper because Petitioner has failed to provide any legal authority or to state a claim upon which relief may be granted.

12. Dismissal pursuant to Section 2-619 is also proper because the McHenry Township proposal to dissolve McHenry Township is the same as the proposal to dissolve McHenry Township that appeared on the March 2020 Primary Ballot and,

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248

therefore, the McHenry County Clerk had the statutory duty to prohibit McHenry Township's June 12/July 6, 2020 proposals from being printed on the November 2020 General Election ballot pursuant to Section 28-7 of the Illinois Election Code (10 ILCS 5/28-7) and to effect notification to the local election official, McHenry Township Clerk Dan Aylward, according to the requirements of Section 28-5 of the Illinois Election Code. 10 ILCS 5/28-5.

13. The reasons and authorities in support of this motion are contained in the accompanying Memorandum in Support of Respondent's Motion to Dismiss Petition for Writ of Mandamus pursuant to 735 ILCS 5/2-615/619.

WHEREFORE, Respondents McHenry County Clerk, Joseph J. Tirio and McHenry County request this Court to deny any relief sought and to dismiss the Petition for Mandamus with prejudice and grant Respondent whatever relief the Court deems just.

COUNTY OF McHENRY

JOSEPH J. TIRIO,
McHenry County Clerk

/s/ Norman D. Vinton
Norman D. Vinton, Chief, Civil Division
McHenry County State's Attorney's Office

/s/ Carla N. Wyckoff
Carla N. Wyckoff, ASA
McHenry County State's Attorney's Office

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248

Prepared by:
Carla N. Wyckoff, ASA, ARDC #6217072
McHenry County State's Attorney's Office
2200 N. Seminary Ave.
Woodstock, IL 60098
815-334-4146
cnwyckoff@mchenrycountyil.gov

** FILED ** Env: 10003060
McHenry County, Illinois
20CH000248
Date: 8/5/2020 11:41 AM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)SS
COUNTY OF MCHENRY)

IN THE CURCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT, MCHENRY COUNTY, ILLINOIS

MCHENRY TOWNSHIP,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	
	)	20 CH 248
COUNTY OF MCHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE MCHENRY COUNTY CLERK,	)	
	)	
DEFENDANTS.	)	

RESPONDENT'S MEMORANDUM IN SUPPORT OF HIS MOTION TO DISMISS PETITION FOR MANDAMUS PURSUANT TO 735 ILCS 5/2-619.5

Background

Petitioner alleges that Respondent Tirio refused to place the June 12, 2020, McHenry Township Trustee-approved proposition on the November 2020 General Election ballot which would have asked the voters if the McHenry Township and road districts wholly within the McHenry Township should be dissolved, effective February 8, 2021, because the language did not meet the wording requirement in the Illinois Townships Code nor the timing restrictions in the Illinois Election Code. Petitioner's Complaint for Writ of Mandamus ¶7.

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248
Page 1 of 11

Petitioner further alleges that Defendant Tirio's actions exceeded his authority in the ministerial position of an elected county clerk by (1) looking past the face of the petition and doing further investigation to conclude that the proposed question was the same as the McHenry Township dissolution question that appeared on the March 2020 Primary Ballot; (2) that the questions are not actually the same since the newly proposed question has an effective date to dissolve McHenry Township that is eight (8) months beyond the dissolution date of the question that was on the ballot at the March 2020 Primary ballot; and (3) that a ministerial county clerk does not have authority to prohibit the question from being placed on the ballot. Petitioner's Complaint for Writ of Mandamus, ¶¶ 15 – 24.

The specific language of the McHenry Township June 12, 2020, proposition proposed for the ballot was as follows:

> "Shall the McHenry Township together with any road districts wholly within the boundaries of McHenry Township, be dissolved on February 8, 2021, with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County? All funds of the dissolved township and dissolved road district shall be used solely on behalf of the residents of the geographic area within the boundaries of the dissolved township. Proceeds from the sale of park land, cemetery land, buildings or facilities after transfer to the county must be utilized for the sole benefit of the geographic area of the dissolved township. The McHenry County Board shall not extend a property tax levy that is greater than 90% of the property

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003080 / Case #20CH000248
Page 2 of 11

tax levy extended by the dissolved township or road district for the duties taken on by McHenry County." Petitioner's Complaint for Writ of Mandamus, ¶5.

Respondent Tirio's June 30, 2020 letter to the Petitioner explained that the question was prohibited from appearing on the November 2020 ballot for two reasons: (1) that the wording of the question did not meet the substantial form requirement articulated in Section 24-25 of the Illinois Townships Code (60 ILCS 51/24-25); and (2) that the same proposition to dissolve McHenry Township had already appeared on the March 2020 Primary Ballot, which is just less than eight (8) months prior to the November 2020 General Election in violation of the 23-month timing restriction in Section 28-7 of the Illinois Election Code. 10 ILCS 5/28-7. Petitioner's Complaint for Writ for Mandamus, ¶7. Section 28-7 forbids the same referenda, albeit with a different effective date, from being placed on another election ballot within 23 months.

Subsequently, on July 6, 2020, Petitioner submitted to Respondent an amended version of the original proposed referendum question to dissolve McHenry Township that was worded as follows: "Shall the McHenry Township together with any road districts wholly within the boundaries of McHenry Township, be dissolved on February 8, 2021, with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County?" Petitioner's Complaint for Writ of Mandamus, ¶8. Respondent reviewed the McHenry Township referenda question that was printed on the March 2020

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248
Page 3 of 11

Primary Ballot and determined that the two questions are the same. The March 2020 Primary Ballot question was worded as follows: "Shall the McHenry Township, together with any road districts wholly within the boundaries of McHenry Township, be dissolved on June 21, 2020, with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County?" Petitioner's Complaint for Writ of Mandamus, ¶ 14.

Respondent followed the second submission with a second letter on July 7, 2020 (presented in its entirety in Petitioner's Complaint for Writ of Mandamus, ¶13), explaining that, despite the amended proposition that did render the question in compliance with the Illinois Townships Code Section 24-30 (60 ILCS 1/24-30) wording requirement, the question would still not be placed on the November 2020 General Election ballot due to the 23-month timing restriction pursuant to Section 28-7 of the Illinois Election Code. 10 ILCS 5/28-7.

Argument

A combined Section 2-615 and Section 2-619 Motion to Dismiss is properly brought pursuant to Section 2-619.1. 735 ILCS 5/2-619.1. A Section 2-615 motion is a challenge asserting that the complaint fails to state a cause of action upon which relief can be granted. *Sherman v. Indian Trails Public Library District,* 363 Ill.Dec. 864, 975 N.E.2d 1173 (1st Dist. 2012). The proper question is whether the well-pleaded facts of the complaint, taken as true and construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Loman v. Freeman,* 229 Ill.2d 104, 890 N.E.2d 542 (2008). However, a

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248
Page 4 of 11

court should not accept as true, conclusions of law or conclusions of fact unsupported by allegations of specific facts upon which conclusions rest. *Dietz v. Illinois Bell Telephone Co.,* 154 Ill.App.3d 554, 507 N.E.2d 24 (1st Dist. 1987).

A Section 2-619 motion admits the legal sufficiency of a complaint and raises defects, defenses or other affirmative matter that defeats the claim. *Krilich v. American National Bank & Trust Co.,* 334 Ill.App.3d 554, 778 N.E.2d 1153 (2nd Dist. 2002). "The term 'affirmative matter' as used in section 2-619(a)(9) has been defined as a type of defense that either negates an alleged cause of action completely or refutes crucial conclusions of law or conclusions of material fact unsupported by allegations of specific fact contained in or inferred from the complaint." *Krilich,* 334 Ill.App.3d at 570.

A writ of mandamus commands a public officer to perform an official, nondiscretionary duty that the petitioner is entitled to have performed and that the officer has failed to perform. *Chicago Bar Association v. Illinois State Board of Elections,* 161 Ill.2d 502, 641 N.E.2d 525 (1994). Mandamus is appropriate only where there is a clear right to the requested relief, a clear duty to respondent to act and clear authority in respondent to act. *Owen v. Board of Education of Kankakee School District No. 111,* 261 Ill.App.3d 298, 632 N.E.2d 1073 (3rd Dist. 1994).

I. The Election Code prohibits the Clerk from placing the same public question on the ballot prior to 23 months after it was submitted to the electorate.

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248
Page 6 of 11

Article VII of the Illinois Constitution authorizes local (which includes townships, as defined in Article VII, §1) elected official selection methods and government structure to be established and/or changed by referendum of the applicable group of voters. Ill.Const.Art.VII, §§1, 2, 3, 4 and 5. The Illinois Townships Code and the Election Code detail the referenda procedures. Section 24-15 of the Illinois Townships Code authorizes the board of trustees of any township located in McHenry County to submit a proposition to dissolve the township to the electors at the next election *"in accordance with the general election law." 60 ILCS 1/24-15 (Emphasis added).* This affirms that the authorizing provision in the Illinois Townships Code is to be taken together with the Illinois Election Code to effect these dissolution referenda questions. Section 24-30 of the Illinois Townships Code requires that the question be stated in substantially the form as listed in the statute. 60 ILCS 1/24-30. Section 28-7 of the Illinois Election Code states that referenda propositions authorized by Article VII of the Illinois Constitution may not be placed on the ballot more than once in any 23-month period. 10 ILCS 5/28-7.

According to the Illinois Election Code, "[e]lection authority means a county clerk..." (10 ILCS 5/1-3(8)); and, "...the county clerks, in their respective counties, shall have charge of the printing of the ballots for all elections, including referenda..." 10 ILCS 5/16-5. Based on his statutory duties, Respondent Tirio is imbued with knowledge of the content of all ballots, including referenda questions and cannot ignore this direct knowledge inuring from his duty to print ballots. Determining that the two questions at issue are the same did not require discretion

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248
Page 6 of 11

or investigation beyond facial review, as the wording is identical except for the effective date if the question were to pass. Based on Petitioner's argument, even a day's difference in the effective date would allow a finding that questions with the same substantive content are different for purposes of ballot placement. To allow this anomaly would undermine the purpose of the statute and the intent of the legislature to limit questions resulting in substantial government and elected official reforms to a more measured timetable and opportunity for consideration—thus the once in 23 months ballot placement limitation.

Further, Petitioner ignores specific statutory authority for a county clerk to advise local officials that a referenda question is prohibited. Referenda questions may be placed on the ballot by either signed petitions (10 ILCS 5/28-2(a)) or resolutions/ordinances of governing boards of political subdivisions (10 ILCS 5/28-2(c). *Petitions* that generate referenda ballot placement are subject to the same objection procedures that apply to candidate nominating petitions. 10 ILCS 5/28-4. These same petition objection procedures, however, do not apply to governing board resolutions or ordinances to place referenda questions on the ballot. But, the Illinois Election Code does provide a specific procedure for the election authority to address possible issues with ballot placement that are not subject to statutory objection procedures. Section 28-5 states that,

> "[w]henever...an election authority or the State Board of Elections is in receipt of ...a certification for the submission of a public question at an election at which the public question may not be placed on the ballot....such

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248
Page 7 of 11

officer or board shall give notice of such prohibition by registered mail, as follows:.....(b) in the case of a certificate from a local election authority, to such election authority, who shall thereupon give notice as provided in subparagraph (a)[in the case of a petition], or notify the governing board which adopted the initiating resolution or ordinance..." 10 ILCS 5/28-5.

As stated above, Section 28-7 provides that any referenda authorized by Article VII of the Illinois Constitution, "...may not be held more than once in any 23-month period on the same proposition..." 10 ILCS 5/28-7. Petitioner's referenda question to dissolve McHenry Township is authorized by Article VII of the Illinois Constitution and is the identical question to dissolve McHenry Township that appeared on the March 2020 Primary Election Ballot. The only difference between the questions is the effective date which is obviously required since the effective date is triggered by statutory requirement that it occur not less than 90 days after it is voted on and approved at the election. 60 ILCS 1/24-20.

The referenda question as it appeared on the March 2020 Primary Election Ballot was worded as follows:

"Shall the McHenry Township, together with any road districts wholly within the boundaries of McHenry Township, be dissolved on June 21, 2020, with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County?"

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248
Page 8 of 11

The referenda question as it is proposed by McHenry Township to be placed on the November 2020 General Election Ballot is worded as follows:

> "Shall the McHenry Township, together with any road districts wholly within the boundaries of McHenry Township, be dissolved on February 8, 2021, with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County?"

It is clear from a facial, cursory glance that the two questions are identical. The only difference is the effective date. This effective date difference is obviously a detail, unrelated to the substance of the question, which must naturally be adjusted based on the timing of the election at which the question may be printed on the ballot. This dissolution date is dictated by Section 24-20 of the Illinois Townships Code which requires that it be at least 90 days after the date of the election at which the referenda is to be voted on. 60 ILCS 1/24-20. The different effective dates do not render these different questions. The proposals to dissolve McHenry Township are exactly the same, therefore, the McHenry Township July 6, 2020, proposed question is prohibited from being on the November 2020 General Election due to the "only once in any 23-month period" restriction pursuant to Section 28-7 of the Illinois Election Code. 10 ILCS 5/28-7.

The duties of a county clerk's position specifically required the McHenry County Clerk's action to preclude the McHenry Township's June 12/July 6, 2020, proposed question to dissolve McHenry Township from the November 2020 General Election Ballot. Because referenda questions to restructure government entities or

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248
Page 9 of 11

elected positions that are authorized by Article VII of the Illinois Constitution are limited to ballot placement only once in any 23-month period, the McHenry County Clerk was required to prohibit McHenry Township's June 12/July 6, 2020 proposals from being printed on the November 2020 General Election ballot. The notification of this prohibition to the local election official, McHenry Township Clerk Dan Aylward, was effected according to the requirements of Section 28-5 of the Illinois Election Code. 10 ILCS 5/28-5.

When taking all well-pleaded facts as true, the Petition fails to state a claim for mandamus because it fails to cite any valid legal authority which would impose a duty on Respondent to provide the relief sought. Dismissal pursuant to Section 2-615 is proper because Petitioner has failed to provide any legal authority or to state a claim upon which relief may be granted.

Dismissal pursuant to Section 2-619 is also proper because the McHenry Township proposal to dissolve McHenry Township is the same as the proposal to dissolve McHenry Township that appeared on the March 2020 Primary Ballot and, therefore, the McHenry County Clerk had the administrative and statutory duty to prohibit McHenry Township's June 12/July 6, 2020 proposals from being printed on the November 2020 General Election ballot pursuant to Section 28-7 of the Illinois Election Code (10 ILCS 5/28-7) and to effect notification to the local election official, McHenry Township Clerk Dan Aylward, according to the requirements of Section 28-5 of the Illinois Election Code. 10 ILCS 5/28-5.

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248
Page 10 of 11

WHEREFORE, Respondents McHenry County Clerk, Joseph J. Tirio and McHenry County request this Court to deny any relief sought and to dismiss the Petition for Mandamus.

COUNTY OF McHENRY

JOSEPH J. TIRIO,
McHenry County Clerk

/s/ Norman D. Vinton
Norman D. Vinton, Chief, Civil Division
McHenry County State's Attorney's Office

/s/ Carla N. Wyckoff
Carla N. Wyckoff, ASA
McHenry County State's Attorney's Office

Prepared by:
Carla N. Wyckoff, ASA, ARDC #6217072
McHenry County State's Attorney's Office
2200 N. Seminary Ave.
Woodstock, IL 60098
815-334-4146
cnwyckoff@mchenrycountyil.gov

Received 08-05-2020 11:53 AM / Circuit Clerk Accepted on 08-05-2020 12:00 PM / Transaction #10003060 / Case #20CH000248
Page 11 of 11

** FILED ** Env: 10047537
McHenry County, Illinois
20CH000248
Date: 8/10/2020 11:37 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHENRY TOWNSHIP, PLAINTIFF,	)	
V.	)	Case No. 20 CH 000248
COUNTY OF MCHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE McHENRY COUNTY CLERK, Defendants.	)	

NOTICE OF MOTION

TO: Carla N. Wyckoff & Norman D. Vinton
Patrick D. Kenneally, McHenry County State's Attorney
2200 North Seminary Avenue
Woodstock, IL 60098
(815)334-4149
cnwyckoff@mchenrycountyil.gov; ndvinton@mchenrycountyil.gov

On August 11, 2020 at 9:45 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Michael J. Chmiel or any Judge sitting in his stead, in the courtroom usually occupied by him, Courtroom 202, in the McHenry County Government Center, 2200 Seminary, Woodstock, Illinois, and shall then and there present the attached ***Motion for Substitution of Judge as a Matter of Right.***

McHenry Township, Plaintiff

By: */s/ Robert T. Hanlon*
Robert T. Hanlon, Plaintiff's Attorney

PROOF OF SERVICE

I, Robert T. Hanlon, an attorney, on oath, state that I served a copy of Plaintiff's ***Motion for Substitution of Judge as a Matter of Right,*** upon the above referenced attorneys at their respective addresses, via electronic filing and electronic mail to the e-mail addresses above, on this 13th day of August, 2020.

s/ Robert T. Hanlon

Robert T. Hanlon, Attorney No. 6286331
Law Offices of Robert T. Hanlon & Assoc., P.C.
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200; (815) 206-6184 (Fax)
robert@robhanlonlaw.com

Received 08-10-2020 01:12 PM / Circuit Clerk Accepted on 08-10-2020 01:35 PM / Transaction #10047537 / Case #20CH000248

** FILED ** Env: 10047537
McHenry County, Illinois
20CH000248
Date: 8/10/2020 11:37 AM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHENRY TOWNSHIP, PLAINTIFF, V. COUNTY OF MCHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE McHENRY COUNTY CLERK, Defendants.	)	Case No. 20 CH 248

MOTION FOR SUBSTITUTION OF JUDGE AS A MATTER OF RIGHT

NOW COMES, Plaintiff, McHenry Township, by and through its attorney, Robert Hanlon, LAW OFFICES OF ROBERT T. HANLON & ASSOCIATES, PC, and moves this Court for an order substituting the Judge pursuant to Rule 735 ILCS 5/2 1101, and states as follows:

1. That this case, 20 CH 248, was filed by on July 24, 2020 in the 22nd Judicial Circuit in McHenry County, Illinois.

2. That Rule 735 ILCS 5/2 1101(2) allows for a substitution of judge as a right so long as the motion for substitution takes place before a trial or hearing has taken place and before the judge has ruled on any substantial issues in the case.

3. That in this case, Judge Chmiel has not ruled on any substantial issues nor has there been a trial or hearing before this Judge.

WHEREFORE, the plaintiff, McHenry Township, prays that this Honorable Court grants her the following relief:

Received 08-10-2020 01:12 PM / Circuit Clerk Accepted on 08-10-2020 01:35 PM / Transaction #10047637 / Case #20CH000248

A. A substitution of judge be granted.

Respectfully submitted,

By: /s/Robert T. Hanlon
Robert T. Hanlon, one of
Plaintiff's attorneys

Robert T. Hanlon, ARDC #6286331
Law Offices of Robert T. Hanlon & Assocs., P.C.
Attorney for Defendant Ann Taylor
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200
(815) 206-6184 (FAX)

Received 08-10-2020 01:12 PM / Circuit Clerk Accepted on 08-10-2020 01:35 PM / Transaction #10047637 / Case #20CH000248

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHenry Township
vs.
County of McHenry and Joseph J. Tirio

Case No. 20 CH 248

~~ORDER OF RECUSAL OR~~ ORDER FOR SUBSTITUTION OF JUDGE

Reason for Reassignment:

☒ Motion for Substitution of Judge: ☒ by Right ~~by~~ Pl. ☐ for Cause

☐ Recusal/Judicial Conflict (Reason): _____

☐ Other: _____

IT IS ORDERED: that the above entitled case is referred to the office of the Chief Judge for reassignment.

Dated: 8-11-20

JUDGE

ORDER OF REASSIGNMENT

This cause being referred to the office of the Chief Judge for random selection of a judge; IT IS HEREBY ORDERED that pursuant to assignment by the office of the Chief Judge this cause is reassigned for

☒ Assigned to the Civil Division, Courtroom 204
(Judge Kevin G. Costello, currently assigned to that division/courtroom)

☐ Assigned to the Honorable _____

☐ Case transferred to the Chief Judge for reassignment of a judge outside of McHenry County.

Dated: 8-11-20

JAMES S. COWLIN, Chief Judge

Proof of Service
The undersigned certifies that a copy of the foregoing document was served upon all parties of record by way of mail, fax or hand delivery on:

_____

C 42

IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHENRY TOWNSHIP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 20 CH 248
	)	
COUNTY OF McHENRY, ET AL.,	)	
	)	
Defendants.	)	

ORDER

This case came before the Court on August 10, 2020, pursuant to notice. The parties appeared in open court through counsel. Through counsel, the Plaintiff indicated a desire to move for substitution of judge. After discussion, and understanding the motion, if any, would be filed by afternoon of August 10, the Court discussed with the parties their availability to return on August 11.

Accordingly, IT IS ORDERED, ADJUDGED and DECREED that this case is continued to August 11, 2020, at 9:45 a.m. for consideration of any motion which may be filed in the afternoon of August 10, and for action and further scheduling as is appropriate.

ENTERED:

eSigned by MICHAEL J. CHMIEL 08/10/2020 14:50:54 YfuOzHvy

Michael J. Chmiel
Circuit Judge

STATE OF ILLINOIS)
)SS
COUNTY OF MCHENRY)

IN THE CUROUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT, MCHENRY COUNTY, ILLINOIS

MCHENRY TOWNSHIP,	
PLAINTIFF,	
v.	20 CH 248
COUNTY OF MCHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE MCHENRY COUNTY CLERK,	
DEFENDANTS.	

ORDER

This case coming to be heard on Defendant's Motion to Dismiss Plaintiff's Complaint for Writ of Mandamus and after Plaintiff's Motion for Substitution of Judge and Reassignment to this Court, all Parties represented and present and all matters considered, this COURT HEREBY ORDERS THAT:

1. Plaintiff will file a Response to Defendant's Motion to Dismiss Writ of Mandamus on Wednesday, August 19, 2020; and

2. Defendant will file a Reply to Plaintiff's Response to Defendant's Motion to Dismiss Writ of Mandamus on Thursday, August 20, 2020; and

3. A hearing is scheduled on these matters on Friday, August 21, 2020, at 10:45 a.m. in Courtroom 202, McHenry County Government Center, 2200 N. Seminary Ave., Woodstock, IL 60098.

Date: August 11, 2020

Judge

C 44

Robert T. Hanlon, Attorney for Plaintiff

Carla N. Wyckoff, Attorney for Defendants

Order Prepared By:
Carla N. Wyckoff, ASA, ARDC No. 6217072
McHenry County State's Attorney's Office
2200 N. Seminary Ave.
Woodstock, IL 60098
815-334-4146 (Tel)
cnwyckoff@mchenrycountyil.gov

** FILED ** Env: 10164638
McHenry County, Illinois
20CH000248
Date: 8/19/2020 10:25 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHENRY TOWNSHIP,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	Case No. 20 CH 248
	)	
COUNTY OF MCHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE McHENRY COUNTY CLERK,	)	
	)	
Defendants.	)	

NOTICE OF FILING

To: Carla N. Wyckoff, ASA, & Norman Vinton, ASA
McHenry County State's Attorney's Office
2200 N. Seminary Ave.
Woodstock, IL 60098
815-334-4146
cnwyckoff@mchenrycountyil.gov

YOU ARE HEREBY NOTIFIED that we have this 19th day of August, 2020, filed in the Office of the Clerk of the Circuit Court of McHenry County, Illinois, Plaintiffs Response to Defendants motion to dismiss, copies of the documents in their entirety being enclosed and served upon you.

ROBERT T. HANLON & ASSOCIATES, P.C.

By:/s/Robert Hanlon

CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that I personally served the attached documents herein described to the above named individual at the e-mail address stated above by electronic mail on August 19, 2020.

McHENRY TOWNSHIP, Plaintiff

By: */s/Robert T. Hanlon*
Robert T. Hanlon, Plaintiff's Attorney

Received 08-20-2020 08:33 AM / Circuit Clerk Accepted on 08-20-2020 08:42 AM / Transaction #10164638 / Case #20CH000248

Robert T. Hanlon, Attorney No. 6286331
Law Offices of Robert T. Hanlon & Assoc., P.C.
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200; (815) 206-6184 (Fax)
robert@robhanlonlaw.com

Received 08-20-2020 08:33 AM / Circuit Clerk Accepted on 08-20-2020 08:42 AM / Transaction #10164638 / Case #20CH000248

** FILED ** Env: 10164638
McHenry County, Illinois
20CH000248
Date: 8/19/2020 10:25 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHENRY TOWNSHIP,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	Case No. 20 CH 248
	)	
COUNTY OF MCHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE McHENRY COUNTY CLERK,	)	
	)	
Defendants.	)	

RESPONSE TO MOTION TO DISMISS

NOW COMES Plaintiff, McHENRY TOWNSHIP, by and through its attorney, LAW OFFICES OF ROBERT T. HANLON & ASSOCIATES, P.C., with its response in opposition to Defendant's motion to dismiss and states as follows:

The essence of Defendants Motion to Dismiss sounds in the concept that the different language in the proposed referendum is the "same" as a prior referendum conducted in the election during the COVID shutdown of the state of Illinois. Defendants do not support their motion to dismiss with an affidavit, and are in essence relying upon the facts pled in the complaint but contending the facts are different than actually articulated the complaint. Moreover, Defendants do not cite to any authority that supports looking beyond the face of the proposition or for the idea that similar amounts to the concept of same as used int eh statutory framework. To get around this fact, Defendants contend that the propositions are identical, when in fact they are not. See Pg 8 of Defendants Motion. Defendants motion is based on a claim that the term "same" as used in the statutory framework means something different than the word "same" used in the English language.

Received 08-20-2020 08:33 AM / Circuit Clerk Accepted on 08-20-2020 08:42 AM / Transaction #10164638 / Case #20CH000248

Defendants acknowledge the referendum question "arises" under the Township Code, as acknowledged by TIRIO in his July 7, 2020 letter, not the election code. Thus, the issue of whether or not the Clerk can look outside of the proposition in order to refuse to place that proposition on the ballot.

Applicable Law

Plaintiff agrees that Mandamus is an extraordinary remedy to enforce, as a matter of right, "the performance of official duties by a public officer where no exercise of discretion on his part is involved." *Madden v. Cronson*, 114 Ill. 2d 504, 514, 103 Ill. Dec. 729, 501 N.E.2d 1267 (1986). A writ of *mandamus* will not be granted unless the plaintiff can show a clear, affirmative right to relief, a clear duty of the defendant to act, and clear authority in the defendant to comply with the writ. *Noyola*, 179 Ill. 2d at 133; *Orenic v. Illinois State Labor Relations Board*, 127 Ill. 2d 453, 467-68, 130 Ill. Dec. 455, 537 N.E.2d 784 (1989); *Chicago Bar Ass'n v. Illinois State Board of Elections*, 161 Ill. 2d 502, 507, 204 Ill. Dec. 301, 641 N.E.2d 525 (1994). "The writ will not lie when its effect is 'to substitute the court's judgment or discretion for that of the body which is commanded to act.' " *Chicago Ass'n of Commerce & Industry v. Regional Transportation Authority*, 86 Ill. 2d 179, 185, 56 Ill. Dec. 73, 427 N.E.2d 153 (1981), quoting *Ickes v. Board of Supervisors*, 415 Ill. 557, 563, 114 N.E.2d 669 (1953). *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229, 710 N.E.2d 798, 813, 1999 Ill. LEXIS 666, *48-49, 238 Ill. Dec. 1, 16. Plaintiff has properly alleged and shown a clear affirmative right to the relief sought, a clear duty of the clerk to place the proposition on the ballot based on the statutory authority under Chapter 60 of the Illinois Compiled statutes and under the election code as cited by Defendants. See

It is clear defendants have acknowledged that there is a clear right of a Township Board to submit a question to the people for consideration. See 10 ILCS 5/28-2(c). Plaintiff alleged

Received 08-20-2020 08:33 AM / Circuit Clerk Accepted on 08-20-2020 08:42 AM / Transaction #10164638 / Case #20CH000248

the right to relief because McHenry Township has a clear affirmative right to place a question to the people concerning its continued existence based upon the provisions of the Townships Act as well as the election code.

However, the Defendant's sole contest is that the question to be submitted to the voters is purportedly the same as the question submitted on the March ballot. However, this contention, required the clerk to look beyond the face of the proposition and compare it with a separate independent document. This much the Clerk acknowledges that he did, in order to come to the legal conclusion that the language was the same as the prior ballot measure. However, this is not his function, as the Illinois Supreme Court has previously articulated.

In *People ex rel. Giese v. Dillon*, 266 Ill. 272, the residents of La Salle filed a petition with the town clerk to have the question, "Shall this town become anti-saloon territory?" placed upon the ballot. *Dillon*, 266 Ill. at 273. When the clerk refused to place the question on the ballot, the residents filed a petition for a writ of mandamus to compel the clerk to place the question on the ballot. *Dillon*, 266 Ill. at 273. In response to the petition, the clerk argued that he was under no obligation to place the question on the ballot because the submitted petition did not comply with the law. *Dillon*, 266 Ill. at 274. Specifically, the clerk argued that (1) the signatures on the ballot were not those of legal voters and were not given in person, and (2) the sworn statements at the bottom of each page were neither signed by a resident of La Salle nor sworn to by an officer having authority to administer an oath. *Dillon*, 266 Ill. at 274.

In affirming the trial court's granting of the writ of *mandamus,* the Illinois Supreme Court explained that the responsibility for determining whether an election petition apparently conforms to the law rests with the clerk. *Dillon*, 266 Ill. at 275-76. Specifically, the clerk's duty is to determine whether, upon the face of the petition, it is in compliance with the law. *Dillon*,

Received 08-20-2020 08:33 AM / Circuit Clerk Accepted on 08-20-2020 08:42 AM / Transaction #10164638 / Case #20CH000248

266 Ill. at 276. If the petition on its face appears to comply with the statutory requisites, the clerk may not look outside the petition to determine whether in fact it does comply; he must submit the question to the voters. *Dillon*, 266 Ill. at 276. The court went on to explain because the validity of signatures and the authority of officers cannot be determined by examining the face of an election petition itself, the court concluded that the petition was in apparent conformity with the law and thus that the clerk was obligated to submit the question to the voters. *Dillon*, 266 Ill. at 276. *North v. Hinkle*, 295 Ill. App. 3d 84, 87-88, 692 N.E.2d 352, 355, 1998 Ill. App. LEXIS 118, *7-9, 229 Ill. Dec. 579, 582; *People ex rel. Giese v. Dillon*, 266 Ill. 272, 273, 107 N.E. 583, 583, 1914 Ill. LEXIS 2119, *1. This case is highly analogous to *Dillon*. In both cases, the clerk looked past the face of the petition and both cases the decision concerning facial conformity was based on an extrinsic fact. Here, that fact is the March ballot question, in *Dillon* it was the legal voters and resident status. As such, under *Dillon*, this court is obligated to deny the motion to dismiss and grant the requested mandamus relief.

Although defendants do not cite to any authority that trumps the authority stated above, Defendants wish to have this Court dismiss the petition for mandamus on the basis that something outside the face of the petition renders it improper. But see *Dillon*. Defendants are simply incorrect.

An argument that is undeveloped and unsupported by authority need not be considered by the Court. *Commonwealth Edison Co. v. Illinois Commerce Com'n*, 398 Ill.App.3d 510 (2nd Dist 2009). Because Defendants have not supplied any legal authority to support the position that the clerk must look beyond the face of the petition in contrast to the authority shown above, they have waived the argument that the clerk has a responsibility to look beyond the face of the petition. Defendants they have waived the essence of the argument made by failing to provide

Received 08-20-2020 08:33 AM / Circuit Clerk Accepted on 08-20-2020 08:42 AM / Transaction #10164638 / Case #20CH000248

authority that the Clerk is to look beyond the actual petition. Moreover, because Plaintiff supports it position with controlling authority, this ought to be the end of the argument.

Even if this court were to ignore the above authority, the position of the defendants is without merit.

How is the word "same" defined?

Generally, the rules of statutory construction are applicable to the construction of a constitutional provision. *Baker v. Miller*, 159 Ill. 2d 249, 257, 636 N.E.2d 551, 554, 1994 Ill. LEXIS 76, *8-9, 201 Ill. Dec. 119, 122, *Chicago Bar Association v. State Board of Elections* (1990), 136 Ill. 2d 513, 526, 146 Ill. Dec. 126, 558 N.E.2d 89, citing *Coalition for Political Honesty v. State Board of Elections* (1976), 65 Ill. 2d 453, 464, 3 Ill. Dec. 728, 359 N.E.2d 138.) As with statutory construction, the court must construe a constitutional provision so as to effectuate the intent of the drafters. *(People v. Turner* (1964), 31 Ill. 2d 197, 199, 201 N.E.2d 415.) The best indication of the intent of the drafters of a constitutional provision is the language which they voted to adopt. *(Coryn v. City of Moline* (1978), 71 Ill. 2d 194, 200, 15 Ill. Dec. 776, 374 N.E.2d 211.) And so it is with statutory construction. (See *In re Marriage of Logston* (1984), 103 Ill. 2d 266, 277, 82 Ill. Dec. 633, 469 N.E.2d 167.) Where the statutory language is clear and unambiguous, it will be given effect without resort to other aids for construction. *(People ex rel. Baker v. Cowlin* (1992), 154 Ill. 2d 193, 197, 180 Ill. Dec. 738, 607 N.E.2d 1251.) see also *Baker v. Miller*, 159 Ill. 2d 249, 257, 636 N.E.2d 551, 554-555, 1994 Ill. LEXIS 76, *9-10, 201 Ill. Dec. 119, 122-123.

Defendants acknowledge there are different dates in the different propositions. See Defendant's motion Pg 7. Thus, even though the defendants contend that the propositions are "identical" they are not identical based on this fundamental acknowledgement. See motion to

Received 08-20-2020 08:33 AM / Circuit Clerk Accepted on 08-20-2020 08:42 AM / Transaction #10164638 / Case #20CH000248

Dismiss Pg. 8. This is the root of the issue in this case aside from the excessive use of power by the clerk. A resolution of this issue in favor of the plain and ordinary meaning resolves the dispute.

Merriam-websters defines the word "same" as:

1 a: resembling in every relevant respect
b: conforming in every respect —used with as
2 a: being one without addition, change, or discontinuance : IDENTICAL
b: being the one under discussion or already referred to
3: corresponding so closely as to be indistinguishable
4: equal in size, shape, value, or importance —usually used with the or a demonstrative (such as that, those) in all senses.

Defendants take the position that "same" deals with an implicit result or subsequent outcome absent the differences in the actual dates. See Motion to Dismiss at pg7-8. However, that position does not foot with the definition of the word "same" when compared to the prior proposition. The ostensible difference is that neither proposition has the same date for the dissolution of the Township. A voter could very well have taken the position that he wanted the Township to be dissolved in 2021, but not in June 2020 and thus voted against the proposition. The Clerk's position is that we should skip examination of the language to determine if they are identical and look to the end result of the shut down of the unit of government. That is, in essence, asking this Court to engage in linguistic gymnastics. Since the language of the propositions in all material respects is not identical, it is not the same.

Examining the word "same" The United States District Court for the Northern District of Illinois looked to the term "same" and concluded it was analogous to "identical". See *Sadowski v. Tuckpointers Local 52 Health & Welfare Trust*, 281 F. Supp. 3d 710, 717, 2017 U.S. Dist. LEXIS 209291, *15-16, 2017 WL 6549759.

Received 08-20-2020 08:33 AM / Circuit Clerk Accepted on 08-20-2020 08:42 AM / Transaction #10164638 / Case #20CH000248

As pled, a review of the language of the March referendum reveals it is not the "same" as the question presented by the McHenry Township Board. See Complaint in paragraph 15. The difference between the two propositions (March 2020 proposition vs. the petition submitted for the general election) can easily be found in the date that the respective petitions seek dissolution of McHenry Township. These two propositions call for dissolution in different years and thus are not the same proposition. Because Plaintiffs pled this fact and Defendants bring the motion to dismiss with argument contrary to this fact, the court must deny the motion to dismiss under the authority advanced by Defendants.

As pled, Defendant, the county clerk exceeded his authority as the McHenry County Clerk when he looked past the face of the petition and elected to infer meaning to the intent of the statute inferring similarity when the relied upon statutory and constitutional reference is "same", when his actual duty was limited to ascertaining if the petition was facially proper. His subsequent step of looking to see if the language was the same or not is error on the part of the clerk. See *Dillon* referenced above. Since the language of the two propositions was not the exact same language, the section of the election code relied upon by the Clerk and States attorney is inapplicable.

The action of the clerk in looking past the face of the complaint usurped the whole power of the electoral objection process. That was not the province of the Clerk. The McHenry County Clerk lacks the power to decide issues of content for propositions. Even if the McHenry County Clerk had such a power, which he does not, the proposition associated with the March 2020 Primary ballot referendum was not the same as the referendum advanced in the present proposition. Thus in consideration of the same statutory references cited by Defendants they are simply in error.

Moreover, the McHenry County Clerk has no constitutional, statutory, or other legal authority to make conclusions of law as it relates to a referendum being placed on the ballot, had there been any such authority, it likely would have appeared in the motion to dismiss. But see *Commonwealth Edison Co. v. Illinois Commerce Com'n*, 398 Ill.App.3d 510 (2nd Dist 2009).

McHenry Township has a clear affirmative right to place a question to the people concerning its continued existence based upon the provisions of the Townships Act (Chapter 60 ILCS and 10 ILCS 5/28-2(c).). Those statutory provisions allow the Township board to place the question on the ballot. Thus, on its face, the proposition is entitled to be presented to the voters.

Defendant, TIRIO'S attempts to serve as an extra-judicial determinate of the law are contrary to our system of law where courts make legal determinations.

Defendants attempt to convolute the idea of similar with the idea of sameness. In the English language, the term "similar" carries with it a wholly different meaning than the term "same". Defendants believe the legislature must surely have intended a similarity as opposed to the word it used "same". Nevertheless, the if the legislature intended same to mean similar it would have used the term similar and it did not. Thus, Defendants position is without merit.

WHEREFORE, Plaintiff, McHENRY TOWNSHIP, prays that this Honorable Court deny the motion to dismiss. following relief:

Dated this 19th day of August, 2020.

Respectfully submitted,

McHENRY TOWNSHIP, Plaintiff

By: */s/Robert T. Hanlon*
Robert T. Hanlon, Plaintiff's Attorney

Robert T. Hanlon, Attorney No. 6286331
Law Offices of Robert T. Hanlon & Assoc., P.C.
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200; (815) 206-6184 (Fax)
robert@robhanlonlaw.com

** FILED ** Env: 10176894
McHenry County, Illinois
20CH000248
Date: 8/20/2020 3:16 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)SS
COUNTY OF MCHENRY)

IN THE CURCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT, MCHENRY COUNTY, ILLINOIS

MCHENRY TOWNSHIP,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	No. 20 CH 248
	)	
COUNTY OF MCHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE MCHENRY COUNTY CLERK,	)	
	)	
DEFENDANTS.	)	

NOTICE OF FILING

TO: Robert T. Hanlon
Law Offices of Robert T. Hanlon & Associates, P.C.
131 East Calhoun St.
Woodstock, IL 60098
robert@robhanlonlaw.com

PLEASE TAKE NOTICE that on August 20, 2020, I filed with the McHenry County Circuit Clerk, Illinois, DEFENDANT MCHENRY COUNTY CLERK JOSEPH TIRIO'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS WRIT OF MANDAMUS a copy of which is attached.

By: */s/ Carla N. Wyckoff*
Carla N. Wyckoff
Assistant State's Attorney

Received 08-20-2020 03:19 PM / Circuit Clerk Accepted on 08-20-2020 03:25 PM / Transaction #10176894 / Case #20CH000248

Patrick D. Kenneally, McHenry County States Attorney
Carla N. Wyckoff, Assistant States Attorney (6217072)
Norman D. Vinton, Assistant States Attorney (6204721)
McHenry County Government Center
2200 N. Seminary Avenue
Woodstock, IL 60098
Tel. (815) 334-4159
Fax (815)337-0872
cnwyckoff@mchenrycountyil.gov
ndvinton@mchenrycountyil.gov

PROOF OF SERVICE

TO: Robert T. Hanlon
Law Offices of Robert T. Hanlon & Associates, P.C.
131 East Calhoun St.
Woodstock, IL 60098
robert@robhanlonlaw.com

I, Susan Rouse, the undersigned, a non-attorney, on oath state I have e-mailed a copy of DEFENDANT MCHENRY COUNTY CLERK JOSEPH TIRIO'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS WRIT OF MANDAMUS to the above email address, on or before 4:30 p.m. on August 20, 2020.

/s/ Susan Rouse
Susan Rouse
Legal Administrative Specialist

Received 08-20-2020 03:19 PM / Circuit Clerk Accepted on 08-20-2020 03:25 PM / Transaction #10176894 / Case #20CH000248

** FILED ** Env: 10176894
McHenry County, Illinois,
20CH000248
Date: 8/20/2020 3:16 PM
Katherine M. Keefe
Clerk of the Circuit Court

STATE OF ILLINOIS)
)SS
COUNTY OF MCHENRY)

IN THE CURCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT, MCHENRY COUNTY, ILLINOIS

MCHENRY TOWNSHIP,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	No. 20 CH 248
	)	
COUNTY OF MCHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE MCHENRY COUNTY CLERK,	)	
	)	
DEFENDANTS.	)	

DEFENDANT MCHENRY COUNTY CLERK JOSEPH TIRIO'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS WRIT OF MANDAMUS

Now comes Defendant Joseph J. Tirio, McHenry County Clerk by and through his attorneys, State's Attorney Patrick D. Kenneally and his duly appointed assistants Norman D. Vinton, Chief, Civil Division, McHenry County State's Attorney's Office and Carla N. Wyckoff, with his Reply to Plaintiff's Response to Defendant's Motion to Dismiss Writ of Mandamus and states in support thereof as follows:

Plaintiff alleges that Defendant, McHenry County Clerk Tirio, had to investigate beyond the face of the McHenry Township's proposed referenda question to determine that it was prohibited from being placed on the November 2020

Received 08-20-2020 03:19 PM / Circuit Clerk Accepted on 08-20-2020 03:25 PM / Transaction #10176894 / Case #20CH000248
Page 1 of 5

General Election Ballot. Plaintiff relies on *People ex rel. Giese v. Dillon,* 266 Ill. 272 (1914) to support his argument that Defendant did not have the authority to make this determination. This reliance is misplaced as the facts in *Dillon* are easily distinguished from the instant circumstances. In *Dillon,* the Clerk refused to place a proposition on the ballot asking voters to decide if the town of LaSalle should become anti-saloon territory. The question had been submitted to the Clerk's Office via petition with 986 signatures. The Clerk dismissed the petition due to his determination of an insufficient number of valid signatures. *Id.* at 273-274. The Clerk claimed that some of the signatures were not genuine; that some signers were not registered voters; that some of the circulators were not able to do so; and that some of the notaries were not authorized to administer oaths. The Court found that the level of investigation required to make these determinations was beyond the Clerk's authority. *Id.* at 275-276.

In the instant case, however, Plaintiff submitted a referenda proposal to the McHenry County Clerk via a resolution approved by the McHenry Township Board. Because the Clerk has the duty to print ballots, including referenda, pursuant to Section 16-5 of the Illinois Election Code, he/she is imbued with knowledge of ballot content. 10 ILCS 5/16-5. To determine that the referenda question to dissolve McHenry Township that was on the March 2020 Primary Election Ballot is the same as the instant proposed referenda question to dissolve McHenry Township required no investigation. The similarity of the questions could be determined by facial perusal and immediate knowledge stemming from the duty to print ballots.

Received 08-20-2020 03:19 PM / Circuit Clerk Accepted on 08-20-2020 03:25 PM / Transaction #10176894 / Case #20CH000248
Page 2 of 5

Plaintiff also ignores the statutory responsibility of County Clerks, as election authorities, to provide notice to local election officials and local governing boards if/when they receive a certification for submission of a public question that is prohibited from being placed on the ballot. The instant proposed referenda question is prohibited from being placed on the November 2020 General Election ballot and Respondent complied specifically with the statutory notice requirements as dictated in Section 28-5 of the Illinois Election Code. 10 ILCS 5/28-5. This authority is critical, as the Illinois Election Code provides an objection process to challenge potential ballot items instigated by petitions signed by voters but not when derived from a governing body's resolution. 10 ILCS 5/28-4. In the case at bar, where there is no statutory provision for voters to object to the inclusion of the question on the ballot, it is even more critical that the Clerk ensure the referenda question is in proper form and allowed.

Plaintiff states that the McHenry Township Board's proposed referenda question to dissolve McHenry Township is not the same as the referenda question to dissolve McHenry Township that appeared on the March 2020 Primary Election ballot because it contains a different effective date. He argues that, as a result of this difference, it is not subject to the statutory limitation that Illinois Constitution Article VII-authorized referenda may not be placed on the ballot more than once in any 23-month period. 10 ILCS 5/28-7. To support his argument that the two questions are different because voters may well want McHenry Township to be dissolved in February 2021 rather than June 2020 is specious and nugatory. The

Received 08-20-2020 03:19 PM / Circuit Clerk Accepted on 08-20-2020 03:25 PM / Transaction #10176894 / Case #20CH000248
Page 3 of 6

effective date is dictated by the enabling statute that dissolution cannot occur before 90 days after the election at which the question is voted on. 60 ILCS 1/24-20.

Section 24-15 of the Illinois Townships Code does authorize a township board in McHenry County to submit a proposal to dissolve the township at an election but also requires that it be effected pursuant to the general election law. 60 ILCS 1/24-15. The Illinois Election Code clearly states that questions authorized by Article VII of the Illinois Constitution that propose changes to government structure and methods to select elected officials be restricted to ballot consideration by voters to only once in any 23-month period. 10 ILCS 5/28-7. To enable circumvention of the requirement that these substantive propositions be given a measured timetable for consideration, by inserting an inconsequential detail, renders the legislative intent of Section 28-7, superfluous. The Courts have long presumed that, in enacting legislation, the legislature does not intend absurdity. *Better Government Association v. Office of the Special Prosecutor,* 129 N.E.3d 1181, 432 Ill.Dec. 638 (2019); and that, exceptions, limitations or conditions that are inconsistent with the legislative intent should not be considered. *Hendricks v. Board of Trustees of the Police Pension Fund of Galesburg,* 38 N.E.3d 969, 395 Ill.Dec. 472 (3rd Dist. 2015).

Dismissal pursuant to Section 2-615 is proper because Plaintiff has failed to provide any legal authority or state a claim upon which relief may be granted. Dismissal pursuant to Section 2-619 is also proper because the McHenry Township proposal to dissolve McHenry Township is the same as the proposal to dissolve McHenry Township that appeared on the March 2020 Primary Election Ballot and,

Received 08-20-2020 03:19 PM / Circuit Clerk Accepted on 08-20-2020 03:26 PM / Transaction #10176894 / Case #20CH000248
Page 4 of 5

therefore, the McHenry County Clerk had the statutory duty to prohibit McHenry Township's July 6, 2020 proposal from being printed on the November 2020 General Election Ballot pursuant to Sections 28-5 and 28-7 of the Illinois Election Code. 10 ILCS 5/28-5; 28-7.

WHEREFORE, Defendants McHenry County Clerk Joseph J. Tirio and McHenry County request this Court to dismiss the Writ for Mandamus with prejudice and grant Defendants whatever relief the Court deems just.

COUNTY OF MCHENRY

JOSEPH J. TIRIO,
McHenry County Clerk

/s/ Norman D. Vinton

Norman D. Vinton, Chief, Civil Division
McHenry County State's Attorney's Office

/s/ Carla N. Wyckoff

Carla N. Wyckoff, ASA
McHenry County State's Attorney's Office

Prepared by:
Carla N. Wyckoff, ASA, ARDC #6217072
McHenry County State's Attorney's Office
2200 N. Seminary Ave.
Woodstock, IL 60098
815-334-4146
cnwyckoff@mchenrycountyil.gov

Received 08-20-2020 03:19 PM / Circuit Clerk Accepted on 08-20-2020 03:25 PM / Transaction #10176894 / Case #20CH000248
Page 5 of 5

STATE OF ILLINOIS)
)SS
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT, MCHENRY COUNTY, ILLINOIS

MCHENRY TOWNSHIP,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	No. 20 CH 248
	)	
COUNTY OF MCHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE MCHENRY COUNTY CLERK,	)	
	)	
DEFENDANTS.	)	

ORDER

This case coming to be heard on Defendant's Motion to Dismiss Plaintiff's Writ of Mandamus, all Parties present, all matters considered, all arguments heard, this COURT HEREBY ORDERS THAT:

This matter is taken under advisement and is continued until Monday, August 24, 2020, at 10:45 a.m. in Courtroom 204 for the Court to issue the written decision. ~~The Parties~~ Defendants stipulate to waive an Answer and further hearing and that if the Motion to Dismiss is denied a Writ of Mandamus will be entered.

Date:_____

_____
Judge

_____
Robert T. Hanlon, Attorney for Plaintiff

_____
Carla N. Wyckoff, Attorney for Defendant

Carla N. Wyckoff, Attorney for Defendant

Order Prepared by:
Carla N. Wyckoff, ASA
ARDC # 6217072
McHenry County State's Attorney's Office
2200 N. Seminary Avenue
Woodstock, Illinois 60098
815-334-4146
cnwyckoff@mchenrycountyil.gov

IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHENRY TOWNSHIP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 20 CH 248
	)	
COUNTY OF McHENRY and JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE McHENRY COUNTY CLERK,	)	
	)	
Defendants.	)	

MEMORANDUM DECISION AND ORDER

This cause came to be heard on August 21, 2020 for hearing on Defendant, Joseph Tirio's ("Tirio") "Motion to Dismiss Petition for Mandamus Pursuant to 735 ILCS 5/2-619.5[1]" ("Motion to Dismiss") filed (with supporting memorandum) on August 5, 2020.

Pursuant to an expedited briefing schedule, Plaintiff, McHenry County Township, ("McHenry Township") filed its response to the Motion to Dismiss on August 19, 2020 and Tirio filed his reply in support of the Motion to Dismiss on August 20, 2020.

The Court has reviewed and considered all of the parties' briefs related to the Motion to Dismiss, the oral arguments of counsel related to the Motion to Dismiss, the court file, and all applicable statutes and case law.

BACKGROUND

On July 24, 2020, Tirio filed a Complaint for Writ of Mandamus seeking a court order

[1] The reference to 5/2-619.5 in the title of the Motion to Dismiss appears to be a misnomer as that subparagraph refers to statute of limitations defenses, which do not appear applicable here.

compelling Tirio, the county clerk and local election official, to place on the ballot for the upcoming November election a referendum question as to whether McHenry Township should be dissolved.

Although the referendum question had been approved by resolution of the McHenry Township Board, Tirio refused to certify and place it on the ballot, advising McHenry Township that it violated the Illinois Election Code because the same proposition was on the March, 2020 election ballot, less than 23 months earlier (Section 28-7 of the Election Code provides that the same referenda may not be considered more than once in a 23 month period).

McHenry Township contends in its Complaint that Tirio did not have the discretion to refuse to certify and place the question on the ballot and seeks a court order compelling him to do so.

ANALYSIS

Pursuant to 735 ILCS 5/2-619, Tirio raises affirmative matter which he alleges defeats McHenry Township's claim for mandamus; namely, its alleged violation of Section 28-7 of the Illinois Election Code (10 ILCS 5/28-7) by submitting the same referendum proposal within a 23 month period.

Before the Court can consider the issue of the legal correctness of Tirio's determination that the referendum proposal violated the Election Code, it must determine whether Tirio had the discretion to make that decision.

McHenry Township contends that Tirio's position is a ministerial one and that he exceeded his authority by refusing to certify the proposal, specifically, by looking past the four corners of the referendum proposal itself and making a determination that it violates Section 28-7 of the Election Code.

In support of its position, McHenry Township cities to an Illinois Supreme Court case from 1914, **People ex rel. Giese v. Dillon,** 266 Ill. 272. There, the town clerk refused to place a referendum question on the ballot, finding issues with petitioners' signatures. Ultimately, the Illinois Supreme Court determined that the clerk exceeded his authority because his review went beyond a facial review of the document. The **Dillon** Court held that if a petition on its face appears to comply with the applicable statute, the clerk cannot look outside the petition to determine whether in fact it complies. The clerk has no discretionary power in such situations to refuse to place the question on the ballot. **Ibid,** p. 276.

Dillon is of limited value given its age, however, subsequent courts including the first district in **Haymore v. Orr,** 385 Ill.App.3d 915 (2008) and the second district (whose decisions are binding on this Court) in **North v. Hinkle,** 295 Ill.App.3d 84 (1998), adopted the **Dillon** court's reasoning, the **North** court stating: "despite its octogenarian distinction, the analysis set forth in **Dillon** remains sensible and relevant." **Ibid,** p. 87.

In **North,** plaintiffs were candidates for municipal positions that sought a writ of mandamus because the city clerk refused to place their names on the ballot. The clerk refused because their nominating papers did not include a statement of candidacy, as required, and as such were not in apparent conformity with the Election Code. The appellate court in **North** upheld the trial court's dismissal of the writ of mandamus finding that the lack of apparent conformity with the Election Code was a ministerial determination that could "be answered by a facial examination of the papers themselves". **Ibid,** p. 88.

Haymore involved the de-certification of a referendum petition by the village clerk because the clerk determined that the petition did not contain the requisite number of signatures. The **Haymore** court reversed the trial court's issuance of a writ of mandamus because the clerk could make a determination as to whether the petition was in apparent conformity with the Election

Code solely by examining the face of the petition, specifically, by counting the number of signatures on it to see if it had the requisite amount. Conversely, in **Dillon,** the court found the petition was in apparent conformity and the clerk exceeded his authority because the validity (as contrasted to number) of signatures could not be determined solely by examining the face of the petition.

Here, Tirio does not suggest any facial non-conformities with the Township or Election Code on the face of the proposed question.[2] The question is submitted in the form required by the Township Code and its proposed effective date if adopted meets the requirements of the Township Code as well. Rather, Tirio reaches the conclusion that the proposed question violates Section 5/28-7 of the Election Code because the same referendum question was placed on the ballot less than 23 months ago.

A facial examination of the proposed question as submitted by the McHenry Township would not reveal the alleged defect Tirio suggests renders it non-certifiable – the placement on a previous ballot less than 23 months earlier of purportedly the same referendum proposal. That defect, if it exists, would be revealed by a review of the referendum proposal in the March, 2020 election and comparison of the language in same to the present proposed question. As stated by the **Haymore** court, referencing **Dillon,** "[i]f the petition on its face appears to comply with the statutory requisites, the clerk may not look outside the petition to determine whether in fact it does not comply; he must submit the question to the voters." **Ibid,** 917.

Here, the referendum proposal submitted by McHenry Township on its face apparently conforms with the statutory requisites. The clerk would have to look outside the four corners of the proposed question to determine any alleged infirmities.

[2] Tirio previously rejected an earlier version of the referendum question on the ground that it violated language dictates of the Township Code but that offending language was amended by McHenry Township to conform with the Township Code and Tirio since acknowledged that defect has been removed.

At oral argument, Tirio's counsel contended that Tirio would not have needed to look beyond the four corners of the proposed question to determine that it violated Section 28-7 because since he is statutorily charged with knowledge of what is on the ballot and with the March, 2020 election being so recent, he would not need to review any other document but could make that determination from memory. McHenry Township's counsel correctly pointed out at oral argument that such a claim is not supported by an affidavit from Mr. Tirio. Regardless, even if there was an evidentiary hearing[3] and Tirio testified that he determined the violation of Section 28-7 based solely on his memory versus a review of the earlier referendum, the Court considers that to be a distinction without a difference. Under either scenario, a comparison is made: one is the clerk comparing his memory of a previous document to the present one before him; the other is comparing the two documents physically. More significantly, as stated before, there is nothing in the language in the proposed referendum that shows (or even suggests) that it violates Section 28-7 of the Election Code. It states verbatim the question in the required form pursuant to the Township Code with a proposed effective date conforming to statutory requirements. It makes no reference to any earlier referendums of the same nature. Thus, one must look beyond the four corners of the proposed question to determine whether it violates Section 28-7.

Given the above, at first glance it would appear that Tirio exceeded his authority by determining that the proposed question violated Section 28-7 and refusing to place it on the ballot and so notifying McHenry Township. However, Tirio points to Section 28-5 of the Election Code as giving him authority to do so. The portion of that Section relevant to Tirio's argument is as follows:

> "Whenever a local election official, an election authority, or the State Board of Elections is in receipt of an initiating petition, or a certification for the submission

[3] Counsel for Tirio and the County of McHenry stipulated at oral argument (confirmed by written order) to waive the filing of an Answer or further hearing but rather stood on their current pleadings in the event the Court denied the Motion to Dismiss.

> of a public question at an election at which the **public question may not be placed on the ballot or submitted because of the limitations of Section 28-1, such officer or board shall give notice of such prohibition,** by registered mail, as follows..." 10 ILCS 5/28-5 (emphasis added)

Tirio contends the above language gives him discretion (even the duty) to determine whether the proposed question violates Section 28-7, relying further on the following first paragraph of Section 28-1:

> "The initiation and submission of all public questions to be voted upon by the electors of the State or of any political subdivision or district or precinct or combination of precincts shall be subject to the provisions of this Article." 10 ILCS 5/28-1.

Here, "this Article" refers to the Election Code. A section of the Election Code is 28-7, which provides that referenda may not be held more than once in any 23 month period on the same proposition. Thus, the proposed question is subject to the limitations of Section 28-7. Section 28-5 states that the local election official or authority (in this case Tirio) is charged with notifying the entity that submitted the public question that the public question may not be placed on the ballot because of limitations of Section 28-1. Thus, Section 28-5 clearly contemplates a determination by someone as to whether the public question violates any section of the Election Code, including 28-7. That begs the rhetorical question: if the local election official or authority is not charged with rendering that determination, who is? The logical answer is the same election official or authority. No provision in the Election Code suggests any other public official would have the standing or authority to do so.

If the election official (in this case Tirio) is charged with determining whether public questions such as the one submitted here is in conformity with the Election Code, including Section 28-7, the Court is forced to circle back to the argument that any such determination is limited to a facial examination of the document. However, strict enforcement of that position leads to an absurd result.

As explained above, a determination that a proposed question violates the 23 month provision in Section 28-7 cannot be accomplished by merely a facial examination of the proposed question. Thus, strict adherence to the facial examination doctrine by the election official could never result in a determination by that official that the proposed question violates Section 28-7. Sections 28-5 and 28-1 make it clear that public questions must comply with all provisions of the Election Code, including the 23 month rule in Section 28-7. Hamstringing the election official to the point where he or she cannot make a determination that a public question violates Section 28-7 because of court imposed limitations on the scope of the official's investigation would allow public questions violative of the Election Code to be placed on the ballot, clearly contrary to the provisions of Section 28-1.

Further, the genesis of the concept that an election official's determination of apparent conformity with the Election Code is limited to a facial examination of the question is factually distinguishable from the case here. **Dillon** involved a referendum initiated by petitions. Presently, the Election Code, through Section 28-4, provides an objection mechanism for referendums initiated by petitions but not by resolution, such as here. Thus, members of the public could have objected to the referendum based on matters such as genuineness of signatures if the proposed question had been initiated by petition. In such a scenario, the public could serve as gatekeeper and it would be understandable for a court to determine that the election official exceeded his authority by questioning the genuineness at signatures like in **Dillon**.

Here, because the public question was initiated by resolution rather than petition, there is no mechanism in the Election Code whereby the public can object. Thus, if the election official is not the gatekeeper, there is no gatekeeper and submitted public questions violative of Section 28-7 would be required to be placed on the ballot in clear contradiction to the intent of Sections 28-5 and 28-1 of the Election Code. That is what distinguishes the case here from not only **Dillon** but

North and **Haymore** as well. None of those cases considered the duties of the local election official under Section 28-5 to reject proposed questions violative of the Election Code.

Such a draconian interpretation of **Dillon** and Section 28-5 would render enforcement of Section 28-7 impractical, if not impossible. McHenry Township argues that if this Court was to order Tirio to place the question on the ballot, Section 28-7 could still be enforced through a lawsuit subsequently brought by a private citizen (i.e. for a writ of mandamus or mandatory injunction to remove the question from the ballot). Putting aside the practical burdens of such a lawsuit (i.e. cost to the litigants, the significantly compressed time period for resolution) such judicial "kicking the can down the road" would violate the purpose of Section 28-5, which requires determination of all submitted public questions as to their conformity with the Election Code before their placement on the ballot. The mechanisms of that Section, specifically the requirement that the election official provide notice of a rejected question to the submitting party, allows that party to do exactly what was done here: file a lawsuit contesting that rejection so that a court can review same and determine whether the question should be placed on the ballot, all in a timely fashion. Tirio rubberstamping a submitted public question he believes to be violative of the Election Code on the assumption that a private citizen will bring a lawsuit to enforce the provisions of the Election Code after Tirio had placed the matter on the ballot would be shirking his duties under the Election Code. Furthermore, it would promote chaos. If such a post ballot printing challenge was brought and successful, Tirio would then have to print all new ballots and destroy the old ones – a potentially monumental and no doubt costly endeavor. The Court is disinclined to facilitate such an absurd scenario.

McHenry Township makes a final alternative argument: even if Tirio had the discretion to determine that the proposed question violated Section 28-7, his decision was erroneous and an abuse of discretion because it is not the same referendum question. For the reasons set out below, the Court disagrees.

Section 28-7 is as follows:

"Except as provided in Article 24 of the Township Code, in any case in which Article VII or paragraph (a) of Section 5 of the Transition Schedule of the Constitution authorizes any action to be taken by or with respect to any unit of local government, as defined in Section 1 of Article VII of the Constitution, by or subject to approval by referendum, any such public question shall be initiated in accordance with this Section.

Any such public question may be initiated by the governing body of the unit of local government by resolution or by the filing with the clerk or secretary of the governmental unit of a petition signed by a number of qualified electors equal to or greater than at least 8% of the total votes cast for candidates for Governor in the preceding gubernatorial election, requesting the submission of the proposal for such action to the voters of the governmental unit at a regular election.

If the action to be taken requires a referendum involving 2 or more units of local government, the proposal shall be submitted to the voters of such governmental units by the election authorities with jurisdiction over the territory of the governmental units. Such multi-unit proposals may be initiated by appropriate resolutions by the respective governing bodies or by petitions of the voters of the several governmental units filed with the respective clerks or secretaries.

This Section is intended to provide a method of submission to referendum in all cases of proposals for actions which are authorized by Article VII of the Constitution by or subject to approval by referendum and supersedes any conflicting statutory provisions except those contained in Division 2-5 of the Counties Code or Article 24 of the Township Code.

Referenda provided for in this Section may not be held more than once in any 23-month period on the same proposition, provided that in any municipality a referendum to elect not to be a home rule unit may be held only once within any 47-month period."
10 ILCS 5/28-7

Here, McHenry Township acknowledges that the wording in the proposed question at issue is identical to the referendum question considered in the March, 2020 election, with the sole exception being the effective date of the proposed abolishment of the township. McHenry Township nevertheless argues that "difference" renders the 23 month rule inapplicable. For several reasons, the Court finds that argument specious.

First, Section 28-7 makes it clear that its limitations apply to all public questions in regard to any unit of local government. Undoubtedly, this is a public question affecting a unit of local government.

Second, the change in effective date McHenry Township relies on is governed by statute, specifically, Section 24-20 of the Township Code, which provides that "the proposed date of the dissolution shall be at least 90 days after the date of election at which the referendum is to be voted upon." **60 ILCS 1/24-20(b)**. Thus, by its very nature the effective date for a proposed dissolution of a township will be different each time it is placed on the ballot, whether that be eight months apart (as McHenry Township seeks to do) or at least 23 months apart as required under the Election Code.

In fact, it does not appear that the referendum question must include the effective date as part of the question. The Township Code in Section 24-30 states that the referendums for dissolution of townships "shall be in substantially the following form on the ballot:

> Shall the (dissolving township), together with any road districts wholly within the boundaries of (dissolving township), be dissolved on (date of dissolution) with all of the township and road district property, assets, personnel, obligations, and liabilities being transferred to McHenry County?
>
> YES
>
> NO"

Section 24-30 does not have any effective date in its required form language. Thus, inclusion of the effective date in the ballot question appears to be superfluous.[4]

The superfluous nature of the change of the effective date from the referendum question in the March, 2020 election to the proposed question here is one example in a litany of ones that lead to the inescapable conclusion that the proposed referendum here is the same proposition

[4] Section 24-20 requires a petition for referendum to dissolve a township to include the date of dissolution on the petition.

submitted and voted upon in March, 2020. The form of the question is identical to the one voted upon in March, 2020. The proposition the public voted upon (and rejected) was whether McHenry Township should be abolished – not the effective date of that dissolution. The effective date is governed by statute and is not a question the public can vote on.

Most significantly, McHenry Township's theory that submitting the same substantive referendum question on abolishing the township but changing the effective date renders the 23 month rule in Section 28-7 inapplicable, would render Section 28-7 unenforceable, at least as to township dissolution referenda, a result clearly contrary to both the Township and Election Code.

60 ILCS 1/24-15 provides the statutory authority for dissolving townships in McHenry County. The section of the Township Code specifically states that any such resolutions must be "in accordance with the general election law." **60 ILCS 1/24-15**. Thus, the process is subject to Section 28-7 of the Election Code. That section of the Election Code requires that the same referendum proposition cannot be held more than once in a 23 month period. If merely changing the effective date of the dissolution (which would have to be different under statute each time the referendum is proposed) would render Section 28-7 inapplicable, there would never be a situation where it would be applicable – rendering it unenforceable – an absurd result. Courts have long assumed that in enacting legislation, the legislature does not intend absurdity. **Better Government Association v. Offices of the Special Prosecutor**, 2019 IL 122949, ¶23.

Here, the legislature's intent is clear: not to burden the public with the same referendum proposition every election cycle. The losing party must wait at least 23 months before submitting it again. McHenry Township is seeking to circumvent that statutory requirement and the Court will not countenance such a proposition.

For all of the above reasons, the Court finds that Tirio had the authority to reject the proposed referendum question submitted by McHenry Township pursuant to resolution and that

his determination that the proposed referendum violated Section 28-7 of the Election Code was correct. As such, McHenry Township is not entitled to injunctive or mandamus relief and its Complaint should be dismissed, with prejudice.

ORDER

IT IS HEREBY ORDERED:

Defendant Joseph J. Tirio's Motion to Dismiss is granted and Plaintiff McHenry Township's Complaint for Writ of Mandamus and Mandatory Injunctive Relief is dismissed with prejudice.

Entered: 8/24/20

KEVIN G. COSTELLO
JUDGE

** FILED ** Env: 10210427
McHenry County, Illinois
20CH000248
Date: 8/24/2020 3:54 PM
Katherine M. Keefe
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

McHENRY TOWNSHIP, PLAINTIFF, V.	)	Case No. 20 CH 248
COUNTY OF MCHENRY AND JOSEPH J. TIRIO, NOT INDIVIDUALLY, BUT IN HIS OFFICIAL CAPACITY AS THE McHENRY COUNTY CLERK, Defendants.	)	

NOTICE OF APPEAL
(Dated 8/24/2020)

To: Carla N. Wyckoff, ASA, & Norman Vinton, ASA
McHenry County State's Attorney's Office
2200 N. Seminary Ave.
Woodstock, IL 60098
815-334-4146
cnwyckoff@mchenrycountyil.gov
ndvinton@mchenrycountyil.gov

Notice is hereby given that Plaintiffs, McHenry Township, appeal to the Illinois Court of Appeals, Second District, from the orders entered in this action as follows:

A) The Memorandum Decision and order of August 24, 2020, dismissing Plaintiffs Complaint with prejudice.

Dated: August 24, 2020

Respectfully submitted,

By: */s/ Robert Hanlon*
One of the Attorneys for
McHenry Township

CERTIFICATE OF SERVICE

I, Robert T. Hanlon, an attorney, certify that on August 24, 2020, the foregoing document was served on all parties and attorneys of record in this action by electronic mail and by United States Mail.

Carla N. Wyckoff, ASA, & Norman Vinton, ASA
McHenry County State's Attorney's Office
2200 N. Seminary Ave.
Woodstock, IL 60098
815-334-4146
cnwyckoff@mchenrycountyil.gov
ndvinton@mchenrycountyil.gov

By: */s/ Robert Hanlon*

Robert T. Hanlon, Attorney No. 6286331
LAW OFFICES OF ROBERT T. HANLON
& ASSOC., P.C.
131 East Calhoun Street
Woodstock, IL 60098
robert@robhanlonlaw.com
(815) 206-2200
(815) 206-6184 (Fax)