

Nos. 1-24-0417 and 1-24-0431, consolidated

**IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

BUILDING OWNERS AND MANAGERS ASSOCIATION, <i>et al</i> , Plaintiffs-Appellees,	Appeal from the Circuit Court of Cook County, County Department, County Division
v.	
BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO, <i>et al</i> , Defendants-Appellants	Case No. 24 COEL 1
And	Honorable Kathleen Burke, Judge Presiding
THE CITY OF CHICAGO,	
Intervenor/Nonparty.	

BRIEF OF DEFENDANTS-APPELLANTS

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ISSUES PRESENTED

- I. WHETHER PLAINTIFFS PROPERLY PLED A COMPLAINT FOR DECLARATORY RELIEF WHERE THE ONLY DEFENDANTS NAMED HAVE NO INTEREST IN THE OUTCOME OF THE DISPUTE?**

- II. WHETHER PLAINTIFFS' CHALLENGE TO A CERTIFIED REFERENDUM IS OTHERWISE PREMATURE?**

- III. WHETHER JUDGMENT ON THE PLEADINGS IS PROPER ABSENT AN ANSWER TO THE COMPLAINT PLACING THE PARTIES AT ISSUE?**

NATURE OF THE CASE

This appeal affords this Court the opportunity to determine whether a party seeking declaratory relief may pursue that claim against an opponent who has no interest in the outcome of an arguably premature dispute, and whether that party is entitled to judgment on the pleadings in the absence of an answer to the complaint. The trial court here granted plaintiffs' motion for judgment on the pleadings premised on a complaint seeking declaratory and injunctive relief with respect to an allegedly illegal referendum certified to the election ballot by the City Clerk after passage by the City Council in accordance with the referendum procedure under the Municipal Code. The complaint did not name the City of Chicago, the entity that initiated, authored and certified the referendum. The complaint instead only named an independent entity whose ministerial administrative role is limited to printing ballots with content as certified to it by the Office of the City Clerk. The judgment of the trial court should be reversed, and the injunctive relief awarded to plaintiffs, which improperly interferes with the conduct of the March 19 primary election, should be vacated.

JURISDICTION

This Court is vested with jurisdiction under Illinois Supreme Court Rule 303. Ill. S. Ct. Rule 303. The trial court entered a final order on February 26, 2024. C. 338-339. The Board filed a notice of appeal on February 27, 2024. A. 1-4.

STANDARD OF REVIEW

This Court reviews the grant of judgment on the pleadings *de novo*. *Ontiveroz v. Khokhar*, 2023 IL App (3d) 220446, ¶ 21. When *de novo* review applies, this Court performs the same analysis that the trial court perform. *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 43. Review of a trial court's order granting

judgment on the pleadings requires this Court to determine whether any issues of material fact existed and, if there were no such issues, whether the movant was entitled to judgment as a matter of law. *Khokhar*, 2023 IL App (3d) 220446 at ¶ 21.

Trial court rulings on motions to dismiss under sections 2-615 and 2-619 are reviewed *de novo*. *Kennedy v. City of Chicago*, 2022 Ill. App. (1st) 210492, ¶ 16.

STATEMENT OF FACTS

Home Rule Authority and the Advisory Referendum Procedure

The City of Chicago is a home rule municipality. As a home rule municipality, the City has the authority to “impose or increase a real estate transfer tax” only through an advisory referendum. 65 ILCS 5/8-3-19. A majority of electors voting in favor of a proposition authorizes the municipality to impose or increase the tax. *Id.* at § 5/8-3-19(e).

A referendum is initiated by the City Council for the City of Chicago by resolution or ordinance. The City Council drafts the referendum and votes on it. If passed, the referendum is then certified by the Office of the City Clerk for inclusion on the ballot.

The Board of Election Commissioners for the City of Chicago (“the Board”) was established by referendum in 1885 and operates under Article 6 of the Illinois Election Code (“Article 6”). *See* 10 ILCS 5/6-1 *et seq.* The Board is an independent unit of government appointed by, and under the supervision of, the Circuit Court of Cook County. *See e.g.*, 10 ILCS 5/6-21. Article 6 authorizes the Defendant Board to administer elections and maintain voter registrations. *See e.g.*, 10 ILCS 5/6-26 (authorizes the Board to adopt voting registration and election regulations); 10 ILCS 5/6-28 (authorizes the Board to manage voter registration). Article 6 does not confer on the Board any authority to decide whether a City Council resolution initiating a referendum

is lawful, nor whether the referendum language itself is lawful so that it can appear on the ballot. *See* 10 ILCS 5/6-1 *et seq.* The Board instead has a nondiscretionary, ministerial duty to comply with the City Clerk’s ballot certification. The Board has a long history of taking neutral positions on referenda initiated by ordinance or resolution through the City Council. The Board has no lawful authority to do otherwise. C. 284.

The Bring Chicago Home Referendum

The City Council initiated a referendum by resolution to change the real estate transfer taxes in the City of Chicago—the so called “Bring Chicago Home” Referendum. C. 22-24. The City Council passed Resolution Number R2023-4166 on November 7, 2023. C. 11. The Resolution authorized a “public question” to be submitted to Chicago voters at the regularly scheduled general primary election on March 19, 2024. C. 22-24. The question asks whether voters approve of implementing a graduated real property transfer tax, which would lower the current tax rate for the first \$1 million of the transfer price for every property purchased in the City, while implementing higher rates on the portions of any transfer prices over \$1 million and \$1.5 million. *Id.* The Resolution was effective immediately on its passage on November 7, 2023. *Id.* On November 22, 2023, the City Clerk certified the Referendum to the Board for inclusion on the March 19, 2024 primary ballot. C. 195-197. The City Clerk certification and a copy of the Resolution were sent to the Board on November 22 for inclusion on the March 19, 2024 primary ballot. C. 195. The Board included the certified Resolution on the ballot consistent with its purely ministerial role in the referendum process. C. 15.

Plaintiffs Challenge Inclusion of the Referendum on the Primary Ballot

A group of plaintiffs consisting of trade associations, business owners and individuals filed a complaint on January 5, 2024 challenging the legality of inclusion of

the Referendum on the March 19, 2024 primary ballot. C. 10-44. The complaint was filed 59 days after the Referendum was passed by City Council. *Id.* The complaint only names the Board and its members as defendants. *Id.* Styled in four counts, plaintiffs seek declaratory and injunctive relief arising out of the City Council’s Referendum as certified by the City Clerk and asks for “an injunction prohibiting the Defendants from certifying and placing the proposed referendum on the March 19, 2024, Primary Election ballot.” C. 11.

Count I alleges that the substance of the Resolution violates the Illinois Municipal Codes because “it proposes to do more than impose a new transfer tax or increase an existing transfer tax.” C. 15-17. Count II alleges that the substance of the Resolution violates the Illinois Constitution because it “combines separate, unrelated questions into a single initiative.” C. 17-18. Count III alleges that the Resolution is substantively unlawful because it is “vague, ambiguous and not self executing [sic].” C. 18-19. Count IV seeks an injunction to prevent the Board from printing ballots with the certified Referendum. C. 20. The complaint is replete with references to the City Council’s involvement in generation of the Referendum and the Clerk’s certification of same. C. 10-20.

Plaintiffs filed a motion for judgment on the pleadings on January 16, 2024, before the Board and its members were served with or responded to the complaint filed ten days earlier. C. 48-65. The motion argued that plaintiffs were entitled to all the relief sought in their complaint as a matter of law and advanced substantive arguments relating to same. *Id.* Plaintiffs also filed a motion to expedite. C. 68. The motion to expedite did

not articulate the reason why plaintiffs waited until January 2024 to challenge a referendum certified in November 2023. C. 285.

The Board and its members filed their appearance on January 19, 2024. C. 70-71. The trial court entered a scheduling order and the matter was continued February 14, 2024. C. 72.

The Board filed a motion to transfer to the Chancery Division on January 25, 2024. C. 75-77. The motion was denied on February 1, 2024. C. 126.

The Board filed a motion to dismiss plaintiffs' complaint under both sections 2-615 and 2-619(a)(9), motion to strike the motion for judgment on the pleadings and an objection to the motion to expedite on February 9, 2024. C. 186-236; 237-284; 285-290.

The combined motion to dismiss argued that plaintiffs' complaint was legally deficient under section 2-615 to the extent that there is no actual controversy between plaintiffs and the Board. C. 186-194. The motion also argued that the purported dispute is not ripe, further underscoring the legal insufficiency. *Id.* The Board alternatively argued that the complaint is barred by other affirmative matter because plaintiffs failed to name a necessary party and the trial court otherwise lacks subject matter jurisdiction. *Id.*

The Board moved to strike the motion for judgment on the pleadings citing the procedural irregularity in considering such a motion before the parties are actually at issue. C. 237-241. The Board consistently asserted that it has no position on the legality of the Referendum and is not authorized to argue either for or against its legality as would be required to address plaintiffs' complaint on the merits. *Id.* The motion to strike the judgment on the pleadings incorporated many of the arguments in the motion to dismiss. *Id.*

The Board argued that Plaintiffs waived their motion to expedite by agreeing to a scheduling order. C. 285-287.

Plaintiffs filed their response on February 13. C. 299-304. They argued that the motion was improperly brought as a hybrid 2-619.1 motion, that the City of Chicago and the City Clerk of Chicago are not necessary parties, and that the case was not premature because “the Plaintiffs are commercial property owners that will be directly effected [sic] by the imposition of a tax.” *Id.*

The Board filed a reply in support of their motion to dismiss on February 14 in advance of the scheduled hearing. C. 314-318. The reply reiterated that plaintiffs’ complaint did not state a claim for declaratory relief and was otherwise barred by other affirmative matter. *Id.*

The City of Chicago filed a petition to intervene as a matter of right and a motion to dismiss on February 9, 2024. C. 130-133; 134-147. The City argued that it was entitled to intervene as a necessary party since it was the City Council that legislatively approved the resolution that initiated the Referendum, meaning that the City would be materially affected by any judgment in plaintiffs’ favor. *Id.* The City also argued that the Board lacks the authority to argue the merits of the Referendum’s legality. *Id.* Plaintiffs objected to the City’s petition. C. 291-296.

The City’s motion to dismiss asserted that the trial court lacked subject matter jurisdiction to prevent an election based on the legality of the Resolution and then proceeded to address the merits of the Resolution. C. 134-147. The substantive legal arguments advanced by the City were not raised by the Board. C. 186-236.

Proceedings in the Trial Court

The trial court conducted a hearing on February 14, 2024, during which the parties asserted their respective positions. R. 4-60.

The crux of plaintiffs' argument challenged the wording of the Resolution:

We're not challenging the tax itself. *We're challenging the propriety of the way the question was worded to be put on the ballot.* And we think that it violates the provisions of the municipal code and the constitution. Regarding the provisions of the municipal code, it's a fairly straightforward argument. We go into it in fairly great detail in our briefs. But to summarize, the Municipal Code, Section 18-13-19, states that a home rule municipality, like Chicago, can impose or increase the transfer tax by referenda. In this case, the City is attempting to decrease, for reasons that we set forth in our memoranda, the tax at the same time. The municipal code, the same section, speaks to that, and it says "An existing ordinance imposing a real estate transfer tax may be amended without approval by referenda."

R. 8 (emphasis added).

The Board noted that plaintiffs' substantive argument did not rebut the Board's assertion that it is simply a ministerial entity with no role in the initiation, drafting or approval of any referenda. As explained by the Board, its role with respect to this Referendum was to include it on the ballot because it was certified by the City Clerk. R. 15-17. The Board reiterated that it has no position on the legality of the Referendum. *Id.*

And, clearly, and I certainly didn't hear this from the plaintiffs in any of the briefs or in argument today, they certainly don't argue that somehow the Board of Election Commissioners has a responsibility for the determining whether this referenda -- or referendum was lawful or not. That's not our job. We don't look at this referendum and say it was done right, it was done correctly, it's set up correctly. We get it, a direction from—you know, once the—the resolution is passed and the City clerk certifies that matter, all we do is we operate pursuant to the direction of the City clerk. That's all we do here. We are not—we're

not the ones that make the decision on exactly the wording of this referendum, and I think that the plaintiffs admit that. In fact, Mr. Kasper, in his argument, he went through three different areas, and then he admits on the record—the Board is not challenging, you know, this—the actions of their client on violations of the municipal code, violations of the Illinois Constitution, or responding to the vagueness argument. We have not responded to any of those. And it's pretty obvious because we're not in a position to do that. We're not the proper party to challenge those three aspects of this referendum.

R. 16-17.

At no time did the Board defend the substance of the Referendum. R. 33.

The City then presented argument relating to its petition to intervene. R. 37-41.

The City's presentation reinforced the reality that the Board lacked any authority to defend the merits of the dispute and so could not represent the City's interest. *Id.* The trial court took the motions under advisement. R. 59.

The trial court conducted a second hearing on February 23, 2024, during oral rulings were issued on the various motions. A. 8-27. The trial court made no specific findings and instead read parts of the parties' respective briefs into the record. *Id.* The trial court denied the Board's motion to dismiss the complaint and motion to strike the motion for judgment on the pleadings. A. 18. Plaintiffs' motion for judgment on the pleadings was granted in its entirety. A. 26. The Board's request for clarification as to the basis for the trial court's ruling was denied. A. 26. The trial court also denied the City's petition to intervene stating that the petition was untimely and that any interest the City has in defending the merits of the Referendum is adequately represented by the Board. A. 9. The trial court did not address the City's argument that timeliness was irrelevant because the City is a necessary party and the court therefore lacked jurisdiction over the case. A. 11.

The trial court entered a written order on February 26 reflecting the February 23 oral ruling. C. 338-339. In addition to denying the Board's motions and granting plaintiffs' motion for judgment on the pleadings, the February 26 order directed the Board "to not count and suppress any votes cast" on the Referendum. *Id.* A separate order was entered on February 26 denying the City's petition to intervene. C. 335.

The City filed a motion to stay enforcement of the February 26 orders. C. 324-329. The City also filed a notice of appeal from the order denying its petition to intervene on February 26. C. 330-331. The trial court denied the motion to stay on February 27, finding that the City's notice of appeal divested it of jurisdiction and the City otherwise lacked standing to seek a stay. Supporting Record 257-58.¹

The Board filed a notice of appeal on February 27, 2024. A. 1-4.

Motions in Appellate Court

The City's appeal is pending under case number 1-24-0417. The City filed an emergency motion to stay in this Court on February 27, 2024, following the denial of its request in the trial court and requested an expedited briefing schedule. The Board filed an appearance in appeal number 1-24-0417 and moved to join the City's motion to stay. This Court entered an order on February 28, 2024, directing that the motion stay would be considered by the merits panel once assigned and setting an expedited briefing schedule.

The Board filed a motion to consolidate its appeal, assigned case number 1-24-0431 with appeal number 1-24-0417, on February 28, 2024. This Court entered an order consolidating the appeals on February 29, 2024.

¹ A copy of this order is not in the Common Law Record but was included in the Supporting Record filed by City in support of its emergency motion to stay filed in this Court.

ARGUMENT

The judgment of the trial court granting plaintiffs the declaratory and injunctive impacting administration of the March 19, 2024, primary election should be reversed and the injunctive relief vacated. Plaintiffs' complaint failed to plead a viable claim for declaratory relief because the Board is a neutral entity *vis a vis* the legality of any referendum initiated by the City Council resolution. Even so, the dispute that plaintiffs purport to litigate is premature which should also have resulted in dismissal of their complaint. Finally, the trial court's entry of judgment on the pleadings was procedurally incorrect in the absence of a responsive pleading that places the parties at issue. Each point is addressed in turn.

I. PLAINTIFFS' COMPLAINT SHOULD HAVE BEEN DISMISSED AS LEGALLY INFIRM OR BARRED BY OTHER AFFIRMATIVE MATTER.

The Board never answered the complaint here. The Board instead immediately and repeatedly asserted that it lacked any authority to litigate the merits of the dispute plaintiffs purport to bring. The Board established that it lacks any authority to advocate either for or against any given referenda. All statutory responsibility for the content and inclusion of the Referendum at issue here lies squarely with the City—a party plaintiffs did not name and whose intervention they vehemently opposed. What plaintiffs were able to achieve here was creation of a straw man who they then readily knocked down to secure the relief they sought without ever having to address the merits of the matters pled in their complaint. The trial court's acceptance of this approach is incorrect under Illinois law and should be reversed.

A. Plaintiffs' Complaint is Deficient under Section 2-615 for Failure to State a Claim.

A party seeking declaratory relief is required to plead that they have a legally tangible interest, the named defendant has an opposing interest, and an actual controversy between the parties exists as to those interests. *Mendez v. City of Chicago*, 2023 IL App (1st) 211513, ¶ 11. Plaintiffs here did not establish the last two elements because the dispute they purport to plead is not against the Board. Plaintiff's request for declaratory relief is properly brought against the City Council that initiated the Referendum, and plaintiffs' request for injunctive relief is properly brought against the City Clerk who certified the Referendum to the ballot.

The Board has no interest in—and is in fact neutral—as to the legality or constitutionality of the challenged Referendum. In relation to referenda initiated by City Council resolution, the Board and its named members merely act as an election administration and record-keeping body. As such, the Board and its members lack the opposing interest required to support a request for declaratory relief. The trial court overlooked this significant element when it denied the Board's motion to dismiss. Indeed, the trial court seemed to misunderstand the Board's argument on this issue. (will need transcript for this)

B. Plaintiffs Also Failed to Allege a Justiciable Controversy

Lack of opposing interest aside, declaratory judgments are not to be used to secure rulings on hypothetical or premature disputes. *Byer Clinic & Chiropractic, Ltd. v. State Farm Fire & Casualty Co.*, 2013 IL App (1st) 113038, ¶ 17. Yet that is what the trial court's ruling here was—an advisory and premature adjudication of a dispute that is

not yet ripe, and which might never come to fruition. If a majority of voters cast ballots in opposition to the Referendum, this entire lawsuit will become moot.

Illinois courts consistently hold that they lack jurisdiction to grant equitable relief for suits that challenge the lawfulness of the substance of a referendum before that referendum goes into effect. It is well-settled Illinois law that “an election is a political matter with which courts of equity have nothing to do.” *Payne v. Emmerson*, 290 Ill. 490, 495 (1919); *accord, Fletcher v. City of Paris*, 377 Ill. 89, 93 (1941); *Slack v. City of Salem*, 31 Ill. 2d 174, 178 (1964); *Sachen v. The Ill. State Bd. Of Elections*, 2022 Ill. App. 220470, ¶ 27. As noted in *Slack*, this Court “has no power to render advisory opinions, until the legislative process has been concluded.” *Slack*, 31 Ill. at 178. Plaintiffs’ complaint here does not plead a ripe dispute, so it is not justiciable, because the Referendum is not yet in effect. The analysis in *Fletcher* is instructive.

The *Fletcher* court held that it could not award injunctive relief because the “primary purpose” of the plaintiffs’ action “was to have the court declare [the municipal ordinance] invalid before it became effective or in force.” The court concluded that the plaintiffs had “no right” to file such an action. *Fletcher*, 377 Ill. at 94-95. The *Fletcher* court held that such an action was premature as the plaintiffs had not yet sustained a direct injury, nor were they in immediate danger of sustaining such a harm. *Id.* at 95. Additionally, the *Fletcher* court noted that, under the separation of powers, “courts can neither dictate nor enjoin the passage of legislation.” *Id.* at 96. Instead, the role of the courts “should be directed against the enforcement rather than the passage of unauthorized orders and resolutions.” *Id.* at 97.

Similarly, the supreme court in *Slack* denied injunctive and declaratory relief to the plaintiff who sought to prevent a referendum from appearing on a ballot. *See, Slack v. City of Salem*. The *Slack* court cited *Fletcher*, finding that the cases were analogous. *Id.* at 175-77. The *Slack* court, therefore, held that the election referendum was part of the legislative process. *Id.* at 177. The court held that the challenge to the referendum was premature and not within the court’s jurisdiction, denying the plaintiff’s plea for injunctive and declaratory relief. *Id.* at 178.

Finally, in *Sachen*, the court held that “courts may not act to enjoin a constitutionally authorized election.” *Sachen*, 2022 Ill. App. (4th) 229470, ¶ 27. The *Sachen* court considered whether the plaintiffs presented a justiciable suit where the plaintiffs sought declaratory judgment and injunctive relief to prevent a proposed constitutional amendment from appearing on the ballot. *Id.* at ¶ 1. After reviewing the above-cited cases, the *Sachen* court opined that it “may not act to enjoin a constitutionally authorized election.” *Id.* at ¶ 27. The *Sachen* court held that the plaintiffs’ challenge to a ballot referendum was “premature and not ripe for consideration.” *Id.*

The above cases teach that plaintiffs’ claim here is premature and not ripe for consideration. Judging the legality of a referendum initiated by City Council resolution is a much different legal action than an electoral board’s adjudication of the legality of signature petitions filed for a citizen-initiated referendum. Just as in the cited cases, plaintiffs here seek to prevent a City Council referendum from appearing on an upcoming ballot based on a challenge to its substantive lawfulness. Illinois law is clear that such substantive challenges to referenda are not justiciable and outside of the jurisdiction of courts sitting in equity. Plaintiffs relied on irrelevant case law involving electoral board

rulings on the legal sufficiency of citizen-initiated referendum petitions, and it was improper for the court to determine that those cases had any relation to the City Council's Referendum in the case at hand. The trial court erred in rejecting plaintiff's argument, which should have prompted dismissal of plaintiffs' complaint under section 2-615.

C. Plaintiffs' Complaint is Otherwise Barred by Other Affirmative Matter.

The Court need not reach this question should it agree with the Board that the complaint was legally insufficient under section 2-615. But even if the Court were to consider this issue, plaintiffs' complaint should also have been dismissed under section 2-619(a)(9) because in addition to being premature, the complaint did not name a necessary party and the trial court lacked jurisdiction to award the requested relief.

A pleading is subject to dismissal under section 2-619(a)(9) where the claim is barred by other affirmative matter. *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 16. Other affirmative matter refers to a defense that negates a cause of action completely or refutes crucial conclusions of law or conclusions of material fact that are contained in or inferred from the complaint. An affidavit is required where the affirmative matter is not evident on the face of the complaint. *Reyes v. Bd. Of Educ.*, 2019 IL App (1st) 180593 ¶ 30.

1. The Board is Not a Proper Party.

The Board is a ministerial body. It has no role in drafting, revising or certifying City-initiated referenda; nor does the Board determine whether the language and form of such referenda are legal in relation to referenda that are initiated by ordinance or resolution of a public body such as the City Council. These acts are squarely within the purview of the City Council—an entity not named in the complaint. Indeed, plaintiffs

direct no allegations against the Board or its named members to establish how this ministerial body has any authority to substantively defend a referendum it had no role in drafting, initiating or certifying to the ballot. The Board and its named members simply have no authority to decide whether the challenged referendum regarding real estate transfer taxes appears on the March Primary ballot. The Board merely has a nondiscretionary, ministerial duty to comply with the applicable Referendum ballot certification that it received from the City Clerk on November 22, 2023.

The impropriety of the Board's inclusion here is confirmed by the fact that, for the Board to comply with any injunctive relief that may be ordered, it needs clear statutory authority to remove the Referendum from the ballot, which authority it lacks. *See e.g., Quinn v. Bd. Of Election Comm'rs for Chi. Electoral Bd.*, 2019 Ill. App. (1st) 190189 (holding that the Board did not have the statutory authority to comply with a writ of *mandamus* to find that referenda are legally valid). Any injunctive relief would properly be ordered against the City Clerk, requiring her to amend or rescind her certification of this Referendum to the Board. Thus, not only is the Board an improper party, but the necessary party—the City of Chicago—is not named in plaintiffs' complaint and was barred by the circuit court from intervening in this action.

Under the Election Code, particularly Articles 6 (*supra*) and 28 (10 ILCS 5/28-1 et. seq.), the Board and its members do not have the authority to decide whether the City Council Resolution and Referendum are lawful, nor whether to block it from going on the ballot when the City Clerk lawfully certified the Referendum to the Board. *See* 10 ILCS 5/6-1 et seq.; *see also, Delgado v. Chicago Bd. Of Election Comm'rs*, 224 Ill.2d 481 (2007) (the Board has no authority to decide a constitutional challenge to an aldermanic

candidate's eligibility to hold office); *Wiseman v. Elward*, 5 Ill. App. 3d 249, 257 (1st Dist. 1972) (the Board does not have statutory authority to hear constitutional challenges to procedures for obtaining signatures for primary nominating petitions). The Board lacks the authority under Article 6 to remove certified referenda from the ballot. *See* 10 ILCS 5/6-1 *et seq.* and 10 ICLS 5-28-4². Without any express or implied statutory authority, the Board is unable to comply with any injunctive order directing it to remove the Referendum from the ballot. *See, Quinn*, 2019 Ill. App. (1st) 190189. While the trial court's February 26, 2024, order only directs the Board not to count and to suppress votes on the Referendum, even this order interferes with the Board's ministerial function and duties without permitting the real party in interest to litigate the merits. Put differently, allowing the trial court's order to stand all but sanctions circumventing well established norms to disrupt a statutorily governed process.

There is no link between the Board's administrative and ministerial authority and the constitutional or legal challenge asserted by plaintiffs with respect to the Referendum initiated by the City Council. Plaintiffs' dispute concerns the decision of the City Council and it is that body that has an interest in defending its own Referendum and its placement on the ballot. Even if plaintiffs could litigate a declaratory action against the Board (which they cannot), plaintiffs could not secure the full and complete relief they seek from the Board because they failed to name the necessary parties.

² Section 28-4 of the Election Code grants the Board the limited authority to adjudicate objections against referenda that are initiated by citizen petition, rather than by City Council Resolution. This authority is expressly limited to only referendum petitions. 10 ILCS 5/28-4.

2. The Trial Court Lacked Subject Matter Jurisdiction.

The justiciability discussion above applies with equal force under a section 2-619(a)(9) analysis. The Referendum has not yet been voted on nor put into effect. Any resolution of the legality of the Referendum is a quest for a premature advisory opinion which courts are loathe to issue. Illinois law plainly holds that plaintiffs' claim as pled is premature. *See, Sachen*, 2022 Ill. App. (4th) 229470, ¶ 27. The Illinois Supreme Court also consistently rejects challenges to referenda before they are put into effect by voters. *See, Payne v. Emmerson*, 290 Ill. 490, 495 (1919); *Fletcher v. City of Paris*, 377 Ill. 89, 93 (1941); *Slack v. City of Salem*, 31 Ill. 2d 174, 178 (1964). The trial court erred in granting relief in a matter where it lacked subject matter jurisdiction to do so.

II. PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS WAS PROCEDURALLY IMPROPER.

Judgment on the pleadings is only proper if the pleadings disclose no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010). A motion or judgment on the pleadings tests the sufficiency of the pleadings by determining whether the plaintiff is entitled to relief or, alternatively, whether the defendant's answer sets up a defense that would entitle the defendant to a hearing on the merits. *See, Granville National Bank v. Alleman*, 237 Ill. App. 3d 890, 894 (3rd Dist. 1992). It is a long-standing practice in Illinois that motions for judgment on the pleadings are proper only after the defendant answers the complaint. The filing of an answer places the parties at issue and enables the trial court to consider the sufficiency of the plaintiff's complaint. *Pollack v. Marathon Oil Co.*, 34 Ill. App. 3d 861, 867 (5th Dist. 1976). Plaintiffs' motion for judgment on the

pleadings here should have been denied because there was no answer to their complaint against which the sufficiency of the claims pled could be assessed.

Plaintiffs filed their motion for judgment on the pleadings on January 16, 2024, ten days after filing their complaint, and three days before the Board appeared. It was procedurally improper for the trial court to dispose of a motion for judgment on the pleadings on the merits before the pleadings were set. *Pollack*, 34 Ill. App. 3d at 867. Indeed, ruling on this motion was particularly awkward given that the Board had filed a motion to dismiss the Complaint citing significant deficiencies, not the least of which included the absence of a necessary party. The trial court lacked at-issue pleadings to be able to assess whether judgment on the pleadings was proper. *Granville National Bank v. Alleman*, 237 Ill. App. 3d 890, 894 (3rd Dist. 1992). The order granting plaintiffs' motion should be reversed and all relief associated with that ruling must be vacated.

Even if the procedural irregularity of ruling on the merits of a motion for judgment on the pleadings is deemed harmless because the Board also moved to dismiss the complaint, the trial court's order granting the motion for judgment on the pleadings should still be reversed because plaintiffs' failure to name the real party in interest allowed them to evade actually addressing the merits of their claim.

The order granting plaintiffs' motion should be reversed and all relief associated with that ruling be vacated.

CONCLUSION

WHEREFORE, for the foregoing reasons, defendants-appellants BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO and its members, MARISEL A. HERNANDEZ, WILLIAM J. KRESSE, and JUNE A. BROWN,

respectfully request that the judgment of the trial court be reversed, and all relief awarded plaintiffs in the February 26, 2024, order be vacated.

March 1, 2024

Respectfully submitted,

By: /s/ Rosa M. Tumialán
One of the Attorneys for Defendants-
Appellants **BOARD OF ELECTION
COMMISSIONERS FOR THE CITY OF
CHICAGO, MARISEL A. HERNANDEZ,
WILLIAM J. KRESSE, AND JUNE A.
BROWN**

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CERTIFICATE OF PLAINTIFF/APPELLEE

I certify that this Brief conforms to the requirements of Rules 341(a) and (b). The length of Defendants/Appellants' brief is 20 pages.

Respectfully submitted,

By: /s/ Rosa M. Tumialán
One of the Attorneys for Defendants-
Appellants **BOARD OF ELECTION
COMMISSIONERS FOR THE CITY OF
CHICAGO, MARISEL A. HERNANDEZ,
WILLIAM J. KRESSE, AND JUNE A.
BROWN**

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PROOF OF SERVICE

The undersigned hereby certifies that, on March 1, 2024, she electronically filed the **Brief of Defendants-Appellants** using the Appellate Court Electronic Case Filing System which will send notification of such filing to all registered participants.

By: Rosa M. Tumialán
One of the Attorneys for Defendants-Appellees

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4896-0240-3753, v. 1

APPENDIX

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FILED
2/27/2024 5:06 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000001

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

BUILDING OWNERS AND MANAGERS
ASSOCIATION, *et al.*,

Plaintiff-Appellee,

v.

BOARD OF ELECTION COMMISSIONERS FOR THE
CITY OF CHICAGO, *et al.*,

Defendants-Appellants

And
CITY OF CHICAGO,

Intervenor/Nonparty

Appeal from the Circuit Court of
Cook County, County
Department, County Division

Case No. 24 COEL 1

Honorable Kathleen Burke, Judge
Presiding

NOTICE OF APPEAL

Defendants-Appellants, BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO, MARISEL A HERNANDEZ, Chair, WILLIAM J. KRESSE, Commissioner/Secretary, JUNE A. BROWN (“Appellants”) under Supreme Court Rule 303(a), hereby appeals to the Appellate Court of Illinois, First District, from the February 26, 2024 order granting plaintiffs’ motion for judgment on the pleadings. A copy of the February 26, 2024 order is attached **Exhibit A**.

By this appeal, Defendants-Appellants request:

1. That the grant of judgment on the pleadings in favor of plaintiffs be reversed and the order that the defendants-appellants not count and suppress any votes cast on the referendum question at the March 19, 2024 primary, and not publish any tallies or results of any votes on the referendum question be vacated.

2. Defendants-Appellants also request that this Court enter an order dismissing the plaintiffs' complaint and award such other relief to which defendants-appellants are entitled in this appeal.

February 27, 2024

Respectfully submitted,

By: /s/ Rosa M. Tumialán
One of the Attorneys for Appellants,
**BOARD OF ELECTION
COMMISSIONERS FOR THE CITY
OF CHICAGO, MARISEL A.
HERNANDEZ, WILLIAM J.
KRESSE, AND JUNE A. BROWN**

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(13056-2) 4881-9369-8473, V. 1

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Iris Y. Martinez
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2024COEL000001

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

Building Owners and Managers Association,)
et al.,)
)
Plaintiffs,)
)
v.)
)
Board of Election Commissioners of the City)
of Chicago, *et al.*,)
)
Defendants.)

No. 24 COEL 001

ORDER

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

1. For the reasons stated in open court and on the record, Defendants' Motion to Dismiss the Complaint is Denied.
2. For the reasons stated in open court and on the record, Plaintiffs' Motion to Expedite Consideration of Plaintiffs' Motion for Judgment on the Pleadings is Granted.
3. For the reasons stated in open court and on the record, Plaintiffs' Motion for Judgment on the Pleadings is Granted.
4. The Defendant Board is ordered to not count and suppress any votes cast on the referendum question at the March 19, 2024 primary election, and not to publish any tallies or results of any votes cast on the referendum question.



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Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000001

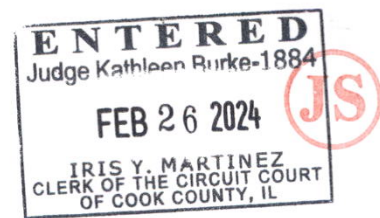
5. The proceedings before the Court were transcribed, a copy of the transcript was ordered and will be filed with the Court. The transcript is incorporated by reference herein.

6. This is a final, appealable Order.

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Enter: 2-26-24
Judge *Kathleen Burke*
1884



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

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

ORDER

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

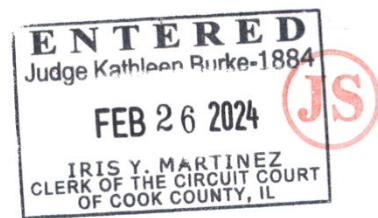
1. For the reasons stated in open court and on the record, Defendants' Motion to Dismiss the Complaint is Denied.
2. For the reasons stated in open court and on the record, Plaintiffs' Motion to Expedite Consideration of Plaintiffs' Motion for Judgment on the Pleadings is Granted.
3. For the reasons stated in open court and on the record, Plaintiffs' Motion for Judgment on the Pleadings is Granted.
4. The Defendant Board is ordered to not count and suppress any votes cast on the referendum question at the March 19, 2024 primary election, and not to publish any tallies or results of any votes cast on the referendum question.

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

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Enter: 2-26-24
Judge *Kathleen Burke*
1884



STATE OF ILLINOIS)

) SS:

COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT - COUNTY DIVISION

BUILDING OWNERS AND MANAGERS)

ASSOCIATION, ET AL.,)

PLAINTIFFS,)

-VS-)NO. 2024 COEL 000001

BOARD OF ELECTION)

COMMISSIONERS FOR THE CITY OF)

CHICAGO, ET AL.,)

DEFENDANTS.)

REPORT OF PROCEEDINGS

CHICAGO, ILLINOIS

FEBRUARY 23, 2024

MAGNA LEGAL SERVICES
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REPORTED BY: CHERYL LYNN MOFFETT, CSR NO. 084-002218
FILE NO. 1104828



Page 2

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF C O O K)
 4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 5 COUNTY DEPARTMENT - COUNTY DIVISION
 6 BUILDING OWNERS AND MANAGERS)
 7 ASSOCIATION, ET AL.,)
 8 PLAINTIFFS,)
 9 -VS-)NO. 2024 COEL 000001
 10 BOARD OF ELECTION)
 11 COMMISSIONERS FOR THE CITY OF)
 12 CHICAGO, ET AL.,)
 13 DEFENDANTS.)
 14 REPORT OF PROCEEDINGS at the Richard J.
 15 Daley Center, 50 West Washington Street, 1704 1908,
 16 Chicago, Illinois, before the HONORABLE KATHLEEN MARIE
 17 BURKE, Judge of said courtroom, commencing at 1:00
 18 p.m., on Friday, January 23.
 19
 20
 21
 22
 23
 24

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 22
 23 * * *
 24

Page 4

1 P R O C E E D I N G S
 2 THE COURT: Good afternoon, everyone. I
 3 think why don't I start with having the parties
 4 identify themselves.
 5 MR. KASPER: Michael Kasper, K-a-s-p-e-r.
 6 MR. DEL GALDO: Michael Delgado,
 7 D-e-l-g-a-l-d-o, and we are for the plaintiff.
 8 MR. LeMONIE: Charles LeMonie,
 9 L-e-M-o-i-n-e, here on behalf of the defendants,
 10 Chicago Board of Elections Commissioners and the
 11 Commissioners individually.
 12 MR. LASKER: Good afternoon. Adam Lasker.
 13 I am with the Board of Elections.
 14 MS. JORDAN: Susan Jordan for the City of
 15 Chicago. J-o-r-d-a-n.
 16 MR. CROUCH: Scott Crouch, C-r-o-u-c-h, also
 17 for the City of Chicago.
 18 THE COURT: All right. Parties, I am going
 19 to start. We have obviously several things. I have
 20 read everything. Everything has been fully briefed,
 21 and so I will just be reading a few things. I'm going
 22 to start with the Motion to Intervene.
 23 All right. Let the record reflect that the
 24 petition to intervene was filed I believe the date was

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1 on February 9 by the City of Chicago. And the City of
 2 Chicago set forth that the Illinois Municipal Code --
 3 the Illinois Municipal Corporation, the City, petitions
 4 for leave to intervene as a matter of right pursuant to
 5 735, 5/2-408(a)(2) of the Code of Civil Procedure. As
 6 required by Section 5/2-408(e), the City is submitting
 7 its combined Motion to Dismiss the Complaint pursuant
 8 to 735 ILCS 5/2-619.1 and Response to the Plaintiff's
 9 Motion for Judgment on the Pleadings concurrently with
 10 this petition.
 11 Section 5/2-408(a)(2) states, in relevant
 12 part, that "upon timely application, anyone shall be
 13 permitted as of right to intervene when the
 14 representation of the applicant's interests by existing
 15 parties is or may be inadequate and the applicant will
 16 or may be bound by order or judgment. 735 ILCS
 17 5/2-408(a)(2) (emphasis added).
 18 When considering a petition to intervene as
 19 of right, "a trial court's discretion is limited to
 20 determining timeliness, inadequacy of representation,
 21 and sufficiency of interest. Once these three --
 22 threshold requirements have been met, the plain meaning
 23 of the statute directs the petition be granted."
 24 It goes on to cite in re County Treasurer

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1 and Ex-Officio County Collector, 2017 Ill. App. (1st)
 2 152951 15 (quoting City of Chicago v. John Hancock
 3 Mutual Life Insurance Company, 127 Ill. App. "A basic
 4 tenant of the intervention statute is that it is and
 5 should be liberally construed." The Board of Trustees
 6 Village of Barrington Police Department, 211 App. 3rd
 7 698, 711 (1st District (citing People vs. Roush, 111
 8 App. 3rd 618 (1st District, 1982.)
 9 The City's petition is without question
 10 timely. The Court has not entered a substantive order
 11 and the City's petition is being filed on the date the
 12 Defendant's response to the Motion for Judgment on the
 13 Pleadings is due. The City has found no Illinois
 14 case -- let's see here. Has not found a case
 15 substantive order, which I've read, in response to the
 16 Plaintiff's Motion for Judgment on the Pleadings due.
 17 The City has found no Illinois holding that the
 18 petition for intervention as of right presented prior
 19 to a substantive decision in the matter is untimely.
 20 C.F. Grant versus John Tilley Ladder Company. 145 Ill.
 21 App. 3rd, 304 (1st District 1986) (reversing for abuse
 22 of discretion, the trial court's denial of the petition
 23 to intervene as of right filed one month after a final
 24 judgment); People versus Baylor versus Bell.

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1 turn off your cell phones.
 2 THE COURT: The City respectfully requests
 3 that the Court grant its petition to file a motion to
 4 dismiss.
 5 Now, the plaintiffs represented by Michael
 6 Kasper and the Delgado Law Group in opposition to
 7 City's Petition to Intervene states as follows.
 8 The Petitioner seeks to intervene as a
 9 matter of right pursuant to 408(a)(2) of the Civil Code
 10 of Procedure which provides upon timely application
 11 anyone shall be permitted as of right to intervene when
 12 the representation of the applicant's interest by
 13 existing parties is or may be inadequate and the
 14 applicant will or may be bound by an order of the
 15 judgment.
 16 735 ILCS 5-408(a). This section sets forth
 17 three threshold requirements: Timely application,
 18 inadequate representation of the Petition's interest by
 19 existing parties, and a finding that the Petitioner
 20 will or may be bound by an order in the case.
 21 The Petition should be denied. The petition
 22 does not satisfy any of the three requirements for
 23 intervening. First, the petition is not timely and
 24 will necessarily delay the agreed upon schedule for

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1 Plaintiff's Complaint challenges the
 2 validity of a resolution that was passed by the Chicago
 3 Council as a necessary step for this process as set
 4 forth in the Illinois Municipal Code, 65 ILCS
 5 5/8-3-19(e) (authorizing a home rule municipality to
 6 pass a resolution submitting the issue to the voters
 7 setting forth their resolution).
 8 The City should not rely on the Defendants
 9 to represent the City's interests. The Chicago Board
 10 of Elections has no role in addressing whether a
 11 resolution complies with the authorizing statute of the
 12 Illinois Constitution. Indeed, an issue cannot be kept
 13 off the ballot on the basis of substantive invalidity.
 14 Sachen versus Illinois State Board of Elections, '22
 15 Ill. App. (4th District) 220470 (citing Fletcher versus
 16 City of Paris, 377 Ill. App. 89, 92).
 17 It goes on and sets forth quite a few other
 18 matters.
 19 It's the position that the Plaintiffs are
 20 seeking an injunction preventing the Board from putting
 21 the resolution on the ballot if granted. The 5-408
 22 (a)(2) recommends that a party may be bound by an
 23 order -- by an order for intervening.
 24 THE SHERIFF: Ladies and gentlemen, please

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1 prompt resolution of the case.
 2 Second, the interest the Petitioners claim
 3 to have is adequately represented by the Defendant
 4 Board of Elections which has filed exactly the same
 5 pleadings: A motion to dismiss and a response to the
 6 judgment on the pleadings. The Petitioner seeks leave
 7 to file.
 8 Third, the Petitioner will not be bound by
 9 any judgment of this Court because the relief sought in
 10 the Complaint that the referendum not appear on the
 11 ballot. And if it does any votes cast on the question
 12 cannot be counted, can only be provided by the
 13 Defendant Board. Petitioner plays no role in preparing
 14 any of the ballots.
 15 The Petition to Intervene should be denied
 16 because it is not timely.
 17 On January 5, 2024, Plaintiffs filed their
 18 Complaint. This same day, the Petitioner issued a
 19 statement saying very clearly that the City is not a
 20 party. And, in fact, the City of Chicago issued a
 21 statement saying the City of Chicago is not a party to
 22 this lawsuit.
 23 On January 16, the Plaintiffs filed a motion
 24 on the judgment on the pleadings -- a dispositive

Page 10

1 motion, if granted -- a memorandum in support of the
 2 Motion, and a Motion to Expedite. On January 19, the
 3 parties agreed to a briefing schedule. And the
 4 schedule was filed, and it set forth that on January 19
 5 the parties agreed to a briefing schedule for hearing
 6 on the Motion on Wednesday, February 14th.
 7 On January 25th, the Defendants moved to
 8 transfer the case to chancery, which was heard and
 9 denied by this Court on January 30th, 2024. The
 10 Petitioner had an observer present in the hearing, but
 11 took no steps to participate in the case. The schedule
 12 was set to permit a final resolution of the matter
 13 prior to the March 19th primary election so that the
 14 Defendant can take necessary steps to prepare for the
 15 election and that the voters, including Plaintiffs,
 16 have an opportunity to know what will or will not
 17 appear on the ballot so they can make an informed
 18 decision.
 19 The timeliness to intervene is up to the
 20 discretion of the Court. The Court cites RTS Plumbing
 21 versus DeFazio. Factors considered in making this
 22 determination include when the intervenor become aware
 23 of the litigation and the amount of time that has
 24 elapsed between the initiation of the action and filing

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1 fails to supply information necessary to determine the
 2 timeliness of the petition."
 3 In short, the Petitioner has been aware of
 4 this case since its inception and followed its progress
 5 throughout, but nonetheless chose to wait until the
 6 last opportunity to file this petition. Petitioners
 7 have been aware of the case literally since the day it
 8 was filed. By waiting 35 days and, more importantly,
 9 until there was only one intervening business day
 10 between the Petition and the long-scheduled hearing on
 11 the dispositive motion, it is fair to infer that the
 12 delay was deliberate and intended to delay the
 13 proceedings so that a final resolution comes much
 14 closer to or even after the primary election.
 15 The Petitioner's purported interest is
 16 adequately represented by the defendant board.
 17 In this case, the Defendant Board has
 18 vigorously defended the case from the onset, from
 19 attempting to transfer the matter out of the Court to
 20 the Chancery Division to filing both a response to the
 21 Motion for Judgment on the Pleadings and a Motion to
 22 Dismiss in accordance with the briefing schedule. The
 23 Board has given no indication that it will not be
 24 prepared with the hearing scheduled for this upcoming

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1 the petition to intervene. Another factor in
 2 considering determining timeliness is the reason for
 3 the party's failure to seek intervention. All of these
 4 factors weigh against the Petitioner.
 5 As stated, the Petitioner became aware of
 6 this litigation the day it was filed. While the amount
 7 of time that Petitioner waited to seek, 35 days, may
 8 not be excessive in other cases, but it is an eternity
 9 in an election case. For example, residency litigation
 10 challenging the Former Mayor Rahm Emanuel's ballot
 11 eligibility went from the Board of Elections to a final
 12 decision in the Supreme Court in the same number of
 13 days, 35, that it took the Petitioner to seek
 14 intervening here. Maksym, M-a-k-s-y-m, versus Board Of
 15 Election Commissioners, 242 Ill. 2nd 303.
 16 As for the third factor, the reason the
 17 Petitioners failed to seek intervention at an earlier
 18 date, that too must weigh against the Petitioner
 19 because they offer no reason at all. The Petitioner is
 20 completely silent regarding the third factor. From
 21 Petitioner's failure to give a reason for this failure,
 22 the Court should conclude that there is none. RTS
 23 Plumbing, 180 Ill. App. 3rd at 1043 ("a decision
 24 denying intervention should be upheld where a party

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1 Wednesday morning.
 2 And I believe that's referring to the
 3 Wednesday the 14th.
 4 In order to show inadequacy of
 5 representation, one must not engage in speculation, but
 6 rather must allege specific facts demonstrating a right
 7 to intervene. In re Marriage of Vondra, 2013 Ill. App.
 8 (1st), 123025 15. Petitioner's sole justification for
 9 intervention in this regard is the conclusory
 10 statement that it "is the only party that can
 11 adequately respond to the Plaintiff's claims." And it
 12 refers to a Petition, Page 2.
 13 Petitioner offers no explanation as to why
 14 it is uniquely qualified to respond or why the Board is
 15 so unqualified to do so. See Id. at 18. Allegations
 16 are conclusory in nature and merely recite statutory
 17 language, that is insufficient to meet the requirements
 18 of 408.
 19 In determining the adequacy of
 20 representation, the Court compares the interests of the
 21 parties to the suit to the interests of the parties
 22 seeking to intervene. At Page 16, (denying
 23 intervention where intervenor's interests were
 24 "squarely in line" with existing parties). The

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1 Petitioner's conclusory boasting notwithstanding, the
 2 Petitioner's claim of inadequacy of representation is
 3 belied by the fact that the Board did, in fact, respond
 4 to Plaintiff's claims by moving to dismiss and
 5 responded to Plaintiff's Motion for Judgment on the
 6 Pleadings. Here too, Petitioner's interests are
 7 "squarely in line" with the Board's, so much that the
 8 Petitioner's proposed responsive pleadings are the same
 9 as those filed by the Board.

10 The Petitioner will not be bound by any
 11 decision in this case.

12 The third threshold requirement for
 13 intervention under Section 2-408(a) is that the
 14 intervenor will or may be bound by an order of judgment
 15 in this case. The Petitioner cannot possibly be bound
 16 by any order of judgment. The sole relief sought in
 17 the Complaint can only be obtained from the Defendant
 18 Board. As the election authority for the City of
 19 Chicago, (10 ILCS 5/6-26), the Board has the sole
 20 responsibility for preparing ballots, conducting
 21 elections and tallying results. The Petitioner plays
 22 no role in these functions.

23 For the same reasons, the Petitioner is not
 24 a necessary party in this case. In support of the

Page 16

1 of everything, is going to deny the question for the
 2 City -- for the Motion to Intervene, and that will be
 3 the ruling.

4 Now, I have a couple. So I will not be -- I
 5 know the City filed a Motion to Dismiss on the 619 in
 6 Opposition to the Motion for Judgment in the Pleadings.
 7 And I believe -- I believe the City, and I do have
 8 parts of the transcript that I may read at some point
 9 from that 14th.

10 Now, I believe both parties did file a
 11 Motion to Dismiss as well as -- which was very lengthy.
 12 And then I believe each party, it was a Motion to
 13 Dismiss by the Board of Election, and then I believe
 14 Mr. Kasper filed a response to that. Am I right on
 15 that, Counsel?

16 MR. KASPER: Yes, Your Honor.

17 THE COURT: Okay. Was that the one filed on
 18 I think Mr. -- that was filed on the 9th, and then your
 19 response was on the reply was the 13th and 14th, am I
 20 correct?

21 MR. KASPER: Correct. I believe we e-mailed
 22 the reply on the 12th and filed it on the 13th because
 23 of the court holiday.

24 THE COURT: Okay.

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1 contention to the contrary, the Petitioner offers only
 2 the conclusionary statement that "it would be
 3 materially affected by a judgment in the Plaintiff's
 4 favor." Petition Page 3. Nowhere does the Petitioner
 5 say why or how it will be materially affected by the
 6 Court's ruling. The case cited by Petitioner, Lurkins
 7 versus Bond Community Unit Number 2, 2021 Ill. App.
 8 (5th) 210292, is easily distinguished. In that case,
 9 the Court found state officials responsible for
 10 enforcing the COVID mask mandate were necessary parties
 11 to litigation involving enforcement of the same
 12 restriction at the local level. The Court obviously
 13 found the state officials were necessary parties
 14 because they were an additional source of enforcement
 15 of the mask mandate. Id. at 9.

16 Here, in contrast, the Petitioner is not an
 17 "additional source" of election administration. The
 18 Petitioner does not add an "additional source" of the
 19 ballot or the election.

20 The -- it goes on to state that the
 21 Plaintiffs are respectfully requesting that the
 22 Petition for Leave is denied.

23 The Court having ruled and having read
 24 everything, and obviously has read a significant amount

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1 MR. LeMOINE: And, Your Honor, for
 2 clarification, the Board also filed a Reply in Response
 3 to the Plaintiff's Motion for Judgment on the
 4 Pleadings. That was filed the morning of
 5 February 14th.

6 THE COURT: Yes, I have it.

7 All right. I can read that into the record.

8 All right. The -- and I believe the
 9 schedule -- I mean I have a copy of the schedule.

10 The order was entered setting forth that the
 11 Defendant was going to file a response to the Motion on
 12 February 9, which the Board of Elections did. The
 13 Plaintiff's reply was filed on February 13th. And,
 14 correct, you were -- it was e-mailed on February 12th
 15 because of the holidays. The matter was set for the
 16 14th at 10:00 a.m. Okay.

17 So, setting forth -- I will read first,
 18 Counsel, the Intervener/Defendant, City of Chicago, an
 19 Illinois Home Rule Municipality Moves to Dismiss
 20 Pursuant to 735 ILCS 5/2619 (a)(1) and 615 to Dismiss
 21 the Plaintiff's Complaint for Declaratory Judgment and
 22 Injunctive Relief. And that is the caption of the
 23 complaint.

24 The City also responds herein to the motion

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1 for the judgment on the pleadings. The Municipal Code
 2 requires a Home Rule Municipality like the City of
 3 Chicago to obtain voter approval to impose or increase
 4 a transfer tax on real property. The Chicago City
 5 Council passed a resolution to be included on the
 6 ballot at the March 19th primary election asking voters
 7 to authorize the City to increase the City real
 8 property tax on transfers of real property with a
 9 transfer price of more than \$1 million.

10 The Plaintiff's complaint seeks to enjoin
 11 the Commission of the Board of Elections from including
 12 the resolution on the ballot. The ballot --
 13 Plaintiff's complaint should be dismissed in its
 14 entirety because it is not within the Court's
 15 jurisdiction to enjoin a referendum as an ongoing part
 16 of the legislative process. The Court should dismiss
 17 the Plaintiff's allegations about validity of the
 18 resolution, Counts 1-3, and its claim for injunction,
 19 Count 1-5, are meritless.

20 Plaintiff's Motion for Judgment on the
 21 Pleadings should be stricken or alternatively denied
 22 based on Plaintiff's failure to name the City as a
 23 Defendant and because the Plaintiff cannot seek
 24 judgment on the pleadings before the Defendant answers

Page 20

1 advisory referendum. The extra revenue new plan is to
 2 be used for the purpose of addressing homelessness
 3 including providing affordable permanent housing for
 4 the permanent housing and the services necessary to
 5 obtain and maintain permanent housing in the City of
 6 Chicago.

7 Exhibit A to the complaint, Page 3, the
 8 resolution was effective immediately after the Chicago
 9 City Council passed into law. Id.

10 Plaintiff's failed their Complaint on
 11 January 5th requesting that the Court use its equitable
 12 power to prevent the Chicago voters from voting on the
 13 City's resolution as an advisory referendum in the
 14 March 19 election. The Complaint 1-545-5262.

15 The plaintiffs are individual companies and
 16 organizations that own or have their interest in
 17 purchasing or investing in developing and leasing,
 18 renting or selling commercial real estate and apartment
 19 buildings throughout the City of Chicago.

20 Complaint. 6-20. The Defendant's named in
 21 the complaint are the Board of Election Commissioners
 22 of the City of Chicago as an election authority
 23 statutorily charged with administering elections within
 24 the City of Chicago including the March 19th primary

Page 19

1 the Complaint.

2 As noted, the Illinois Municipal Code
 3 requires home municipalities like the City to obtain
 4 voter approval via advisory referendum before they can
 5 impose or increase a real estate transfer tax.

6 Complaint Page 2 citing 65 ILCS 5-8319, Section
 7 85-83-19(e) provides that if the majority of voters on
 8 the -- voting on the proposition vote in favor of the
 9 municipality may impose or increase the tax. On
 10 November 7, 2023, the City Council passed a Resolution
 11 Number R 23-41 which initiated and authorized the
 12 public question to be submitted to the voters at the
 13 regularly scheduled general primary on March 19.

14 The City of Chicago Resolution Number R
 15 234016, Exhibit A to the Complaint, see also the
 16 Complaint, the resolution asks whether the voters
 17 approve of implementing a graduated home rule tax which
 18 would lower the current tax rate for the first
 19 \$1 million of transfer price for every property
 20 purchased in the City while implementing higher rates
 21 only on the portion of transfer prices over \$1 million
 22 and \$1.5 million. See Id. Page 3-4.

23 Describing current tax rate incurred
 24 proposed graduated tax rate be implemented to voters in

Page 21

1 election. The Board and three individual Defendants
 2 sued solely in their official capacity as the Board's
 3 chair, secretary, and commissioners. Collectively the
 4 Defendants.

5 The Motion to Dismiss continues to state at
 6 735 CS 5-619 as a combined 615 in a 619(a)(1) motion, a
 7 Motion to Dismiss pursuant to 73 ILCS 5-619 admits the
 8 sufficiency of all well pleaded facts, but argues for
 9 the dismissal of the complaint based on the affirmative
 10 matter claimed avoiding any legal effect.

11 It goes on to cite Janda versus United
 12 States Cellular Corporation, 2011 Ill. 1st 10355283.
 13 Motions pursuant to Subsection 619 challenges the
 14 Court's jurisdiction. A Motion to Dismiss 615 attacks
 15 the legal sufficiency of the Complaint by facing the
 16 defects of the Complaint. Gillespie versus City of
 17 Chicago, 2019 Ill. App. (1st), 182189 at 20.

18 Citing Vitro versus (inaudible). When
 19 ruling on a 615 motion, the relevant question is
 20 whether the allegations in the Complaint construed in
 21 the light most favorable to the plaintiff are
 22 sufficient to state a cause of action upon which the
 23 relief may be granted. Gillespie 2019 Ill. App. (1st)
 24 182, 189 citing Canal versus Trapinka. Illinois is a

Page 22

1 fact pleading state in conclusions of law and
 2 conclusionary factual allegations unsupported specific
 3 are not deemed admitted. Alpha School Bus Company
 4 versus Wagner. 391 Ill. App. 3rd 722 (1st District)
 5 735 (1st District). Internal citation motion.
 6 A motion for the judgment on the pleadings
 7 is improper if only the questions of law and fact exist
 8 after the pleadings have been filed. Harris Trust
 9 versus Savings Bank versus Donovan, 143 Illinois 2nd
 10 1661-172-1991. Where the plaintiff moves for a
 11 judgment on the pleadings, the narrow issue is whether
 12 the facts alleged in the answer comes to a legal
 13 sufficient defense. People versus Rel. Shapo versus
 14 Agora Syndicate, 323 Ill. App. 3rd. 543, 549, 201.
 15 The Complaint should be dismissed in its
 16 entirety with prejudice pursuant to Section 269 for
 17 lack of subject matter jurisdiction. The Complaint
 18 goes on to state that: And it should be dismissed in
 19 its entirety because the Court does not have subject
 20 matter jurisdiction based on the resolution. Sachen
 21 versus Illinois 2022 Ill. App. 4th, 2204, appeal
 22 denied, Northeastern 2nd 1060 Illinois '22.
 23 In Sachen for Taxpayers petition for leave
 24 to file complaint to enjoin the Board of Elections from

Page 24

1 expanding -- expending funds in connected with it.
 2 Sanchen 2022 4th 02047018 citing Fletcher at 91.
 3 The Fletcher case cited that the Courts have
 4 no more right to interfere or prevent a holding of an
 5 election which is one step in the legislation process
 6 for the enactment of bringing into existence a City
 7 ordinance that would enjoin the City Council from
 8 adopting the ordinance in the first instance. Fletcher
 9 377 Ill. 1096. The Fletcher Court noted that the
 10 election constituted one of the first necessary steps
 11 in the passages of the ordinance and that the ordinance
 12 could not become effective and in total submitted by
 13 the ordinance.
 14 The validity of an ordinance cannot be
 15 prematurely circuitously attacked in the Courts. The
 16 Courts have no such control. The Sanchen Court relied
 17 on Slack versus City of Salem, 31 Illinois 2nd -- 2 2nd
 18 174 (1964) in which the Supreme Court reaffirmed the
 19 holding of Fletcher. In Slack, the Plaintiff sought a
 20 declaratory judgment and injunctive relief to prevent
 21 the referendum selection to approve the issuance of
 22 revenue bonds, authorizing the statute and ordinance
 23 calling for the election were in substance. Sachen
 24 citing the City of Salem.

Page 23

1 submitting the proposed Workers' Rights Amendment,
 2 Petitioners asserted that the proposed amended was --
 3 amendment was granted by federal law and thus
 4 Unconstitutional. The trial court denied the petition
 5 holding that it lacks the power to restrain the
 6 referendum. The Appellate Court affirmed in citing the
 7 Illinois Supreme Court's decision in Fletcher versus
 8 City of Paris which stated --
 9 THE REPORTER: I'm sorry, Judge. Can you
 10 slow down a little bit?
 11 THE COURT: Well, okay. I was trying not to
 12 delay it for everyone. Okay.
 13 THE REPORTER: Okay. The court's assertion
 14 in -- versus City of Paris which stated --
 15 THE COURT: Yes. Okay.
 16 -- which stated it has been a long settled
 17 in Illinois that the Courts have no jurisdiction to
 18 enjoin the holding of an election. Id at 19th quoting
 19 Fletcher at 92-93. In Fletcher group of taxpayers
 20 challenged the validity of a proposed municipal
 21 ordinance that was set for referendum vote. Municipal
 22 ordinance in Fletcher could not become effective unless
 23 voters first approved it via referendum as relief they
 24 sought to enjoin the City from holding the election

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1 The referendum that is sought to be enjoined
 2 in this case, like the referendum, is part of the
 3 legislative process. Unlike the proposal to issue
 4 bonds is favorably acted upon by the voters in
 5 referendum that is sought to be enjoined, the City of
 6 Salem did not issue any bonds under the act 175. The
 7 Court further stated that the Court has no power to
 8 render advisory opinions until the process has been
 9 concluded. There is no controversy that it's ripe for
 10 declarator judgment. Indeed the Constitutional issues
 11 which opined in this case sought may never progress
 12 beyond the realm of a hypothetical.
 13 In affirming Sachen, the Court stated that
 14 the amendment is unconstitutional as stated.
 15 The Court goes on, and there's -- I won't
 16 read the entire part. I will try to expedite it
 17 because it's probably 10, 14 pages, Counsel. It is all
 18 on the record. I will move to the end.
 19 The plaintiff's motion should be stricken,
 20 alternatively denied because the Defendants have not
 21 yet answered the Complaint or asserted any defense.
 22 Judgment on the pleadings is proper where the pleadings
 23 disclosed no genuine material fact.
 24 The conclusion is that the case is still at

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1 the pleading stage with the City's Motion to Dismiss
 2 only if the Court decides that the Complaint states a
 3 claim and only that the defendants having asserted the
 4 Complaint and should be -- should the Court consider
 5 Plaintiff's Motion for Judgment. If the Court does
 6 decide to hear the Plaintiff's motion at this point,
 7 the City asserts argument on the Motion to Dismiss in
 8 response. For these reasons, the City request that the
 9 City deny -- dismiss the complaint with prejudice and
 10 strike it, alternatively deny the motion for judgment
 11 on the pleadings.

12 The Plaintiff's response states that the
 13 motion is improperly brought as a hybrid motion and
 14 should be stricken. While the Board bills this as a
 15 combined 2-619 motion, the motion contains an
 16 introductory "facts" section that refers to several
 17 exhibits, including the Affidavit of the Executive
 18 Director of the Board. A 615 motion is limited to the
 19 pleadings itself. See Cwikla, C-w-i-k-l-a, versus
 20 Shier, S-h-i-e-r, 345 Ill. App. 3rd 23, 29, 801
 21 Northeastern 2nd 1103, 1109 (1st District 2003); Inland
 22 versus Real Estate Corporation versus Christoph,
 23 C-h-r-i-s-t-o-p-h. 107 Ill. App. 3rd 183, 185, 437
 24 Northeastern 2nd 660 (1st District). Because these

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1 not an appeal to the Circuit Court from an electoral
 2 board that was unfavorable to the plaintiff. Instead,
 3 this is properly before the Circuit Court requesting a
 4 declaration that the proposed referendum is
 5 Unconditional.

6 The Board is the appropriate defendant by
 7 statute and longstanding. 10 ILCS 5/626 (responsible
 8 for "conduct" of the elections); 10 ILCS 5/7-16 (has
 9 the duty "to prepare and cause to be printed the
 10 primary ballots for each political party in each
 11 precinct in his respective jurisdiction"); 10 ILCS
 12 5/7-13 (the duty to provide all the poll books, poll
 13 sheets, tally sheets and other records to each precinct
 14 for each primary election); 10 ILCS 5/58 (solely
 15 responsible for tallying the votes and has the duty to
 16 proclaim the results); See generally Coalition for
 17 Political Honesty versus State Board of Elections, 65
 18 Ill. 2nd 453 (1976), (Coalition I); Coalition for
 19 Political Honesty versus State Board of Elections, 83
 20 2nd 236 (1980) (Coalition II); Lousin, L-o-u-s-i-n,
 21 versus State Board of Elections, 108 Ill. App. 3rd 496,
 22 (1st District 1982); Chicago Bar Association versus
 23 State Board of Elections, 137 Ill. 2nd 394 (1990)
 24 (CBA 1) Chicago Bar Association versus Illinois State

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1 "facts" appear to be listed as part of both 615 and
 2 619, the motion is an inappropriate hybrid motion that
 3 must be stricken for failure to conform with the Code
 4 of Civil Procedure. Tielke, T-i-e-l-k-e, versus Auto
 5 Owners Insurance Company, 434 Ill. Dec. 234, 239,
 6 139 -- 135 rather. Northeast 2nd -- Northeastern 3rd
 7 118, 123 (1st District 2019); Jenkins versus Concorde
 8 Acceptance Corporation, 345 Ill. App. 3rd 669, 674,
 9 802, 1270, 1276 (1st District 2003). Further, it is
 10 prejudicial here because it is not clear what is being
 11 relied upon for what portion of the motion.

12 Response to the Motion to Dismiss Pursuant
 13 to 2-615.

14 The City and the Clerk are not necessary
 15 parties.

16 The statutory provisions and cases cited by
 17 the Board are all Illinois Election Code provisions
 18 that deal with hearings before the Board are
 19 inapposite. See, e.g., 10 ILCS 5/6-1 et seq; Quinn
 20 versus Board of Election Commissioners for Chicago
 21 Electoral Board, 2019 Ill. App. (1st District) 190189;
 22 Delgado versus Chicago Board of Election Commissioner,
 23 224 Ill. 2nd 481 (2007); Wiseman versus Elward, 5
 24 Illinois at 3rd 249, 257 (1st District 1972). This is

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1 Board of Elections, 161 Ill. 2nd 502 (1994 (CBA II),
 2 Clark versus Illinois State Board of Elections, 2014
 3 Ill. App. (1st District) 141; Hooker versus Illinois
 4 State Board of Elections, 2016 Ill. 121077.

5 The relief requested is not premature.
 6 There is an actual active controversy. Next the Board
 7 contends that the relief requested is premature and
 8 that there is not an active controversy. In support of
 9 this argument the Board cites to Payne versus Emmerson,
 10 Fletcher versus City of Paris, Slack versus City of
 11 Paris, and Sachen versus Illinois State Board of
 12 Elections.

13 Payne versus Emmerson is totally
 14 inapplicable to this case. In that case, the
 15 Petitioner sought to strike advisory referenda as to if
 16 certain issues should be considered at the
 17 legislature's Fifth Constitution Convention. Not only
 18 was it advisory, but it was also advisory as to what
 19 might -- what might -- Payne versus Emmerson is totally
 20 inapplicable. In that case the Petitioner sought to
 21 strike advisory referendum as to certain issues should
 22 be considered in the legislator's Fifth Constitutional
 23 Convention. Not only was it advisory, but it was also
 24 advisory as to what might be considered by the

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1 legislation at the convention firmly within the
 2 legislative process and doubly advisory so as not to
 3 constitute an "active controversy" so as to be
 4 premature. 290 Ill. App. 490, 492-494, 125
 5 Northeastern 2nd -- or Northeastern, rather, 329, 330,
 6 331 (1919). Slack similarly was a case that was
 7 brought by the City Treasurer to enjoin the question as
 8 to if revenue bonds should be issued, and thus it was
 9 an advisory opinion that was still within the
 10 legislative process and required further action of the
 11 municipality to issue the bonds. See Slack, at 177,
 12 121.

13 Sachen and Fletcher are both taxpayer suits
 14 that were brought under a special provision of the
 15 Illinois Code of Civil Procedure that allows taxpayer
 16 suits to be brought to prevent expenditure of public
 17 funds for unconstitutional purposes. See, e.g., 735
 18 ILCS 5/11-301; 5/11-303; Sachen 2022 Illinois App.
 19 (4th) 220470 App. 14, 15, 215 Northeastern 3rd 977, 980
 20 (4th District 2022); Fletcher, 377 Ill. 89, 94, 35
 21 Northeastern 2nd 329, 332 (1941). Payne was also
 22 brought by taxpayer, so it is further inapplicable to
 23 this case for that reason as well. Payne at 491, 329.

24 Taxpayer suits have different calculations

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1 Here this is not a taxpayer suit and it is
 2 not a "step in the legislative process." Rather, here
 3 the Plaintiffs are commercial property owners, voters
 4 or otherwise interested parties that are directly tied
 5 to the commercial properties that will be directly
 6 affected by the imposition of a tax upon property
 7 valued more than \$1 million. See Com., the complaint,
 8 at Page 6-20.

9 Further, the suit here, like the suits in
 10 the Coalition for Public Honesty, Chicago Bar
 11 Association and Hooker, directly seek to declare the
 12 manner in which the referenda itself are not being
 13 proposed as invalid, unconstitutional, specifically as
 14 inappropriate logrolling, (Complaint 41-45) combining
 15 separate unrelated questions into a single initiative
 16 (Complaint 46-52), and it is vague and ambiguous and
 17 not self-executing (Complaint Page 53 through 62).
 18 Coalition for Public Honesty Versus the State Board of
 19 Elections, 65 Illinois 2nd 453, 458, 459, 359
 20 Northeastern 2nd 138, 141 (1976); Chicago Bar
 21 Association versus Illinois State Board of Elections,
 22 161 Illinois 2nd 502, 509, 641 Northeastern 2nd 525,
 23 528-529 (1994); Hooker versus Illinois State Board of
 24 Election, 2016 Illinois 121077, 22-23, 63 Northeastern

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1 as to standing and who can bring what and at what point
 2 as specifically discussed in Fletcher. 377 Illinois at
 3 98, 35 Northeastern 2nd 333; see also generally Barco,
 4 B-a-r-c-o, Manufacturing Company versus Wright, 1011 --
 5 10 Illinois 2nd 157, 139 Northeastern 2nd 227 (1956)
 6 (citizens and taxpayers have a right to enjoin misuse
 7 of public funds); Snow versus Dixon, 66 Illinois 2nd
 8 443, 362 Northeastern 2nd (1977) (no requirement that
 9 taxpayers individual interest under the Public Monies
 10 Act should be substantial. CF 775 ILCS 5/18-102 (to
 11 bring an action for quo warranto, w-a-r-r-a-n-t-o, a
 12 citizen must have a sufficient private and specific
 13 interest to him to have standing to bring said cause);
 14 People versus Miller versus Fullenwilder, 329 Illinois
 15 65 (1928) (holding that the interest of an individual
 16 as a citizen and a taxpayer was insufficient -- (1928)
 17 (holding that the interest of an individual as a
 18 citizen and taxpayer was sufficient to challenge the
 19 Governor's title to public office). Similarly and
 20 lastly, Slack was for all intents and purposes a
 21 taxpayer suit as was brought by the Treasurer, City
 22 Treasurer who had no standing alleged. See generally
 23 City of Paris, 31 Illinois 2nd 174, 201 Northeastern
 24 2nd 119 (1964).

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1 3rd, 824-834.

2 This case is not seeking an "advisory
 3 opinion on an imaginary dispute." Crest Commercial
 4 versus Union Hall, 04 Illinois App. 2nd 110, 114, 243
 5 Northeastern 2nd 652, 655 (2nd District 1968). Rather
 6 it is a suit where an actual controversy exists, where
 7 the plaintiffs have specific private interests, and
 8 where the plaintiffs will suffer real and actual harm.
 9 Greenberg versus United Airlines, 206 Ill. App. 3rd 40,
 10 48-49, 563 Northeastern 2nd 1031, 1037, 1038 (1st
 11 District 1990); see also 735 IL 5/701(a).

12 The plaintiffs incorporate by reference
 13 their Reply in Support of a Motion on the Judgment of
 14 the Pleadings.

15 The plaintiffs incorporate these arguments
 16 by reference as if fully restated here.

17 Response to the Motion to Dismiss 619.

18 Illustrative of the prejudice that the
 19 plaintiffs suffer from the improper incorporation of
 20 "facts" in relation to the entire motion, the 619
 21 motion appears to simply repeat the arguments from the
 22 615 motion. Plaintiffs repeat that the Board is the
 23 proper party for the same reasons as to why the City
 24 and Clerk is not necessary parties.

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1 Additionally, the Court does not lack
 2 subject matter jurisdiction for the same reasons that
 3 the relief requested is not premature and that there is
 4 an active controversy.
 5 Wherefore, the Plaintiffs request the Motion
 6 to Dismiss be denied with prejudice. Respectfully
 7 submitted. Michael Kasper and Michael T. Delgado.
 8 Now, I believe you filed a reply.
 9 MR. LeMOINE: That's correct.
 10 THE COURT: Okay. I will read the reply.
 11 The Board of Election Commissioners for the
 12 City of Chicago and its members filed a combined Motion
 13 to Dismiss setting out separate arguments justifying
 14 dismissal under 2-615 for want of a legal sufficiently
 15 plead claim and alternatively under 619(a)(9) based on
 16 other affirmative matters. Plaintiff's response claims
 17 ignorance as to what argument was directed under which
 18 section. Plaintiffs otherwise failed to rebut the
 19 significant defects that plague their Complaint.
 20 Dismissal of the Plaintiff's Complaint as to the Board
 21 and its members with prejudice is proper and should be
 22 granted.
 23 Defendant's motion complies with Section
 24 619.1.

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1 This much is confirmed by the City's Petition to
 2 Intervene.
 3 Similarly, the premature argument also goes
 4 into the elements of declaratory relief, justiciable
 5 controversy. Plaintiff's arguments on this point in
 6 the case they cite misses the mark.
 7 Plaintiffs insists that they pursue an
 8 actual claim that is not an imaginary dispute. That
 9 was not the argument the Board and its members
 10 advanced. Plaintiffs may well have an actual dispute
 11 with the content of the referendum, but that dispute is
 12 not presently justiciable. Plaintiff's seek --
 13 plaintiff's statements to the contrary notwithstanding,
 14 the case cited by the Board its members. See Payne
 15 versus Emmerson, 290 490, 495 (1919 ("an injunction
 16 will not be an issue of a court of equity for the
 17 purpose of a restraining the holding of an election"
 18 because an election is a political matter with which
 19 courts of equity have nothing to do) and Slack versus
 20 City of Paris, 31 Illinois 2nd 174, 177 (1964)
 21 (injunction not proper where referendum was part of the
 22 legislative process so the Court could not enjoin the
 23 referendum from appearing on the ballot). Indeed, the
 24 referendum may not be approved in which case all of

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1 Plaintiff's initial contention is that the
 2 Defendant's motion is procedurally deficient because it
 3 does not specify which argument is directed under which
 4 section is required by section as required by 2619.1.
 5 This argument is baseless as Defendant's motion was
 6 divided into two sections, the first of which
 7 specifically references 2-615. The second section
 8 specifically referenced other affirmative matters and
 9 can only mean 619(a)(9).
 10 The Defendant's relative to Section 615
 11 raise two arguments. The Plaintiffs failed to plead
 12 all the elements -- failed to plead all the elements
 13 necessary to support request for a declaratory relief,
 14 and the claim is premature. Plaintiffs failed to
 15 squarely address either, preferring instead to rely on
 16 unfounded assertions that the hybrid motion confused
 17 them.
 18 Plaintiffs seek declaratory relief. There
 19 are certain elements necessary to establish a right to
 20 this form of relief. Plaintiff's response is silent on
 21 the issue because they do not and cannot refute the
 22 fact that they have no actual controversy with the
 23 Board or its members. To the extent that there is a
 24 controversy, it is with the City Council, if at all.

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1 Plaintiff's contentions are moot.
 2 Plaintiffs here allege no harm from the
 3 referendum appearing on the ballot and, instead, only
 4 claim injury from the effects of the referendum if it
 5 is approved by the voters into effect. None of the
 6 cases change the longstanding black letter election law
 7 that courts of equity cannot enjoin the holding of an
 8 election, especially based on hypothetical damages.
 9 Plaintiff's reliance on Crest Commercial,
 10 Inc. versus Union Hall, 04 Illinois App. 2nd 110 (2nd
 11 District 1968) (regarding the interpretation of a lease
 12 agreement) and in Greenberg versus United Airlines, 206
 13 Illinois App. 3rd 40 (1st District 1990) regarding
 14 contract and fraud claims brought by the airlines'
 15 customers requesting declaratory judgment based on
 16 Defendant airlines' changes in the rule for frequent
 17 flyer program) is misplaced because the Plaintiffs here
 18 face no harm from the referendum appearing on the
 19 ballot in itself.
 20 Plaintiff's argument on this point assumes
 21 that the referendum will pass and that they will suffer
 22 harm due to the referendum being enacted. But it is
 23 also possible that the referendum will be rejected by
 24 the voters and that the claimed -- claimed damages will

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1 never materialize. This is the classic case of a
 2 premature request for a declaratory relief.
 3 Plaintiff's response confirms said Complaint
 4 is barred by other affirmative matter.
 5 Plaintiff's argument relating to the
 6 necessary party is set out on a response Section 2-615
 7 part the motion even though this issue was clearly
 8 advanced as a Section 2-619(a)(9) argument.
 9 Even so, plaintiff's contentions underscores
 10 the impropriety of naming the Board and its members
 11 here. Plaintiff's entire argument spans a total of
 12 four sentences accompanied by a string of citations
 13 inapposite cases to create the illusion that the Board
 14 and its members are proper parties despite their lack
 15 of interest in the substance of the referendum
 16 involvement in its initiation by the City Council.
 17 Plaintiff cites Coalition for Political
 18 Honesty versus State Board of Election, 65 Illinois 2nd
 19 453 (1976) (Coalition 1); Coalition for Political
 20 Honesty versus State Board of Election, 83 Illinois 2nd
 21 236 (1980) (Coalition II); Lousin versus State Board of
 22 Election, 108 Illinois App. 3rd 496 (1st District
 23 1982); Chicago Bar Association versus State Board of
 24 Elections, 137 2nd 394 (1990) (CBA 1); Chicago Bar

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1 State Board of Elections for determination
 2 of its validity. See Hooker, 2016 Illinois 2nd. 2016
 3 Illinois 121077 at 7 (noting that the State Board of
 4 Elections determined a petitioner received more than
 5 the required number of signatures).
 6 Unlike the string cases with no discussion,
 7 Defendants here have established that they have no
 8 substantive role in either drafting or verifying or
 9 certifying a referendum for inclusion on a ballot. To
 10 the contrary, the Board and its members merely act at
 11 the direction of the City Council. The City Council
 12 referendum was initiated by City Council resolution and
 13 not by any signature petitions amended by voters. The
 14 plaintiffs cannot overlook this immutable fact. It is
 15 for this reason that plaintiffs elected to string cases
 16 instead of providing the Court with any meaningful
 17 discussion. This practice is not favored as it foists
 18 the burden of research and argument onto the Court.
 19 See Cwik versus Giannoulas, 237 Illinois 2nd 409, 423,
 20 (2010) (expressing disapproval of string practice).
 21 Plaintiff's string citations and absent argument are
 22 egregious where they seek expedited review after
 23 delaying filing their Complaint for months after the
 24 referendum was certified.

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1 Association versus Illinois State Board of Elections,
 2 161 Illinois 2nd 502 (CBA II); Clark versus Illinois
 3 State Board of Elections, 2014 versus 149937; and
 4 Hooker versus State Board of Elections, 2016 121077 for
 5 the proposition that the Board and its members are
 6 proper parties.
 7 Setting aside that there were no necessary
 8 party questions in any of these cases, plaintiff's
 9 analogy that it is proper to name the Board and its
 10 members here because it was proper to name the State
 11 Board of Elections in the cited cases overlooks that
 12 the State Board of Election actually have an interest
 13 in the issue being adjudicated.
 14 For instance, the issue in Coalition 1 and
 15 Coalition 2, the State Board of Elections was named
 16 because it is the body that approves signatures on
 17 petitions and declares petitions to be valid where the
 18 City Council referendum at issue in this case was not
 19 initiated by petition signatures. Coalition I, 65
 20 Illinois 2nd at 462 (observing that the state electoral
 21 board determines the validity and sufficiency of
 22 petitions); Coalition II, 161 Illinois 2nd at 505.
 23 (WHEREUPON, a pause was had
 24 in the proceedings.)

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1 The Defendant Board of Election and the City
 2 of Chicago members, Marisel Hernandez, William J.
 3 Kresse, June Brown, requests an order dismissing the
 4 Plaintiff's complaint with prejudice against the
 5 Defendant for an award of costs and for all court fees.
 6 Respectfully submitted, Board of Election Commissioners
 7 and by Charles LeMoine and his colleagues, Rosa
 8 Tumialan, T-u-m-i-a-l-a-n, and Molly Thompson,
 9 T-o-m-p-s-o-n, and Taylor A. Brewer.
 10 All right. That is it as to that issue.
 11 The Court did have significant testimony
 12 concerning the matters pursuant to even the transcript
 13 on those days of the -- I believe it was the 14th.
 14 There was a significant amount of testimony. So I
 15 believe at some point you stated that there was very
 16 little testimony. Given the opportunity I believe, if
 17 I'm not mistaken, there was a significant amount of
 18 discussion on multiple issues, and I allowed all
 19 parties to speak. I won't necessarily go through the
 20 transcript from February 14, but there was certainly
 21 the opportunity to respond on that date and significant
 22 amount of -- a lengthy discussion.
 23 With regards to this Motion to Dismiss, the
 24 Court has heard it and obviously read into the record

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1 the motion by the City to dismiss the --
 2 MR. LeMOINE: Your Honor, can I just --
 3 you're saying the City Motion to Dismiss. I think
 4 you're referencing the Chicago Board of Election
 5 Commissioners since you denied the City's petition.
 6 THE COURT: All right. Thank you so much.
 7 MR. LeMOINE: You're welcome.
 8 THE COURT: I also, though, read into the
 9 record the Plaintiff's Response in Opposition of the
 10 Board of Elections' Motion to Dismiss as well as the
 11 reply of the Board of Elections.
 12 Based on my review of all the rulings and
 13 the events on the 14th, the Court is going to deny the
 14 motion at this time, and that will be the Court's
 15 ruling.
 16 Now, I have a couple other motions. I do --
 17 I am going to just take a two-minute recess at this
 18 time, and I will be back very promptly. And I think
 19 we've got a couple other matters that we'll discuss.
 20 Okay? All right.
 21 (WHEREUPON, a break was had
 22 in the proceedings.)
 23 THE COURT: All right, Parties. I will just
 24 very briefly summarize some of the motion to expedite

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1 The Defendant's response to the motion, the
 2 City of Chicago initiated a referendum resolution
 3 R2023-416 in November of 2023. On November 22nd the
 4 officer of the City Clerk certified the referendum and
 5 inclusion for March 24 ballot. See the resolution.
 6 The City Clerk certified the referendum.
 7 See -- and it's on Exhibit A.
 8 Plaintiffs waited until January 5, 59 days
 9 after the resolution was initiated, to file their
 10 complaint objecting to the referendum and seeking its
 11 removal from the March 19th election. Plaintiffs then
 12 waited an additional 11 days to file procedurally
 13 defective motion on the judgment on the pleadings and a
 14 motion to expedite. Plaintiffs state no good cause for
 15 doing the filing. It goes on to state that the
 16 resolution was initiated by the City Council.
 17 Plaintiff's January 5, '24 Complaint is silent as to
 18 the reasons for this protracted delay. But absent any
 19 effort to establish good cause for why they waited
 20 nearly two months to file their complaint, nor is there
 21 an articulated reason why they waited an additional 11
 22 days, the motion is otherwise moot. Unexpected delay
 23 aside, the request for the expedited ruling is moot.
 24 The Court entered an agreed scheduling that

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1 the pleadings. Okay?
 2 The matter concerns Plaintiff's motion to
 3 expedite consideration of their motion for judgment on
 4 the pleadings.
 5 Now comes the Plaintiffs, through counsel,
 6 and moves this Court for an expedited consideration of
 7 their motion for judgment on the pleadings, and in
 8 support thereof states as follows:
 9 That the matter concerns the eligibility of
 10 a referendum question to appear on the ballot at the
 11 March 19, 2024 primary election for consideration by
 12 Chicago voters. The Complaint was filed January 5, and
 13 the Plaintiffs have filed a judgment on the pleadings
 14 on January 16.
 15 Consideration of the motion should be
 16 expedited for the defendant, Board of Election
 17 Commissioners, to take the necessary steps to prepare
 18 ballots and other materials upon.
 19 Wherefore, for the foregoing reasons,
 20 Plaintiffs request that the motion to expedite their
 21 Motion for Judgment on the Pleadings be granted and
 22 that the Court set an expedited briefing schedule on
 23 the Motion and that the Court schedule a hearing on the
 24 matter at its earliest convenience.

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1 governs filings in this matter. Plaintiff's consent to
 2 the schedule set out in the agreed scheduling order
 3 concedes the motion to expedite. The agreed order is a
 4 record of the parties' agreement and is not an
 5 adjudication of their rights. In re marriage of
 6 Rolseth, R-o-l-s-e-t-h, 389 Ill. App. 969, 907
 7 Northeastern 2nd, 897 2nd district. An agreed order
 8 supersedes the motion as a result. City of Marseilles
 9 versus Radford, 287 Illinois App. 3rd 757, 76696
 10 Northeastern 2nd 125 3rd District (1987). The
 11 Defendants request that the motion to expedite be
 12 denied for all other relief requested.
 13 The Court does believe there was more or
 14 less an agreement, and the Court is going to deny the
 15 request by the Defendants, and the matter is being
 16 expedited for purposes of expediting -- moving quickly
 17 on this matter. So I will grant the motion to expedite
 18 the matter.
 19 I believe then the next motion is the motion
 20 on the pleadings, which, again, is very well briefed.
 21 And to reiterate, going back to the motion
 22 for the expedited consideration, the Court did enter
 23 the response by the Defendants was met by filing their
 24 response by February 9, and the Plaintiff filed their

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1 reply by the 13th, and the matter was set for a hearing
 2 on the 14th as it was as well as several other motions
 3 were set.
 4 Plaintiff filed a motion for judgment on the
 5 pleadings in Building Owners and Managers versus the
 6 Board of Election Commissioners.
 7 Plaintiff's Motion for Judgment on the
 8 Pleadings. The Plaintiffs move for judgment on the
 9 pleadings pursuant to Section 2-615 Code of Civil
 10 Procedure 735 ILCS 5/6-15(e), and in support of their
 11 motion states the following:
 12 The action for a declaratory judgment and
 13 injunctive relief seeks to prevent the Defendant, Board
 14 of Elections, from printing on the ballot referendum
 15 question on the March 19 primary election ballot
 16 proposing to change the real estate tax rate on
 17 properties sold in the city.
 18 On November 7, 2023, the Chicago City
 19 Council passed Resolution Number R2023-416 directing
 20 the Board of Elections to place such a question on
 21 presentation to the Chicago voters. The referendum
 22 contains the -- shall have the City impose a real
 23 estate tax decrease of 20 percent to establish new tax
 24 rate of \$3 for every \$500 transfer price or fraction

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1 or corporate purposes. Revenue from the increase (the
 2 difference between the revenue granted under the
 3 increased rate and the current rate) is to be used for
 4 the purpose of addressing homelessness including
 5 providing permanent affordable housing for services
 6 necessary to obtain and maintain permanent housing in
 7 the City of Chicago.
 8 The Plaintiffs seek the declaration of the
 9 referendum question -- seek a declaration that the
 10 referendum question violates Section 8-19 of the
 11 Illinois Municipal Code 65 ILCS 5/8-13-19(d) which
 12 provides "a home rule municipality may impose a new
 13 real estate tax, transfer tax, or may increase the
 14 existing one, a state transfer tax with prior
 15 referendum approval." 65 ILCS 5/813-19(d).
 16 Section 8-319 permits a home rule
 17 municipality to amend an existing real estate transfer
 18 tax without approval by the referendum so long as the
 19 amendment does not increase the transfer tax or
 20 transactions covered by the tax.
 21 The referendum section of the code because
 22 it is not the only purpose proposes to increase the
 23 real estate transfer tax on some transfers by
 24 referendum, but it also proposes to decrease the real

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1 thereof for that part of the transfer price below
 2 \$1 million to be paid by the buyer of the real estate
 3 transfer unless the buyer is exempt from the tax solely
 4 by the operation of state law and in which case the tax
 5 is to be paid by the seller.
 6 A real estate transfer tax increase of
 7 166.67 percent to establish a new transfer tax rate,
 8 \$10 for every \$500 transfer price or fraction thereof
 9 for that part of the transfer price between \$1 million
 10 and, \$1,500,000 inclusive to be paid by the buyer of
 11 the real estate transferred unless the -- unless the
 12 buyer is exempt from the tax solely by operation of the
 13 state law in which case the tax is to be paid by the
 14 seller and a real estate transfer tax increase of
 15 300 percent to establish a new transfer tax rate of \$15
 16 for every \$500 of transfer price or fraction thereof
 17 for part of the transfer price exceeding \$1,500,000 to
 18 be paid by the buyer and the real estate transferred
 19 unless the buyer is exempt from the tax solely by
 20 operation of state law in which case the tax is to be
 21 paid by the seller.
 22 The current rate of the real estate transfer
 23 tax is \$375 per \$500 of the entire transfer price or
 24 fraction thereof, and the revenue is used for general

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1 estate transfer tax rate on other transfers not
 2 permitted by Section 8-19.
 3 The referendum question violates Article
 4 III, Section 3 of the Illinois Constitution which
 5 provides "all elections shall be fair and equal."
 6 Illinois Constitution.
 7 For purposes of referenda, this provision is
 8 violated when a proposed referendum combines separate,
 9 unrelated questions into a single initiative.
 10 Coalition for Political Honesty versus Illinois State
 11 Board of Election, 83 Illinois 2nd, 236 (1980). The
 12 purpose of this restriction is to protect the voters'
 13 right to vote on each question separately. The
 14 referendum plainly calls for three separate questions.
 15 1. Shall transfer tax lower from \$3.75 to \$3.00 for
 16 purchase value of less than \$1 million? 2. Shall the
 17 transfer tax rate be raised from \$3.75.
 18 You know, I don't think --
 19 FROM THE AUDIENCE: I can't type?
 20 THE COURT: It's electronic. Thank you.
 21 The transfer rate be raised \$3.75 to \$10.00
 22 for purchase value between \$1 million and \$1.5, and
 23 shall transfer tax rate be raised from \$3.75 to \$15 per
 24 purchase value of \$1.5 million.

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1 Because the referendum question proposes a
 2 combined question combining three separate questions,
 3 it violates Plaintiff's and all voters' right to vote
 4 on three propositions separately in violation of
 5 Article 377, Section 3 of the Illinois Constitution.
 6 The referendum question is vague, ambiguous,
 7 and not self-executing in violation of the Illinois
 8 law. Illinois Supreme Court precedent has established
 9 that a municipal referendum must be self-executing;
 10 meaning the question must "stand on its own," and that
 11 question "leaving gaps to be filled by the legislation
 12 or the municipal lobby, then just what was approved by
 13 the voters remains uncertain." *Lipinski versus Chicago*
 14 *Board of Election*, 114 Illinois 2nd 95 (1986). *Leck*
 15 *versus Michaelson*, 111 Illinois 2nd 523 (1986). The
 16 referendum question provides that the revenue generated
 17 will be used for the vague and ambiguous purpose of
 18 addressing homelessness without any further explanation
 19 to the voters as to what will and will not be done and
 20 who will make these decisions.
 21 Resolution R2034-416 is thus not
 22 self-executing; therefore, cannot be placed on the
 23 ballot at the March 19 primary election.
 24 Plaintiffs are entitled to judgment on the

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1 The standard for judgment on the pleadings.
 2 2/6-15(e) provides that "any party may
 3 seasonably move for judgment on the pleadings." 735 IL
 4 5-615(e). Judgment on the pleadings is proper if the
 5 pleadings disclose no genuine issue of material fact
 6 and that the movant is entitled to judgment as a matter
 7 of law. *Lebron versus Gottlieb Memorial Hospital*, 237
 8 Illinois 2nd 217, 2626, (2010). The case presents no
 9 genuine issue of fact, but instead presents entirely
 10 legal question; i.e., whether the referendum question
 11 complies with the Illinois Municipal Code and
 12 Contusion.
 13 Argument.
 14 The referendum question fails to comply with
 15 the requirements of the Illinois Municipal Code for
 16 increasing real estate transfer taxes.
 17 The plain language of the Municipal Code
 18 prohibits combining tax increases and tax decreases in
 19 the same question.
 20 The Illinois Municipal Code permits a
 21 rule -- home rule municipality to "impose a new real
 22 estate transfer tax" or to "increase" an existing or a
 23 real estate transfer tax only upon "prior referendum
 24 approval." 65 ILCS-5-8-13-19(D). The same section of

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1 pleadings because there are no disputed questions of
 2 material fact, and the referendum question is legally
 3 and Constitutionally invalid for the reasons set forth
 4 above and set forth in greater detail in the
 5 memorandum.
 6 Wherefore, for the foregoing reasons and the
 7 reasons set forth in the Memorandum of Law supporting
 8 this motion, plaintiffs pray that this Court grants the
 9 Motion for Judgment on the Pleadings and grant the
 10 relief requested in their complaint.
 11 Respective submitted, Michael Kasper and
 12 Michael T. Del Galdo.
 13 Now I'm looking at the plain language of
 14 the -- of the memorandum, Counsel. I'll try to kind of
 15 summarize a few sections. Okay?
 16 Plaintiffs instituted this litigation
 17 seeking a declaratory judgment and injunctive relief
 18 because of referendum question violates Section 8-319
 19 of the Illinois Municipal Code, 65 ILCS 5-813-19(d),
 20 Article 3, Section 3 of the Illinois Constitution,
 21 (Illinois Constitutional Article 3 at Page 3) and well
 22 established precedent that prohibits referendum
 23 questions that are vague and ambiguous and not
 24 self-executing.

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1 the code permits a home rule municipality to amend an
 2 existing real estate transfer tax ordinance without
 3 approval by referendum so long as the amendment does
 4 not decrease, increase the transfer tax rate or add
 5 transactions covered by the tax. The complete section
 6 reads as follows:
 7 Except as provided in subsection (i), no
 8 home rule municipality should impose a real estate --
 9 new real estate transfer tax after the effective date
 10 of this amendatory act of 1996 without prior approval
 11 of the referendum. Except as provided in Subsection I,
 12 no home rule municipality shall impose an increase of
 13 the rate of a current real estate transfer tax without
 14 prior approval by referendum. A home rule municipality
 15 may impose a new real estate transfer tax or may
 16 increase an existing real estate transfer tax with
 17 prior referendum approval. The referendum shall be
 18 conducted as provided in Section C. The -- it was
 19 actually Subsection (e). An existing ordinance or
 20 resolution imposing a real estate transfer tax may be
 21 amended without approval by referendum if the amendment
 22 does not increase the rate of the tax or the
 23 transactions for which the tax is imposed.
 24 65 ILCS 5-13-19(D), emphasis added. Thus

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1 the Municipal Code permits three separate actions
 2 regarding the transfer tax. 1, imposition of a new
 3 transfer tax, which requires prior referendum approval;
 4 an increase of an existing transfer tax, which requires
 5 prior referendum approval; and an amendment to an
 6 existing transfer tax which does not increase the rate
 7 (which can be done without referendum approval).
 8 The referendum presented here violates
 9 Section 8-13 of 19 of the Municipal Code because it not
 10 only proposes to "increase" to City's current real
 11 estate transfer tax rate on some transfers by
 12 referendum, but it also proposes in the same referendum
 13 to amend by decreasing the real estate transfer tax
 14 rate on other transfers the increase prior to the
 15 approval by the referendum, but the other amendment
 16 decrease may be done without prior approval by
 17 referendum.
 18 The imposition of a new transfer tax or an
 19 increase in the rate of the existing tax and any other
 20 amendment such as a decrease being done in the
 21 referendum when constraints as to the Court's goal is
 22 to determine and effectuate the legislative intent
 23 that's indicated by giving the statutory language it's
 24 plain and ordinary meaning. People versus Hardin, 238

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1 December 14, Resolution -- 2022 Resolution R2022-1490,
 2 and see the complaint, it was introduced also proposing
 3 to raise the real estate transfer tax from \$3.75 to
 4 \$13.25 for every \$500.00 in the value of the
 5 transferred property from \$1 million, a 253 increase.
 6 That resolution also did not pass.
 7 On September 13, four months after
 8 resolution R2021919 and Resolution R2022-1409 were
 9 declared lost. Resolution R23 over -- 23-41, the
 10 subject of this litigation, was introduced proposing to
 11 introduce the real estate transfer tax properties
 12 valued at less than \$1 million by 20 percent while in
 13 the same question proposing to increase the tax rate
 14 value between \$1 million and \$1.5 by 1666.67 percent
 15 and to increase the tax rate on property transfer value
 16 above \$1.5 million by a staggering 300 percent.
 17 In short, there was insufficient support by
 18 the City Council to pass a resolution increasing the
 19 transfer tax rate alone, and only by combining it with
 20 a proposition also to reduce the rate on some
 21 transfers. This is a textbook example of "logrolling"
 22 or "bundling unpopular legislation with more palatable
 23 bills so that the well-received bills would carry the
 24 unpopular ones to passage." see Warts versus Quinn.

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1 Illinois 2nd 33, 40, 20-10. The Courts will not depart
 2 from the statute's plain language by reading in
 3 exceptions, limitations in conflict with the
 4 legislative.
 5 In addition, Courts must construe the
 6 statute's words in light of other relevant provisions,
 7 not in the isolation. Moreover, the Courts may
 8 consider for reasons in the law that problem be
 9 remedied. The purposes to be achieved and consequences
 10 construing the statute one way or another. People
 11 versus Burlington, 2018 Illinois App. 4th 150642 at 16.
 12 Here the Municipal Code permits the
 13 imposition or increase in the real estate transfer tax
 14 by referendum but does not permit the corresponding
 15 decrease in the tax by the referendum. The purposes to
 16 be achieved by this law and the problems to be remedied
 17 is to prevent precisely the type of legislative
 18 logrolling that happened here.
 19 On July 21st '21 Resolution R2021-919,
 20 complaint -- and the complaint was introduced proposing
 21 a referendum to only increase the real estate transfer
 22 tax from \$3.75 to \$13.25 for every \$500 in the value of
 23 the transferred property above \$1 million, a (253
 24 increase.) That resolution did not pass. On

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1 In Illinois the prohibition against
 2 logrolling appears in the single subject rule of
 3 Article IV, Section (80)(d) of the Illinois
 4 Constitution. Illinois Constitution 1970, Article IV
 5 at 8(D). The rule is designed to prevent the passage
 6 of legislation that standing alone could not muster the
 7 necessary votes for enactment. People versus Sypien,
 8 198 Illinois 2nd 338 citing Geja's Cafe versus
 9 Metropolitan Peer Exposition Authority. "Such
 10 'logrolling' by legislators is a practice strictly
 11 prohibited by the state's constitution;" People versus
 12 Cervantes, 189 Illinois 80 2nd 80, 98 (1999). People
 13 versus Wooters, 188 Illinois 2nd, 500, 518 (1998).
 14 The prohibition against logrolling "ensures
 15 that the legislature addresses the difficult decision
 16 faces directly and subject to public scrutiny rather
 17 than passing unpopular measures on the back of popular
 18 ones." Johnson versus Edgar, 176 Illinois 2nd 499, 514
 19 (1997).
 20 Johnson versus Edward is particularly
 21 instructive here because in that case -- because in
 22 that case the Supreme Court invalidated an equally
 23 egregious example of logrolling. The General Assembly
 24 passed legislature combining, as here, a tax increase

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1 (on motor fuel) with the creation of the state's first
 2 sex offender notification law for predatory criminal
 3 sexual assault of a child. Id 516. The Court struck
 4 down the legislation in its entirety.
 5 Given the prohibition against logrolling,
 6 the General Assembly by the Illinois Constitution makes
 7 perfect sense that the General Assembly would impose.
 8 Viewed through less prohibition against combining tax
 9 increases with tax decreases in the same question as
 10 set forth in 8-13-19(d) is simply an anti-logrolling
 11 provision designed to prevent exactly what happened
 12 here. That is why the plain language of Section
 13 8-13-19 prohibits combining both transfer taxes.
 14 Then it goes on to another section.
 15 You know, ma'am, if you -- you know, you can
 16 use it, but is there a way for you to, like, type a
 17 little quieter?
 18 FROM THE AUDIENCE: Yes.
 19 THE COURT: That would be appreciated.
 20 Okay? You know, I know -- you're welcome to do it.
 21 You know, it was a little loud. So maybe you can
 22 somehow be a little more quiet. Okay? Thank you.
 23 FROM THE AUDIENCE: Is this good?
 24 THE COURT: That's the spot. Okay. Just

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1 Imposing a real estate transfer tax may be amended
 2 without referendum.
 3 It goes on. You know, move to Section B.
 4 The referendum combined three separate questions.
 5 Article 3, Section 3 of the Illinois Constitution
 6 provides that all elections shall be free and equal.
 7 Illinois Constitution 1970. The free and equal clause
 8 guarantees the right to vote in Illinois and recognizes
 9 a broad public policy to expand the opportunity to
 10 vote. Clark versus Illinois State Board of Elections,
 11 and it goes on with a couple other cases cited.
 12 Under the clause every qualified voter has a
 13 right to vote. All votes must have equal influence.
 14 Chicago Bar Association versus white. The free and
 15 equal clause gives Constitutional priority to the
 16 state's public policy encouraging full and effective
 17 participation. The free and equal clause is violated
 18 when separate and unrelated questions are combined in a
 19 single proposition on a ballot, and that goes on to
 20 talk about the Collation for Political Honesty versus
 21 Illinois.
 22 In Clark, the Appellate Court affirmed the
 23 Circuit Court's decision (Honorable Mary Mikva
 24 presiding) finding that a proposed referendum question

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1 fine. Okay?
 2 Rules of statutory -- Section 2. Rules of
 3 the statutory construction prove that tax increases and
 4 tax decreases cannot be included in the same
 5 referendum.
 6 Even if, despite the foregoing, Section
 7 8-13-19(d) were ambiguous, it must still be read to
 8 prevent the referendum at issue here. "Where a statute
 9 is susceptible to more than one equally reasonable
 10 interpretation, then the statute is ambiguous, and the
 11 Court may consider extrinsic aids of construction to
 12 discern the legislative intent." Policemen's
 13 Benevolent Labor Commissioner versus City of Sparta,
 14 2019 Ill. App. (5th) 190039(u) at 17. The expressio
 15 unius est exclusio alterius (the expression of one
 16 thing means exclusion on the other) doctrine of
 17 statutory construction is instructive here. When a
 18 statute lists certain things omitted. It goes on and
 19 cites people verse Klaeren.
 20 Here, 13-19, there are two actions regarding
 21 real estate tax that municipalities may take prior
 22 referendum approval: The imposition of a new tax
 23 increase in the rate under the expressio unius rule,
 24 the omission allowing a decrease amongst other matters.

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1 that included separate and unrelated components,
 2 Article III, Section 3. Clark, 2014 Ill. App. (1st),
 3 141937 at Page 29. The referendum in Clark proposed
 4 several changes to the Constitution's legislation
 5 including term limits for legislators and increasing
 6 the number of votes needed to override the Governor's
 7 veto. In affirming the Circuit Court, the Appellate
 8 Court noted that "both term limits and veto provisions
 9 could easily stand as an independent proposition
 10 without affecting the rest of the proposed changes"
 11 and therefore held that "the proposed amendment is
 12 invalid under the free and equal clause."
 13 Here, as in Clark, the tax increase
 14 provisions could stand as "independent propositions."
 15 This conclusion is highlighted by the fact that the tax
 16 decrease provision does not even contemplate a
 17 referendum proposition, but specifically states that a
 18 decrease effectuated "without approval by the
 19 referendum." Instead, the tax decrease provision was
 20 included in the referendum for the obvious political
 21 reasons.
 22 In determining whether a proposed referendum
 23 violates, the Supreme Court has also considered the
 24 possibility that combined propositions if presented

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1 were presented on separate questions "incongruous
 2 results might follow." Coalition, and I believe we
 3 cited these cases earlier, proposed changing the
 4 Illinois House of Representatives from multi members to
 5 single-member district.

6 Here, there is no risk of incongruous
 7 results if, despite the prohibition of Section
 8 8-13-19(d), the tax increase questions and the tax
 9 decrease questions were likely separated.

10 The referendum proposed in this case calls
 11 for three separate questions: Shall the rate be
 12 lowered from \$3.75 to \$3.00 for purchase value of less
 13 than \$1 million? Shall the transfer tax rate be raised
 14 from \$3.75 to \$10 for purchase value between \$1 million
 15 and \$1.5? Three: Shall the transfer tax be raised
 16 from \$3.75 to \$15 for the purchase value of
 17 \$1.5 million? Because the referendum proposes a
 18 compound question combining three questions, it
 19 violates the Plaintiff's and all voters' right to vote
 20 on the Constitution.

21 There is a -- you go on to talk about the
 22 referendum is vague and ambiguous and not
 23 self-executing. And you cite the -- the Lipinski
 24 versus Chicago Board of Election Commissioners and Leck

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1 voters.

2 And it goes on and states: In conclusion,
 3 for the foregoing reasons the Plaintiffs pray that this
 4 Court grants their Motion for Judgment on the Pleadings
 5 and grant the relief requested in their Complaint
 6 declaring the resolution unconstitutional and unlawful,
 7 enjoining the Defendants from certifying the referendum
 8 question proposed by the resolution on the March 19,
 9 primary election ballot and from printing the question
 10 on the ballots distributed to the voters on the
 11 March 19, the primary election, suppressing any votes
 12 cast for or against referendum question proposed by
 13 Resolution R2023-4116 and granting any other such
 14 relief. Respectfully submitted by Michael Kasper and
 15 Michael T. Delgado.

16 MR. LeMOINE: Your Honor, may I interject
 17 here for a moment?

18 THE COURT: No. I mean I will read what
 19 it -- I believe you have a response. You have a reply
 20 brief. You have a response. I'll read that.

21 MR. LeMOINE: We have a response.

22 THE COURT: Yes.

23 MR. LeMOINE: Okay.

24 THE COURT: And I am going to read it.

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1 versus the Michaelson case.

2 A referendum requiring additional provisions
 3 not clearly contemplated by the terms of the
 4 proposition renders the proposition fatally vague and
 5 ambiguous.

6 You go on and talk about Lipinski. The
 7 Supreme Court invalidated a proposed referendum
 8 altering the process of electing the City Council
 9 officials from partisan to non-partisan. Id at 106.
 10 In doing so, the Court enunciated numerous questions
 11 and gaps left unanswered. As a result, the Court held
 12 that "the non-partisan referendum proposition is too
 13 vague and ambiguous as a binding referendum...because
 14 it leaves in its wake significant questions."

15 In Leck, the Supreme Court considered the
 16 Constitutionality of a runoff. The Supreme Court
 17 invalidated the referendum. "The terms did not
 18 indicate how or when the runoff would be conducted."
 19 As a result the referendum was invalid.

20 The referendum also fails the Supreme
 21 Court's vague and ambiguous test. The question
 22 provides that revenue generated will be used for the
 23 vague and ambiguous "purpose of addressing
 24 homelessness" without any further explanation to the

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1 MR. LeMOINE: Okay.

2 THE COURT: Okay? I may not -- similarly I
 3 might not read it in it's entirety, just like I didn't
 4 read their amendment in its entirety, but I'll
 5 certainly read on.

6 MR. LeMOINE: You're doing great.

7 THE COURT: Well, thank you. I appreciate
 8 that.

9 The Defendant's response to the Plaintiff's
 10 Motion to Expedite Consideration of Their Motion for
 11 Judgment on the Pleadings.

12 Now comes the Board of Election
 13 Commissioners for the City of Chicago, Marisel
 14 Hernandez, William Kresse and June Brown and by their
 15 attorneys through Tressler state the following:

16 The City Council of the Chicago initiated a
 17 referendum through Resolution R23-4166 in November of
 18 2023. On November 2023 the Office of the City
 19 certified the resulting referendum for inclusion on the
 20 March 2024 primary ballot. See resolution
 21 Certification attached as Exhibit A.

22 The City Clerk certified the referendum
 23 citing -- and, again, it talks about Exhibit A.
 24 Plaintiffs waited until January 5, 59 days

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1 after the resolution was initiated, to file their
 2 complaint objecting to the referendum and seeking its
 3 removal from the March 19 primary ballot. The
 4 Plaintiffs then waited an additional 11 days to file
 5 procedurally defective motion for a judgment on the
 6 pleadings and a motion to expedite.
 7 The motion should be denied because there is
 8 no adjutancy other than that created by Plaintiff's
 9 protracted delay in filing a challenge to a referendum
 10 certified in November 2023, and the request is
 11 otherwise moot. Plaintiffs state no good cause for
 12 their delay in filing the resolution initiated by the
 13 City Council on November 7. Plaintiff's January 5,
 14 2024 complaint is silent as to the reason for the
 15 projected delay. The Illinois courts deny motions to
 16 expedite cases where there are similar delays including
 17 in election cases with nearly identical facts. See
 18 *Davis versus City Country Club Hills*, 2013 Ill. App.
 19 (1st), 123, 634 at Page 8.
 20 Plaintiff's only argument for expediting the
 21 Motion for Judgment on the Pleadings is so that the
 22 Defendants can take necessary steps to prepare ballots
 23 and other materials for the upcoming primary election,
 24 but absent any effort to establish good cause for why

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1 referendum question for submission to the Illinois
 2 voters. And it has a site.
 3 It goes on to state that they have had 32
 4 yeas and 17 nays. And it goes on to certify that the
 5 resolution was delivered to the Mayor of Chicago after
 6 the passage thereof of the City Council without delay
 7 by the City Clerk in the City of Chicago and that this
 8 Mayor failed to return the said resolution to the said
 9 City within his written objections thereto, and at the
 10 next regular meeting of the said Council occurring not
 11 less than five days after the passage of the
 12 resolution.
 13 It goes on to say it certifies the original
 14 true copy, and it's signed Andrea Valencia, Exhibit A.
 15 And then you have a copy of the resolution.
 16 And then it goes on, and it reads the
 17 questions that I think generally what was just read
 18 earlier.
 19 Number 1: A real estate tax, transfer tax
 20 decreases 20 percent to establish a new transfer tax
 21 rate of \$3 for every \$500 of the transfer tax or a
 22 fraction thereof for that part of the transfer price
 23 under \$1 million to be paid by the buyer of the real
 24 estate transferred unless the buyer is exempt.

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1 they waited nearly two months to file their complaint,
 2 nor is there an articulated reason why they waited an
 3 additional 11 days to file their motion for judgment on
 4 the pleadings. Had the plaintiffs been diligent in
 5 filing their pleadings, they would not have needed to
 6 move this Court to expedite their motion for judgment
 7 on the pleadings. The motion is otherwise moot.
 8 Unexplained delay aside, the request for an expedited
 9 ruling is moot.
 10 The Court entered an agreed scheduling order
 11 that governs the filings in this matter. Plaintiff's
 12 consent to the schedule set out in the agreed schedule
 13 order concedes the motion to expedite. The agreed
 14 order is a part -- is a record of the parties'
 15 agreement and is not an adjudication of their rights.
 16 In the marriage of Rolfeth, R-o-l-s-e-t-h, 389 Ill.
 17 App. 969, 907 Northeastern 2nd, Page 97, 2nd District,
 18 2009. An agreed order supersedes as a result. City of
 19 Marseilles versus Radkey, 287 Ill. App. 3rd, 757, 760,
 20 769 Northeastern 2nd, 125, 3rd District, 1987.
 21 Exhibit A is a letter from Andrea Valencia, City Clerk
 22 of the City of Chicago that certified that the annexed
 23 foregoing is a true and correct copy of the certain
 24 resolution now on file. Call for approval of

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1 Then Number 2 is real estate transfer tax
 2 increase of 166.67 percent to established a new
 3 transfer tax of \$10 for every \$500 transfer price or
 4 fraction thereof for part of the transfer price between
 5 \$1 million and \$1,500,000 to be paid by the buyer
 6 unless the buyer is exempt.
 7 And third is a transfer tax increase by
 8 300 percent to transfer tax rate at \$15 every \$500 or
 9 fraction thereof as part of a transfer tax exceeding
 10 \$500 to be paid by the buyer of the real estate
 11 transferred unless the buyer is exempt. The current
 12 rate of transfer tax is \$3.75 per \$500 of the entire
 13 transfer price or a fraction thereof. The revenue from
 14 the increase is the difference between revenue
 15 generated under the increase and the current rate is to
 16 be used for purposes of homelessness. Then it has a --
 17 shows the box, yes or no, and they're empty.
 18 Then you have a -- it looks like a letter
 19 from the Alderwoman, Section 8-13. This is from Maria
 20 Hadden, and she types that: Pursuant to the statute
 21 together with Alderman -- Alderperson Matt Martin and
 22 Alderperson Carlos Ramirez-Rosa hereby gives notice to
 23 City Council to be convened Wednesday October 4 under
 24 the heading of miscellaneous business, I intend to call

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1 a public hearing on the intent to submit the question.
 2 Members of the public will be given an opportunity to
 3 speak or vote, and no vote will be taken.
 4 And then they talk about the letter.
 5 She signed the letter, and then it's the
 6 resolution.
 7 And then it looks like they have a part of
 8 the ordinance, Section 1 of 20 -- 2-44-070 of the
 9 Municipal Code amended deleting the text struck there
 10 for inserting the text underscored as follows. It
 11 reads that: Commissioner in conjunction with the
 12 Commission of Family and Support Services shall submit
 13 a report to the City Council. The report shall include
 14 but not be limited to departments. It goes on to say:
 15 The report shall also include supporting information on
 16 the Chicago Continuing Care's annual report to the
 17 United States Department of Housing and Urban
 18 Development from other stakeholders deemed relevant by
 19 the Commissioner of Family and Support Services. The
 20 Bring Chicago Home Advisory Board established in
 21 Chapter 2-48 may request information regarding outcomes
 22 related in appropriations from the Bring Chicago Home
 23 Fund.
 24 Then it goes on and talks about the purpose.

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1 Exhibit D.
 2 Then deposit of funds. All proceeds
 3 resulting from the tax imposed Section 3-33030(A)
 4 including interest and penalties shall be deposited as
 5 follows. The transactions will be described, and all
 6 proceeds will be deposited in the City's corporate fund
 7 for transactions subject to the tax proceeds in the
 8 relevant will generate a rate. A fraction shall be
 9 deposited in the City's corporate fund.
 10 Okay. And then there's a letter from a
 11 Mr. Holiday, you know, essentially stating the same
 12 information. And then Peter Polacek, P-o-l-a-c-e-k, is
 13 the managing editor of the City Council Journal.
 14 And it goes on. Mr. Holiday says that: I
 15 have personal knowledge of the facts. I'm the
 16 executive director of the Chicago Board of
 17 Commissioners. I oversee voter registration in
 18 elections. My job is to but not limited to general
 19 supervision. Based on my experience and roles, I
 20 affirm that CBEC members have a long history of taking
 21 neutral positions on referenda initiated by ordinance
 22 and resolution by the City Council. I believe the CBEC
 23 is not authorized by statute to make decisions
 24 regarding whether such a referenda are law. I declare

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1 The primary goal of the fund is directly addressing and
 2 combat homelessness.
 3 And then they talk about definitions. Area
 4 median income has the meaning ascribed to in Section
 5 2-44-080. Advisory Board means Bring Chicago Home
 6 established in the chapter
 7 Bring Chicago Home means the fund
 8 established, Paragraph 2 of the Section 3-33-165 for
 9 purposes of addressing homelessness.
 10 And use of funds. It says the use --
 11 revenues from Bring Chicago Home shall be
 12 appropriately -- appropriated exclusively for eligible
 13 uses. The budget director in consultation with the
 14 City departments shall determine maximum amount of
 15 funds from the Bring Chicago Home Fund.
 16 And then it goes on in Paragraph C,
 17 allowable expenses for shelter in non-congregate
 18 models, discrete capital costs for existing shelter
 19 beds for severe and extreme weather and increasing
 20 operational supports.
 21 It goes on and lists quite a bit of detail
 22 about the Advisory Board that I'm sure is documented in
 23 your exhibits.
 24 And it goes on and reads the tax code,

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1 by penalty true and correct.
 2 I'll try to -- I'm trying to kind of pick
 3 out because I think -- I think you include, if I'm not
 4 mistaken, the Complaint as one exhibit. The
 5 Plaintiff's Complaint if I'm not mistaken.
 6 And then I had tabbed it where you had kind
 7 of started. Yes, you included their Complaint. And
 8 then -- so obviously I won't read that.
 9 And then it goes on to say starting at
 10 Exhibit A, you start out: I hereby, together with
 11 Alderman Hadden, Ramirez and Martin resolution seeking
 12 approval of referendum question regarding...
 13 Your favorable consideration will be
 14 appreciated. And I believe it's signed by the Mayor.
 15 And then it included the Exhibit A as the resolution.
 16 And then it has the same information about the tax
 17 which we read into the record earlier with the yes or
 18 no. So that Exhibit A is the same Paragraphs 1, 2, 3
 19 that was read previously with the blank yes or no.
 20 The City Clerk of Chicago shall certify the
 21 public question referenced herein. The Chicago Board
 22 of Election Commissioners in accordance with Article 28
 23 of the Election Code. The resolution shall be in full
 24 force upon its passage.

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1 And then it looks like you have a City of
2 Chicago Tracking and a -- I'll read it. I'm not quite
3 sure. I guess that was the wards.
4 Hadden, 41 -- 49; Taylor, 20; Martin, 47;
5 Sigcho, S-i-g-c-h-o, Lopez, 25; Ramirez-Rosa, 35;
6 Rodriguez Sanchez, 33; LaSpata, L-a-S-p-a-t-a, 1;
7 Rodriguez 22; Vasquez, Jr, 40.
8 And resolution: Submission of a public
9 question referendum to Chicago voters, November 8, 2022
10 general election proposing an increase of the Chicago
11 real estate transfer tax for purposes of providing
12 resources for affordable housing and to combat
13 homelessness.
14 And then Exhibit B is the resolution which
15 was read earlier, and it's signed by Martin Hadden from
16 the 49th ward, and Jeanette Taylor from the 20th Ward,
17 Matthew Martin, 47th Ward; Alderperson Byron Sigcho,
18 S-i-g-c-h-o, Lopez, L-o-p-e-z, 25th Ward; Carlos
19 Ramirez-Rosa, 35th Ward; Alderperson Rossana Rodriguez
20 Sanchez, 33rd Ward; Alderperson Daniel LaSpata,
21 L-a-S-p-a-t-a, 1st Ward.
22 And I believe this would be Exhibit B, and
23 it lists all the wards and it says tap -- it lists all
24 the wards, and it goes all the way up to 50 wards, and

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1 MR. KASPER: So does everybody else.
2 THE COURT: I mean I believe I read it
3 correctly.
4 MR. CROUCH: Okay.
5 THE COURT: Thank you. And I read -- so I
6 believe I have completed the motion. And let's see.
7 We did the Motion to Dismiss, and we did the
8 motion -- I actually chose not to read some of the
9 transcript, although -- let me glance if there's
10 anything. And this would be the transcript from...
11 Yes, I believe actually everything was set
12 forth sufficiently.
13 All right. And let the record reflect that
14 having listened to very lengthy and having read a
15 significant amount, it is the -- a declaration for the
16 Chicago referendum that was filed on January 5th.
17 After reviewing everything, the Court is
18 going to find for the plaintiffs, Building Owners
19 Managers, et al., and I am going to grant their motion
20 for the judgment on the pleadings and grant the relief
21 requested in the Complaint. And that will be my
22 ruling.
23 MR. LeMOINE: Your Honor. May I --
24 MR. CROUCH: Thank you, Your Honor.

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1 then it's signed Mayor Lightfoot and Clerk Valencia.
2 And then I believe they've all signed it
3 with their signatures. Marie Hadden and all the
4 several of the wards have signatures.
5 And then I believe it might be a duplicate.
6 I think then perhaps I -- seems like these are
7 duplicative, so perhaps I stapled them wrong or
8 included them, but they're all -- okay.
9 All right. Counsel, I think I have read
10 everything correctly on the motion for the judgment?
11 MR. CROUCH: Your Honor, I think you
12 accidentally re-read the Board's Response in Opposition
13 to the Motion to Expedite, not their Motion in
14 Opposition to the -- not the Response in Opposition to
15 the Judgment on the Pleadings.
16 THE COURT: I believe I read your response,
17 Defendant's response.
18 MR. CROUCH: I believe when it started that
19 it was their Response in Opposition to the Motion to
20 Expedite, and the argue --
21 MR. KASPER: Your Honor. You're not in the
22 case.
23 MR. CROUCH: I just want to make sure
24 there's a clear record.

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1 MR. LeMOINE: May I approach the Court?
2 THE COURT: No. I think we've spent
3 everything. I've read everything in the record.
4 There's nothing further to say.
5 MR. KASPER: Thank you, Your Honor.
6 THE COURT: You're welcome.
7 MR. DEL GALDO: We'll send it in a draft
8 order.
9 THE COURT: Right. And you can show it to
10 the other side and --
11 MR. KASPER: We'll get it to them tomorrow.
12 THE COURT: You'll get it tomorrow?
13 MR. KASPER: Yes.
14 MR. LeMOINE: Tomorrow's what? Saturday?
15 MR. KASPER: We'll get it to you by 5:00.
16 THE COURT: Okay. And then can you send it
17 to the other side?
18 MR. KASPER: Sure.
19 THE COURT: And then I think we also need an
20 order for the motion to -- denying the City's request
21 to intervene.
22 MR. KASPER: Correct, Your Honor.
23 THE COURT: All right. Very good. Thank
24 you. And thank you for your time. I know with

1 everyone it's been -- you've been all very patient
2 listening to a very long afternoon, so thank you so
3 much. Okay?

4 MR. KASPER: Thank you.

5 THE COURT: Oh, you're welcome.

6 (Hearing concluded at 3:23 p.m.)

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1 STATE OF ILLINOIS)

2)SS:

3 COUNTY OF C O O K)

4 I, CHERYL LYNN MOFFETT, Certified Shorthand
5 Reporter No. 084-002218 in and for the County of Cook
6 and State of Illinois, do hereby certify that I caused
7 to be reported in shorthand and thereafter transcribed
8 the foregoing transcript of proceedings.

9 I further certify that the foregoing is a
10 true and correct transcript of my shorthand notes so
11 taken as aforesaid; and, further, that I am not counsel
12 for nor in any way interested in the outcome thereof.

13 I further certify that this certificate
14 applies to the original signed IN BLUE and certified
15 transcripts only. I assume no responsibility for the
16 accuracy of any reproduced copies not made under my
17 control or direction.

18
19 IN TESTIMONY WHEREOF, I have hereunto set my
20 hand this 29th day of February, 2024.

21 _____
22
23 CHERYL LYNN MOFFETT
24

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FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

BUILDING OWNERS AND MANAGERS
ASSOCIATION, ET AL.

Plaintiff/Petitioner

Reviewing Court No: 1-24-0417

Circuit Court/Agency No: 2024COEL000001

v.

Trial Judge/Hearing Officer: KATHLEEN BURKE

COMMISSION OF THE BOARD OF
ELECTIONS OF THE CITY OF CHICAGO,
ET AL.

Defendant/Respondent

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