

IN THE SUPREME COURT OF ILLINOIS

No. _____

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|---------------------------------------|---|-------------------------------------|
| BUILDING OWNERS AND |) | Petition for Leave to |
| MANAGERS ASSOCIATION, <i>et al.</i> , |) | Appeal from the Appellate |
| |) | Court of Illinois for the First |
| <i>Petitioner-Appellant,</i> |) | Judicial District, Fifth Division |
| |) | Appellate Court Nos. 1-24-0417, and |
| v. |) | 1-24-0431, consolidated |
| |) | |
| BOARD OF ELECTION |) | There Heard on |
| COMMISSIONERS FOR THE CITY OF |) | Appeal from the Circuit Court of |
| CHICAGO, <i>et al.</i> , |) | Cook County, County Department, |
| |) | County Division, No. 24-COEL-1 |
| <i>Respondents – Appellees.</i> |) | |
| |) | Honorable Kathleen M. Burke, |
| |) | Judge Presiding. |
| |) | |

PETITION FOR LEAVE TO APPEAL

Michael J. Kasper
 (ARDC No. 6201411)
 151 N. Franklin St., Suite 2500
 Chicago, IL 60606
 (312) 704-3292
mjkasper60@mac.com
*Counsel for Petitioner-Appellant
 Building Owners and Managers
 Association*

Michael T. Del Galdo (ARDC No. 6255825)
 Cynthia S. Grandfield (ARDC No. 6277559)
 Del Galdo Law Group, LLC
 1441 S. Harlem Ave.
 Berwyn, Illinois 60402
 (708) 222-7000
delgaldo@dlglawgroup.com
grandfield@dlglawgroup.com
*Counsel for Petitioner-Appellant
 Building Owners and Managers Association*

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 CYNTHIA A. GRANT
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PRAYER FOR LEAVE TO APPEAL

Last Wednesday, the First District Appellate Court severely diminished the voting rights protections provided by the free and equal elections clause of the Illinois Constitution by ruling that those protections do not apply to referendum questions placed on the ballot by municipal alderpersons. *Building Owners & Managers Ass’n v. Commission of the Board of Elections*, 2024 IL App (1st) 240417. The “free and equal elections” clause of Article III, Section 3 of the Illinois Constitution “gives constitutional priority to the state's public policy of encouraging the full and effective participation of the entire electorate.” *Clark v. Illinois State Board of Elections*, 2014 IL App (1st)

141937, ¶ 27. That clause is violated when referenda questions prevent “a voter from giving a free and equal expression of preference as to each proposition.” *Id.* at ¶ 28. Because voters express their preferences through voting, the free and equal clause is violated in the voting booth, when the voter is voting.

In this case, Plaintiffs filed a complaint in the Circuit Court of Cook County alleging that a referendum question placed on the ballot by the Chicago City Council proposing to raise the real estate transfer tax on some properties, and in the same question, lower the tax on other properties, was constitutionally ineligible to appear on the ballot because the question violated both the free and equal elections clause and the applicable provisions of the Municipal Code. A001-035. The referendum question proposes to *reduce* the real estate transfer tax on properties valued at less than \$1M by 20%, while *in the same question*, proposing to *increase* the tax rate for property valued between \$1M and \$1.5M by 166.67%; and to *increase* the tax rate on property transfers valued above \$1.5M by 300%. As a result of this combination, a voter wishing to support the decrease portion alone must also support the increase with the same vote, and a voter wishing to support only the increase, must also support the decrease.

The Circuit Court agreed and enjoined the Defendant, the Chicago Board of Elections, from counting or releasing any votes cast on the question. A218-219. The Appellate Court reversed that decision, concluding that Plaintiffs’ “complaint is premature” because the referendum “is a step in the legislative process.” *Building Owners*, 2024 IL App (1st) 240417, ¶ 19. The Appellate Court’s decision is incorrect and should be reversed because it fails to recognize the critical fact that the “free and equal elections” clause protects voting rights, and once a voter is forced to vote on an

unconstitutional question, the violation of that right has occurred and the injury to that right cannot be subsequently remedied. Indeed that is why, nearly fifty years ago, this Court recognized that “the framers of our constitution intended this court alone to determine whether constitutional requirements for a proposed amendment were satisfied.” *Coalition for Political Honesty v. State Bd. of Elections*, 65 Ill. 2d 453, 462 (1976)(Coalition I). The Appellate Court’s decision is not only contrary to this Court’s pronouncement in *Coalition I*, it is also the first, and only, decision holding that the judiciary has no jurisdiction to consider a pre-election challenge brought under the “free and equal elections” clause.

The Appellate Court’s decision, if permitted to stand, eliminates *any* pre-election challenge to the constitutionality of a referendum question placed on the ballot by municipal alderpersons, regardless of how blatantly unconstitutional the question may be. The possibilities for ballot abuse by municipal councils across the state are endless.

The Appellate Court’s decision also stands in direct conflict to the same court’s most recent decision regarding municipal referenda. In *Henyard v. Municipal Officers of Dolton*, 2022 IL App (1st) 220898, the First District Court explicitly considered its jurisdiction over a pre-election complaint that two referendum questions placed on the ballot by municipal alderpersons violated Article III, Section 3. The Court concluded it had jurisdiction and then invalidated the questions as being “fatally vague and ambiguous” in violation of Article III, Section 3.

The Appellate Court’s decision also sets two up different standards for judicial review of municipal referenda questions. Under the Appellate Court’s decision, courts would have no jurisdiction to consider a pre-election constitutional challenge to a

referendum placed on the ballot by municipal alderpersons, but courts would have jurisdiction over a question (even the same question) placed on the ballot by citizen initiative. Why questions initiated by citizens should get more judicial scrutiny than questions initiated by alderpersons, the Court does not say. The free and equal elections clause draws no such distinction.

Accordingly, pursuant to Supreme Court Rule 315, Plaintiffs-Appellees, the Building Owners and Managers Association of Chicago, *et al*, seek leave to appeal from the judgment entered in the above-entitled cause by the Appellate Court of Illinois, First District, Fifth Division. This Court should grant the Petition and restore the long established voting rights protections afforded to Illinois voters by Article III, Section 3.

JUDGMENT APPEALED

The First District Appellate Court, Fifth Division, entered its judgment on March 6, 2024. No petition for hearing was filed.

POINTS RELIED UPON FOR REVERSAL

1. The Appellate Court's decision has dramatically weakened the voting protections provided by the Illinois Constitution. Prior to the Appellate Court's decision, voters could challenge the ballot eligibility of proposed referenda questions to prevent an unconstitutional question from appearing on the ballot. The Appellate Court removed that right by determining that courts had no jurisdiction to consider such pre-election constitutional challenges to municipal referendum questions.
2. The Appellate Court's decision fails to recognize that this Court and other courts, including the Appellate Court, have routinely considered pre-election challenges to referendum questions brought under Article III, Section 3. The Appellate Court's decision does not even mention Article III, Section 3.

3. The Appellate Court’s decision is directly contradictory to its decision in a similar case from just two years earlier where the same court held that it did have jurisdiction to consider, and then ruled ineligible, two referenda questions passed by municipal alderpersons. *Henyard v. Municipal Officers of Dolton*, 2022 IL App (1st) 220898.

4. The referendum question in this case violates the free and equal elections clause by forcing voters to vote “yes” or “no” on separate questions that are vague and ambiguous, and violates the Municipal Code by combining into a single question two separate questions: (1) to increase the real estate transfer tax on some transactions; and (2) to decrease the tax on other transactions.

ISSUES PRESENTED FOR REVIEW

1. Do courts have jurisdiction to consider voters’ constitutional challenges brought under Article III, Section 3 of the Illinois Constitution to referendum questions passed by municipal alderpersons?.

2. Are voting rights protections provided by Article III, Section 3 regarding referendum questions enforceable prior to an election?

3. If the referendum question passed by the Chicago City Council violates Article III, Section 3 and the applicable provisions of the Illinois Municipal Code governing the eligibility requirements for referendum questions?

STATEMENT OF FACTS

Plaintiffs filed the complaint in this case seeking a declaration that a proposed referendum question was ineligible to appear on the ballot and, as a result, also sought to enjoin the Chicago Board of Elections from placing the referendum question, or counting any votes placed on the question, on the March 19, 2024 primary election ballot. A001-035. The referenda question is:

Shall the City of Chicago impose:

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

The current rate of the real estate transfer tax is \$3.75 per \$500 of the entire transfer price, or fraction thereof, and the revenue is used for general corporate purposes. The revenue from the increase (the difference between the revenue generated under the increased rate and the current rate) is to be used for the purpose of addressing homelessness, including providing permanent affordable housing and the services necessary to obtain and maintain permanent housing in the City of Chicago. (A015)

The complaint asserted the question: (1) impermissibly combined both a tax increase question with a tax decrease question in violation of Section 8-3-19 of the Illinois Municipal Code (65 ILCS 5/8-13-19(d)), (2) violated the “free and equal elections” clause by improperly combining three separate questions into a single question, and (3) violated Article III, Section 3 because the question is vague, ambiguous and not self-executing. A001-035 In support of the complaint, Plaintiffs filed a motion for judgment on the pleadings. A036-053.

The Defendant Board moved to dismiss the complaint. A054-104. The City of Chicago sought to intervene as a matter of right, which the Circuit Court denied. A105-

108; A218-219. The Defendant Board and the City appealed to the Appellate Court, which ordered expedited briefing and reversed the Circuit Court's decision on March 6, 2024. A456-467

STANDARD OF REVIEW

The issues presented on review are legal ones: (1) whether the court's have jurisdiction to enforce the voting rights protections provided by Article III, Section 3 of the Illinois Constitution prior to an election involving a referendum question placed on the ballot by a municipal alderpersons, and (2) whether the referendum question passed by the Chicago City Council violates Article III, Section 3 and the governing provisions of the Municipal Code. The Court's review of legal issues is a non-deferential, *de novo* standard. *Cinkus v. Village of Stickney Municipal Officers Elec. Bd.*, 228 Ill.2d 200, 212 (2008); *Corbin v. Schroeder*, 2021 IL 127052, ¶ 32.

ARGUMENT

A. The Appellate Court Incorrectly Ruled that Courts Lack Jurisdiction to Protect the Voting Rights Protections Provided by Article III, Section 3.

Article III, Section 3 provides that "[a]ll elections shall be free and equal." ILL.CONST.1970, art. III, § 3. A referendum question satisfies "this constitutional requirement 'if it presents the proposition in such a manner that the voter has a clear opportunity to express his choice either for or against it.'" *CBA v. White*, 365 Ill.App.3d at 959; see also *People ex rel. Royal v. Cain*, 410 Ill. 39, 57, 101 N.E.2d 74 (1951). On the other hand, the free and equal clause is violated when separate and unrelated questions are combined in a single proposition on a ballot. *Coalition for Political Honesty v. State Bd. of Elections*, 83 Ill. 2d 236 (1980)(Coalition II). Combining separate and unrelated questions prevents a voter from giving a free and equal expression of preference as to each proposition. *Clark*, 2014 IL App (1st) 141937, ¶ 28; see

also *Routt v. Barrett*, 396 Ill. 322, 332 (1947); *People ex rel. Hall v. Bopp*, 396 Ill. 80, 83 (1947).

At least twice in the past ten years, the First District Appellate Court exercised its jurisdiction and invalidated referenda questions for violating Article III, Section 3. Just two years ago, in *Henyard*, the Appellate Court ruled that two referenda questions placed on the ballot by the Village of Dolton alderpersons empowering voters to recall the mayor were “fatally vague and ambiguous” in violation of Article III, Section 3. *Id.* at ¶ 53.

The facts in *Henyard* are essentially the same as in this case. Both involve an Article III, Section 3 challenge to proposed referenda questions that were initiated prior to the election at which the question would appear on the ballot. In *Henyard*, the Court found that it did have jurisdiction to hear the Article III, Section 3 complaint, but in this case, just two years later, the same Court holds that courts have no jurisdiction to hear the very same challenge at the very same point during an election campaign.

In its decision, the Appellate Court attempts to distinguish *Henyard* by pointing out that in that case the Court issued its decision after the election, and not before. *Building Owners*, 2024 IL App (1st) 240417, ¶ 19. In both cases, however, the Article III, Section 3 challenge was filed *before* the election, not after. In fact, the *Henyard* Court enjoined the County Clerk (the election authority for suburban Cook County) from counting or publishing the results *before* the election, not after. *Henyard*, at ¶ 16. The fact that the *Henyard* court waited until after the election to issue its final decision should not affect the court’s jurisdiction. *See also Alms v. Peoria County Commission*, 2022 IL App (4th) 220975, ¶¶ 48052 (considering, but rejecting, a pre-election free and equal elections

challenge to proposed referendum passed by county board). Is the Court below really suggesting that it lacked jurisdiction when it issued its decision on March 6, 2024, but it would have had jurisdiction if it had waited two weeks and issued its decision on March 20, 2024 (the day after the election)?

The second case where the First District Appellate Court also recently took up, and resolved, a pre-election complaint alleging that a proposed referendum question that included separate and unrelated components violated Article III, Section 3 is *Clark*. *Clark*, 2014 IL App (1st) 141937, ¶ 29. The referendum in *Clark* proposed several changes to the constitution's legislative article, including term limits for legislators and increasing the number of votes needed to override the governor's veto. *Id.* at ¶ 30. The Appellate Court determined, before the election, that "the proposed amendment is invalid under the free and equal clause." *Id.*

The Appellate Court below distinguished *Clark* on the basis that the referendum question in that case sought voter approval of a proposed constitutional amendment, while the question in this case seeks voter approval of a proposed tax. *Building Owners*, 2024 IL App (1st) 240417, ¶ 19. As a result, the Appellate Court has established a sort-of dual system, where the free and equal elections clause protects voters in some referenda elections, but not others.

In *Clark*, the referendum question was initiated by voters themselves, whereas here the referendum was initiated by the City's alderpersons. Thus, under the Appellate Court's new ruling, the free and equal elections clause can be used to protect voters from unconstitutional referenda questions that they have initiated themselves, but cannot be used to protect them from referenda questions initiated by alderpersons. Deference to

separation of powers should not extend so far that courts turn a blind eye to constitutional violations.

Instead, to the contrary, the Constitutional framers made clear that the free and equal elections clause was designed to protect all voters, at all elections regardless of the source of the violation:

Elections are free where voters are subjected to no intimidation or improper influence, and where every voter is allowed to cast his ballot as his own judgment and conscience dictates.

(4) IL.1970 Const. Conv. Tran. 5.29.1970, p. 1383 (Del. McDonald). In this case, Plaintiffs alleged that the way the question is to be presented to voters creates improper influence and deprives voters of the right to cast their ballot according to their own judgment in violation of Article III, Section 3. The Appellate Court was wrong to deprive them of an adjudication of their claim.

B. The Free and Equal Elections Clause Applies to All Elections.

In its ruling below, the Appellate Court declared that it lacked jurisdiction because the referendum was “part of the legislative process” (¶ 14) and that “no Illinois court has ever sanctioned a challenge to a referendum that was a step in the legislative process.” *Building Owners*, 2024 IL App (1st) 240417, ¶ 19. But that is exactly what the same court did in *Henyard*. In both cases, the municipal council (there Dolton, here Chicago) passed a resolution placing a referenda question on the ballot. In both cases, if the referendum question were to be approved by voters, the municipal council would then be authorized to enact an ordinance implementing the referendum question (in *Henyard* mayoral recall, here a property transfer tax increase). How could this case involve the “legislative process” but *Henyard* did not, if both involved exactly the same process?

Perhaps more importantly, none of the legislative process cases cited by the Appellate Court below involved a challenge under the free and equal elections clause. In *Fletcher v. Paris*, 387 Ill. 89 (1941), the Court considered a post-election challenge to nullify a referendum result where “it is obvious that the primary purpose of the suit was to have the court declare ordinance No. 6 invalid before it became effective or in force.” That is simply not the case here. Here, the purpose of the complaint is not to declare the ordinance implementing the tax invalid, should the referendum pass, but rather the complaint challenges the improper question because it violates Article III, Section 3. The 1870 Constitution, under which *Fletcher* was decided, also contained a “free and equal elections” provision (ILL.CONST.1870, art. II, ¶ 18), but there is no indication that the referendum was challenged on that basis, nor did the Court even mention that provision.

Similarly, in *Payne v. Emmerson*, 290 Ill. 490 (1919), also decided under the 1870 Constitution, plaintiffs sought to force an advisory referenda concerning the Legislature’s Fifth Constitutional Convention to be included on the ballot. As in *Fletcher* no claims were raised regarding the free and equal elections clause, and indeed that clause was not even mentioned by the Court

In *Slack v. Salem*, 31 Ill.2d 174 (1964), a third 1870 Constitution case relied upon by the Court below, a city treasurer sought to enjoin a referendum question seeking approval to issue bonds under the Building Revenue Bond Act on the basis that the Act itself was unconstitutional. *Slack*, 31 Ill.2d at 175. In other words, the treasurer claimed that the referendum, if it passed, would enable the municipality to issue revenue bonds under an unconstitutional statute. Once again, no claims were raised under, nor did the Court mention, the free and equal elections clause.

Finally, in *Sachen v. Illinois State Board of Elections*, 2022 IL App (4th) 220470, plaintiffs sought to enjoin a constitutional amendment referendum on the 2022 Workers' Rights amendment to the Illinois Constitution. *Sachen*, 2022 IL App (4th) 220470, ¶ 4. Plaintiffs alleged that the amendment, if passed, would violate the National Labor Relations Act and would be pre-empted by federal law under the Supremacy Clause. *Id.* at ¶ 5. Once again, however, no claims were raised under the "free and equal elections" clause, nor did the court even mention it.

The four cases principally relied upon by the Appellate Court below to determine that courts lack jurisdiction to consider pre-election challenges under the free and equal elections clause have two things in common. First, none of the cases involved, or even mentioned, the free and equal elections clause. The Court was thus incorrect to conclude that these cases support the conclusion that courts lack jurisdiction to consider free and equal elections claims. Second, all of the cases involve challenges not to the referendum question itself, as is the case here, but to the legality of the results of the referendum were it to pass.

In making its ruling last week, the Appellate Court became the first, and only, court of which Plaintiffs are aware, to rule that the free and equal elections clause of Article III, Section 3 cannot be invoked to protect voters from being forced to vote on an unconstitutional referendum. The decision is incorrect, diminishes the voting rights protections of our constitution, and should be reversed.

*C. The Referendum Question Violates Article III, Section 3
Of the Illinois Constitution and the Illinois Municipal
Code.*

Plaintiffs' complaint asserted that the referendum question (1) violates Section 8-3-19 of the Illinois Municipal Code (65 ILCS 5/8-13-19(d)), and (2) violates the free and equal elections clause (ILL.CONST.1970, art. III, § 3) by improperly combining separate questions, and (3) is vague, ambiguous and not self-executing also in violation of the free and equal elections clause. Because the Appellate Court below concluded that it lacked jurisdiction, its decision did not address the merits of the Plaintiffs' claims.

(1). The Plain Language of the Municipal Code Prohibits Combining Tax Increases and Tax Decreases in the Same Referendum Question.

The Illinois Municipal Code permits a home rule municipality to “impose a new real estate transfer tax” or to “increase” an existing real estate transfer tax only upon “prior referendum approval.” 65 ILCS 5/8-13-19(d). The same section of the Code permits a home rule municipality to “amend an existing real estate transfer tax” ordinance “without approval by referendum” so long as the amendment does not increase the transfer tax rate or add transactions covered by the tax. *Id.*

The complete section reads as follows:

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

65 ILCS 5/8-13-19(d)(emphasis added). Thus, the Municipal Code permits three separate actions regarding the real estate transfer tax: (1) imposition of a new transfer tax (which requires prior referendum approval); (2) an increase of an existing transfer tax (which requires prior referendum approval); and (3) an amendment to an existing transfer tax that does not increase the rate (which can be done without referendum approval).

The Referendum presented here violates Section 8-3-19 because it not only proposes to “increase” the City’s current real estate transfer tax rate on some transfers by referendum, but it also proposes, in the same referendum, to amend (by decreasing) the real estate transfer tax rate on other transfers. The increase requires “prior approval by referendum,” but the other amendment (the decrease) “may” be done “without prior approval by referendum.”

The plain language of the statute contemplates two changes with “prior approval by referendum” (imposition of a new transfer tax or an increase in the rate of an existing tax), and any other amendment (such as a decrease in the rate of tax) being done “without prior approval by referendum.” When construing a statute, the court’s “goal is to determine and effectuate the legislature's intent, best indicated by giving the statutory language its plain and ordinary meaning.” *People v. Hardin*, 238 Ill.2d 33, 40 (2010). Courts “will not depart from the statute's plain language by reading in exceptions, limitations, or conditions in conflict with the legislature's intent.” *Id.* Moreover, courts “may consider the reason for the law, the problems to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another.” *People v. Burlington*, 2018 IL App (4th) 150642, ¶ 16.

Here, the Municipal Code permits the imposition or an increase in the real estate transfer tax by referendum but does not permit a corresponding decrease in the tax by referendum, and certainly not by the same referendum. The “purposes to be achieved” by this law, and the “problems to be remedied” is to prevent precisely the type of ballot manipulation that happened here.

On July 21, 2021, Resolution R2021-919 (A016-022) was introduced proposing a referendum to only increase the real estate transfer tax. That resolution did not pass.¹ On December 14, 2022, Resolution R2022-1409 (A023-025), was introduced also proposing to only raise the real estate transfer tax. That Resolution also did not pass. *Id.*

Four months after Resolution R2021-919 and Resolution R2022-1409 were declared lost, Resolution R2023-4166 (the subject of this litigation) was introduced, proposing to *reduce* the real estate transfer tax on some properties while *in the same question*, proposing to *increase* the tax rate for properties.

In short, there was insufficient support in the City Council to pass a resolution increasing the transfer tax rate alone, and only by combining it with a proposition to also reduce the rate on some transfers did it muster sufficient votes to pass. This is a textbook example of “‘logrolling’ or ‘bundling unpopular legislation with more palatable bills, so that the well-received bills would carry the unpopular ones to passage.’” *See Wirtz v. Quinn*, 2011 IL 111903, ¶ 13.

In Illinois, the prohibition against legislative logrolling appears in the single subject rule of Article IV, Section 8(d) of the Illinois Constitution. ILL.CONST.1970, art. IV, § 8(d). The rule is designed to prevent the passage of legislation that, if standing

¹ <https://occprodstoragev1.blob.core.usgovcloudapi.net/lsmatterattachmentspublic/452ec73a-2459-4872-952b-96ab0891a299.pdf>

alone, could not muster the necessary votes for enactment. *People v. Sypien*, 198 Ill.2d 334, 338 (2001), citing *Geja's Cafe v Metropolitan Pier & Exposition Authority*, 153 Ill. 2d 239, 258 (1992). “Such ‘logrolling’ by legislators is a practice strictly prohibited by this state’s constitution.” *Id.*; *People v. Cervantes*, 189 Ill. 2d 80, 98 (1999). The prohibition against logrolling “ensures that the legislature addresses the difficult decisions it faces directly and subject to public scrutiny, rather than passing unpopular measures on the backs of popular ones.” *Johnson v. Edgar*, 176 Ill.2d 499, 514 (1997).

Given the prohibition against logrolling imposed on the General Assembly by the Illinois Constitution, it directly follows that the General Assembly would impose similar restrictions on municipalities governing their deliberations. Viewed through this lens, the prohibition against combining tax increases with tax decreases in the same referendum question set forth in Section 8-13-19(d) is simply an anti-logrolling provision designed to prevent exactly what happened here.

Even if, despite the foregoing, Section 8-13-19(d) were ambiguous, it must still be read to prevent the referendum at issue here. “Where a statute is susceptible to more than one equally reasonable interpretation, then the statute is ambiguous, and the court may consider extrinsic aids of construction to discern the legislative intent.” *Policemen’s Benevolent Labor Comm. v. City of Sparta*, 2019 Ill.App. (5th) 190039-U, ¶ 17. One of the better known rules of statutory construction is the doctrine of *expressio unius est exclusio alterius* (the expression of one thing means the exclusion on another), when a statute lists certain things, those things omitted were intended as exclusions. *People ex rel. Klaeren v. Village of Lisle*, 316 Ill. App. 3d 770, 781 (2nd Dist., 2000).

Here, Section 8-13-19(d) enumerates two actions regarding a real estate transfer tax that municipalities may take with prior referendum approval: (1) imposition of a new transfer tax; and (2) an increase in the rate of an existing transfer tax. Under the *expressio unius* rule, the omission of allowing a decrease in the transfer tax rate amongst the actions permitted with prior referendum approval must be read as an intentional exclusion. This interpretation is bolstered by the final sentence of Section 8-13-19(d), which provides: “An existing ordinance ... imposing a real estate transfer tax may be amended without approval by referendum ... if the amendment does not increase the rate of the tax...” 65 ILCS 5/8-13-19(d).

The General Assembly preempted home rule municipalities’ ability to enact or change real estate transfer taxes in any manner inconsistent with Section 8-13-19(d). 65 ILCS 5/8-3-19(g). By combining a decrease in the transfer tax rate on some, mostly residential properties, with a large increase in the transfer tax rate on commercial and industrial (and higher valued residential properties), the referendum question is not authorized by Section 8-13-19(d) and the referendum question it calls for is, therefore, ineligible to appear on the ballot.

(2.) The Referendum Combines Three Separate Questions in Violation of Article III, Section 3.

As stated above, this Court has determined that the free and equal elections clause is violated when separate and unrelated questions are combined in a single proposition on a ballot. *Coalition II*, 83 Ill.2d 236. Combining separate and unrelated questions prevents a voter from giving a free and equal expression of preference as to each proposition. *Clark*, 2014 IL App (1st) 141937, ¶ 28;

The referendum in *Clark* proposed several changes to the Constitution's legislative article, including term limits for legislators and increasing the number of votes needed to override the governor's veto. *Clark*, 2014 IL App (1st) 141937, ¶ 30. In affirming the circuit court, the court noted that "[b]oth the term limits and veto provisions could easily stand as independent propositions without affecting the rest of the proposed changes" and therefore held that "the proposed amendment is invalid under the free and equal clause." *Id.*

Here, as in *Clark*, the fact that the tax increase provisions could stand as "independent propositions" is not seriously debatable. This conclusion is highlighted by the fact that the tax decrease provision of Section 8-13-19(d) does not even contemplate a referendum proposition, but specifically states that a decrease in the transfer tax rate be effectuated "without approval by referendum." 65 ILCS 5/8-13-19(d). By combining the increase provisions with the decrease provision, the referendum question deprives the voter of the opportunity to vote in favor of a tax decrease, without at the same time, voting in favor of a tax increase. The combination of the two was for rather obvious political reasons. Because the Referendum question proposes a compound question combining three separate questions, it violates Plaintiffs' (and all voters) right to vote on the three propositions separately in violation of Article III, Section 3 of the Illinois Constitution.

(3.) The Referendum Question is Vague, Ambiguous and Not Self-Executing in Violation of Illinois Law.

This Court has established that a municipal referendum must be self-executing, meaning that the question must "stand on its own" without "leaving gaps to be filled by the legislature or municipal body..." *Lipinski v. Chicago Board of Election Comm'rs*,

114 Ill.2d 95, 99 (1986); *Leck v. Michaelson*, 111 Ill.2d 523, 530-31 (1986) (referendum must be able to stand on its own terms and may not be vague and ambiguous regarding the information needed for its implementation and enforcement.). A referendum requiring such “additional provisions ‘not clearly contemplated by the terms of [the referendum] proposition’” renders the proposition fatally “vague and ambiguous.” *Lipinski*, 114 Ill.2d at 100, quoting *Leck*, 111 Ill.2d at 528.

In *Lipinski*, this Court invalidated a proposed referendum altering the process of electing Chicago City officials from partisan to non-partisan. *Id.* at 106. In doing so, the Court enunciated numerous questions and gaps left unanswered by the referendum question, such as when it would take effect, how many signatures would candidates be required to submit, and which candidates would qualify for a runoff election. *Id.* at 100-104. As a result, this Court held “the nonpartisan referendum proposition is too vague and ambiguous to qualify ... because it leaves in its wake significant questions unanswered and details which conflict with the Election Code.” *Id.* at 106.

In *Leck*, the Supreme Court considered the constitutionality of a municipal referendum creating a runoff election system. *Leck*, 111 Ill.2d at 526. This Court ruled that referendum ineligible because “the terms of the proposition did not indicate how or when that runoff would be conducted.” *Id.* at 529. Specifically, the Court concluded that “the bare concept contained in the referendum proposition had to be interpreted, supplemented and modified in order to be implemented. *Id.* at 530. As a result, the referendum was ineligible due to its “vagueness and ambiguity.” *Id.*

In *Henyard*, referenced above, the Appellate Court ruled that the two recall referenda questions proposed by the Dolton Village Council were “fatally vague and

ambiguous under the doctrines enunciated by our supreme court in *Leck* and *Lipinski*.”

Henyard, 2022 IL App (1st) 220898, ¶ 53. In particular, the Court found that:

The verbal gymnastics necessary to draft the two referenda in a way that would allow Henyard to be removed midterm resulted in an enormously convoluted, confusing, and ambiguous question, which clearly violates the clarity and precision requirements that our supreme court set forth in *Leck* and *Lipinski*.

Id. at ¶ 53.

This Referendum also fails the vague and ambiguous test. The question provides that the revenue generated will be used for the vague and ambiguous “purpose of addressing homelessness” without any further explanation to the voters as to what will, and will not, be done with the funds raised, and who will make those decisions. The vague and ambiguous reference to “addressing homelessness” will require additional action by the City Council to decide precisely how the additional revenue will be used.

The fact that Resolution R2023-4166 is not self-executing is borne out by the fact that Alderpersons Hadden, Martin and Ramirez-Rosa filed a draft Ordinance (A026-035) with the City Clerk on September 29, 2023 calling for, amongst many other things: (1) the creation of a “Bring Chicago Home Fund” within the City government to receive revenues from the increased real estate transfer tax, and setting forth the “eligible uses” for the funds deposited in the Bring Chicago Home Fund as “any support provided by the City or a delegate agency selected by the City to people experiencing or at risk of homelessness, including providing permanent affordable housing and the services necessary to obtain and maintain permanent housing...” None of this is included in the proposition to be put to the voters.

Resolution R2023-4166 is vague and ambiguous leaving many questions unanswered that will require additional action by the City Council to implement. As a

result, the Referendum is not self-executing, and the Circuit Court was correct in determining that is not eligible to be placed on the ballot at the March 19, 2024, Primary Election.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiffs-Appellees respectfully pray that this Court grant this Petition for Leave to Appeal and enter an Order reversing the decision of the Appellate Court, and restoring the Order of the Circuit Court.

Respectfully Submitted,

Plaintiffs

By : /s/ Michael Kasper

Michael Kasper (ARDC No. 6201411)
151 N. Franklin, Suite 2500
Chicago, IL 60606
312.704.3292
mjkasper60@mac.com

By: /s/ Michael T. Del Galdo

Michael T. Del Galdo (ARDC No. 6255825)
Cynthia S. Grandfield (ARDC No. 6277559)
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Avenue
Berwyn, Illinois 60602
(708) 222-7000 (t)
delgaldo@dlglawgroup.com
grandfield@dlglawgroup.com

Supreme Court Rule 341(c) Certification

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the table of contents, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5,879 words.

/s/ Michael J. Kasper

Michael J. Kasper
151 North Franklin Street, Suite 2500
Chicago, Illinois 60606
(312) 704-3292
mkasper60@mac.com

IN THE SUPREME COURT OF ILLINOIS

No. _____

| | | |
|---------------------------------|---|--|
| BUILDING OWNERS AND MANAGERS |) | Petition for Leave to |
| ASSOCIATION, <i>et al.</i> , |) | Appeal from the Appellate |
| |) | Court of Illinois for the First |
| <i>Petitioner-Appellant,</i> |) | Judicial District, Fifth Division |
| |) | Appellate Court Nos. 1-24-0417, and 1- |
| v. |) | 24-0431, consolidated |
| |) | |
| BOARD OF ELECTION |) | There Heard on |
| COMMISSIONERS FOR THE CITY OF |) | Appeal from the Circuit Court of |
| CHICAGO, <i>et al.</i> , |) | Cook County, County Department, |
| |) | County Division, No. 24-COEL-1 |
| <i>Respondents – Appellees.</i> |) | |
| |) | Honorable Kathleen M. Burke, |
| |) | Judge Presiding. |
| |) | |

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

FILED
1/5/2024 2:48 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000001
Calendar, 12

BUILDING OWNERS AND MANAGERS)
ASSOCIATION OF CHICAGO, THE)
CHICAGOLAND APARTMENT ASSOCIATION,)
NEIGHBORHOOD BUILDING OWNERS)
ALLIANCE, WOMEN CONSTRUCTION)
OWNERS & EXECUTIVES CHICAGO CAUCUS,)
HOME BUILDERS' ASSOCIATION)
OF GREATER CHICAGO d/b/a BUILDING)
INDUSTRY ASSOCIATION OF GREATER)
CHICAGO, SOUTHLAND BLACK CHAMBER)
OF COMMERCE FOUNDATION,)
CHICAGOLAND ASSOCIATION OF)
SHOPPING CENTER OWNERS, MATTHEW)
BAUMANN, CROSSTOWN)
REAL ESTATE ADVISORS, LLC, MATT)
KATSAROS, WILDWOOD CCI, LLC, THERESA)
KERN, MA REBAR, and TRACII RANDOLPH,)
AJH FOREVER, LLC)

2024COEL000001

No: _____

Plaintiffs,

v.

BOARD OF ELECTION COMMISSIONERS)
of the CITY OF CHICAGO, MARISEL A.)
HERNANDEZ, Chair, WILLIAM J. KRESSE,)
Commissioner/Secretary, JUNE A. BROWN,)

Defendants.

**COMPLAINT FOR DECLARATORY
JUDGMENT & INJUNCTIVE RELIEF**

NOW COME the Plaintiffs, Building Owners & Managers Association of Chicago, by
and through their attorneys Michael J. Kasper and Michael T. Del Galdo, and hereby complain
against defendants as follows:

Introduction.

1. On November 7, 2023, the Chicago City Council passed Resolution Number R2023-4166 (attached as Exhibit A) directing the Defendant Chicago Board of Election Commissioners to place an advisory referendum on the March 19, 2024 ballot proposing to change the real estate transfer tax rate on every property sold in the City.
2. The City Council passed the Resolution because Section 8-13-19 of the Illinois Municipal Code permits a home rule municipality to impose or increase a real estate transfer tax only after voter approval. 65 ILCS 5/8-13-19.
3. Today, the Chicago real estate transfer tax is \$3.75 for every \$500 in the value of transferred property.
4. Resolution R2023-4166 proposes to change the transfer tax rate in three separate ways. First, the Resolution proposes to lower the transfer tax rate to \$3.00 for every \$500 in the value of the transferred property below \$1M (a 20% reduction). Second, the Resolution proposes to increase the transfer tax rate to \$10.00 for every \$500 in the value of the transferred property above \$1M but below \$1.5M (a 166.67% increase). Third, the Resolution proposes to increase the transfer tax rate to \$15 for every \$500 in the value of the transferred property above \$1.5M (a 300% increase).
5. This Complaint seeks a declaration that the proposed referendum violates both Section 8-13-19 of the Illinois Municipal Code and the Illinois Constitution, and also seeks an injunction prohibiting the Defendants from certifying and placing the proposed referendum on the March 19, 2024 Primary Election ballot.

Parties.

6. Plaintiff Building Owners & Managers Association of Chicago is the trade association for Chicago's commercial office building industry, representing the city's largest office buildings

and a segment of Chicago's commercial real estate heavily impacted by the proposed referendum.

7. Plaintiff the Chicagoland Apartment Association is the trade association for the owners and managers of over 275,000 market-rate and affordable rental units in apartments of all sizes throughout the Chicagoland region, the vast majority of which are valued at over \$1 million.

8. Plaintiff the Neighborhood Building Owners Alliance is the trade association for 11 Chicago-area community building owner affiliates, including small and mid-sized neighborhood housing providers. Almost all apartment buildings in the city are valued at over \$1 million.

9. Plaintiff the Women Construction Owners & Executives (WCOE) Chicago Caucus is the trade association for women-owned construction companies in the Chicagoland area.

10. Plaintiff the Home Builders Association of Greater Chicago, d/b/a Building Industry Association of Greater Chicago is the business association representing the residential construction and development industry in Chicago and the suburbs.

11. Plaintiff the Southland Black Chamber of Commerce Foundation represents businesses and professional men and women who have joined together for the purpose of promoting the civic and commercial progress in the Southland community.

12. Plaintiff the Chicagoland Association of Shopping Center Owners is a private, member-based association of local real estate investors and developers. CASCO's members are actively engaged in the ownership and operation of commercial real estate as their primary source of business.

13. Plaintiff Crosstown Real Estate Advisors, LLC is a private real estate investment firm based in Chicago.

14. Plaintiff Matthew Baumann is Managing Director of Crosstown Real Estate Advisors, LLC.
15. Plaintiff Wildwood CCI, LLC is a residential development company focused solely in the City of Chicago.
16. Plaintiff Matt Katsaros, Principal of Wildwood CCI, LLC, is a resident and registered voter in the City of Chicago.
17. Plaintiff MA Rebar is a road and building construction firm based in Chicago.
18. Plaintiff Theresa Kern, President of MA Rebar, is a resident and registered voter in the City of Chicago.
19. Plaintiff AJH Forever, LLC, is a real estate management company in Chicago.
20. Plaintiff Tracii Randolph, CEO of AJH Forever, LLC, is a resident and registered voter in the City of Chicago.
21. Defendant Board of Election Commissioners is the election authority statutorily charged with administering elections within the City of Chicago, including the March 19, 2024 Primary Election.
22. Defendant Marisel A. Hernandez is the Chair of the Board of Election Commissioners for the City of Chicago, and is sued solely in her official capacity.
23. Defendant William J. Kresse is the Commissioner/Secretary of the Board of Election Commissioners for the City of Chicago, and is sued solely in his official capacity.
24. Defendant June A. Brown is a Commissioner of the Board of Election Commissioners for the City of Chicago, and is sued solely in her official capacity.

Jurisdiction and Venue.

25. Plaintiffs bring this action pursuant to 735 ILCS 5/2-701, and 735 ILCS 5/11- 101.

26. Personal jurisdiction and venue is appropriate in the Circuit Court of Cook County because the City of Chicago is located in Cook County; plaintiffs and defendants are located and do business in Cook County, and the Defendant Board of Election Commissioners administers elections within Cook County.

27. Subject matter jurisdiction is appropriate as Illinois courts are courts of general jurisdiction and this matter concerns matters of Illinois law – specifically the Illinois Constitution and the Illinois Municipal Code.

28. Venue is appropriate in the County Division as this is a case dealing with the March 19, 2024 General Election.

Factual Allegations.

29. On July 21, 2021, Alderperson Maria Hadden, and several co-sponsors, introduced Resolution R2021-919 (attached as Exhibit B), which proposed the submission of a referendum question seeking to raise the real estate transfer tax from \$3.75 to \$13.25 for every \$500 in the value of the transferred property above \$1M (a 253% increase).

30. The question proposed by Resolution R2021-919 did not propose a decrease in any portion of the real estate transfer tax. Resolution R2021-919 did not pass the City Council and was officially declared lost on May 24, 2023 at the adjournment of the previous City Council term.

31. On December 14, 2022, Alderperson Maria Hadden, and several co-sponsors, introduced Resolution R2022-1409 (attached as Exhibit C), which also proposed the submission of a referendum question seeking to raise the real estate transfer tax from \$3.75 to \$13.25 for every \$500 in the value of the transferred property above \$1M (a 253% increase).

32. The question proposed by Resolution R2022-1409 did not propose a decrease in any portion of the real estate transfer tax. Resolution R2022-1409 did not pass the City Council and was officially declared lost on May 24, 2023 at the adjournment of the previous City Council term.

33. On September 13, 2023, four months after Resolution R2021-919 and Resolution R2022-1409 were declared lost, Mayor Johnson and three Alderpersons introduced Resolution R2023-4166 (the subject of this litigation), which proposed the submission of a referendum question seeking to (1) lower the real estate transfer tax rate to \$3.00 for every \$500 in the value of the transferred property below \$1M (a 20% reduction); (2) increase the real estate transfer tax rate to \$10.00 for every \$500 in the value of the transferred property above \$1M but below \$1.5M (a 166.67% increase); and (3) to increase the real estate transfer tax rate to \$15 for every \$500 in the value of the transferred property above \$1.5M (a 300% increase).

34. On November 7, 2023, by a vote of 32-17-1, the City Council passed Resolution R2023-4166, thereby directing Defendants to place the referendum question on the ballot at the March 19, 2024 Primary Election.

Count I – The Proposed Referendum Violates the Illinois Municipal Code

35. Plaintiffs reallege the allegations in paragraphs 1-34.

36. Section 8-3-19 of the Illinois Municipal Code provides that “[a] home rule municipality may impose a new real estate transfer tax or may increase an existing real estate transfer tax with prior referendum approval.” 65 ILCS 5/8-13-19(d) .

37. Section 8-3-19 thus permits a home rule municipality, through referendum, to either (1) impose a new real estate transfer tax; or (2) increase an existing real estate transfer tax.

38. Section 8-3-19 also empowers a home rule municipality to amend an existing real estate transfer tax ordinance “without approval by referendum” so long as the amendment does not increase the transfer tax rate or add transactions covered by the tax. *Id.*

39. Section 8-3-19 specifically preempts home rule municipalities’ authority to enact a real estate transfer tax inconsistent with that section. 65 ILCS 5/8-3-19(g)(“A home rule municipality may not impose real estate transfer taxes other than as authorized by this Section. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.”).

40. Resolution R2023-4166 is inconsistent with Section 8-3-19 because it not only proposes to (greatly) increase the real estate transfer tax rate on some transfers but it also proposes to decrease the real estate transfer tax rate on other transfers (as not permitted by Section 8-3-19).

41. By requiring a home rule municipality to obtain voter approval to either (1) impose a new real estate transfer tax; or (2) increase an existing transfer tax, but permitting any other amendment (such as lowering the tax rate) “without approval by referendum”, Section 8-3-19 prevents the practice of legislative log-rolling. *See Wirtz v. Quinn*, 2011 IL 111903, ¶ 13 (“the disfavored practice known as ‘logrolling’ or ‘bundling unpopular legislation with more palatable bills, so that the well-received bills would carry the unpopular ones to passage.’”).

42. Resolution R2023-4166 is a textbook example of logrolling. It combines a popular idea (lowering taxes) with an unpopular idea (raising taxes) in order to carry the unpopular idea to passage.

43. There can be no doubt that Resolution R2023-4166 is an example of logrolling. Just four months after two separate Resolutions (R2021-919 and R2022-1409) proposing to only increase

the transfer tax failed to pass, the proposed increase was combined with the proposed decrease in order to ensure sufficient support to pass the City Council.

44. Examples like R2023-4166 are precisely why Section 8-3-19 of the Municipal Code prohibits enactment of real estate transfer taxes that are “inconsistent” with that section.

45. R2023-4166 is inconsistent with Section 8-3-19 because it proposes to do more than impose a new transfer tax or increase an existing transfer tax. As a result, it is prohibited by law and cannot be put before the voters at the March 19, 2024 Primary Election.

**Count II – The Proposed Referendum Violates Article III,
Section 3 of the Illinois Constitution**

46. Plaintiffs reallege the allegations in paragraphs 1-45.

47. Article III, Section 3 of the Illinois Constitution provides that “[a]ll elections shall be free and equal.” ILL.CONST.1970, art. III, § 3.

48. For purposes of referenda, this provision is violated when a proposed referendum combines separate, unrelated questions into a single initiative. *Coalition for Political Honesty v. Illinois State Board of Elections*, 83 ILL.2d 236 (1980).

49. The purpose of this restriction is to protect the voters’ right to vote on each question separately. *Id.*

50. Resolution R2023-4166 plainly calls for three separate questions: (1) shall the transfer tax rate be lowered from \$3.75 to \$3.00 for purchase value of less than \$1M?; (2) shall the transfer tax rate be raised from \$3.75 to \$10.00 for purchase value between \$1M and \$1.5M?; and (3) shall the transfer tax rate be raised from \$3.75 to \$15.00 for purchase value above \$1.5M?

51. Resolution R2023-4166 violates voters’ rights to vote on each of the three questions separately. For example, and most obviously, many voters likely support the first question

(lowering taxes), but oppose the second and third questions (raising taxes). However, they cannot express their support for the first proposition without also expressing support for the second and third propositions that they oppose.

52. Because Resolution R2023-4166 is a compound question combining three separate questions, it violates Plaintiffs' (and all voters) right to vote on the three propositions separately in violation of Article III, Section 3 of the Illinois Constitution, and cannot be placed on the ballot for voter consideration at the March 19, 2024 Primary Election.

Count III – The Proposed Referendum is Vague, Ambiguous and Not Self Executing

53. Plaintiffs reallege the allegations in paragraphs 1-52.

54. Illinois Supreme Court precedent has established that a municipal referendum must be self-executing; meaning that the question must “stand on its own” and that a question “leaving gaps to be filled by the legislature or municipal body, then just what was approved by the voters remains uncertain.” *Lipinski v. Chicago Board of Election Comm’rs*, 114 Ill.2d 95 (1986); *Leck v. Michaelson*, 111 Ill.2d 523 (1986).

55. Resolution R2023-4166 provides that the revenue generated will be used for “the purpose of addressing homelessness” without any further explanation to the voters as to what will, and will not, be done with the funds raised, and who will make those decisions.

56. The vague and ambiguous reference to “addressing homelessness” is insufficient to identify precisely what would be approved by the voters.

57. The vague and ambiguous reference to “addressing homelessness” will require additional action by the City legislature or municipal body to decide precisely how the additional revenue will be used.

58. The fact that Resolution R2023-4166 is not self-executing is borne out by the fact that Alderpersons Hadden, Martin and Ramirez-Rosa filed a draft Ordinance (attached as Exhibit D) with the City Clerk on September 29, 2023 calling for: (1) the creation of a “Bring Chicago Home Fund” within the City government to receive revenues from the increased real estate transfer tax, and setting forth the “eligible uses” for the funds deposited in the Bring Chicago Home Fund as “any support provided by the City or a delegate agency selected by the City to people experiencing or at risk of homelessness, including providing permanent affordable housing and the services necessary to obtain and maintain permanent housing...” None of this is included in the proposition to be put to the voters.

59. The proposed Ordinance also specifically provides that “law enforcement operations” is not an eligible use of the funds. This is also not included in the proposition to be put to the voters.

60. The proposed Ordinance further calls for the creation of a Bring Chicago Home Advisory Board consisting of fifteen (15) board members appointed by the Mayor (and several other non-voting members) to make recommendations regarding the percentage of funds to be expended annually on the eligible uses from the Bring Chicago Home Fund. This is not included in the proposition to be put to the voters.

61. The proposed Ordinance further empowers the City Budget Director, in conjunction with the Advisory Board and City departments, to determine what percentage of the Fund should be annually used for the eligible purposes. This too is not set forth in the proposition to be put to the voters.

62. Resolution R2023-4166 is thus not self-executing, and therefore cannot be placed on the ballot at the March 19, 2024 Primary Election.

Count IV – Injunction.

63. Plaintiffs reallege the allegations of paragraphs 1-62.

64. Because Resolution R2023-4166 violates the Illinois Municipal Code and the Illinois Constitution, as set forth in counts I, II and III of this Complaint, the Defendants should be enjoined from printing the proposed referendum question on the ballot at the March 19, 2024 Primary Election.

65. The Plaintiffs have a clear and ascertainable right in need of protection in ensuring that the Illinois Municipal Code and Illinois Constitution is upheld and not violated to their detriment.

66. The Plaintiffs have no valid remedy at law with respect to this unlawful and unconstitutional ordinance.

67. The Plaintiffs and any individual or entity the referenda encompasses would suffer irreparable injury if relief is not granted.

Conclusion.

WHEREFORE, for all of the above and foregoing reasons, the Plaintiffs respectfully request that this Honorable Court enter an Order declaring the Resolution unconstitutional and unlawful, enjoining Defendants from certifying the referendum question proposed by Resolution R2023-4166 on the March 19, 2024 Primary Election ballot, and from printing the question of ballots distributed to voters at the March 19, 2024 Primary Election; and granting such other relief as may be just and proper.

Respectfully Submitted,

Plaintiffs

By : /s/ Michael Kasper

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

By: /s/ Michael T. Del Galdo

Michael T. Del Galdo
Cynthia S. Grandfield
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Avenue
Berwyn, Illinois 60602
(708) 222-7000 (t)
delgaldo@dlglawgroup.com
grandfield@dlglawgroup.com
Cook County Firm ID No. 44047



OFFICE OF THE MAYOR
CITY OF CHICAGO

BRANDON JOHNSON
MAYOR

September 14, 2023

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

Ladies and Gentlemen:

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

Your favorable consideration of this resolution will be appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to be "BJ", followed by a horizontal line.

Mayor

RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

Shall the City of Chicago impose:

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

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

☐ Yes

☐ No

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

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



City of Chicago



R2021-919

Office of the City Clerk
Document Tracking Sheet**Meeting Date:**

7/21/2021

Sponsor(s):

Hadden (49)
Taylor (20)
Martin (47)
Sigcho-Lopez (25)
Ramirez-Rosa (35)
Rodriguez Sanchez (33)
La Spata (1)
Rodriguez (22)
Vasquez, Jr. (40)

Type:

Resolution

Title:

Submission of public question by referendum to Chicago voters at November 8, 2022 general election proposing increase of City of Chicago real estate transfer tax for purposes of providing resources for affordable housing and services to combat homelessness

Committee(s) Assignment:

Committee on Committees and Rules

RESOLUTION

WHEREAS, the Illinois General Assembly, specifically in 65 ILCS 5/8-3-19, allows home rule municipalities to increase their own Real Estate Transfer Taxes only by means of referendum; and

WHEREAS, the City of Chicago is a home rule municipality under Article VII of the 1970 Illinois Constitution; and

WHEREAS, the "City Portion" of the City of Chicago current transfer tax rate is three dollars and seventy-five cents (\$3.75) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, per transaction; and

WHEREAS, the City seeks to increase the "City Portion" of real estate transfer tax imposed, keeping the current rate at three dollars and seventy-five cents (\$3.75) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, for transfers up to one million dollars (\$1,000,000.00) in transfer price, and increasing the rate to thirteen dollars and twenty-five cents (\$13.25) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, for transfers over one million dollars (\$1,000,000.00) in transfer price; and

WHEREAS, the increased revenue shall be dedicated to the Homeless Transfer Tax Fund and is to be dedicated to combating homelessness by providing permanent affordable housing and the services necessary to obtain and maintain permanent housing; and

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

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

Section 1. The foregoing recitals are found as fact and incorporated herein by reference.

Section 2. In accordance with 65 ILCS 5/8-3-19, the City Council of the City of Chicago hereby initiates and authorizes the following referendum question to be submitted to the voters of the entire City of Chicago at the regularly scheduled general election next occurring after the effective date of this resolution on November 8, 2022.

Shall the City of Chicago impose a real estate transfer tax increase of 253% to establish a new transfer tax rate of thirteen dollars and twenty-five cents (\$13.25) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, for transfers of more than \$1,000,000 in transfer price to be paid by the buyer of the real estate transferred?

The current rate of the "City Portion" of the real estate transfer tax is \$3.75 per \$500.00 of the transfer price, or fraction thereof, and the revenue is used for general corporate purposes. The revenue from the increase is to be used for the sole purpose of combating homelessness by providing permanent affordable housing and the services necessary to obtain and maintain permanent housing in the City of Chicago. The increase would concern the "City Portion" of the tax only, and there would be no increase in the rate of the "CTA Portion" of the tax, which is \$1.50 per \$500.00 of the transfer price, or fraction thereof.

☐ Yes

☐ No

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

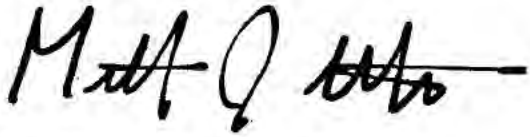
Section 4. This Resolution shall be in full force and effect upon its passage.



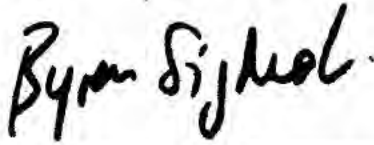
Aldersperson Maria E. Hadden
49th Ward



Aldersperson Jeanette Taylor
20th Ward



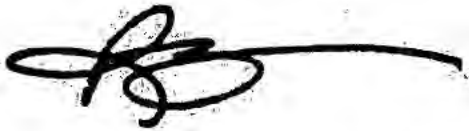
Alderson Matthew Martin
47th Ward



Alderson Byron Sigcho-Lopez
25th Ward



Alderson Carlos Ramirez-Rosa
35th Ward



Alderson Rossana Rodriguez Sanchez
33rd Ward



Alderson Daniel LaSpata
1st Ward

The following legislation is being introduced by Maria E. Hadden regarding the Bring Chicago Home ballot referendum resolution co-sponsored by

Daniel LaSpata

Alderman Ward 1

Alderman Ward 2

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Alderman Ward 3

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Alderman Ward 4

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Alderman Ward 5

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Alderman Ward 6

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Alderman Ward 7

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Alderman Ward 9

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Alderman Ward 10

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Alderman Ward 11

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Alderman Ward 15

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Alderman Ward 16

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Alderman Ward 17

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Alderman Ward 18

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Alderman Ward 19

Jeanette B. Taylor

Alderman Ward 20

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Alderman Ward 21

Michael D. Rodriguez

Alderman Ward 22

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The following legislation is being introduced by Maria E. Hadden regarding the Bring Chicago Home ballot referendum resolution co-sponsored by

Alderman Ward 23

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Alderman Ward 24

Byron Sigcho-Lopez

Alderman Ward 25

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Alderman Ward 26

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Alderman Ward 27

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Alderman Ward 28

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Alderman Ward 29

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Alderman Ward 30

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Alderman Ward 31

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Alderman Ward 32

Rossana Rodriguez Sanchez

Alderman Ward 33

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Alderman Ward 34

Carlos Ramirez-Rosa

Alderman Ward 35

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Alderman Ward 36

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Alderman Ward 37

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Alderman Ward 38

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Alderman Ward 39

Andre Vasquez

Alderman Ward 40

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Alderman Ward 41

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Alderman Ward 42

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Alderman Ward 43

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Alderman Ward 44

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The following legislation is being introduced by Maria E. Hadden regarding the Bring Chicago Home ballot referendum resolution co-sponsored by

Alderman Ward 45

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Alderman Ward 46

Matthew J. Martin

Alderman Ward 47

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Alderman Ward 48

Maria E. Hadden

Alderman Ward 49

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Alderman Ward 50

Mayor Lightfoot

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Clerk Valencia

Click or tap here to enter text.



City of Chicago



R2022-1409

Office of the City Clerk

Document Tracking Sheet

Meeting Date:

12/14/2022

Sponsor(s):

Hadden (49)
Villegas (36)
Sigcho-Lopez (25)
Moore (17)
Martin (47)
Rodriguez (22)
Burnett (27)
La Spata (1)
Ramirez-Rosa (35)
Maldonado (26)
Vasquez, Jr. (40)
Lopez (15)
Osterman (48)
Taylor (20)

Type:

Resolution

Title:

Submission of public question by referendum to Chicago voters at next regular election proposing increase of City of Chicago real estate transfer tax for purposes of providing resources for affordable housing and services to combat homelessness

Committee(s) Assignment:

Committee on Committees and Rules

Bring Chicago Home

130520

Committee on Committees and Rules
December 14, 2022

RESOLUTION

WHEREAS, Pursuant to 65 ILCS 5/8-3-19, home rule municipalities may increase their real estate transfer taxes by means of referendum; and

WHEREAS, The City of Chicago is a home rule municipality under Article VII of the 1970 Illinois Constitution; and

WHEREAS, The "City Portion" of the City of Chicago transfer tax rate is currently three dollars and seventy-five cents (\$3.75) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, per transaction; and

WHEREAS, The City seeks to increase the "City Portion" of real estate transfer tax by keeping the current rate at three dollars and seventy-five cents (\$3.75) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, for transfers up to one million dollars (\$1,000,000.00) in transfer price, and increasing the rate to thirteen dollars and twenty-five cents (\$13.25) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, for transfers over one million dollars (\$1,000,000.00) in transfer price; and

WHEREAS, The increased revenue will be deposited in a Homeless Transfer Tax Fund, to be dedicated to combating homelessness by providing permanent affordable housing and the services necessary to obtain and maintain permanent housing; and

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

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

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

SECTION 2. In accordance with 65 ILCS 5/8-3-19, the City Council of the City of Chicago hereby initiates and authorizes the following referendum question to be submitted to the voters of the entire City of Chicago at the next regular election occurring no less than 79 days after the effective date of this resolution:

Shall the City of Chicago impose a real estate transfer tax increase of 253% to establish a new transfer tax rate of thirteen dollars and twenty-five cents (\$13.25) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, for transfers of more than \$1,000,000 in transfer price to be paid by the buyer of the real estate transferred?


The current rate of the "City Portion" of the real estate transfer tax is three dollars and seventy-five cents (\$3.75) per five hundred dollars (\$500.00) of the transfer price, or fraction thereof, to be paid by the buyer of the real estate transferred, and the revenue is used for general corporate purposes. The revenue from the increase is to be used for the sole purpose of combating homelessness by providing permanent affordable housing and the services necessary to obtain and maintain permanent housing in the City of Chicago. The increase would concern the "City Portion" of the tax only, and there would be no increase in the rate of the "CTA Portion" of the tax, which is one dollar and fifty cents (\$1.50) per



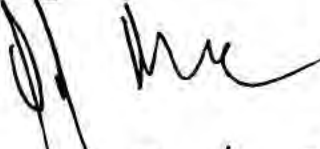



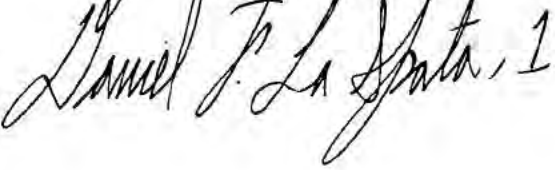
five hundred dollars (\$500.00) of the transfer price, or fraction thereof, to be paid by the seller of the real estate transferred.

- ☐ Yes
☐ No

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

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


 MARIA HADDEN
 Alderperson, 49th Ward

 36th
 2nd
 17th
 47
 22
 227
 1

 35

 26

 40th

 15

 48

 20th

Miscellaneous Business

CITY HALL, ROOM 200
121 NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60602

VAND BUREAU, 1111 WEST MONROE AVENUE
CHICAGO, ILLINOIS 60606

PHONE: 773.600.5700
WEB: ALDERWOMAN.ORG
EMAIL: OFFICE@ALDERWOMAN.ORG



MARIA E. HADDEN
ALDERWOMAN, 49TH WARD

CHAIRWOMAN, COMMITTEE ON ENVIRONMENTAL PROTECTION & ENERGY

COMMITTEE MEMBERSHIPS

COMMITTEES AND RULES
FINANCIAL AND GOVERNMENT OVERSIGHT
BUDGET & GOVERNMENT OPERATIONS
ENVIRONMENTAL PROTECTION & ENERGY
HEALTH AND HUMAN RELATIONS
HOUSING AND REAL ESTATE
IMMIGRANT & REFUGEE RIGHTS
PUBLIC SAFETY

September 21, 2023

Honorable Anna Valencia
City Clerk
City Hall, Room 107
121 North LaSalle Street
Chicago, Illinois 60602

Dear Ms. Valencia:

Pursuant to Section 8-3-19 of the Illinois Municipal Code, 65 ILCS 5/8-3-19, I, together with Alderperson Matt Martin and Alderperson Carlos Ramirez-Rosa, hereby give notice that at the City Council meeting to be convened at 10:00 a.m. on Wednesday, October 4, 2023, under the heading of Miscellaneous Business, I intend to call for a public hearing on the intent to submit the question of increasing the City's real estate transfer tax to referendum as set forth in the attached resolution and proposed ordinance. Members of the general public will be given an opportunity to speak, and no vote will be taken on these items. Please include this letter and the attached documents as part of the agenda for the meeting.

Very truly yours,

Maria E. Hadden
Alderperson, 49th Ward

Chicago City Clerk's Office
2023 SEP 29 4:18:35

RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

Shall the City of Chicago impose:

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

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

☐ Yes

☐ No

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

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

DRAFT DOCUMENT – SUBJECT TO CHANGE**ORDINANCE****BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

SECTION 1. Section 2-44-070 of the Municipal Code of Chicago is hereby amended by deleting the text struck through and by inserting the text underscored, as follows:

2-44-070 Annual report on homelessness and housing.

(a) On or before ~~July 31, 2023, and then~~ May 31 of each year, ~~thereafter~~, the Commissioner, in conjunction with the Commissioner of Family and Support Services, shall submit an annual report to the appropriate City Council committee on the progress made to address homelessness and housing within the City. The report shall include, but not be limited to, the departments' and delegate agencies' progress on implementing the seven principles for addressing encampments outlined by the United States Interagency Council on Homelessness and codified in the City's 2023 budget ordinance. The report shall also include supporting information from the Chicago Continuum of Care's annual reports to the United States Department of Housing and Urban Development and from other stakeholders as deemed relevant by the Commissioner and the Commissioner of Family and Support Services. The Bring Chicago Home Advisory Board established in Chapter 2-48 may request information regarding outcomes related to appropriations from the Bring Chicago Home Fund established pursuant to Chapter 3-33 be included with the report.

(Omitted text is not affected by this ordinance)

SECTION 2. Title 2 of the Municipal Code of Chicago is hereby amended by inserting a new Chapter 2-48, as follows:

**Chapter 2-48
Bring Chicago Home**

2-48-010 Purpose and intent.

The primary goal of the Bring Chicago Home Fund is to directly address and combat homelessness in the City by providing permanent affordable housing and the services necessary to obtain and maintain permanent housing.

2-48-020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

"Area median income" has the meaning ascribed to that term in Section 2-44-080(B).

"Advisory Board" means the Bring Chicago Home Advisory Board established in this Chapter.

"Bring Chicago Home Fund" means the fund established pursuant to paragraph (2) of Section 3-33-165 for the purpose of addressing homelessness.

DRAFT DOCUMENT – SUBJECT TO CHANGE

“Continuum of Care” means the Chicago Continuum of Care, or successor group, that is organized to carry out the responsibilities required by the United States Department of Housing and Urban Development’s Continuum of Care Program pursuant to the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11301 *et seq.*, or the Collaborative Applicant designated by Chicago Continuum of Care pursuant to its charter.

“Eligible use” means any support provided by the City or a delegate agency selected by the City to people experiencing or at risk of homelessness, including providing permanent affordable housing and the services necessary to obtain and maintain permanent housing, as set forth in Section 2-48-010, and the activities of the Advisory Board. “Eligible use” shall not include law enforcement operations.

“Implementing Commissioners” means the Commissioner of Family and Support Services, the Commissioner of Housing, and the Commissioner of Public Health.

“People experiencing or at risk of homelessness” means any resident of the City of Chicago, without limitation with respect to immigration status, who: (1) meets a definition of homelessness under federal law; or (2) is in a situation characterized by housing instability, including, but not limited to, fleeing gender-based violence, living doubled up, or currently being in or having been recently released from a prison, jail, or residential treatment facility.

“Returning resident” means a resident of the City who is returning or has recently returned to live in their community after having been convicted of an imprisonable offense under a local, state, or federal law.

2-48-030 Use of funds.

(a) Revenues from the Bring Chicago Home Fund shall be appropriated exclusively for eligible uses.

(b) The Budget Director, in consultation with relevant City departments and the Advisory Board, shall determine the maximum amount of funds from the Bring Chicago Home Fund to be included in the budget recommendation for eligible uses. In making this determination, the Budget Director shall make reasonable efforts to minimize the potential for disruption to people experiencing or at risk of homelessness served by programs funded by the Bring Chicago Home Fund due to a decline in future revenue.

(c) Allowable expenses for shelter are non-congregate models, discrete capital costs for existing congregate shelter, beds for severe or extreme weather, and increasing operational rates to support pay equity for shelter employees and to expand operations from traditional overnight to 24-hour shelter models.

2-48-040 Bring Chicago Home Advisory Board – Establishment; recommendations.

(a) *Establishment and composition.* There is hereby established a Bring Chicago Home Advisory Board. The Advisory Board shall be composed of three non-voting *ex officio* members, five non-voting designated members, and fifteen appointed members. All members shall be residents of the City.

DRAFT DOCUMENT – SUBJECT TO CHANGE

(1) *Non-voting members.* Each of the Implementing Commissioners shall serve as a non-voting *ex officio* member and co-chair of the Advisory Board. The Mayor shall designate an individual representing or acting on behalf of the Continuum of Care and an additional City employee or official as non-voting members, and the Implementing Commissioners shall each designate an employee or official from their respective department as a non-voting member.

(2) *Voting members.* The Mayor shall appoint, by and with the advice and consent of the City Council, fifteen voting Advisory Board members for a term of three years. No person shall be eligible to serve as a voting member for more than two consecutive terms. Vacancies shall be filled in the same manner that appointments are made and shall be filled for the unexpired term of the member whose position has become vacant. The Advisory Board shall consist of members with broad and varied experiences, skills, expertise, and knowledge, including: formal affiliation with one or more homelessness social service agencies, permanent supportive housing developers or property managers, community organizations representing distinct geographic areas of the City, or disability-centered organizations; and expertise regarding youth homelessness, family homelessness, permanent supportive housing development, or providing housing to people experiencing or at risk of homelessness through tenant-based rental assistance. At least five members shall have lived experience as people experiencing or at risk of homelessness, including such lived experience due to gender-based violence, migrant status, status as a returning resident, or status as a minor. At least three members shall have a formal affiliation with a community-based organization that organizes people with lived experience of poverty, homelessness, or housing instability for social change.

(b) *Powers and duties.* The Advisory Board shall have the following powers and duties:

(1) Hold public meetings and engage in community outreach. The Advisory Board shall hold at least two public hearings before proposing a recommendation pursuant to this section;

(2) Make recommendations for the proportion of Bring Chicago Home Fund revenue to be spent on each eligible use each year. No later than May 31, 2025, and no later than May 31 each year thereafter, the Advisory Board shall present the Mayor and City Council with spending recommendations. The recommendations shall be published on a publicly available website and be presented to an appropriate City Council committee no later than June 30 each year;

(3) Make recommendations, including prioritization for housing, to appropriate departments regarding proposed programs using funds from the Bring Chicago Home Fund;

(4) Establish goals and metrics, including goals and metrics for the purpose of addressing inequities, to guide and evaluate success; and

(5) Track participant and program outcomes, and review appropriate information, documents, data, and records, as may be provided by the Implementing Commissioners pursuant to Section 2-44-070 and Section 2-50-085.

DRAFT DOCUMENT – SUBJECT TO CHANGE

SECTION 3. Section 2-50-085 of the Municipal Code of Chicago is hereby amended by deleting the text struck through and by inserting the text underscored, as follows:

2-50-085 Annual report on homelessness and housing.

(a) On or before ~~July 31, 2023, and then~~ May 31 of each year, ~~thereafter~~, the Commissioner of the Department of Family and Support Services, in conjunction with the Commissioner of the Department of Housing, shall submit an annual report to the appropriate City Council committee on the progress made to address homelessness and housing within the City. The report shall include, but not be limited to, the departments' and delegate agencies' progress on implementing the seven principles for addressing encampments outlined by the United States Interagency Council on Homelessness and codified in the City's 2023 budget ordinance. The report shall also include supporting information from the Chicago Continuum of Care's annual reports to the United States Department of Housing and Urban Development and from other stakeholders as deemed relevant by the Commissioner of Family and Support Services and the Commissioner of Housing. The Bring Chicago Home Advisory Board established in Chapter 2-48 may request information regarding outcomes related to appropriations from the Bring Chicago Home Fund established pursuant to Chapter 3-33 be included with the report.

(Omitted text is not affected by this ordinance)

SECTION 4. Section 3-33-030 of the Municipal Code of Chicago is hereby amended by deleting the text struck through and by inserting the text underscored, as follows:

3-33-030 Tax imposed.

A. Except as otherwise provided in this chapter, a tax is imposed upon the privilege of transferring title to, or beneficial interest in, real property located in the ~~city~~ City, whether or not the agreement or contract providing for the transfer is entered into the ~~city~~ City. The tax shall be at the rate of: ~~\$3.75~~

(1) \$3 per \$500.00 \$500 of the transfer price, or fraction thereof, of the real property or the beneficial interest in real property for that part of the transfer price under \$1,000,000;

(2) \$10 per \$500 of the transfer price, or fraction thereof, of the real property or the beneficial interest in real property for that part of the transfer price between \$1,000,000 and \$1,500,000 (inclusive); and

(3) \$15 per \$500 of the transfer price, or fraction thereof, of the real property or the beneficial interest in real property for that part of the transfer price exceeding \$1,500,000.

(Omitted text is not affected by this ordinance)

DRAFT DOCUMENT – SUBJECT TO CHANGE

SECTION 5. Chapter 3-33 of the Municipal Code of Chicago is hereby amended by inserting a new Section 3-33-035, as follows:

3-33-035 Tax reductions.

A. For transfers taking place on or after January 1, 2030, with further adjustments every five years thereafter, the tax imposed by Section 3-33-030(A) shall be decreased in the following manner:

(1) The rate of \$3 per \$500 of the transfer price, or fraction thereof, shall be imposed on that part of the transfer price under \$1,000,000 in 2025 dollars, adjusted for inflation by the Chained Consumer Price Index for all Urban Consumers (C-CPI-U);

(2) The rate of \$10 per \$500 of the transfer price, or fraction thereof, shall be imposed on that part of the transfer price between \$1,000,000 and \$1,500,000 (inclusive) in 2025 dollars, adjusted for inflation by the Chained Consumer Price Index for all Urban Consumers (C-CPI-U); and

(3) The rate of \$15 per \$500 of the transfer price, or fraction thereof, shall be imposed on that part of the transfer price exceeding \$1,500,000 in 2025 dollars, adjusted for inflation by the Chained Consumer Price Index for all Urban Customers (C-CPI-U).

B. The tax imposed by Section 3-33-030(A) shall be decreased to a flat rate of \$3 per \$500 of the transfer price, or fraction thereof, for all transfers involving real property that is subject to affordability requirements pursuant to an agreement executed by any of the following: Chicago Department of Housing; Chicago Department of Family and Support Services; Chicago Housing Authority; Cook County Assessor's Office Affordable Housing Special Assessment Program; Illinois Housing Development Authority; Illinois Department of Human Services; or United States Department of Housing and Urban Development; or other legally enforceable agreement as acknowledged by the Commissioner of the Department of Housing, provided that at least 20 percent of the dwelling units on the real property that is the subject of the transfer receiving the reduced tax rate are covered by the affordability requirements agreement. The Commissioner of the Department of Housing is hereby authorized to promulgate rules with respect to the documentation required to establish eligibility for an adjustment pursuant to this paragraph.

SECTION 6. Chapter 3-33 of the Municipal Code of Chicago is hereby amended by inserting a new Section 3-33-165, as follows:

3-33-165 Deposit of funds.

All proceeds resulting from the tax imposed by Section 3-33-030(A), including interest and penalties, shall be deposited as follows:

(1) For transactions subject only to the tax rate described in Section 3-33-030(A)(1), all proceeds shall be deposited in the City's corporate fund; and

(2) For transactions subject to a tax rate described in Section 3-33-030(A)(2) or Section 3-33-030(A)(3), proceeds in the amount equivalent to the revenue generated under a rate of \$3.75 per \$500 of the transfer price, or fraction thereof, shall be deposited in the City's corporate

DRAFT DOCUMENT – SUBJECT TO CHANGE

fund and the remainder shall be deposited in a single appropriate fund designated by the Budget Director, in consultation with the Comptroller, for the purpose of addressing homelessness (the “Bring Chicago Home Fund”).

SECTION 7. Following due passage and approval, this ordinance shall take effect January 1, 2025.

DRAFT

FILED
1/16/2024 4:52 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000001

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. |) | |

PLAINTIFFS’ MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiffs, by their counsel, move for judgment on the pleadings pursuant to Section 2-615(e) of the Code of Civil Procedure (735 ILCS 5/2-615(e)), and in support of their motion state as follows:

- 1. This action for declaratory judgment and injunctive relief seeks to prevent the Defendant Board of Elections from printing on the ballot a referendum question on the March 19, 2024 Primary Election ballot proposing to change the real estate transfer tax rate on property sold in the City.
- 2. On November 7, 2023, the Chicago City Council passed Resolution Number R2023-4166 (attached as Exhibit A), directing the Board of Elections to place such a question on the ballot for presentation to Chicago voters.
- 3. The referenda question contained in R2023-4166 is:

Shall the City of Chicago impose:

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

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

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

4. Plaintiffs seek a declaration that the Referendum question violates Section 8-3-19 of the Illinois Municipal Code 65 ILCS 5/8-13-19(d), which provides “[a] home rule municipality may impose a new real estate transfer tax or may increase an existing real estate transfer tax with prior referendum approval.” 65 ILCS 5/8-13-19(d).
5. Section 8-3-19 permits a home rule municipality to amend an existing real estate transfer tax ordinance “without approval by referendum” so long as the amendment does not increase the transfer tax rate or add transactions covered by the tax. *Id.*
6. The Referendum violates Section 8-3-19 of the Municipal Code because it not only proposes to increase the real estate transfer tax rate on some transfers by referendum but it also proposes to decrease the real estate transfer tax rate on other transfers as not permitted by Section 8-3-19.
7. The Referendum question violates Article III, Section 3 of the Illinois Constitution, which provides that “[a]ll elections shall be free and equal.” ILL.CONST.1970, art. III, § 3.

8. For purposes of referenda, this provision is violated when a proposed referendum combines separate, unrelated questions into a single initiative. *Coalition for Political Honesty v. Illinois State Board of Elections*, 83 ILL.2d 236 (1980). The purpose of this restriction is to protect the voters' right to vote on each question separately. *Id.*

9. The Referendum plainly calls for three separate questions: (1) shall the transfer tax rate be lowered from \$3.75 to \$3.00 for purchase value of less than \$1M?; (2) shall the transfer tax rate be raised from \$3.75 to \$10.00 for purchase value between \$1M and \$1.5M?; and (3) shall the transfer tax rate be raised from \$3.75 to \$15.00 for purchase value above \$1.5M?

10. Because the Referendum question proposes a compound question combining three separate questions, it violates Plaintiffs' (and all voters') right to vote on the three propositions separately in violation of Article III, Section 3 of the Illinois Constitution

11. The Referendum question is vague, ambiguous, and not self executing in violation of Illinois law. Illinois Supreme Court precedent has established that a municipal referendum must be self-executing; meaning that the question must "stand on its own" and that a question "leaving gaps to be filled by the legislature or municipal body, then just what was approved by the voters remains uncertain." *Lipinski v. Chicago Board of Election Comm'rs*, 114 Ill.2d 95 (1986); *Leck v. Michaelson*, 111 Ill.2d 523 (1986).

12. The Referendum question provides that the revenue generated will be used for the vague and ambiguous "purpose of addressing homelessness" without any further explanation to the voters as to what will, and will not, be done with the funds raised, and who will make those decisions.

13. Resolution R2023-4166 is thus not self-executing, and therefore cannot be placed on the ballot at the March 19, 2024 Primary Election.

14. Plaintiffs are entitled to judgment on the pleadings because there are no disputed questions of material fact and the Referendum question is legally and constitutionally invalid for the reasons set forth above and set forth in greater detail in the Memorandum of Law accompanying this Motion.

WHEREFORE, for the foregoing reasons and the reasons set forth in the Memorandum of Law supporting this Motion, Plaintiffs respectfully pray that this Court grant their Motion for Judgment on the Pleadings and grant the relief requested in their Complaint.

Respectfully Submitted,

Plaintiffs

By : /s/ Michael Kasper

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

By: /s/ Michael T. Del Galdo

Michael T. Del Galdo
Cynthia S. Grandfield
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Avenue
Berwyn, Illinois 60602
(708) 222-7000 (t)
delgaldo@dlglawgroup.com
grandfield@dlglawgroup.com
Cook County Firm ID No. 44047

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

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

PLAINTIFFS’ MEMORANDUM OF LAW IN SUPPORT OF
THEIR MOTION FOR JUDGMENT ON THE PLEADINGS

I. Introduction.

This action for declaratory judgment and injunctive relief seeks to prevent the Defendant Board of Elections from printing a referendum question on the March 19, 2024 Primary Election ballot proposing to change the real estate transfer tax rate on property sold in the City of Chicago.

On November 7, 2023, the Chicago City Council passed Resolution Number R2023-4166 (Complaint, Ex. A), directing the Board of Elections to place such a question on the ballot for presentation to Chicago voters at the March 19, 2024 primary election. The referenda question contained in R2023-4166 is:

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

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\$1,500,000 (inclusive) to be paid by the buyer of the real estate transferred unless the buyer is exempt from the tax solely by the operation of state law, in which case the tax is to be paid by the seller; AND

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

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

Plaintiffs instituted this litigation, seeking declaratory judgment and injunctive relief, because the Referendum question violates Section 8-3-19 of the Illinois Municipal Code (65 ILCS 5/8-13-19(d)), Article III, Section 3 of the Illinois Constitution, (ILL.CONST.1970, art. III, § 3), and well established precedent that prohibits referendum questions that are vague, ambiguous and not self-executing.

II. Standard for Judgment on the Pleadings.

Section 2-615(e) provides that “any party may seasonably move for judgment on the pleadings.” 735 ILCS 5/2-615(e). “Judgment on the pleadings is proper if the pleadings disclose no genuine issue of material fact and that the movant is entitled to judgment as a matter of law.” *Lebron v. Gotlieb Mem. Hosp.*, 237 Ill.2d 217, 226 (2010). This case presents no genuine issues of fact, but instead presents an entirely legal question; i.e. whether the Referendum question complies with the Illinois Municipal Code and the Illinois Constitution.

III. *Argument.*

- A. The Referendum Question Fails to Comply with the Requirements of the Illinois Municipal Code for Increasing Real Estate Transfer Taxes.
 - 1. The Plain Language of the Municipal Code Prohibits Combining Tax Increases and Tax Decreases in the Same Question.

The Illinois Municipal Code permits a home rule municipality to “impose a new real estate transfer tax” or to “increase” an existing real estate transfer tax only upon “prior referendum approval.” 65 ILCS 5/8-13-19(d). The same section of the Code permits a home rule municipality to “amend an existing real estate transfer tax” ordinance “without approval by referendum” so long as the amendment does not increase the transfer tax rate or add transactions covered by the tax. *Id.*

The complete section reads as follows:

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

65 ILCS 5/8-13-19(d)(emphasis added). Thus, the Municipal Code permits three separate actions regarding the real estate transfer tax: (1) imposition of a new transfer tax (which

requires prior referendum approval);¹ (2) an increase of an existing transfer tax (which requires prior referendum approval); and (3) an amendment to an existing transfer tax that does not increase the rate (which can be done without referendum approval).

The Referendum presented here violates Section 8-3-19 of the Municipal Code because it not only proposes to “increase” the City’s current real estate transfer tax rate on some transfers by referendum but it also proposes, in the same Referendum, to amend (by decreasing) the real estate transfer tax rate on other transfers. The increase requires “prior approval by referendum,” but the other amendment (the decrease) “may” be done “without prior approval by referendum.”

Thus, the plain language of the statute contemplates two changes with “prior approval by referendum” (imposition of a new transfer tax or an increase in the rate of an existing tax), and any other amendment (such as a decrease in the rate of tax) being done “without prior approval by referendum.” When construing a statute, the court’s “goal is to determine and effectuate the legislature’s intent, best indicated by giving the statutory language its plain and ordinary meaning.” *People v. Hardin*, 238 Ill.2d 33, 40 (2010). Courts “will not depart from the statute’s plain language by reading in exceptions, limitations, or conditions in conflict with the legislature’s intent.” *Id.*

In addition, Courts must construe the statute’s words and phrases in light of other relevant provisions and not in isolation. *Id.* Moreover, courts “may consider the reason for the law, the problems to be remedied, the purposes to be achieved, and the consequences

¹ This Referendum does not propose to “impose” a real estate transfer tax as Chicago currently imposes a real estate transfer tax.

of construing the statute one way or another." *People v. Burlington*, 2018 IL App (4th) 150642, ¶ 16.

Here, the Municipal Code permits the imposition or an increase in the real estate transfer tax by referendum, but does not permit a corresponding decrease in the tax by referendum. The “purposes to be achieved” by this law, and the “problems to be remedied” is to prevent precisely the type of legislative logrolling that happened here.

On July 21, 2021, Resolution R2021-919 (Complaint, Ex. B) was introduced proposing a referendum to only increase the real estate transfer tax from \$3.75 to \$13.25 for every \$500 in the value of the transferred property above \$1M (a 253% increase). That resolution did not pass.² On December 14, 2022, Resolution R2022-1409 (Complaint, Ex. C), was introduced also proposing to only raise the real estate transfer tax from \$3.75 to \$13.25 for every \$500 in the value of the transferred property above \$1M (a 253% increase). That Resolution also did not pass. *Id.*

On September 13, 2023, four months after Resolution R2021-919 and Resolution R2022-1409 were declared lost, Resolution R2023-4166 (the subject of this litigation) was introduced, proposing to *reduce* the real estate transfer tax on properties valued at less than \$1M by 20%, while *in the same question*, proposing to *increase* the tax rate for property valued between \$1M and \$1.5M by 166.67%; and to *increase* the tax rate on property transfers valued above \$1.5M by a staggering 300%.

In short, there was insufficient support in the City Council to pass a resolution increasing the transfer tax rate alone, and only by combining it with a proposition to also

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<https://occprodstoragev1.blob.core.usgovcloudapi.net/lsmatterattachmentspublic/452ec73a-2459-4872-952b-96ab0891a299.pdf> (last accessed 1/15/24).

reduce the rate on some transfers did it muster sufficient votes to pass. This is a textbook example of “‘logrolling’ or ‘bundling unpopular legislation with more palatable bills, so that the well-received bills would carry the unpopular ones to passage.’” *See Wirtz v. Quinn*, 2011 IL 111903, ¶ 13.

In Illinois, the prohibition against legislative logrolling appears in the single subject rule of Article IV, Section 8(d) of the Illinois Constitution. ILL.CONST.1970, art. IV, § 8(d). The rule is designed to prevent the passage of legislation that, if standing alone, could not muster the necessary votes for enactment. *People v. Sypien*, 198 Ill.2d 334, 338 (2001), *citing Geja's Cafe v Metropolitan Pier & Exposition Authority*, 153 Ill. 2d 239, 258 (1992). “Such ‘logrolling’ by legislators is a practice strictly prohibited by this state's constitution.” *Id.*; *People v. Cervantes*, 189 Ill. 2d 80, 98 (1999); *People v. Wooters*, 188 Ill. 2d 500, 518 (1999). The prohibition against logrolling “ensures that the legislature addresses the difficult decisions it faces directly and subject to public scrutiny, rather than passing unpopular measures on the backs of popular ones.” *Johnson v. Edgar*, 176 Ill.2d 499, 514 (1997).

Johnson v. Edgar is particularly instructive here because, in that case, the Supreme Court invalidated an equally egregious example of logrolling. The General Assembly passed legislation combining, as here, a tax increase (on motor fuel) with the creation of the State’s first sex offender notification law for predatory criminal sexual assault of a child. *Id.* at 516. The Court struck down the legislation in its entirety. *Id.*

Given the prohibition against logrolling imposed on the General Assembly by the Illinois Constitution, it makes perfect sense that the General Assembly would impose similar restrictions on municipalities governing their deliberations. Viewed through this

lens, the prohibition against combining tax increases with tax decreases in the same question set forth in Section 8-13-19(d) is simply an anti-logrolling provision designed to prevent exactly what happened here. That is why the plain language of Section 8-13-19(d) prohibits combining both a transfer tax increase and a decrease in the same question.

2. Rules of Statutory Construction Prove That
Tax Increases and Tax Decreases Cannot be Included
In the Same Referendum.

Even if, despite the foregoing, Section 8-13-19(d) were ambiguous, it must still be read to prevent the Referendum at issue here. “Where a statute is susceptible to more than one equally reasonable interpretation, then the statute is ambiguous, and the court may consider extrinsic aids of construction to discern the legislative intent.” *Policemen’s Benevolent Labor Comm. v. City of Sparta*, 2019 Ill.App. (5th) 190039U, ¶ 17. The *expressio unius est exclusio alterius* (the expression of one thing means the exclusion on another) doctrine of statutory construction is instructive here - when a statute lists certain things, those things omitted were intended as exclusions. *People ex rel. Klaeren v. Village of Lisle*, 316 Ill. App. 3d 770, 781 (2nd Dist., 2000).

Here, under Section 8-13-19(d) there are two actions regarding a real estate transfer tax that municipalities may take with prior referendum approval: (1) imposition of a new transfer tax; and (2) an increase in the rate of an existing transfer tax. Under the *expressio unius* rule, the omission of allowing a decrease in the transfer tax rate amongst the actions permitted with prior referendum approval must be read as an intentional exclusion. This is further solidified by the final sentence of Section 8-13-19(d), which provides: “An existing ordinance ... imposing a real estate transfer tax may be amended without approval by

referendum ... if the amendment does not increase the rate of the tax...” 65 ILCS 5/8-13-19(d).

The General Assembly preempted home rule municipalities’ ability to enact or change real estate transfer taxes in any manner inconsistent with Section 8-13-19(d). *See* 65 ILCS 5/8-13-19(g)(“A home rule municipality may not impose real estate transfer taxes other than as authorized by this Section. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.”). By combining a decrease in the transfer tax rate on some, mostly residential properties, with a large increase in the transfer tax rate on commercial and industrial (and higher valued residential properties), Resolution R2023-4166 is not authorized by Section 8-13-19(d) and is, therefore, invalid.

B. The Referendum Combines Three Separate Questions in Violation of Article III, Section 3 of the Illinois Constitution.

Article III, Section 3 of the Illinois Constitution provides that “[a]ll elections shall be free and equal.” ILL.CONST.1970, art. III, § 3. The free and equal clause guarantees the right to vote in Illinois and reflects a broad public policy to expand the opportunity to vote. *Clark v. Illinois State Board of Elections*, 2014 IL App (1st) 141937, ¶ 27; *Orr v. Edgar*, 283 Ill. App. 3d 1088, (1st Dist., 1996). Under the clause, every qualified voter has a right to vote and all votes must have equal influence. *Chicago Bar Ass’n v. White*, 386 Ill.App.3d 955, 959 (1st Dist., 2008). The free and equal clause gives constitutional priority to the state's public policy of encouraging the full and effective participation of the entire electorate. *Clark*, 2014 IL App (1st) 141937, ¶ 27; *Orr*, 283 Ill. App. 3d at 1102.

The free and equal clause is violated when separate and unrelated questions are combined in a single proposition on a ballot. *Coalition for Political Honesty v. Illinois*

State Board of Elections, 83 Ill.2d 236 (1980). Combining separate and unrelated questions prevents a voter from giving a free and equal expression of preference as to each proposition. *Clark*, 2014 IL App (1st) 141937, ¶ 28; see also *Routt v. Barrett*, 396 Ill. 322, 332 (1947); *People ex rel. Hall v. Bopp*, 396 Ill. 80, 83 (1947).

In *Clark*, the Appellate Court affirmed the Circuit Court’s decision (Hon. Mary Mikva, presiding) finding that a proposed referendum question that included separate and unrelated components violated Article III, Section 3. *Clark*, 2014 IL App (1st) 141937, ¶ 29. The referendum in *Clark* proposed several changes to the Constitution’s legislative article, including term limits for legislators and increasing the number of votes needed to override the governor’s veto. *Id.* at ¶ 30. In affirming the Circuit Court, the Appellate Court noted that “[b]oth the term limits and veto provisions could easily stand as independent propositions without affecting the rest of the proposed changes” and therefore held that “the proposed amendment is invalid under the free and equal clause.” *Id.*

Here, as in *Clark*, the tax increase provisions could stand as “independent propositions.” This conclusion is highlighted by the fact that the tax decrease provision of Section 8-13-19(d) does not even contemplate a referendum proposition, but specifically state that a decrease in the transfer tax rate be effectuated “without approval by referendum.” 65 ILCS 5/8-13-19(d). Instead, the tax decrease provision was included in the referendum for the obvious political reasons set forth above.

In determining whether a proposed referendum violates Article III, Section 3, the Supreme Court has also considered the possibility that if the combined propositions were presented to voters as separate questions “incongruous results might follow.” *Coalition*, 83 Ill.2d at 254. In *Coalition*, the Court held that could be the case where a referendum

proposed changing the Illinois House of Representatives from multimember to single member districts and also proposed repealing cumulative voting. If the questions were separated, Court noted, “the voters might vote to retain cumulative voting and adopt single-member districts”, resulting in an incongruous result. *Id.*

Here, there is no such risk of an incongruous result. If, despite the prohibition of Section 8-13-19(d), the tax increase questions and the tax decrease questions were separated into separate propositions, no incongruous result could occur. Instead, the likely outcome would be that voters would approve the tax decrease provisions, and reject the tax increase provisions. Regardless, if the questions were separated, there would be no possibility of the type of incongruous results the Court recognized in *Coalition*.

The Referendum proposed in this case calls for three separate questions: (1) shall the transfer tax rate be lowered from \$3.75 to \$3.00 for purchase value of less than \$1M?; (2) shall the transfer tax rate be raised from \$3.75 to \$10.00 for purchase value between \$1M and \$1.5M?; and (3) shall the transfer tax rate be raised from \$3.75 to \$15.00 for purchase value above \$1.5M? Because the Referendum question proposes a compound question combining three separate questions, it violates Plaintiffs’ (and all voters) right to vote on the three propositions separately in violation of Article III, Section 3 of the Illinois Constitution.

C. The Referendum Question is Vague, Ambiguous and Not Self Executing in Violation of Illinois Law.

The Illinois Supreme Court has established that a municipal referendum must be self-executing, meaning that the question must “stand on its own” without “leaving gaps to be filled by the legislature or municipal body...” *Lipinski v. Chicago Board of Election Comm’rs*, 114 Ill.2d 95, 99 (1986); *Leck v. Michaelson*, 111 Ill.2d 523 (1986). A

referendum requiring such “additional provisions ‘not clearly contemplated by the terms of [the referendum] proposition’” renders the proposition fatally “vague and ambiguous.” *Lipinski*, 114 Ill.2d at 100, quoting *Leck*, 111 Ill.2d at 528.

In *Lipinski*, the Supreme Court invalidated a proposed referendum altering the process of electing Chicago City officials from partisan to non-partisan. *Id.* at 106. In doing so, the Court enunciated numerous questions and gaps left unanswered by the referendum question, such as when it would take effect, how many signatures would candidates be required to submit, and which candidates would qualify for a runoff election. *Id.* at 100-104. As a result, the Court held “the nonpartisan referendum proposition is too vague and ambiguous to qualify as a binding referendum ... because it leaves in its wake significant questions unanswered and details which conflict with the Election Code.” *Id.* at 106.

In *Leck*, the Supreme Court considered the constitutionality of a municipal referendum creating a runoff election system. *Leck*, 111 Ill.2d at 526. The Supreme Court invalidated the referendum because “the terms of the proposition did not indicate how or when that runoff would be conducted.” *Id.* at 529. Specifically, the Court concluded that:

What is clear is that the bare concept contained in the referendum proposition had to be interpreted, supplemented and modified in order to be implemented. Because the referendum could not stand on its own terms, however, the voters of Lansing cannot be said to have approved a coherent scheme for altering the election of their officials...

Id. at 530. As a result, the referendum was invalid due to its “vagueness and ambiguity.” *Id.*

This Referendum also fails the Supreme Court’s vague and ambiguous test. The question provides that the revenue generated will be used for the vague and ambiguous “purpose of addressing homelessness” without any further explanation to the voters as to

what will, and will not, be done with the funds raised, and who will make those decisions. The vague and ambiguous reference to “addressing homelessness” will require additional action by the City Council to decide precisely how the additional revenue will be used.

The fact that Resolution R2023-4166 is not self-executing is borne out by the fact that Alderpersons Hadden, Martin and Ramirez-Rosa filed a draft Ordinance (Complaint, Ex. D) with the City Clerk on September 29, 2023 calling for: (1) the creation of a “Bring Chicago Home Fund” within the City government to receive revenues from the increased real estate transfer tax, and setting forth the “eligible uses” for the funds deposited in the Bring Chicago Home Fund as “any support provided by the City or a delegate agency selected by the City to people experiencing or at risk of homelessness, including providing permanent affordable housing and the services necessary to obtain and maintain permanent housing...” None of this is included in the proposition to be put to the voters.

The proposed Ordinance also specifically provides that “law enforcement operations” is not an eligible use of the funds. This is also not included in the proposition to be put to the voters. The proposed Ordinance further calls for the creation of a Bring Chicago Home Advisory Board consisting of fifteen (15) board members appointed by the Mayor (and several other non-voting members) to make recommendations regarding the percentage of funds to be expended annually on the eligible uses from the Bring Chicago Home Fund. This is not included in the proposition to be put to the voters.

The proposed Ordinance further empowers the City Budget Director, in conjunction with the Advisory Board and City departments, to determine what percentage of the Fund should be annually used for the eligible purposes. This too is not set forth in the proposition to be put to the voters.

Resolution R2023-4166 is vague and ambiguous, leaving many questions unanswered that will require additional action by the City Council to implement. As a result, the Referendum is not self-executing, and therefore cannot be placed on the ballot at the March 19, 2024 Primary Election.

IV. Conclusion.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully pray that this Court grant their Motion for Judgment on the Pleadings and grant the relief requested in their Complaint: declaring the Resolution unconstitutional and unlawful, enjoining Defendants from certifying the referendum question proposed by Resolution R2023-4166 on the March 19, 2024 Primary Election ballot, and from printing the question of ballots distributed to voters at the March 19, 2024 Primary Election, suppressing any votes cast for or against the referendum question proposed by Resolution R2023-4166, and granting such other relief as may be just a proper.

Respectfully Submitted,

Plaintiffs

By : /s/ Michael Kasper

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

By: /s/ Michael T. Del Galdo

Michael T. Del Galdo
Cynthia S. Grandfield
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Avenue
Berwyn, Illinois 60602
(708) 222-7000 (t)
delgaldo@dlglawgroup.com
grandfield@dlglawgroup.com
Cook County Firm ID No. 44047

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

BUILDING OWNERS AND MANAGERS)
ASSOCIATION, *et al.*,)
)
Plaintiffs,)
)
v.) Case No. 2024 COEL 000001
)
)
BOARD OF ELECTION COMMISSIONERS FOR)
THE CITY OF CHICAGO, *et al.*,)
)
Defendants.)

MOTION TO DISMISS

NOW COME Defendants BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO and its members, MARISEL A. HERNANDEZ, WILLIAM J. KRESSE, and JUNE A. BROWN (“Defendants” and “the Board”), by and through their attorneys, Tressler LLP, and move this Honorable Court to dismiss plaintiffs’ complaint under section 2-619.1 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-619.1. Defendants state as follows in support of their motion:

FACTS

The City Council of the City of Chicago (“the City Council”) initiated a referendum through Resolution R2023-4166 in November 2023. On November 22, 2023, the Office of the City Clerk certified the resulting referendum (the “Referendum”) for inclusion on the March 2024 primary ballot. *See* Resolution Certification, attached as **Exhibit A**. Plaintiffs object to the referendum and seek its removal from the primary ballot.

Plaintiffs filed their Complaint on January 5, 2024, seeking declaratory and injunctive relief, a copy of which is attached as **Exhibit B**. The Complaint is directed against the Board of Election Commissioners and its members and alleges that the referendum passed by the City

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Council is unlawful under both the Illinois Municipal Code and the Illinois Constitution. Plaintiffs allege that the City Council's resolution acted as the direction from the City Council for the Board "to place the referendum on the ballot." *See Exhibit B* at pg. 7, ¶ 34; Letter from Office of the City Clerk, attached as **Exhibit C**; Office of the City Clerk Receipt of Filing, attached as **Exhibit D**. Notably absent is any allegation that the Board did anything other than what was directed by the City Council and what was certified to the Board by the City Clerk. Plaintiffs now request an order from this Court directing that the Board remove the referendum from the ballot without first requesting the necessary relief of ordering the City Clerk to amend or rescind the ballot certification that she previously transmitted to the Board.

The Board of Election Commissioners 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 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, and the Board therefore 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. *See* Declaration of Charles Holiday, Jr., attached as **Exhibit E**.

LEGAL STANDARD

A section 2-615 motion allows for the dismissal of a pleading where it is legally insufficient based on defects apparent on its face. 735 ILCS 5/2-615. The question presented by the motion is whether the allegations of the pleading, when construed in the light most favorable to the pleader, state sufficient facts to establish a cause of action upon which relief may be granted. *Hadley v. Subscriber Doe*, 2015 IL 118000, ¶ 29. Conclusory allegations are not accepted as true.

A motion to dismiss under section 2-619 of the Code admits the legal sufficiency of the pleading but asserts an affirmative defense or other matter that avoids or defeats the claim. *Barber v. American Airlines, Inc.*, 241 Ill. 2d 450, 455 (2011). 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.

ARGUMENT

Plaintiff's complaint is subject to dismissal because it fails to state a viable cause of action for declaratory and injunctive relief against the Board and its named members. The complaint alleges no actual controversy with Defendants and the matters pled are otherwise not justiciable. The complaint is alternatively barred by other affirmative matter. Each issue is addressed in turn.

I. THE COMPLAINT FAILS TO STATE A VIABLE CLAIM FOR DECLARATORY RELIEF, SUBJECTING IT TO DISMISSAL UNDER

SECTION 2-615.

Plaintiffs' complaint seeks a declaration that the Referendum is unlawful and unconstitutional. Should they prevail on this point, plaintiffs seek an injunction requiring removal of the Referendum from the primary ballot. But plaintiffs do not state a proper claim for declaratory relief.

A. Plaintiffs Do Not Allege the Elements Required to Seek Declaratory Relief.

It is well settled that a party seeking declaratory relief is required to plead that it has 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 cannot establish the last two elements because the allegations in the complaint purport to plead a dispute between them and the City Council that initiated the Referendum but plaintiffs did not sue the City Council.

The Board has no interest in—and is in fact neutral—as to the legality or constitutionality of the challenged Referendum. The Board and its named members merely act as an election administration and record-keeping body. As such, the Board and its members lack the opposing interest required to support a request for declaratory relief. Plaintiffs cannot seek the declaratory relief they request absent an opposing interest. Plaintiffs' decision to name the Board and its members as the only defendants is fatal. Dismissal of the Complaint under section 2-615 is proper and should be granted.

B. Plaintiffs' Claim is Premature.

The complaint also fails for want of an actual controversy that is presently justiciable. Plaintiffs' challenge to the substance of the Referendum is premature and not ripe for consideration by this Court.

Illinois courts consistently hold that they do not have the 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’ case is not ripe, and so 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.*

As the above cases illustrate, plaintiffs’ claim here is premature and not ripe for consideration. Just as the plaintiffs in the above cases, plaintiffs here seek to prevent a 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’ complaint should be dismissed as premature under section 2-615.

II. THE COMPLAINT IS ALTERNATIVELY BARRED BY OTHER AFFIRMATIVE MATTER.

The Court need not reach this question should it agree that the complaint fails to state a viable cause of action. Were the Court to reach the question, the complaint is subject to dismissal for the additional reason that it is barred by other affirmative matter—the Board and its members are not the proper party defendants against whom the requested relief may be sought, and the Court lacks jurisdiction to hear this case. A court should not issue injunctive relief in relation to

particular subject matter unless and until all of the necessary parties are named, notified and provided an opportunity to appear and defend their interests.

A. Defendants are Not Proper Parties to this Complaint.

As mentioned above, the Board is a ministerial body. It has no role in either drafting or revising referenda; nor does the Defendant Board determine whether the language and form of referenda are legal for 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 plaintiffs did not name as a party defendant. 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 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 upcoming March Primary ballot.

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 would need to have 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 Defendant Board did not have the statutory authority to comply with a writ of *mandamus* to find that referenda are legally valid). 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 5-28-4¹. Without any express or implied statutory authority, Defendants would not be able to comply with an injunctive order to remove the Referendum from the ballot. *See, Quinn*, 2019 Ill. App. (1st) 190189. Without conceding the justiciability issue, a proper injunction here would instead direct the City Clerk to amend or rescind the Referendum ballot certification that she duly transmitted to the Board.

In short, there is no link between the Defendants' 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 as 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 relief they seek from the Board because they failed to name the necessary parties. The complaint should be dismissed with prejudice.

B. The Court Lacks Jurisdiction to Consider Plaintiffs' Claim.

The justiciability discussion above applies with equal force under a section 2-619(a)(9) analysis. The Referendum has not yet been voted upon 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

¹ Section 28-4 of the Election Code grants the Board with 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.

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 motion to dismiss based on other affirmative matter is proper and should be granted.

WHEREFORE, Defendants BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO and its members, MARISEL A. HERNANDEZ, WILLIAM J. KRESSE, and JUNE A. BROWN respectfully request an order dismissing Plaintiffs' Complaint with prejudice as alleged against these Defendants, for an award of costs, and for all other relief this Court deems appropriate and just.

Respectfully Submitted,

Dated: February 9, 2024

**BOARD OF ELECTION COMMISSIONERS FOR THE
CITY OF CHICAGO AND ITS MEMBERS, MARISEL A.
HERNANDEZ, WILLIAM J. KRESSE AND JUNE A.
BROWN, DEFENDANTS**

By: /s/ Charles A. LeMoine

Charles A. LeMoine

Rosa M. Tumialán

Molly Thompson

Taylor A. Brewer

233 South Wacker Drive, 61st Floor

Chicago, Illinois 60606-6399

Tel: (312) 627-4000

Firm No. 46239

clemoine@tresslerllp.com

rtumialan@tresslerllp.com

mthompson@tresslerllp.com

tbrewer@tresslerllp.com

Attorneys for Defendants

4864-0020-8032, v. 9

RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

BOARD OF ELECTION COMM
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Shall the City of Chicago impose:

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

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

☐ Yes

☐ No

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

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

BOARD OF ELECTION COMM
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FILED
1/5/2024 2:48 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000001
Calendar, 12

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

BUILDING OWNERS AND MANAGERS)
ASSOCIATION OF CHICAGO, THE)
CHICAGOLAND APARTMENT ASSOCIATION,)
NEIGHBORHOOD BUILDING OWNERS)
ALLIANCE, WOMEN CONSTRUCTION)
OWNERS & EXECUTIVES CHICAGO CAUCUS,)
HOME BUILDERS' ASSOCIATION)
OF GREATER CHICAGO d/b/a BUILDING)
INDUSTRY ASSOCIATION OF GREATER)
CHICAGO, SOUTHLAND BLACK CHAMBER)
OF COMMERCE FOUNDATION,)
CHICAGOLAND ASSOCIATION OF)
SHOPPING CENTER OWNERS, MATTHEW)
BAUMANN, CROSSTOWN)
REAL ESTATE ADVISORS, LLC, MATT)
KATSAROS, WILDWOOD CCI, LLC, THERESA)
KERN, MA REBAR, and TRACII RANDOLPH,)
AJH FOREVER, LLC)

2024COEL000001

No: _____

Plaintiffs,

v.

BOARD OF ELECTION COMMISSIONERS)
of the CITY OF CHICAGO, MARISEL A.)
HERNANDEZ, Chair, WILLIAM J. KRESSE,)
Commissioner/Secretary, JUNE A. BROWN,)

Defendants.

**COMPLAINT FOR DECLARATORY
JUDGMENT & INJUNCTIVE RELIEF**

NOW COME the Plaintiffs, Building Owners & Managers Association of Chicago, by
and through their attorneys Michael J. Kasper and Michael T. Del Galdo, and hereby complain
against defendants as follows:

Introduction.



A066

1. On November 7, 2023, the Chicago City Council passed Resolution Number R2023-4166 (attached as Exhibit A) directing the Defendant Chicago Board of Election Commissioners to place an advisory referendum on the March 19, 2024 ballot proposing to change the real estate transfer tax rate on every property sold in the City.
2. The City Council passed the Resolution because Section 8-13-19 of the Illinois Municipal Code permits a home rule municipality to impose or increase a real estate transfer tax only after voter approval. 65 ILCS 5/8-13-19.
3. Today, the Chicago real estate transfer tax is \$3.75 for every \$500 in the value of transferred property.
4. Resolution R2023-4166 proposes to change the transfer tax rate in three separate ways. First, the Resolution proposes to lower the transfer tax rate to \$3.00 for every \$500 in the value of the transferred property below \$1M (a 20% reduction). Second, the Resolution proposes to increase the transfer tax rate to \$10.00 for every \$500 in the value of the transferred property above \$1M but below \$1.5M (a 166.67% increase). Third, the Resolution proposes to increase the transfer tax rate to \$15 for every \$500 in the value of the transferred property above \$1.5M (a 300% increase).
5. This Complaint seeks a declaration that the proposed referendum violates both Section 8-13-19 of the Illinois Municipal Code and the Illinois Constitution, and also seeks an injunction prohibiting the Defendants from certifying and placing the proposed referendum on the March 19, 2024 Primary Election ballot.

Parties.

6. Plaintiff Building Owners & Managers Association of Chicago is the trade association for Chicago's commercial office building industry, representing the city's largest office buildings

and a segment of Chicago's commercial real estate heavily impacted by the proposed referendum.

7. Plaintiff the Chicagoland Apartment Association is the trade association for the owners and managers of over 275,000 market-rate and affordable rental units in apartments of all sizes throughout the Chicagoland region, the vast majority of which are valued at over \$1 million.

8. Plaintiff the Neighborhood Building Owners Alliance is the trade association for 11 Chicago-area community building owner affiliates, including small and mid-sized neighborhood housing providers. Almost all apartment buildings in the city are valued at over \$1 million.

9. Plaintiff the Women Construction Owners & Executives (WCOE) Chicago Caucus is the trade association for women-owned construction companies in the Chicagoland area.

10. Plaintiff the Home Builders Association of Greater Chicago, d/b/a Building Industry Association of Greater Chicago is the business association representing the residential construction and development industry in Chicago and the suburbs.

11. Plaintiff the Southland Black Chamber of Commerce Foundation represents businesses and professional men and women who have joined together for the purpose of promoting the civic and commercial progress in the Southland community.

12. Plaintiff the Chicagoland Association of Shopping Center Owners is a private, member-based association of local real estate investors and developers. CASCO's members are actively engaged in the ownership and operation of commercial real estate as their primary source of business.

13. Plaintiff Crosstown Real Estate Advisors, LLC is a private real estate investment firm based in Chicago.

14. Plaintiff Matthew Baumann is Managing Director of Crosstown Real Estate Advisors, LLC.
15. Plaintiff Wildwood CCI, LLC is a residential development company focused solely in the City of Chicago.
16. Plaintiff Matt Katsaros, Principal of Wildwood CCI, LLC, is a resident and registered voter in the City of Chicago.
17. Plaintiff MA Rebar is a road and building construction firm based in Chicago.
18. Plaintiff Theresa Kern, President of MA Rebar, is a resident and registered voter in the City of Chicago.
19. Plaintiff AJH Forever, LLC, is a real estate management company in Chicago.
20. Plaintiff Tracii Randolph, CEO of AJH Forever, LLC, is a resident and registered voter in the City of Chicago.
21. Defendant Board of Election Commissioners is the election authority statutorily charged with administering elections within the City of Chicago, including the March 19, 2024 Primary Election.
22. Defendant Marisel A. Hernandez is the Chair of the Board of Election Commissioners for the City of Chicago, and is sued solely in her official capacity.
23. Defendant William J. Kresse is the Commissioner/Secretary of the Board of Election Commissioners for the City of Chicago, and is sued solely in his official capacity.
24. Defendant June A. Brown is a Commissioner of the Board of Election Commissioners for the City of Chicago, and is sued solely in her official capacity.

Jurisdiction and Venue.

25. Plaintiffs bring this action pursuant to 735 ILCS 5/2-701, and 735 ILCS 5/11- 101.

26. Personal jurisdiction and venue is appropriate in the Circuit Court of Cook County because the City of Chicago is located in Cook County; plaintiffs and defendants are located and do business in Cook County, and the Defendant Board of Election Commissioners administers elections within Cook County.

27. Subject matter jurisdiction is appropriate as Illinois courts are courts of general jurisdiction and this matter concerns matters of Illinois law – specifically the Illinois Constitution and the Illinois Municipal Code.

28. Venue is appropriate in the County Division as this is a case dealing with the March 19, 2024 General Election.

Factual Allegations.

29. On July 21, 2021, Alderperson Maria Hadden, and several co-sponsors, introduced Resolution R2021-919 (attached as Exhibit B), which proposed the submission of a referendum question seeking to raise the real estate transfer tax from \$3.75 to \$13.25 for every \$500 in the value of the transferred property above \$1M (a 253% increase).

30. The question proposed by Resolution R2021-919 did not propose a decrease in any portion of the real estate transfer tax. Resolution R2021-919 did not pass the City Council and was officially declared lost on May 24, 2023 at the adjournment of the previous City Council term.

31. On December 14, 2022, Alderperson Maria Hadden, and several co-sponsors, introduced Resolution R2022-1409 (attached as Exhibit C), which also proposed the submission of a referendum question seeking to raise the real estate transfer tax from \$3.75 to \$13.25 for every \$500 in the value of the transferred property above \$1M (a 253% increase).

32. The question proposed by Resolution R2022-1409 did not propose a decrease in any portion of the real estate transfer tax. Resolution R2022-1409 did not pass the City Council and was officially declared lost on May 24, 2023 at the adjournment of the previous City Council term.

33. On September 13, 2023, four months after Resolution R2021-919 and Resolution R2022-1409 were declared lost, Mayor Johnson and three Alderpersons introduced Resolution R2023-4166 (the subject of this litigation), which proposed the submission of a referendum question seeking to (1) lower the real estate transfer tax rate to \$3.00 for every \$500 in the value of the transferred property below \$1M (a 20% reduction); (2) increase the real estate transfer tax rate to \$10.00 for every \$500 in the value of the transferred property above \$1M but below \$1.5M (a 166.67% increase); and (3) to increase the real estate transfer tax rate to \$15 for every \$500 in the value of the transferred property above \$1.5M (a 300% increase).

34. On November 7, 2023, by a vote of 32-17-1, the City Council passed Resolution R2023-4166, thereby directing Defendants to place the referendum question on the ballot at the March 19, 2024 Primary Election.

Count I – The Proposed Referendum Violates the Illinois Municipal Code

35. Plaintiffs reallege the allegations in paragraphs 1-34.

36. Section 8-3-19 of the Illinois Municipal Code provides that “[a] home rule municipality may impose a new real estate transfer tax or may increase an existing real estate transfer tax with prior referendum approval.” 65 ILCS 5/8-13-19(d) .

37. Section 8-3-19 thus permits a home rule municipality, through referendum, to either (1) impose a new real estate transfer tax; or (2) increase an existing real estate transfer tax.

38. Section 8-3-19 also empowers a home rule municipality to amend an existing real estate transfer tax ordinance “without approval by referendum” so long as the amendment does not increase the transfer tax rate or add transactions covered by the tax. *Id.*

39. Section 8-3-19 specifically preempts home rule municipalities’ authority to enact a real estate transfer tax inconsistent with that section. 65 ILCS 5/8-3-19(g)(“A home rule municipality may not impose real estate transfer taxes other than as authorized by this Section. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.”).

40. Resolution R2023-4166 is inconsistent with Section 8-3-19 because it not only proposes to (greatly) increase the real estate transfer tax rate on some transfers but it also proposes to decrease the real estate transfer tax rate on other transfers (as not permitted by Section 8-3-19).

41. By requiring a home rule municipality to obtain voter approval to either (1) impose a new real estate transfer tax; or (2) increase an existing transfer tax, but permitting any other amendment (such as lowering the tax rate) “without approval by referendum”, Section 8-3-19 prevents the practice of legislative log-rolling. *See Wirtz v. Quinn*, 2011 IL 111903, ¶ 13 (“the disfavored practice known as ‘logrolling’ or ‘bundling unpopular legislation with more palatable bills, so that the well-received bills would carry the unpopular ones to passage.’”).

42. Resolution R2023-4166 is a textbook example of logrolling. It combines a popular idea (lowering taxes) with an unpopular idea (raising taxes) in order to carry the unpopular idea to passage.

43. There can be no doubt that Resolution R2023-4166 is an example of logrolling. Just four months after two separate Resolutions (R2021-919 and R2022-1409) proposing to only increase

the transfer tax failed to pass, the proposed increase was combined with the proposed decrease in order to ensure sufficient support to pass the City Council.

44. Examples like R2023-4166 are precisely why Section 8-3-19 of the Municipal Code prohibits enactment of real estate transfer taxes that are “inconsistent” with that section.

45. R2023-4166 is inconsistent with Section 8-3-19 because it proposes to do more than impose a new transfer tax or increase an existing transfer tax. As a result, it is prohibited by law and cannot be put before the voters at the March 19, 2024 Primary Election.

**Count II – The Proposed Referendum Violates Article III,
Section 3 of the Illinois Constitution**

46. Plaintiffs reallege the allegations in paragraphs 1-45.

47. Article III, Section 3 of the Illinois Constitution provides that “[a]ll elections shall be free and equal.” ILL.CONST.1970, art. III, § 3.

48. For purposes of referenda, this provision is violated when a proposed referendum combines separate, unrelated questions into a single initiative. *Coalition for Political Honesty v. Illinois State Board of Elections*, 83 ILL.2d 236 (1980).

49. The purpose of this restriction is to protect the voters’ right to vote on each question separately. *Id.*

50. Resolution R2023-4166 plainly calls for three separate questions: (1) shall the transfer tax rate be lowered from \$3.75 to \$3.00 for purchase value of less than \$1M?; (2) shall the transfer tax rate be raised from \$3.75 to \$10.00 for purchase value between \$1M and \$1.5M?; and (3) shall the transfer tax rate be raised from \$3.75 to \$15.00 for purchase value above \$1.5M?

51. Resolution R2023-4166 violates voters’ rights to vote on each of the three questions separately. For example, and most obviously, many voters likely support the first question

(lowering taxes), but oppose the second and third questions (raising taxes). However, they cannot express their support for the first proposition without also expressing support for the second and third propositions that they oppose.

52. Because Resolution R2023-4166 is a compound question combining three separate questions, it violates Plaintiffs' (and all voters) right to vote on the three propositions separately in violation of Article III, Section 3 of the Illinois Constitution, and cannot be placed on the ballot for voter consideration at the March 19, 2024 Primary Election.

Count III – The Proposed Referendum is Vague, Ambiguous and Not Self Executing

53. Plaintiffs reallege the allegations in paragraphs 1-52.

54. Illinois Supreme Court precedent has established that a municipal referendum must be self-executing; meaning that the question must “stand on its own” and that a question “leaving gaps to be filled by the legislature or municipal body, then just what was approved by the voters remains uncertain.” *Lipinski v. Chicago Board of Election Comm’rs*, 114 Ill.2d 95 (1986); *Leck v. Michaelson*, 111 Ill.2d 523 (1986).

55. Resolution R2023-4166 provides that the revenue generated will be used for “the purpose of addressing homelessness” without any further explanation to the voters as to what will, and will not, be done with the funds raised, and who will make those decisions.

56. The vague and ambiguous reference to “addressing homelessness” is insufficient to identify precisely what would be approved by the voters.

57. The vague and ambiguous reference to “addressing homelessness” will require additional action by the City legislature or municipal body to decide precisely how the additional revenue will be used.

58. The fact that Resolution R2023-4166 is not self-executing is borne out by the fact that Alderpersons Hadden, Martin and Ramirez-Rosa filed a draft Ordinance (attached as Exhibit D) with the City Clerk on September 29, 2023 calling for: (1) the creation of a “Bring Chicago Home Fund” within the City government to receive revenues from the increased real estate transfer tax, and setting forth the “eligible uses” for the funds deposited in the Bring Chicago Home Fund as “any support provided by the City or a delegate agency selected by the City to people experiencing or at risk of homelessness, including providing permanent affordable housing and the services necessary to obtain and maintain permanent housing...” None of this is included in the proposition to be put to the voters.

59. The proposed Ordinance also specifically provides that “law enforcement operations” is not an eligible use of the funds. This is also not included in the proposition to be put to the voters.

60. The proposed Ordinance further calls for the creation of a Bring Chicago Home Advisory Board consisting of fifteen (15) board members appointed by the Mayor (and several other non-voting members) to make recommendations regarding the percentage of funds to be expended annually on the eligible uses from the Bring Chicago Home Fund. This is not included in the proposition to be put to the voters.

61. The proposed Ordinance further empowers the City Budget Director, in conjunction with the Advisory Board and City departments, to determine what percentage of the Fund should be annually used for the eligible purposes. This too is not set forth in the proposition to be put to the voters.

62. Resolution R2023-4166 is thus not self-executing, and therefore cannot be placed on the ballot at the March 19, 2024 Primary Election.

Count IV – Injunction.

63. Plaintiffs reallege the allegations of paragraphs 1-62.

64. Because Resolution R2023-4166 violates the Illinois Municipal Code and the Illinois Constitution, as set forth in counts I, II and III of this Complaint, the Defendants should be enjoined from printing the proposed referendum question on the ballot at the March 19, 2024 Primary Election.

65. The Plaintiffs have a clear and ascertainable right in need of protection in ensuring that the Illinois Municipal Code and Illinois Constitution is upheld and not violated to their detriment.

66. The Plaintiffs have no valid remedy at law with respect to this unlawful and unconstitutional ordinance.

67. The Plaintiffs and any individual or entity the referenda encompasses would suffer irreparable injury if relief is not granted.

Conclusion.

WHEREFORE, for all of the above and foregoing reasons, the Plaintiffs respectfully request that this Honorable Court enter an Order declaring the Resolution unconstitutional and unlawful, enjoining Defendants from certifying the referendum question proposed by Resolution R2023-4166 on the March 19, 2024 Primary Election ballot, and from printing the question of ballots distributed to voters at the March 19, 2024 Primary Election; and granting such other relief as may be just and proper.

Respectfully Submitted,

Plaintiffs

By : /s/ Michael Kasper

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

By: /s/ Michael T. Del Galdo

Michael T. Del Galdo
Cynthia S. Grandfield
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Avenue
Berwyn, Illinois 60602
(708) 222-7000 (t)
delgaldo@dlglawgroup.com
grandfield@dlglawgroup.com
Cook County Firm ID No. 44047



OFFICE OF THE MAYOR
CITY OF CHICAGO

BRANDON JOHNSON
MAYOR

September 14, 2023

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

Ladies and Gentlemen:

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

Your favorable consideration of this resolution will be appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to be "BJ", followed by a horizontal line.

Mayor

RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

Shall the City of Chicago impose:

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

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

☐ Yes

☐ No

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

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



City of Chicago



R2021-919

Office of the City Clerk

Document Tracking Sheet

Meeting Date:

7/21/2021

Sponsor(s):

Hadden (49)
Taylor (20)
Martin (47)
Sigcho-Lopez (25)
Ramirez-Rosa (35)
Rodriguez Sanchez (33)
La Spata (1)
Rodriguez (22)
Vasquez, Jr. (40)

Type:

Resolution

Title:

Submission of public question by referendum to Chicago voters at November 8, 2022 general election proposing increase of City of Chicago real estate transfer tax for purposes of providing resources for affordable housing and services to combat homelessness

Committee(s) Assignment:

Committee on Committees and Rules

RESOLUTION

WHEREAS, the Illinois General Assembly, specifically in 65 ILCS 5/8-3-19, allows home rule municipalities to increase their own Real Estate Transfer Taxes only by means of referendum; and

WHEREAS, the City of Chicago is a home rule municipality under Article VII of the 1970 Illinois Constitution; and

WHEREAS, the "City Portion" of the City of Chicago current transfer tax rate is three dollars and seventy-five cents (\$3.75) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, per transaction; and

WHEREAS, the City seeks to increase the "City Portion" of real estate transfer tax imposed, keeping the current rate at three dollars and seventy-five cents (\$3.75) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, for transfers up to one million dollars (\$1,000,000.00) in transfer price, and increasing the rate to thirteen dollars and twenty-five cents (\$13.25) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, for transfers over one million dollars (\$1,000,000.00) in transfer price; and

WHEREAS, the increased revenue shall be dedicated to the Homeless Transfer Tax Fund and is to be dedicated to combating homelessness by providing permanent affordable housing and the services necessary to obtain and maintain permanent housing; and

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

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

Section 1. The foregoing recitals are found as fact and incorporated herein by reference.

Section 2. In accordance with 65 ILCS 5/8-3-19, the City Council of the City of Chicago hereby initiates and authorizes the following referendum question to be submitted to the voters of the entire City of Chicago at the regularly scheduled general election next occurring after the effective date of this resolution on November 8, 2022.

Shall the City of Chicago impose a real estate transfer tax increase of 253% to establish a new transfer tax rate of thirteen dollars and twenty-five cents (\$13.25) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, for transfers of more than \$1,000,000 in transfer price to be paid by the buyer of the real estate transferred?

The current rate of the "City Portion" of the real estate transfer tax is \$3.75 per \$500.00 of the transfer price, or fraction thereof, and the revenue is used for general corporate purposes. The revenue from the increase is to be used for the sole purpose of combating homelessness by providing permanent affordable housing and the services necessary to obtain and maintain permanent housing in the City of Chicago. The increase would concern the "City Portion" of the tax only, and there would be no increase in the rate of the "CTA Portion" of the tax, which is \$1.50 per \$500.00 of the transfer price, or fraction thereof.

☐ Yes

☐ No

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

Section 4. This Resolution shall be in full force and effect upon its passage.



Aldersperson Maria E. Hadden

49th Ward

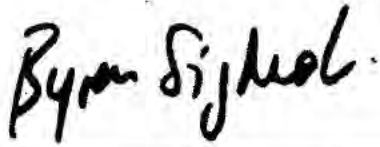


Aldersperson Jeanette Taylor

20th Ward




Aldersperson Matthew Martin
47th Ward



Aldersperson Byron Sigcho-Lopez
25th Ward



Aldersperson Carlos Ramirez-Rosa
35th Ward



Aldersperson Rossana Rodriguez Sanchez
33rd Ward



Aldersperson Daniel LaSpata
1st Ward

The following legislation is being introduced by Maria E. Hadden regarding the Bring Chicago Home ballot referendum resolution co-sponsored by

Daniel LaSpata

Alderman Ward 1

Alderman Ward 2

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Alderman Ward 3

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Alderman Ward 4

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Alderman Ward 5

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Alderman Ward 6

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Alderman Ward 7

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Alderman Ward 8

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Alderman Ward 9

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Alderman Ward 10

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Alderman Ward 11

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Alderman Ward 12

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Alderman Ward 14

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Alderman Ward 15

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Alderman Ward 16

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Alderman Ward 17

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Alderman Ward 18

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Alderman Ward 19

Jeanette B. Taylor

Alderman Ward 20

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Alderman Ward 21

Michael D. Rodriguez

Alderman Ward 22

Click or tap here to enter text.

The following legislation is being introduced by Maria E. Hadden regarding the Bring Chicago Home ballot referendum resolution co-sponsored by

Alderman Ward 23

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Alderman Ward 24

Byron Sigcho-Lopez

Alderman Ward 25

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Alderman Ward 26

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Alderman Ward 27

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Alderman Ward 28

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Alderman Ward 29

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Alderman Ward 30

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Alderman Ward 31

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Alderman Ward 32

Rossana Rodriguez Sanchez

Alderman Ward 33

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Alderman Ward 34

Carlos Ramirez-Rosa

Alderman Ward 35

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Alderman Ward 36

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Alderman Ward 37

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Alderman Ward 38

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Alderman Ward 39

Andre Vasquez

Alderman Ward 40

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Alderman Ward 41

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Alderman Ward 42

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Alderman Ward 43

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Alderman Ward 44

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The following legislation is being introduced by Maria E. Hadden regarding the Bring Chicago Home ballot referendum resolution co-sponsored by

Alderman Ward 45

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Alderman Ward 46

Matthew J. Martin

Alderman Ward 47

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Alderman Ward 48

Maria E. Hadden

Alderman Ward 49

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Alderman Ward 50

Mayor Lightfoot

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Clerk Valencia

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City of Chicago



R2022-1409

Office of the City Clerk

Document Tracking Sheet

Meeting Date: 12/14/2022

Sponsor(s): Hadden (49)
Villegas (36)
Sigcho-Lopez (25)
Moore (17)
Martin (47)
Rodriguez (22)
Burnett (27)
La Spata (1)
Ramirez-Rosa (35)
Maldonado (26)
Vasquez, Jr. (40)
Lopez (15)
Osterman (48)
Taylor (20)

Type: Resolution

Title: Submission of public question by referendum to Chicago voters at next regular election proposing increase of City of Chicago real estate transfer tax for purposes of providing resources for affordable housing and services to combat homelessness

Committee(s) Assignment: Committee on Committees and Rules

RESOLUTION

WHEREAS, Pursuant to 65 ILCS 5/8-3-19, home rule municipalities may increase their real estate transfer taxes by means of referendum; and

WHEREAS, The City of Chicago is a home rule municipality under Article VII of the 1970 Illinois Constitution; and

WHEREAS, The "City Portion" of the City of Chicago transfer tax rate is currently three dollars and seventy-five cents (\$3.75) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, per transaction; and

WHEREAS, The City seeks to increase the "City Portion" of real estate transfer tax by keeping the current rate at three dollars and seventy-five cents (\$3.75) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, for transfers up to one million dollars (\$1,000,000.00) in transfer price, and increasing the rate to thirteen dollars and twenty-five cents (\$13.25) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, for transfers over one million dollars (\$1,000,000.00) in transfer price; and

WHEREAS, The increased revenue will be deposited in a Homeless Transfer Tax Fund, to be dedicated to combating homelessness by providing permanent affordable housing and the services necessary to obtain and maintain permanent housing; and

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

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

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

SECTION 2. In accordance with 65 ILCS 5/8-3-19, the City Council of the City of Chicago hereby initiates and authorizes the following referendum question to be submitted to the voters of the entire City of Chicago at the next regular election occurring no less than 79 days after the effective date of this resolution:

Shall the City of Chicago impose a real estate transfer tax increase of 253% to establish a new transfer tax rate of thirteen dollars and twenty-five cents (\$13.25) for every five hundred dollars (\$500.00) of transfer price, or fraction thereof, for transfers of more than \$1,000,000 in transfer price to be paid by the buyer of the real estate transferred?


The current rate of the "City Portion" of the real estate transfer tax is three dollars and seventy-five cents (\$3.75) per five hundred dollars (\$500.00) of the transfer price, or fraction thereof, to be paid by the buyer of the real estate transferred, and the revenue is used for general corporate purposes. The revenue from the increase is to be used for the sole purpose of combating homelessness by providing permanent affordable housing and the services necessary to obtain and maintain permanent housing in the City of Chicago. The increase would concern the "City Portion" of the tax only, and there would be no increase in the rate of the "CTA Portion" of the tax, which is one dollar and fifty cents (\$1.50) per



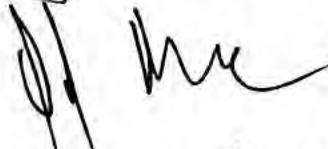




five hundred dollars (\$500.00) of the transfer price, or fraction thereof, to be paid by the seller of the real estate transferred.

- ☐ Yes
☐ No

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

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


 MARIA HADDEN
 Alderperson, 49th Ward

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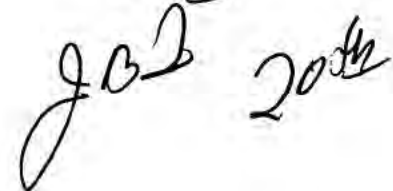
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 26

 40th

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 20th

Miscellaneous Business

CITY HALL, ROOM 200
121 NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60602

VAND BUREAU, 1111 WEST MONROE AVENUE
CHICAGO, ILLINOIS 60606

PHONE: 773.600.5700
WEB: ALDERWOMAN.ORG
EMAIL: OFFICE@ALDERWOMAN.ORG



MARIA E. HADDEN
ALDERWOMAN, 49TH WARD

CHAIRWOMAN, COMMITTEE ON ENVIRONMENTAL PROTECTION & ENERGY

COMMITTEE MEMBERSHIPS

COMMITTEES AND RULES
FINANCIAL AND GOVERNMENT OVERSIGHT
BUDGET & GOVERNMENT OPERATIONS
ENVIRONMENTAL PROTECTION & ENERGY
HEALTH AND HUMAN RELATIONS
HOUSING AND REAL ESTATE
IMMIGRANT & REFUGEE RIGHTS
PUBLIC SAFETY

September 21, 2023

Honorable Anna Valencia
City Clerk
City Hall, Room 107
121 North LaSalle Street
Chicago, Illinois 60602

Dear Ms. Valencia:

Pursuant to Section 8-3-19 of the Illinois Municipal Code, 65 ILCS 5/8-3-19, I, together with Alderperson Matt Martin and Alderperson Carlos Ramirez-Rosa, hereby give notice that at the City Council meeting to be convened at 10:00 a.m. on Wednesday, October 4, 2023, under the heading of Miscellaneous Business, I intend to call for a public hearing on the intent to submit the question of increasing the City's real estate transfer tax to referendum as set forth in the attached resolution and proposed ordinance. Members of the general public will be given an opportunity to speak, and no vote will be taken on these items. Please include this letter and the attached documents as part of the agenda for the meeting.

Very truly yours,

Maria E. Hadden
Alderperson, 49th Ward

Chicago City Clerk's Office
2023 SEP 29 4:18:35

RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

Shall the City of Chicago impose:

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

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

☐ Yes

☐ No

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

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

DRAFT DOCUMENT – SUBJECT TO CHANGE**ORDINANCE****BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

SECTION 1. Section 2-44-070 of the Municipal Code of Chicago is hereby amended by deleting the text struck through and by inserting the text underscored, as follows:

2-44-070 Annual report on homelessness and housing.

(a) On or before ~~July 31, 2023, and then~~ May 31 of each year, ~~thereafter~~, the Commissioner, in conjunction with the Commissioner of Family and Support Services, shall submit an annual report to the appropriate City Council committee on the progress made to address homelessness and housing within the City. The report shall include, but not be limited to, the departments' and delegate agencies' progress on implementing the seven principles for addressing encampments outlined by the United States Interagency Council on Homelessness and codified in the City's 2023 budget ordinance. The report shall also include supporting information from the Chicago Continuum of Care's annual reports to the United States Department of Housing and Urban Development and from other stakeholders as deemed relevant by the Commissioner and the Commissioner of Family and Support Services. The Bring Chicago Home Advisory Board established in Chapter 2-48 may request information regarding outcomes related to appropriations from the Bring Chicago Home Fund established pursuant to Chapter 3-33 be included with the report.

(Omitted text is not affected by this ordinance)

SECTION 2. Title 2 of the Municipal Code of Chicago is hereby amended by inserting a new Chapter 2-48, as follows:

**Chapter 2-48
Bring Chicago Home**

2-48-010 Purpose and intent.

The primary goal of the Bring Chicago Home Fund is to directly address and combat homelessness in the City by providing permanent affordable housing and the services necessary to obtain and maintain permanent housing.

2-48-020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

"Area median income" has the meaning ascribed to that term in Section 2-44-080(B).

"Advisory Board" means the Bring Chicago Home Advisory Board established in this Chapter.

"Bring Chicago Home Fund" means the fund established pursuant to paragraph (2) of Section 3-33-165 for the purpose of addressing homelessness.

DRAFT DOCUMENT – SUBJECT TO CHANGE

“Continuum of Care” means the Chicago Continuum of Care, or successor group, that is organized to carry out the responsibilities required by the United States Department of Housing and Urban Development’s Continuum of Care Program pursuant to the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11301 *et seq.*, or the Collaborative Applicant designated by Chicago Continuum of Care pursuant to its charter.

“Eligible use” means any support provided by the City or a delegate agency selected by the City to people experiencing or at risk of homelessness, including providing permanent affordable housing and the services necessary to obtain and maintain permanent housing, as set forth in Section 2-48-010, and the activities of the Advisory Board. “Eligible use” shall not include law enforcement operations.

“Implementing Commissioners” means the Commissioner of Family and Support Services, the Commissioner of Housing, and the Commissioner of Public Health.

“People experiencing or at risk of homelessness” means any resident of the City of Chicago, without limitation with respect to immigration status, who: (1) meets a definition of homelessness under federal law; or (2) is in a situation characterized by housing instability, including, but not limited to, fleeing gender-based violence, living doubled up, or currently being in or having been recently released from a prison, jail, or residential treatment facility.

“Returning resident” means a resident of the City who is returning or has recently returned to live in their community after having been convicted of an imprisonable offense under a local, state, or federal law.

2-48-030 Use of funds.

(a) Revenues from the Bring Chicago Home Fund shall be appropriated exclusively for eligible uses.

(b) The Budget Director, in consultation with relevant City departments and the Advisory Board, shall determine the maximum amount of funds from the Bring Chicago Home Fund to be included in the budget recommendation for eligible uses. In making this determination, the Budget Director shall make reasonable efforts to minimize the potential for disruption to people experiencing or at risk of homelessness served by programs funded by the Bring Chicago Home Fund due to a decline in future revenue.

(c) Allowable expenses for shelter are non-congregate models, discrete capital costs for existing congregate shelter, beds for severe or extreme weather, and increasing operational rates to support pay equity for shelter employees and to expand operations from traditional overnight to 24-hour shelter models.

2-48-040 Bring Chicago Home Advisory Board – Establishment; recommendations.

(a) *Establishment and composition.* There is hereby established a Bring Chicago Home Advisory Board. The Advisory Board shall be composed of three non-voting *ex officio* members, five non-voting designated members, and fifteen appointed members. All members shall be residents of the City.

DRAFT DOCUMENT – SUBJECT TO CHANGE

(1) *Non-voting members.* Each of the Implementing Commissioners shall serve as a non-voting *ex officio* member and co-chair of the Advisory Board. The Mayor shall designate an individual representing or acting on behalf of the Continuum of Care and an additional City employee or official as non-voting members, and the Implementing Commissioners shall each designate an employee or official from their respective department as a non-voting member.

(2) *Voting members.* The Mayor shall appoint, by and with the advice and consent of the City Council, fifteen voting Advisory Board members for a term of three years. No person shall be eligible to serve as a voting member for more than two consecutive terms. Vacancies shall be filled in the same manner that appointments are made and shall be filled for the unexpired term of the member whose position has become vacant. The Advisory Board shall consist of members with broad and varied experiences, skills, expertise, and knowledge, including: formal affiliation with one or more homelessness social service agencies, permanent supportive housing developers or property managers, community organizations representing distinct geographic areas of the City, or disability-centered organizations; and expertise regarding youth homelessness, family homelessness, permanent supportive housing development, or providing housing to people experiencing or at risk of homelessness through tenant-based rental assistance. At least five members shall have lived experience as people experiencing or at risk of homelessness, including such lived experience due to gender-based violence, migrant status, status as a returning resident, or status as a minor. At least three members shall have a formal affiliation with a community-based organization that organizes people with lived experience of poverty, homelessness, or housing instability for social change.

(b) *Powers and duties.* The Advisory Board shall have the following powers and duties:

(1) Hold public meetings and engage in community outreach. The Advisory Board shall hold at least two public hearings before proposing a recommendation pursuant to this section;

(2) Make recommendations for the proportion of Bring Chicago Home Fund revenue to be spent on each eligible use each year. No later than May 31, 2025, and no later than May 31 each year thereafter, the Advisory Board shall present the Mayor and City Council with spending recommendations. The recommendations shall be published on a publicly available website and be presented to an appropriate City Council committee no later than June 30 each year;

(3) Make recommendations, including prioritization for housing, to appropriate departments regarding proposed programs using funds from the Bring Chicago Home Fund;

(4) Establish goals and metrics, including goals and metrics for the purpose of addressing inequities, to guide and evaluate success; and

(5) Track participant and program outcomes, and review appropriate information, documents, data, and records, as may be provided by the Implementing Commissioners pursuant to Section 2-44-070 and Section 2-50-085.

DRAFT DOCUMENT – SUBJECT TO CHANGE

SECTION 3. Section 2-50-085 of the Municipal Code of Chicago is hereby amended by deleting the text struck through and by inserting the text underscored, as follows:

2-50-085 Annual report on homelessness and housing.

(a) On or before ~~July 31, 2023, and then~~ May 31 of each year, ~~thereafter~~, the Commissioner of the Department of Family and Support Services, in conjunction with the Commissioner of the Department of Housing, shall submit an annual report to the appropriate City Council committee on the progress made to address homelessness and housing within the City. The report shall include, but not be limited to, the departments' and delegate agencies' progress on implementing the seven principles for addressing encampments outlined by the United States Interagency Council on Homelessness and codified in the City's 2023 budget ordinance. The report shall also include supporting information from the Chicago Continuum of Care's annual reports to the United States Department of Housing and Urban Development and from other stakeholders as deemed relevant by the Commissioner of Family and Support Services and the Commissioner of Housing. The Bring Chicago Home Advisory Board established in Chapter 2-48 may request information regarding outcomes related to appropriations from the Bring Chicago Home Fund established pursuant to Chapter 3-33 be included with the report.

(Omitted text is not affected by this ordinance)

SECTION 4. Section 3-33-030 of the Municipal Code of Chicago is hereby amended by deleting the text struck through and by inserting the text underscored, as follows:

3-33-030 Tax imposed.

A. Except as otherwise provided in this chapter, a tax is imposed upon the privilege of transferring title to, or beneficial interest in, real property located in the ~~city~~ City, whether or not the agreement or contract providing for the transfer is entered into the ~~city~~ City. The tax shall be at the rate of: ~~\$3.75~~

(1) \$3 per \$500.00 \$500 of the transfer price, or fraction thereof, of the real property or the beneficial interest in real property for that part of the transfer price under \$1,000,000;

(2) \$10 per \$500 of the transfer price, or fraction thereof, of the real property or the beneficial interest in real property for that part of the transfer price between \$1,000,000 and \$1,500,000 (inclusive); and

(3) \$15 per \$500 of the transfer price, or fraction thereof, of the real property or the beneficial interest in real property for that part of the transfer price exceeding \$1,500,000.

(Omitted text is not affected by this ordinance)

DRAFT DOCUMENT – SUBJECT TO CHANGE

SECTION 5. Chapter 3-33 of the Municipal Code of Chicago is hereby amended by inserting a new Section 3-33-035, as follows:

3-33-035 Tax reductions.

A. For transfers taking place on or after January 1, 2030, with further adjustments every five years thereafter, the tax imposed by Section 3-33-030(A) shall be decreased in the following manner:

(1) The rate of \$3 per \$500 of the transfer price, or fraction thereof, shall be imposed on that part of the transfer price under \$1,000,000 in 2025 dollars, adjusted for inflation by the Chained Consumer Price Index for all Urban Consumers (C-CPI-U);

(2) The rate of \$10 per \$500 of the transfer price, or fraction thereof, shall be imposed on that part of the transfer price between \$1,000,000 and \$1,500,000 (inclusive) in 2025 dollars, adjusted for inflation by the Chained Consumer Price Index for all Urban Consumers (C-CPI-U); and

(3) The rate of \$15 per \$500 of the transfer price, or fraction thereof, shall be imposed on that part of the transfer price exceeding \$1,500,000 in 2025 dollars, adjusted for inflation by the Chained Consumer Price Index for all Urban Customers (C-CPI-U).

B. The tax imposed by Section 3-33-030(A) shall be decreased to a flat rate of \$3 per \$500 of the transfer price, or fraction thereof, for all transfers involving real property that is subject to affordability requirements pursuant to an agreement executed by any of the following: Chicago Department of Housing; Chicago Department of Family and Support Services; Chicago Housing Authority; Cook County Assessor's Office Affordable Housing Special Assessment Program; Illinois Housing Development Authority; Illinois Department of Human Services; or United States Department of Housing and Urban Development; or other legally enforceable agreement as acknowledged by the Commissioner of the Department of Housing, provided that at least 20 percent of the dwelling units on the real property that is the subject of the transfer receiving the reduced tax rate are covered by the affordability requirements agreement. The Commissioner of the Department of Housing is hereby authorized to promulgate rules with respect to the documentation required to establish eligibility for an adjustment pursuant to this paragraph.

SECTION 6. Chapter 3-33 of the Municipal Code of Chicago is hereby amended by inserting a new Section 3-33-165, as follows:

3-33-165 Deposit of funds.

All proceeds resulting from the tax imposed by Section 3-33-030(A), including interest and penalties, shall be deposited as follows:

(1) For transactions subject only to the tax rate described in Section 3-33-030(A)(1), all proceeds shall be deposited in the City's corporate fund; and

(2) For transactions subject to a tax rate described in Section 3-33-030(A)(2) or Section 3-33-030(A)(3), proceeds in the amount equivalent to the revenue generated under a rate of \$3.75 per \$500 of the transfer price, or fraction thereof, shall be deposited in the City's corporate

DRAFT DOCUMENT – SUBJECT TO CHANGE

fund and the remainder shall be deposited in a single appropriate fund designated by the Budget Director, in consultation with the Comptroller, for the purpose of addressing homelessness (the “Bring Chicago Home Fund”).

SECTION 7. Following due passage and approval, this ordinance shall take effect January 1, 2025.

DRAFT



CITY OF CHICAGO

OFFICE OF THE CITY CLERK
ANNA M. VALENCIA

HAND DELIVERED

November 22, 2023

Charles Holiday, Jr., Executive Director
Board of Election Commissioners
for the City of Chicago
69 West Washington Street, Suite 800
Chicago, Illinois 60602

Dear Mr. Holiday:

I transmit herewith a certified copy of a resolution (R2023-0004166) adopted by the Chicago City Council at their regular meeting held on November 7, 2023 regarding the submission of the following public question to the voters of the entire City of Chicago at the regularly scheduled general election to be held on March 19, 2024:

Shall the City of Chicago impose:

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





CITY OF CHICAGO

OFFICE OF THE CITY CLERK
ANNA M. VALENCIA

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

☐ Yes☐ No

Should you have any questions please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Peter Polacek".

Peter Polacek
Managing Editor, Chicago City Council Journal
Office of the City Clerk

Office: 312-744-2894

Cell: 312-434-4714

Email: Peter.Polacek@cityofchicago.org.

Encl.

**BOARD OF ELECTION COMMISSIONERS
FOR THE CITY OF CHICAGO
PETITION FILING RECEIPT**

Form 331

2010Chicago, Illinois Nov 22 20 23RECEIVED FROM PETER POLACEK
Name of person filingOFFICE OF THE CHICAGO CITY CLERK
Home address of person filingCANDIDATE NOMINATING PETITION OF N/A
Name of Candidate

Home address of Candidate

FOR OFFICE OF N/A DISTRICT

PARTY

☐ STATEMENT OF CANDIDACY☐ STATEMENT OF ECONOMIC INTEREST☐ STATEMENT OF LOYALTY☐ PUBLIC POLICY PETITION OF CITY COUNCIL OF CHICAGO
RESOLUTION Name of Proponent OrganizationDocument R2023-0004166 (SEE ATTACHED)
Address of Proponent Organization

TEXT OF QUESTION OF PUBLIC POLICY (If Applicable) "SHALL THE CITY OF CHICAGO IMPOSE:

- (1) A REAL ESTATE TRANSFER TAX DECREASE OF 20% TO ESTABLISH A NEW TRANSFER TAX RATE OF \$3 FOR EVERY \$500 OF THE TRANSFER PRICE, OR FRACTION THEREOF, FOR THAT PART OF THE TRANSFER PRICE UNDER \$1,000,000 TO BE PAID BY THE BUYER OF THE REAL ESTATE TRANSFERRED UNLESS THE BUYER IS EXEMPT FROM THE TAX SOLELY BY OPERATION OF STATE LAW, IN WHICH CASE THE TAX IS TO BE PAID BY THE SELLER; AND
- (2) A REAL ESTATE TRANSFER TAX INCREASE OF 166.67% TO ESTABLISH A NEW TRANSFER TAX RATE OF \$10 FOR EVERY \$500 OF THE TRANSFER PRICE OR FRACTION THEREOF, FOR THAT PART OF THE TRANSFER PRICE BETWEEN \$1,000,000 AND \$1,500,000 (INCLUSIVE) TO BE PAID BY THE BUYER OF THE REAL ESTATE TRANSFERRED UNLESS THE BUYER IS EXEMPT FROM THE TAX SOLELY BY OPERATION OF STATE LAW, IN WHICH CASE THE TAX IS TO BE PAID BY THE SELLER; AND
- (3) A REAL ESTATE TRANSFER TAX INCREASE OF 300% TO ESTABLISH A NEW TRANSFER TAX RATE OF \$15 FOR EVERY \$500 OF THE TRANSFER PRICE OR FRACTION THEREOF, FOR THAT PART OF THE TRANSFER PRICE EXCEEDING \$1,500,000 TO BE PAID BY THE BUYER OF THE REAL ESTATE TRANSFERRED UNLESS THE BUYER IS EXEMPT FROM THE TAX SOLELY BY OPERATION OF STATE LAW, FOR THE ELECTION TO BE HELD ON

NUMBER OF PAGE(S) = 2

Date of Election MARCH 19, 2024NOTICE OF CAMPAIGN FINANCE & DISCLOSURE REQUIREMENTS GIVEN: ☐ IN PERSON ☐ BY MAIL

IN WHICH CASE THE TAX IS TO BE PAID BY THE SELLER?
THE CURRENT RATE OF THE REAL ESTATE TRANSFER TAX IS \$3.75 PER \$500 OF THE ENTIRE TRANSFER PRICE, OR FRACTION THEREOF, AND THE REVENUE IS USED FOR GENERAL CORPORATE PURPOSES. THE REVENUE FROM THE INCREASE (THE DIFFERENCE BETWEEN REVENUE GENERATED UNDER THE INCREASED RATE AND THE CURRENT RATE) IS TO BE USED FOR THE PURPOSE OF ADDRESSING HOMELESSNESS, INCLUDING PROVIDING PERMANENT AFFORDABLE HOUSING AND THE SERVICES NECESSARY TO OBTAIN AND MAINTAIN

BOARD OF ELECTION COMMISSIONERS

RECEIVED BY Rick Thurman
Deputy Clerk**BOARD OF ELECTIONS**

A103

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

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

Plaintiffs,

v.

Board of Election Commissioners, *et al.*,

Defendants.

Case No. 2024 COEL 000001

DECLARATION OF CHARLES HOLIDAY, JR.

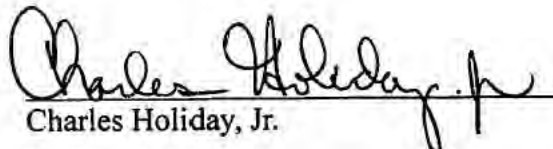
I, CHARLES HOLIDAY, JR., under penalty of perjury, state that I have personal knowledge of the facts set forth herein, that I am competent to testify, and if called, would testify as follows:

1. I am the Executive Director of the Chicago Board of Election Commissioners ("CBEC") and I oversee voter registration and election administration for the City of Chicago's over 1.5 million voters. My job duties include, but are not limited to, general supervision of the day-to-day operations of CBEC's seven divisions: registration, community services, information technology, pre-election voting and logistics, finance, human resources, and warehouse operation.

2. Based on my experience and role as described above, I affirm that Defendant CBEC and its members have a long history of taking neutral positions on referenda initiated by ordinance or resolution through the Chicago City Council and I believe CBEC is not authorized by statute to make decisions regarding whether such referenda are lawful.

I declare under penalty of perjury that the foregoing statements are true and correct pursuant to Section 1-109 of the Illinois Code of Civil Procedure.

Dated: February 9, 2024


Charles Holiday, Jr.

FILED
2/9/2024 1:24 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000001

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

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

Plaintiffs/Petitioners,

v.

Commission of the Board of Elections of
the City of Chicago, *et al.*,

Defendants/Respondents.

Case No. 2024 COEL 001

Hon. Kathleen Burke
Circuit Court Judge

Calendar 8

City of Chicago’s Petition to Intervene
as a Matter of Right Pursuant to 735 ILCS 5/2-408(a)(2)

1. The City of Chicago, an Illinois municipal corporation (“the City”), petitions the Court for leave to intervene in this matter as of right pursuant to 735 ILCS 5/2-408(a)(2) of the Code of Civil Procedure. As required by section 5/2-408(e), the City is submitting its combined Motion to Dismiss the Complaint pursuant to 735 ILCS 5/2-619.1 and Response to Plaintiffs’ Motion for Judgment on the Pleadings concurrently with this Petition.

2. Section 5/2-408(a)(2) states, in relevant part, that “upon timely application anyone shall be permitted **as of right** to intervene in an action . . . when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action.” 735 ILCS 5/2-408(a)(2)(emphasis added).

3. When considering a petition to intervene as of right, “a trial court's discretion is limited to determining timeliness, inadequacy of representation, and sufficiency of interest. Once these threshold requirements have been met, the plain meaning of the statute directs that the petition be granted.” *In re County Treasurer & Ex-Officio County Collector*, 2017 IL App (1st) 152951, ¶ 15 (quoting *City of Chicago v. John Hancock Mutual Life Insurance Co.*, 127 Ill. App.

FILED
2/9/2024 1:24 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000001

3d 140, 144 (1st Dist. 1984)). “A basic tenet of the intervention statute is that it should be liberally construed.” *Board of Trustees of Village of Barrington Police Pension Fund v. Dep’t of Ins.*, 211 Ill. App. 3d 698, 711 (1st Dist. 1991)(citing *People v. Roush*, 111 Ill. App. 3d 618 (1st Dist. 1982)).

4. The City’s petition is without question timely. The Court has not entered a substantive order and the City’s petition is being filed on the date Defendants’ response to Plaintiff’s Motion for Judgment on the Pleadings is due. The City has found no Illinois case holding that a petition for intervention as of right presented prior to a substantive decision in the matter is untimely. *C.f. Brandt v. John S. Tilley Ladders Co.* 145 Ill. App. 3d 304 (1st Dist. 1986)(reversing for abuse of discretion the trial court’s denial of petition to intervene as of right filed one month after final judgment); *People ex. rel. Baylor v. Bell Mutual Casualty Co.*, 2 Ill. App. 3d 17 (1st Dist. 1971)(same, except petition filed two months after judgment).

5. Plaintiff’s Complaint challenges the validity of a resolution that was passed by the Chicago City Council as a necessary step in the City’s legislative process for increasing the City’s Real Property Transfer Tax, as set forth in the Illinois Municipal Code. 65 ILCS 5/8-3-19(e) (authorizing a home rule municipality to pass a resolution submitting the issue to the voters and setting forth the form of the resolution). The City, not the Board of Elections, is the only party that can adequately respond to Plaintiffs’ claims.

6. The City should not have to rely on the Defendants to represent the City’s interest. The Chicago Board of Elections has no role in addressing whether a resolution complies with the authorizing statute or the Illinois Constitution. Indeed, an issue cannot be kept off the ballot on the basis of substantive invalidity. *Sachen v. Ill. State Bd. of Elections*, 2022 IL App (4th) 220470, ¶ 19 (citing *Fletcher v. City of Paris*, 377 Ill. 89, 92 (1941)).

7. There can be no doubt that the City has sufficient interest in this matter. The City has a direct interest in this suit. The relief Plaintiffs seek--an injunction preventing the Board from putting the resolution on the ballot--if granted, would leave the City without a guaranteed right to seek post-judgment relief or appeal. Section 5/2-408(a)(2) recognizes that a party who may be bound by an order or judgment may intervene.

8. Furthermore, the City should be allowed to intervene as a necessary party. The City is a necessary party because it would be “materially affected” by a judgment in Plaintiffs’ favor and in the City’s absence. *Lurkins v. Bond County Community Unit No. 2*, 2021 IL App (5th) 210292, ¶ 8 (quoting *Certain Underwriters at Lloyd's London v. Burlington Ins. Co.*, 2015 IL App (1st) 141408, ¶ 15).

9. Joinder of necessary parties is jurisdictional and can be raised at any time. *Zurich Insurance Co. v. Raymark Industries*, 144 Ill. App. 3d. 943, 946 (1st Dist. 1986). Any order entered in this matter prior to the City being added as a party-defendant in the Complaint would be void. *Certain Underwriters at Lloyd's London*, 2015 IL App (1st) 141408, ¶ 15.

10. In *Lurkins*, 2021 IL App (5th) 210292, the plaintiff sought an injunction preventing plaintiffs’ local school district and its superintendent – the only two defendants named in the action – from enforcing the Illinois Governor’s Executive Order requiring masks at public schools during the COVID-19 Federal Public Health Emergency. *Id.* at ¶ 3. The trial court entered a temporary restraining order and the defendants appealed. The appellate court found that the governor and the state agencies responsible for enforcing the order’s mask mandate in public schools were necessary defendants because they had an interest in this matter “that would be materially affected by a judgment entered in their absence, and their participation is required to protect that interest.” *Id.* at ¶ 9. The court held that the plaintiff’s failure to name these necessary parties in their complaint

rendered the temporary restraining order entered in those parties' absence void for lack of subject matter jurisdiction. *Id.*

11. As in *Lurkins*, the City is a necessary defendant because it would be materially affected by a judgment entered in its absence and its participation here is required to protect its interest.

WHEREFORE, the City respectfully requests that the Court grant its petition to intervene and allow it to file its Motion to Dismiss and Response to Plaintiffs' Motion for Judgment on the Pleadings *instantly*.

Dated: February 9, 2024

Respectfully submitted,

/s/ Scott M. Crouch
Scott M. Crouch

Attorney for Intervenor/Defendant City of
Chicago

Attorney Code: 90909
Susan P. Jordan
Scott M. Crouch
Attorney No. 90909
City of Chicago – Department of Law
Revenue Litigation Division
2 N. LaSalle St., Ste 440
Chicago, IL 60602
(312) 744-6921/8369
Susan.Jordan@cityofchicago.org
Scott.Crouch@cityofchicago.org

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

(866) 624-6221

www.MagnaLS.com

REPORTED BY: CHERYL LYNN MOFFETT, CSR NO. 084-002218

FILE NO. 1104828

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

1 A P P E A R A N C E S

2 FOR THE PLAINTIFF:

LAW OFFICES OF KASPER & NOTTAGE

3 BY: MR. MICHAEL J. KASPER

151 North Franklin Street, Suite 2500

4 Chicago, Illinois 60606

(312) 704-3297

5 E-mail - MJKasper60@mac.com

and

6 LAW OFFICES OF DEL GALDO LAW GROUP, LLC

BY: MR. MICHAEL T. DEL GALDO

7 1441 South Harlem Avenue

Berwyn, Illinois 60602

8 (708) 222-7000

E-mail - delgaldo@dlglawgroup.com

9

FOR THE DEFENDANT/INTERVENOR CHICAGO BOARD OF ELECTION

10 COMMISSIONERS:

LAW OFFICES OF TRESSLER, LLP

11 BY: MR. CHARLES A. LeMOINE

233 South Wacker Drive, 61st Floor

12 Chicago, Illinois 60606

(312) 627-4000

13 E-mail - clemoine@tresslerllp.com

14 LAW OFFICES OF ILLINOIS STATE BOARD OF ELECTIONS

GENERAL COUNSEL:

15 BY: MR. ADAM LASKER

69 West Washington Street

16 Chicago, Illinois 60602

(312) 814-6440

17

18 FOR THE DEFENDANT CITY OF CHICAGO:

LAW OFFICES OF THE CORPORATION COUNSEL

19 BY: MS. SUSAN P. JORDAN and MR. SCOTT M. CROUCH

Two North LaSalle Street, Suite 440

20 Chicago, Illinois 60602

(312) 744-6921 / (312) 744-8369

21 E-mail - Susan.Jordan@cityofchicago.org

Scott.Crouch@cityofchicago.org

22

23

* * *

24

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

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

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.

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

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 Petitioner'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

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

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

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

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

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 conclusionary
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

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

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

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.

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

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

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

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

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

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

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

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. Sanchen
24 citing the City of Salem.

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

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

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

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 1); 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

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

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

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).

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

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.

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.

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.

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

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

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

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 1, 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.)

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 Giannoulis, 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.

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 Plaintiffs'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

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

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 Plaintiff's 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.

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

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

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

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

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

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.

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

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 Respectively 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.

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

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

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

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

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.

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

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

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.

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

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

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

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

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.

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

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

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 expedited. 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

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.

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

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.

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,

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

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.

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

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.

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.

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.)

7 * * *

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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 -----Cheryl Lynn Moffett-----

23 CHERYL LYNN MOFFETT

24



Magna

Key Contacts



Schedule a Deposition:

Scheduling@MagnaLS.com | 866-624-6221

Order a Transcript:

CustomerService@MagnaLS.com | 866-624-6221

General Billing Inquiries:

ARTeam@MagnaLS.com | 866-624-6221

Scheduling Operations Manager:

Patricia Gondor (E: PGondor@MagnaLS.com | C: 215-221-9566)

Customer Care:

Cari Hartley (E: CHartley@MagnaLS.com | C: 843-814-0841)

Director of Production Services:

Ron Hickman (E: RHickman@MagnaLS.com | C: 215-982-0810)

National Director of Discovery Support Services:

Carmella Mazza (E: CMazza@MagnaLS.com | C: 856-495-1920)

Billing Manager:

Maria Capetola (E: MCapetola@MagnaLS.com | C: 215-292-9603)

Director of Sales Operations:

Kristina Moukina (E: KMoukina@MagnaLS.com | C: 215-796-5028)

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

Building Owners and Managers Association,
et al.,

Plaintiffs,

v.

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

Defendants.

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No. 24 COEL 001

ORDER

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

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

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

6. This is a final, appealable Order.

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

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

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



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

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

BUILDING OWNERS AND MANAGERS
ASSOCIATION, *et al*,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants

And

THE 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

BRIEF OF DEFENDANTS-APPELLANTS

Attorney for Defendants-Appellants

Rosa M. Tumialán ARDC No.: 6226267

rtumialan@tresslerllp.com

Taylor A. Brewer

tbrewer@tresslerllp.com

Tressler LLP

233 S. Wacker Drive, 61st Floor

Chicago, IL 60606

T. 312-627-4191

F. 312-627-1717

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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**

Rosa M. Tumialán (ARDC# 6226267)
rtumialan@tresslerllp.com
 Taylor A. Brewer
tbrewer@tresslerllp.com
 TRESSLER, LLP
 233 S. Wacker Drive, 61st Floor
 Chicago, IL 60606
 (312) 627-4191
 (312) 627-1919

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**

Rosa M. Tumialán (ARDC# 6226267)
rtumialan@tresslerllp.com
Taylor A. Brewer
tbrewer@tresslerllp.com
TRESSLER, LLP
233 S. Wacker Drive, 61st Floor
Chicago, IL 60606
(312) 627-4191
(312) 627-1919

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

Rosa M. Tumialán (ARDC# 6226267)

rtumialan@tresslerllp.com

Taylor A. Brewer

tbrewer@tresslerllp.com

TRESSLER, LLP

233 S. Wacker Drive, 61st Floor

Chicago, IL 60606

(312) 627-4191

(312) 627-1919

4896-0240-3753, v. 1

APPENDIX

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Hearing Start: No hearing scheduled

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.

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CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000001

2. Defendants-Appellants also request that this Court enter an order dismissing 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**

Charles A. LeMoine
Rosa M. Tumialán
Molly Thompson
Taylor A. Brewer
233 South Wacker Drive, 61st Floor
Chicago, Illinois 60606-6399
Tel: (312) 627-4000
Firm No. 46239
clemoine@tresslerllp.com
rtumialan@tresslerllp.com
mthompson@tresslerllp.com
tbrewer@tresslerllp.com
rtumialan@tresslerllp.com

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

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

Defendants.

No. 24 COEL 001

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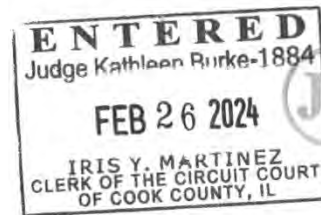
5. The proceedings before the Court were transcribed, a copy of the transcript was ordered and will be filed with the Court. The transcript is incorporated by reference herein.

6. This is a final, appealable Order.

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

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

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:

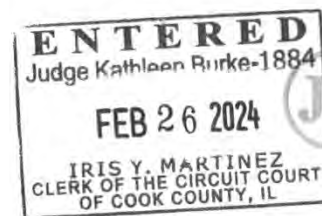
1. For the reasons stated in open court and on the record, Defendants' Motion to Dismiss the Complaint is Denied.
2. For the reasons stated in open court and on the record, Plaintiffs' Motion to Expedite Consideration of Plaintiffs' Motion for Judgment on the Pleadings is Granted.
3. For the reasons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

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

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

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
(866) 624-6221
www.MagnaLS.com

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



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|--|---|
| <p style="text-align: right;">Page 2</p> <p>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</p> | <p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S 2 FOR THE PLAINTIFF: LAW OFFICES OF KASPER & NOTTAGE 3 BY: MR. MICHAEL J. KASPER 151 North Franklin Street, Suite 2500 4 Chicago, Illinois 60606 (312) 704-3297 5 E-mail - MJKasper60@mac.com and 6 LAW OFFICES OF DEL GALDO LAW GROUP, LLC BY: MR. MICHAEL T. DEL GALDO 7 1441 South Harlem Avenue Berwyn, Illinois 60602 8 (708) 222-7000 E-mail - delgaldo@dlglawgroup.com 9 FOR THE DEFENDANT/INTERVENOR CHICAGO BOARD OF ELECTION 10 COMMISSIONERS: LAW OFFICES OF TRESSLER, LLP 11 BY: MR. CHARLES A. LeMOINE 233 South Wacker Drive, 61st Floor 12 Chicago, Illinois 60606 (312) 627-4000 13 E-mail - clemoine@tresslerllp.com 14 LAW OFFICES OF ILLINOIS STATE BOARD OF ELECTIONS GENERAL COUNSEL: 15 BY: MR. ADAM LASKER 69 West Washington Street 16 Chicago, Illinois 60602 (312) 814-6440 17 FOR THE DEFENDANT CITY OF CHICAGO: LAW OFFICES OF THE CORPORATION COUNSEL 18 BY: MS. SUSAN P. JORDAN and MR. SCOTT M. CROUCH Two North LaSalle Street, Suite 440 19 Chicago, Illinois 60602 (312) 744-6921 / (312) 744-8369 20 E-mail - Susan.Jordan@cityofchicago.org Scott.Crouch@cityofchicago.org 21 22 * * * 23 24</p> |
| <p style="text-align: right;">Page 4</p> <p>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</p> | <p style="text-align: right;">Page 5</p> <p>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</p> |

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| <p style="text-align: right;">Page 6</p> <p>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.</p> | <p style="text-align: right;">Page 7</p> <p>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</p> |
| <p style="text-align: right;">Page 8</p> <p>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</p> | <p style="text-align: right;">Page 9</p> <p>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</p> |

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| <p style="text-align: right;">Page 10</p> <p>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</p> | <p style="text-align: right;">Page 11</p> <p>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</p> |
| <p style="text-align: right;">Page 12</p> <p>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</p> | <p style="text-align: right;">Page 13</p> <p>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</p> |

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| <p>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.</p> <p>10 The Petitioner will not be bound by any 11 decision in this case.</p> <p>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.</p> <p>23 For the same reasons, the Petitioner is not 24 a necessary party in this case. In support of the</p> | <p>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.</p> <p>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.</p> <p>20 The -- it goes on to state that the 21 Plaintiffs are respectfully requesting that the 22 Petition for Leave is denied.</p> <p>23 The Court having ruled and having read 24 everything, and obviously has read a significant amount</p> |
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| <p>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.</p> <p>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.</p> <p>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?</p> <p>16 MR. KASPER: Yes, Your Honor.</p> <p>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?</p> <p>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.</p> <p>24 THE COURT: Okay.</p> | <p>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.</p> <p>6 THE COURT: Yes, I have it.</p> <p>7 All right. I can read that into the record.</p> <p>8 All right. The -- and I believe the 9 schedule -- I mean I have a copy of the schedule.</p> <p>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.</p> <p>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.</p> <p>24 The City also responds herein to the motion</p> |

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| <p style="text-align: right;">Page 18</p> <p>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.</p> <p>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.</p> <p>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</p> | <p style="text-align: right;">Page 19</p> <p>1 the Complaint.</p> <p>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.</p> <p>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.</p> <p>23 Describing current tax rate incurred 24 proposed graduated tax rate be implemented to voters in</p> |
| <p style="text-align: right;">Page 20</p> <p>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.</p> <p>7 Exhibit A to the complaint, Page 3, the 8 resolution was effective immediately after the Chicago 9 City Council passed into law. Id.</p> <p>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.</p> <p>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.</p> <p>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</p> | <p style="text-align: right;">Page 21</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p> |

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| <p>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</p> | <p>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</p> |
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| <p>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.</p> | <p>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</p> |

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| <p>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.</p> <p>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</p> | <p>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.</p> <p>12 Response to the Motion to Dismiss Pursuant 13 to 2-615.</p> <p>14 The City and the Clerk are not necessary 15 parties.</p> <p>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</p> |
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| <p>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.</p> <p>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</p> | <p>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.</p> <p>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.</p> <p>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</p> |

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| <p style="text-align: right;">Page 30</p> <p>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.</p> <p>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</p> | <p style="text-align: right;">Page 31</p> <p>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, 101l -- 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).</p> |
| <p style="text-align: right;">Page 32</p> <p>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.</p> <p>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</p> | <p style="text-align: right;">Page 33</p> <p>1 3rd, 824-834.</p> <p>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).</p> <p>12 The plaintiffs incorporate by reference 13 their Reply in Support of a Motion on the Judgment of 14 the Pleadings.</p> <p>15 The plaintiffs incorporate these arguments 16 by reference as if fully restated here.</p> <p>17 Response to the Motion to Dismiss 619.</p> <p>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.</p> |

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| <p style="text-align: right;">Page 34</p> <p>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.</p> | <p style="text-align: right;">Page 35</p> <p>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.</p> |
| <p style="text-align: right;">Page 36</p> <p>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</p> | <p style="text-align: right;">Page 37</p> <p>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</p> |

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| <p style="text-align: right;">Page 38</p> <p>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</p> | <p style="text-align: right;">Page 39</p> <p>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.)</p> |
| <p style="text-align: right;">Page 40</p> <p>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.</p> | <p style="text-align: right;">Page 41</p> <p>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 Plaintiffs'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</p> |

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| <p style="text-align: right;">Page 42</p> <p>1 the motion by the City to dismiss the --</p> <p>2 MR. LeMOINE: Your Honor, can I just --</p> <p>3 you're saying the City Motion to Dismiss. I think</p> <p>4 you're referencing the Chicago Board of Election</p> <p>5 Commissioners since you denied the City's petition.</p> <p>6 THE COURT: All right. Thank you so much.</p> <p>7 MR. LeMOINE: You're welcome.</p> <p>8 THE COURT: I also, though, read into the</p> <p>9 record the Plaintiff's Response in Opposition of the</p> <p>10 Board of Elections' Motion to Dismiss as well as the</p> <p>11 reply of the Board of Elections.</p> <p>12 Based on my review of all the rulings and</p> <p>13 the events on the 14th, the Court is going to deny the</p> <p>14 motion at this time, and that will be the Court's</p> <p>15 ruling.</p> <p>16 Now, I have a couple other motions. I do --</p> <p>17 I am going to just take a two-minute recess at this</p> <p>18 time, and I will be back very promptly. And I think</p> <p>19 we've got a couple other matters that we'll discuss.</p> <p>20 Okay? All right.</p> <p>21 (WHEREUPON, a break was had</p> <p>22 in the proceedings.)</p> <p>23 THE COURT: All right, Parties. I will just</p> <p>24 very briefly summarize some of the motion to expedite</p> | <p style="text-align: right;">Page 43</p> <p>1 the pleadings. Okay?</p> <p>2 The matter concerns Plaintiff's motion to</p> <p>3 expedite consideration of their motion for judgment on</p> <p>4 the pleadings.</p> <p>5 Now comes the Plaintiffs, through counsel,</p> <p>6 and moves this Court for an expedited consideration of</p> <p>7 their motion for judgment on the pleadings, and in</p> <p>8 support thereof states as follows:</p> <p>9 That the matter concerns the eligibility of</p> <p>10 a referendum question to appear on the ballot at the</p> <p>11 March 19, 2024 primary election for consideration by</p> <p>12 Chicago voters. The Complaint was filed January 5, and</p> <p>13 the Plaintiff's have filed a judgment on the pleadings</p> <p>14 on January 16.</p> <p>15 Consideration of the motion should be</p> <p>16 expedited for the defendant, Board of Election</p> <p>17 Commissioners, to take the necessary steps to prepare</p> <p>18 ballots and other materials upon.</p> <p>19 Wherefore, for the foregoing reasons,</p> <p>20 Plaintiffs request that the motion to expedite their</p> <p>21 Motion for Judgment on the Pleadings be granted and</p> <p>22 that the Court set an expedited briefing schedule on</p> <p>23 the Motion and that the Court schedule a hearing on the</p> <p>24 matter at its earliest convenience.</p> |
| <p style="text-align: right;">Page 44</p> <p>1 The Defendant's response to the motion, the</p> <p>2 City of Chicago initiated a referendum resolution</p> <p>3 R2023-416 in November of 2023. On November 22nd the</p> <p>4 officer of the City Clerk certified the referendum and</p> <p>5 inclusion for March 24 ballot. See the resolution.</p> <p>6 The City Clerk certified the referendum.</p> <p>7 See -- and it's on Exhibit A.</p> <p>8 Plaintiffs waited until January 5, 59 days</p> <p>9 after the resolution was initiated, to file their</p> <p>10 complaint objecting to the referendum and seeking its</p> <p>11 removal from the March 19th election. Plaintiffs then</p> <p>12 waited an additional 11 days to file procedurally</p> <p>13 defective motion on the judgment on the pleadings and a</p> <p>14 motion to expedite. Plaintiffs state no good cause for</p> <p>15 doing the filing. It goes on to state that the</p> <p>16 resolution was initiated by the City Council.</p> <p>17 Plaintiff's January 5, '24 Complaint is silent as to</p> <p>18 the reasons for this protracted delay. But absent any</p> <p>19 effort to establish good cause for why they waited</p> <p>20 nearly two months to file their complaint, nor is there</p> <p>21 an articulated reason why they waited an additional 11</p> <p>22 days, the motion is otherwise moot. Unexpected delay</p> <p>23 aside, the request for the expedited ruling is moot.</p> <p>24 The Court entered an agreed scheduling that</p> | <p style="text-align: right;">Page 45</p> <p>1 governs filings in this matter. Plaintiff's consent to</p> <p>2 the schedule set out in the agreed scheduling order</p> <p>3 concedes the motion to expedite. The agreed order is a</p> <p>4 record of the parties' agreement and is not an</p> <p>5 adjudication of their rights. In re marriage of</p> <p>6 Rolseth, R-o-l-s-e-t-h, 389 Ill. App. 969, 907</p> <p>7 Northeastern 2nd, 897 2nd district. An agreed order</p> <p>8 supersedes the motion as a result. City of Marseilles</p> <p>9 versus Radford, 287 Illinois App. 3rd 757, 76696</p> <p>10 Northeastern 2nd 125 3rd District (1987). The</p> <p>11 Defendants request that the motion to expedite be</p> <p>12 denied for all other relief requested.</p> <p>13 The Court does believe there was more or</p> <p>14 less an agreement, and the Court is going to deny the</p> <p>15 request by the Defendants, and the matter is being</p> <p>16 expedited for purposes of expediting -- moving quickly</p> <p>17 on this matter. So I will grant the motion to expedite</p> <p>18 the matter.</p> <p>19 I believe then the next motion is the motion</p> <p>20 on the pleadings, which, again, is very well briefed.</p> <p>21 And to reiterate, going back to the motion</p> <p>22 for the expedited consideration, the Court did enter</p> <p>23 the response by the Defendants was met by filing their</p> <p>24 response by February 9, and the Plaintiff filed their</p> |

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| <p style="text-align: right;">Page 46</p> <p>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.</p> <p>4 Plaintiff filed a motion for judgment on the 5 pleadings in Building Owners and Managers versus the 6 Board of Election Commissioners.</p> <p>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:</p> <p>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.</p> <p>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</p> | <p style="text-align: right;">Page 47</p> <p>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.</p> <p>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.</p> <p>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</p> |
| <p style="text-align: right;">Page 48</p> <p>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.</p> <p>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).</p> <p>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.</p> <p>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</p> | <p style="text-align: right;">Page 49</p> <p>1 estate transfer tax rate on other transfers not 2 permitted by Section 8-19.</p> <p>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.</p> <p>7 For purposes of referenda, this provision is 8 violated when a proposed referendum combines separate, 9 unrelated questions into a single initiative.</p> <p>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.</p> <p>18 You know, I don't think -- 19 FROM THE AUDIENCE: I can't type? 20 THE COURT: It's electronic. Thank you.</p> <p>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.</p> |

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| <p style="text-align: right;">Page 50</p> <p>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</p> | <p style="text-align: right;">Page 51</p> <p>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.</p> |
| <p style="text-align: right;">Page 52</p> <p>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</p> | <p style="text-align: right;">Page 53</p> <p>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</p> |

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| <p style="text-align: right;">Page 54</p> <p>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</p> | <p style="text-align: right;">Page 55</p> <p>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</p> |
| <p style="text-align: right;">Page 56</p> <p>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.</p> | <p style="text-align: right;">Page 57</p> <p>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 Sympien, 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</p> |

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| <p style="text-align: right;">Page 58</p> <p>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</p> | <p style="text-align: right;">Page 59</p> <p>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.</p> |
| <p style="text-align: right;">Page 60</p> <p>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</p> | <p style="text-align: right;">Page 61</p> <p>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</p> |

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| <p style="text-align: right;">Page 62</p> <p>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</p> | <p style="text-align: right;">Page 63</p> <p>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</p> |
| <p style="text-align: right;">Page 64</p> <p>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.</p> | <p style="text-align: right;">Page 65</p> <p>1 MR. LeMOINE: Okay. 2 THE COURT: Okay? I may not -- similarly I 3 might not read it in its 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</p> |

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| <p style="text-align: right;">Page 66</p> <p>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</p> | <p style="text-align: right;">Page 67</p> <p>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</p> |
| <p style="text-align: right;">Page 68</p> <p>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.</p> | <p style="text-align: right;">Page 69</p> <p>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</p> |

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| <p style="text-align: right;">Page 70</p> <p>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.</p> | <p style="text-align: right;">Page 71</p> <p>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,</p> |
| <p style="text-align: right;">Page 72</p> <p>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</p> | <p style="text-align: right;">Page 73</p> <p>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.</p> |

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| <p>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</p> | <p>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.</p> |
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| <p>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.</p> | <p>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</p> |

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| <p>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.) 7 * * * 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> | <p>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</p> |
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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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FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

BUILDING OWNERS AND MANAGERS
ASSOCIATION, ET AL.

Plaintiff/Petitioner

v.

Reviewing Court No: 1-24-0417

Circuit Court/Agency No: 2024COEL000001

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

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

BUILDING OWNERS AND MANAGERS
ASSOCIATION, et al.,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants,

and

CITY OF CHICAGO,

Intervenor-Nonparty-Appellant.

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

BRIEF AND APPENDIX OF INTERVENOR/NONPARTY APPELLANT

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

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

ORAL ARGUMENT REQUESTED
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NATURE OF THE CASE

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

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

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

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

ISSUES PRESENTED

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

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

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

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

JURISDICTION

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

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

STATUTORY PROVISIONS INVOLVED

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

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

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

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

STATEMENT OF FACTS

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

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

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

Shall the City of Chicago impose:

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

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

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

- ☐ Yes
☐ No

C. 24.

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

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

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

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

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

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

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

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

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

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

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

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

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

oral ruling denying the City's motion to intervene, denying the Board's motion to dismiss, and granting plaintiffs' motion for judgment on the pleadings. The circuit court read the parties' filings into the record but did not give reasons for its rulings. See Report of Proceedings, 2/23/24.¹ Also on February 23, 2024, the City filed a motion for stay in the circuit court.

C. 324. On February 26, 2024, the circuit court entered a written order denying the City's petition to intervene. C. 335. The court also entered its judgment. C. 336-37. The judgment order states that the Board's motion to dismiss is denied; that for the reasons stated in open court and on the record, plaintiffs' motion to expedite consideration of their motion for judgment on the pleadings and plaintiffs' motion for judgment on the pleadings are granted; and that the Board "is ordered not to count and suppress any votes cast on the referendum question at the March 19, 2024 primary election, and not to publish any tallies or results of any votes cast on the referendum question." C. 336. The City filed a notice of appeal on February 26, 2024. C. 347. On February 27, 2024, the circuit court denied the City's motion to stay. A12. The Board filed a notice of appeal on February 27, 2024.

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

ARGUMENT

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

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

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

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

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

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

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

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

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

C. 236. It is plain that the City's interests were not adequately represented, so intervention should have been allowed.

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

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

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

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

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

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

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

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

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

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

II. THE CIRCUIT COURT LACKED JURISDICTION.

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

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

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

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

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

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

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

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

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

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

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

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

A. The Referendum Complies With The Municipal Code.

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

it proposes to “increase the real estate transfer tax rate on some transfers” and also “to decrease the real estate transfer tax rate on other transfers.”

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

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

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

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

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

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

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

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

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

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

The act at issue in Wirtz is illustrative. It had 13 separate provisions,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. PLAINTIFFS ARE NOT ENTITLED TO AN INJUNCTION.

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

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

* * * *

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

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

CONCLUSION

This court should reverse the circuit court's judgment.

Respectfully submitted,

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

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

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) & (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents, points, and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 34 pages.

s/ Myriam Zreczny Kasper

MYRIAM ZRECZNY KASPER, Attorney

CERTIFICATE OF FILING/SERVICE

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

s/ Myriam Zreczny Kasper

MYRIAM ZRECZNY KASPER, Attorney

APPENDIX

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

Building Owners and Managers Association,
et al.,

Plaintiffs,

v.

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

Defendants.

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No. 24 COEL 001

ORDER

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

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

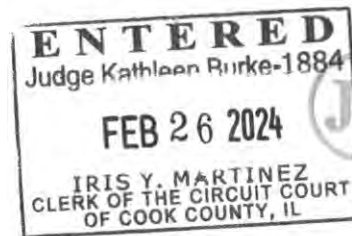
5. The proceedings before the Court were transcribed, a copy of the transcript was ordered and will be filed with the Court. The transcript is incorporated by reference herein.

6. This is a final, appealable Order.

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

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

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



**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.

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No. 24 COEL 001

ORDER

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

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

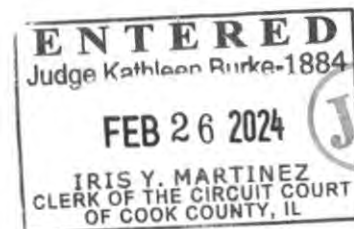
Enter: Feb. 24, 2024

Judge

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

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

Kathleen Marie Burke
1884



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

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

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

NOTICE OF APPEAL

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

A42

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 2/26/2024 12:59 PM
 Iris Y. Martinez
 CIRCUIT CLERK
 COOK COUNTY, IL
 2024-02-26 0001

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

Respectfully submitted,

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

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

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

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

NOTICE OF FILING NOTICE OF APPEAL

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

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

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

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

Corporation Counsel
of the City of Chicago

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

CERTIFICATE OF SERVICE/CERTIFICATE OF FILING

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

s/ MYRIAM ZRECZNY KASPER
MYRIAM ZRECZNY KASPER



OFFICE OF THE MAYOR
CITY OF CHICAGO

BRANDON JOHNSON
MAYOR

September 14, 2023

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

Ladies and Gentlemen:

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

Your favorable consideration of this resolution will be appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to be "BJ", followed by a horizontal line.

Mayor

RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

Shall the City of Chicago impose:

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

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

☐ Yes

☐ No

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

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

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

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

Plaintiffs,

v.

**BOARD OF ELECTION
COMMISSIONERS of the City of
Chicago and its Members
MARISEL A. HERNANDEZ,
Chair, WILLIAM J. KRESSE,
Commissioner/Secretary, and
JUNE A. BROWN,**

Respondents.

No. 2024COEL000001

Hon. Kathleen Marie Burke

Cal. 8

ORDER

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

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

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

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

2. This Court does not have jurisdiction to hear such a motion because "when the notice of appeal is filed, the appellate court's jurisdiction attaches instanter, and the cause is beyond the jurisdiction of the trial court." *Daley v. Laurie*, 106 Ill. 2d 33, 37-38 (1985) (while taking notice that the defendant's Notice of Appeal preempted the defendant's motion for a new trial, causing the trial court to lose jurisdiction).
3. Pursuant to the Supreme Court Rule 305(d), the City of Chicago is not foreclosed from obtaining the necessary relief of a stay from the Appellate Court. Ill. Sup. Ct. Rule 305(d).
4. The City of Chicago's Motion to Stay is also denied because the City of Chicago as non-intervenor, and ultimately as a non-party under the facts of this case has no standing to seek a stay on the final merits.

Dated: 2-27-2024

ENTERED:



Kathleen Marie Burke
1884

Judge Kathleen Marie Burke

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Nos. 1-24-0417 and 1-24-0431 (consolidated)

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

BUILDING OWNERS AND MANAGERS ASSOCIATION, et al.,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants,

and

CITY OF CHICAGO,

Intervenor-Nonparty-Appellant

Appeal from the Circuit Court of Cook County, Illinois

County Department, County Division

Case No. 2024 COEL 001

Honorable Kathleen Burke, Presiding

BRIEF AND APPENDIX OF PLAINTIFFS-APPELLEES

Michael J. Kasper (ARDC No. 6201411)
151 N. Franklin, Suite 250
Chicago, IL 60606
(312) 704-3292 (t)
Mjkasper60@mac.com
Cook County Attorney No. 33837

Michael T. Del Galdo (ARDC No. 6255825)
Cynthia S. Grandfield (ARDC No. 6277559)
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Avenue
Berwyn, IL 60402
(708) 222-7000 (t)
delgaldo@dlglawgroup.com
grandfield@dlglawgroup.com
Cook County Firm ID No. 44047

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QUESTIONS PRESENTED

1. Did the Circuit Court abuse its discretion in denying the City’s petition to intervene?
2. Did the Circuit Court properly grant Plaintiffs judgment on the pleadings where the Defendant offered no arguments against the merits of the motion?

ARGUMENT

Ten years ago, this Court recognized that the “free and equal” clause of Article III, Section 3 of the Illinois Constitution “gives constitutional priority to the state's public policy of encouraging the full and effective participation of the entire electorate.” *Clark v. Illinois State Board of Elections*, 2014 IL App (1st) 141937, ¶ 27. That clause is expressly violated when referenda questions prevent “a voter from giving a free and equal expression of preference as to each proposition.” *Id.* at ¶ 28. By forcing voters to vote “yes” or “no” on both a tax increase and a tax decrease with the same vote, the proposed referendum in this case is precisely the kind of blatant ballot manipulation that the “free an equal” clause was created to prevent.

Plaintiffs filed this Complaint seeking a declaration that a proposed referendum question was ineligible to appear on the ballot and, as a result, also sought to enjoin the Board of Elections from placing the referendum question, or counting any votes placed on the question, on the March 19, 2024 primary election ballot. The Complaint asserted three bases why the question was ineligible to appear on the ballot: (1) because the question impermissibly combined both a tax increase question with a tax decrease question in violation of Section 8-3-19 of the Illinois Municipal Code (65 ILCS 5/8-13-19(d)), (2) the question violated the “free and equal” clause by improperly combining three separate questions into a single question, and (3) the question violates well established precedent prohibiting referendum questions that are vague, ambiguous and not self-executing from appearing on the ballot. In support of the Complaint, Plaintiffs filed a Motion for Judgment on the Pleadings.

The Board both moved to dismiss the Complaint and responded in opposition to Plaintiffs’ Motion. In responding to the Motion, the Board chose not to respond to the merits of Plaintiffs’ claims, but instead asserted that it was not the proper defendant and that the case was “premature.” The Board also chose not to file an affirmative motion seeking judgment, such as a cross motion

for judgment on the pleadings or for summary judgment. The Circuit Court denied the Board's motion to dismiss and granted Plaintiff's Motion for Judgment. The Board does not contest the merits of Plaintiffs' Motion in this appeal. Accordingly, such arguments are waived.

Thirty-five days after the complaint was filed, and just two business days before the long scheduled hearing on the dispositive Motion for Judgment on the Pleadings, the City sought to intervene as a matter of right, which the Circuit Court denied. The City has not only appealed that decision. Not only did the Circuit Court not abuse its discretion in denying that motion, but the Board's appeal to this Court renders the City's intervention moot. The City, which has never been a party to the case, is also attempting to assert an improper non-party appeal of the Circuit Court's ultimate ruling in Plaintiff's favor.

Two *amicus curiae* have also submitted briefs in support of the Appellants. Both of these briefs, however, improperly speak to the merits of Plaintiffs' Motion for Judgment on the Pleadings; issues and arguments that were never raised by the Defendant – neither here nor in the Circuit Court – and should therefore be disregarded. Nonetheless, the arguments put forward by the *amici* are insufficient to save this fatally flawed referendum.

A. The Circuit Court Did Not Abuse Its Discretion in Denying the City's Petition to Intervene as Matter of Right.

The Circuit Court properly denied the City's petition as a to intervene as a defendant. The decision to grant or deny a petition to intervene is left to the discretion of the trial court. *Redmond v. Devine*, 152 Ill. App. 3d 68, 74 (1987) (intervention is a matter within the sound discretion of the trial court and its decision will not be disturbed absent a clear abuse of discretion). On appeal of the denial of a petition to intervene under Section 408(a)(2) of the Code of Civil Procedure, "the standard of review is whether the trial court abused its discretion." *Estate of Miroballi v. Sivers*, 2014 IL App. (2nd) 130442-U, ¶ 15 (affirming the denial of intervention sought under Section

408(a)(2)); *see also* *Madison Two Associates v. Pappas*, 371 Ill. App. 3d 352, 354 (2007) ("An order denying leave to intervene as of right is generally reviewed for a clear abuse of discretion."). A court abuses its discretion only when "its decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would agree with its position." *King Koil Licensing Co. v. Harris*, 2017 IL App (1st) 161019, ¶ 70, quoting *Control Solutions, LLC v. Elecsys*, 2014 IL App (2d) 120251, ¶ 38.

Plaintiffs filed their Complaint on January 5, 2024. That same day, the City issued a public statement recognizing the lawsuit and stating "[t]he City of Chicago is not a party to this lawsuit." C 298. On January 16, 2024, Plaintiffs filed a Motion for Judgment on the Pleadings (a dispositive motion if granted), a memorandum in support of the Motion, and a Motion to Expedite. C. 48-51. On January 19, 2024, the parties agreed to a briefing schedule on the motion and any other pleadings the Defendant would file, and scheduled a hearing on the Motion for Wednesday, February 14, 2024. C. 72.

On January 25, 2024, Defendants moved to transfer the case to the Chancery Division (C. 74-77), which was heard, and denied, by the Court on January 30, 2024. C. 126). The City had an observer present at the hearing, but took no steps to participate in the case. This schedule was set in order to permit a final resolution of the matter prior to the March 19, 2024 Primary Election, so that the Defendant can take necessary steps to prepare for the election, and that voters (including plaintiffs) have an opportunity to know what will, or will not, appear on the ballot so that they can make informed voting decisions.

The City petitioned to intervene as a matter of right on Friday, February 9, 2024, pursuant to Section 408(a)(2) of the Code of Civil Procedure, which provides:

(a) Upon timely application anyone shall be permitted as of right to intervene in an action: ... (2) when the representation of the applicant's interest by existing parties is or

may be inadequate and the applicant will or may be bound by an order or judgment in the action;

735 ILCS 5/2-408(a). This Section sets three threshold requirements: (1) timely application; (2) inadequate representation of petitioner's interest by the existing parties; and (3) a finding that the petitioner will or may be bound by an order in the case. *Id.*

The Circuit Court correctly denied the petition because the City does not satisfy any of these three requirements. First the petition was not timely, and would have, if granted, delayed the *agreed upon* schedule for prompt resolution of the case. Second, the City's interest was adequately represented by the Defendant Board, which filed exactly the same pleadings – a motion to dismiss and a response to the motion for judgment on the pleadings – that City sought leave to file. Third, the City is not “bound” by the Circuit Court's judgment because the Court's Order – that any votes cast on the question not be counted - can only be provided by the Defendant Board. The City plays no role in preparing ballots or counting votes.

1. The City's Petition was Not Timely.

The timeliness of a petition to intervene is left to the discretion of the trial court. *RTS Plumbing Co. v. DeFazio*, 1080 Ill.App.3d 1037, 1042 (1st Dist., 1989). Factors considered in making this determination include when the intervenors became aware of the litigation, and the amount of time that elapsed between the initiation of the action and the filing of the petition to intervene. *Id.* at 1042 (citations omitted). Another factor considered in determining timeliness is the reason for the party's failure to seek intervention at an earlier date. *Id.* (citations omitted). All of these factors weighed against the City.

Although the City became aware of the litigation the day it was filed, January 5, it waited 35 days to seek intervention. While that may not be excessive in other types of cases, it is an eternity in an election case. For example, the residency litigation challenging former Mayor Rahm

Emanuel's ballot eligibility went from the Board of Elections¹ to a final decision in the Supreme Court in the same number of days – 35 - that it took Petitioner to seek to intervene here. *Maksym v. Board of Elec. Comm'rs*, 242 Ill.2d 303 (2011).

Contrast that with the City's activity since the Circuit Court's decision. Since then, the City has filed a notice of appeal, a docketing statement, a request for preparation of the record on appeal, a motion to expedite consideration of this appeal, a lengthy motion to stay enforcement of the Circuit Court's Order pending appeal, and an even lengthier brief. All in just five days. The City certainly knows how to act with urgency when it wants to.

Consideration of the third factor - the reason for a petitioner's failure to seek earlier intervention – alone demonstrates that the Circuit Court did not abuse its discretion. The City was completely silent regarding this third factor, offering no explanation at all. From the City's failure to give a reason for their delay, the Court could reasonably have concluded that there was none. *RTS Plumbing Co.*, 180 Ill.App.3d at 1043 (“a decision denying intervention should be upheld where a party fails to supply the information necessary to make a determination of the timeliness of its petition.”).

In short, the City was aware of this case since its inception, and followed its progress throughout, but nonetheless chose to wait until the very last opportunity to file its petition to intervene. By waiting 35 days, and more importantly, until there was only *one* intervening business day between filing its petition and the long scheduled hearing on the dispositive motion, it is fair to infer that the delay was deliberate, and intended to delay the proceedings so that a final resolution would come much closer to, or even after, the primary election.

¹ <https://www.cbsnews.com/chicago/news/election-hearing-officer-finds-for-emanuel/>.

2. The City's Purported Interest was Adequately Represented by the Defendant Board.

In this case, the Defendant Board vigorously defended the case from the onset: from attempting to transfer the matter out of the County Division to the Chancery Division (C. 74-77), to filing both a Response to the Motion for Judgment on the Pleadings, and a Motion to Dismiss (C. 186), all in accordance with the Circuit Court's briefing schedule. The Board continues to vigorously defend the case; filing its own notice of appeal, moving to consolidate its appeal with this one, and filing a brief.

In order to show inadequacy of representation, one must not engage in speculation but, rather, must allege specific facts demonstrating a right to intervene. *In re Marriage of Vondra*, 2013 IL App. (1st) 123025, ¶ 15. The City's sole justification for intervention before the Circuit Court was the conclusory statement that it "is the only party that can adequately respond to Plaintiffs' claims." C. 131. The City offered the Circuit Court no explanation as to *why* it was uniquely qualified to respond, or why the Board was so unqualified to do so. *See Id.* at ¶ 18 ("Allegations that are conclusory in nature and merely recite statutory language are insufficient to meet the requirements of section 2-408.").

In determining the adequacy of representation, the court compares the interests of the parties in the suit to the interests of the parties seeking to intervene. *Id.* at ¶ 16 (denying intervention where intervenor's interests were "squarely in line" with existing parties). The City's conclusory boasting notwithstanding, its claim of inadequacy of representation is belied by the fact that the Board did, in fact, respond to Plaintiff's claims by moving to dismiss and responded to Plaintiffs' Motion for Judgment on the Pleadings. In fact, the Board filed the same two pleadings that the City proposed to file – a motion to dismiss and a response to the motion for judgment on the pleadings – making many of the same arguments. The City's interests: (a) dismissal of the case,

and (b) denial of the Plaintiff's motion for judgment on the pleadings, were thus "squarely in line" with Board's. Under these circumstances, the Circuit Court certainly did not abuse its discretion in denying the intervention.

3. The City is Not Bound by the Court's Decision.

The third threshold requirement for intervention under Section 2-408(a) is that the intervenor "will or may be bound" by an "order or judgment" in the case. When a proposed intervenor will not be bound by the court's order, intervention is properly denied. *Estate of Miroballi v. Sivers*, 2014 IL App. (2nd) 130443-U, ¶ 15 (proposed intervenor not bound by court orders). In this case, the Court's only order is that the Board not count and suppress any votes cast on the referendum question. C. 336. The City is not "bound" in any way by this Order. As the election authority for the City of Chicago (10 ILCS 5/6-26), the Board has sole responsibility for preparing ballots, conducting elections and tallying results. The City plays no role in any of these functions.

B. The City's Petition to Intervene is Moot.

The City appealed the Circuit Court's denial of its petition to intervene. That decision is now moot because the Circuit Court entered its final judgment on February 23, 2024. The Defendant Board filed a notice of appeal. As a result, the Circuit Court no longer has jurisdiction over this case. *City of Chicago v. Meyers*, 37 Ill.2d 470, 472 (1967) ("Filing of notice of appeal within due time causes jurisdiction of the reviewing court to attach *instante* and deprives the lower court of jurisdiction."); *see also Thornton v. Ill. Dep't of Corrections*, 2022 IL App. (5th) 220269-U, ¶ 15 ("Once the circuit court issued the order dismissing the cause on the merits, the legal controversy was decided and there was no need to preserve the status quo."). Here, the Court granted Plaintiffs judgment on the pleadings, which decided and concluded the legal controversy before it.

By filing its notice of appeal, the Board deprived the Circuit Court of jurisdiction over the matter. As a result, the City's petition to intervene is moot because there is no longer a case into which it can intervene.

C. As a Non-Party, the City Cannot Appeal the Circuit Court's Judgment.

Because the City's petition to intervene was denied, the City is a non-party. *See Success Nat'l Bank v. Specialist Eye Care Cntr*, 340 Ill.App.3d 74 (2nd Dist., 1999)(a proposed intervenor whose petition was not granted is a non-party), At most, all the City can appeal is the denial of their petition to intervene. "In general, a nonparty does not have standing to appeal from a judgment in the trial court." *MidFirst Bank v. McNeal*, 2016 IL App (1st) 150465, ¶ 19, *citing Stone v. Baldwin*, 414 Ill. 257, 262 (1953) ("an appeal by a person not a party to the record is unauthorized and void"); *see also Marino v. Ortiz*, 484 U.S. 301, 304 (1988) ("The rule that only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment, is well settled."). And, here, the City does not have standing to appeal the entry of judgment on the pleadings and certainly does not have standing to ask this Court to decide a motion to dismiss that it was never given leave to file.

The City contends that is one of the limited situations that would allow it to appeal the entry of judgment as a non-party. The City is wrong. "To have standing to bring an appeal, a nonparty must have a "direct, immediate, and substantial interest in the subject matter, which would be prejudiced by the judgment or benefitted by its reversal." *Success Bank*, 340 Ill.App.3d at 76. A nonparty to an action "is prejudiced or aggrieved in a legal sense when a legal right has been invaded or a pecuniary interest is directly, not merely indirectly, affected." *Metropolitan Sanitary District ex rel. O'Keeffe v. Ingram Corp.* (1980), 85 Ill. App. 3d 859, 865, *rev'd on other grounds* (1981), 85 Ill. 2d 458. Because the general rule is that a non-party is not permitted to appeal, the exceptions are necessarily interpreted very narrowly. *People v. Bluett*, 166 Ill.App.3d

593, 598 (2nd Dist. 1988)(describing “limited circumstances” when a nonparty can appeal and denying the Secretary of State leave to appeal to enforce provisions of the Illinois Vehicle Code related to drunk drivers despite the fact that “Illinois has a paramount interest in protecting its public roads and highways” and the Secretary of State has been given power in that regard); *See, e.g., Hurlbert v. Brewer*, 386 Ill. App.3d 1096, 1102 (4th Dist. 2008)(holding that exceptions to when a non-party can seek relief is narrow under Section 2-1401). The interest must be emphatically direct and Illinois courts have repeatedly denied units of government and government officials the ability to appeal or otherwise seek relief as a non-party for lacking a sufficient direct interest. *See People v. Bluett*, at 598, 398; *Hurlbert*, at 1102, 587; *Lake Cnty. Forest Pres. Dist. v. First Nat. Bank of Waukegan*, 213 Ill. App.3d 309, 314 (2nd Dist. 1991).

In this case, the City does not have a direct interest – as further borne out and supported by the precedent. While the City may argue that it may not be able to receive tax revenue because of the Circuit Court’s judgment, Illinois Appellate Courts have already repeatedly rejected the argument that loss of expected tax revenue permits a nonparty to appeal a circuit court decision. *Lake Cnty. Forest Pres. Dist. v. First Nat. Bank of Waukegan*, 213 Ill. App. 3d 309, 314 (2nd Dist. 1991); *see also, e.g., City of Chicago v. ProLogis*, 383 Ill. App.3d 160, 169-172 (1st Dist. 2008)(holding that the right to receive tax revenue as a bondholder was insufficient to confer standing as a non-party). In *Lake Cnty Forest Pres. Dist.*, this Court found that a non-party school district, claiming that “the removal of that property from the Lake County tax rolls would deny the district future real estate tax revenue...” was improperly granted permission to intervene as a defendant because that interest was “insufficient.” *Id.* at 314. The Court went on to hold that, as a nonparty, the school district could not appeal the Circuit Court’s decision:

The school district's interest in receiving tax revenue from the subject property is too remote to provide standing to appeal. Therefore, the school district's appeal in the present case is dismissed.

Id. at 314.

In addition, the City's legal rights are completely unaffected by this ruling on the referenda. The City is empowered by the Election Code and the Municipal Code to place referenda questions on the ballot under certain circumstances. 10 ILCS 5/28-1. That power is unaffected by the Circuit Court's ruling in this case. The City could pass another resolution today – including one regarding the real estate transfer tax. 65 ILCS 5/8-13-19(d). The City's legal right has not been affected, much less “invaded” by the Circuit Court's ruling. Instead, the Defendant Board is the only entity that is affected by the ruling of the Circuit Court to not count votes. This is because the Board is the only entity that prepares ballots, conducts elections, tallies the votes, canvasses returns, and proclaims the results. *See* 10 ILCS 5/6-26 (the Board is responsible for “conduct” of elections).

Its assertion that the *Citicorp* case is “on all fours” with this case is inaccurate. Further, the City's claims of the powers of Rule 366 is unsupported. The City mischaracterizes what actually occurred in the *Citicorp* case. In *Citicorp*, a bidder on a sheriff's sale was the highest bidder. *Citicorp Sav. of Illinois v. First Chicago Trust of Ill.*, 269 Ill.App.3d 293, 295-296 (1st Dist. 1995). After the judge refused to confirm the sale due to repayment by the mortgagee to the mortgagor, the highest bidder filed a petition to intervene to confirm the sale. *Id.* at 296, 1042. The judge denied the petition, and the bidder appealed. *Id.* The Appellate Court held that the bidder had standing to appeal as an interest in the property and should have been granted leave to intervene. *Id.* at 299. However, the Court *only* determined pursuant to Rule 366 that, even if the right to intervene had been granted, the sheriff's sale still should not have been and would not have been confirmed. *Id.* at 299-300.

Thus, in *Citcorp.*, the Court only utilized Rule 366 as a way to additionally affirm the ruling of the trial court with respect to the sheriff's sale. *Id.* The City does not cite and, indeed, cannot cite to any instance where Rule 366 has been utilized to grant a motion to dismiss that has been denied, or, alternatively, overturn a dispositive motion (such as the motion for judgment on the pleadings in this case), based on arguments an intervenor was not given leave to make at the circuit court level. Instead, such an argument would go against the clear limitations to this Court's jurisdiction as outlined in Rules 301, 303, and 304. *See also Desnick v. Dept. of Prof. Regulation*, 171 Ill.2d 510, 540 665 N.E.2d 1346, 1362 (1996)(holding that the denial of a motion to dismiss is not appealable); *See Burnham Management Co. v. Davis*, 302 Ill.App.3d 263, 269–70, 704 N.E.2d 974, 978 (2nd Dist. 1998) (“The required written finding under Rule 304(a) is sufficient to establish appellate jurisdiction only if it refers to either the judgment's immediate enforceability or its immediate appealability or both, depending on the type of relief involved.”).

The City made deliberate tactical decisions. It did not attempt to intervene on a timely basis, yet attended hearings as a non-party and made repeated statements to the press about the lawsuits and its merits. The City's filing of multiple motions and an expedited appeal demonstrates the ability of the City to move quickly. Not only does the City lack standing to appeal as a non-party, but this is further bolstered by the City's inaction at the circuit court level. The City made a strategic decision, and it must live with the consequences.

The City now asks the Court to apply narrow exceptions broadly to give the City as a non-party standing it does not have and further interpret Illinois Supreme Court Rules outlining jurisdiction in a way that goes against the plain language of the rules and has never remotely been interpreted by any Illinois Appellate Court in this manner. This must be soundly rejected. The City does not have standing to appeal as a non-party.

D. The Defendant Board is the Only Necessary Party Defendant.

1. The Board Alone Can Implement the Circuit Court's Order.

Plaintiff's Complaint sought a ruling enjoining the Board from placing the referendum question, or counting any votes placed on the question, on the March 19, 2024 primary election ballot. The Board, not the City, is the only entity that could provide the relief Plaintiffs sought.

The Board acknowledges that it is the election authority for the City of Chicago. As such, it is responsible for "the conduct of elections." 10 ILCS 5/6-26. The Board, and only the Board, has the duty "to prepare and cause to be printed the primary ballot for each political party in each precinct in his respective jurisdiction." 10 ILCS 5/7-16. The Board is also responsible for providing all the poll books, poll sheets, tally sheets and other records to each precinct for each primary election. 10 ILCS 5/7-13. Finally, the Board is also solely responsible for tallying votes and has the duty to proclaim the results. 10 ILCS 5/-58. In the face of these clear statutory obligations, the Board's claim that it is not the "proper" party is specious.

The Board claimed that this action should not be directed at it, but instead should name as defendant the City Clerk, who directed the Board to place the question on the ballot. C. 193. Bd. Resp., p. 2. The Board thus pointed the finger at the Clerk. The Clerk, no doubt, would point the finger at the City Council. Section III of the Resolution (C. 38) that the City Council passed specifically provides:

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

The Clerk only did what she was directed to do by the City Council. So, should plaintiffs sue the City Council? Facing a complaint to undo its passage of the ineligible Resolution, the City Council, of course, would point its finger at Article I, Section 1 of the Illinois Constitution. ILL.CONST.1970, art.I, § 1 ("The legislative, executive and judicial branches are separate. No

branch shall exercise powers properly belonging to another.”). Plaintiffs sought only an order preventing the question from appearing on the ballot and that any ballots cast on the question not be counted. Only the Board prepares ballots. Only the Board counts votes and publishes the results. The Board is obviously a proper and necessary defendant.

The Clerk, however, is not a necessary party. “A necessary or indispensable party is one whose presence in the suit is required for any of three reasons: (1) to protect an interest which the absentee has in the subject matter of the controversy which would be materially affected by a judgment entered in his absence; (2) to reach a decision which will protect the interests of those who are before the court or (3) to enable the court to make a complete determination of the controversy.” *Safeco Ins. Co. v. Treinis*, 238 Ill.App.3d 541, 550 (1st Dist., 1992)(citations omitted).

First, the Clerk has no real interest in the matter, as she simply performed the ministerial act of transmitting the City Council passed Resolution to the Board. For the same reason, the Clerk is not necessary to protect either the Plaintiff’s or the Board’s interests: unlike the Board, the Clerk plays no role whatsoever in conducting elections. For that reason, the Court can also make a complete determination of the controversy without the Clerk.

For the same reasons, the City is not a necessary party. The City has no interest that was materially affected by the Circuit Court’s Order. In fact, the City is not at all impacted by the Circuit Court’s Order, either directly or indirectly. The City has no legal right that was in any way been affected by the Circuit Court’s judgment. The sole directive from the Circuit Court is that the Board not count votes on the referendum question. As stated above, the City plays no role whatsoever in administering elections. That is the sole province and responsibility of the Defendant Board. 10 ILCS 5/6-26 (the Board is responsible for “conduct” of elections). Because

the City plays no role in administering elections regarding referenda questions, it has no legal right that is adversely affected by the Circuit Court's judgment.

To the contrary, the City's legal right regarding referenda questions is completely unaffected by the Circuit Court's ruling. The City is empowered by both the Election Code and the Municipal Code to place eligible referenda questions on the ballot. 10 ILCS 5/28-1. That power is unaffected by the Circuit Court's ruling in this case. The City could pass another resolution on this, or any other, issue at any time. 65 ILCS 5/8-13-19(d). The City has no interest that has been materially affected by the Circuit Court's ruling.

The City offers only the conclusory statement that "it would be materially affected by a judgment in Plaintiff's favor." Nowhere does Petitioner say why or how it would be materially affected by the Court's ruling. The case cited by the City, *Lurkins v. Bond County Community Unit No. 2*, 2021 IL App (5th) 210292, is easily distinguished. In that case, the Court found state officials responsible for enforcing the Covid mask mandate were necessary parties to litigation involving enforcement of the same restriction at the local level. The Court, obviously, found that the state officials were necessary parties because they were "an additional source of enforcement of the mask mandate." *Id.* at ¶ 9. Here, in contrast, the City is not an "additional source" of election administration. The City is not an "additional source" of ballot production, or election vote tallying.

2. In Every Referenda Case, the Election Authority Has Been the Defendant.

At the State level, referenda proposing to amend the Illinois Constitution are received by the Secretary of State, who forwards the questions to the State Board of Elections. ILL.CONST.1970, art.XIV, § 3. The Secretary of State thus serves an equivalent function as the City Clerk does in this case. In every case challenging the legal sufficiency of a proposed statewide referendum, the State Board of Elections is the named defendant. *See Coalition for Political*

Honesty v. State Bd. of Elections, 65 Ill. 2d 453 (1976)(Coalition I); *Coalition for Political Honesty v. State Bd. of Elections*, 83 Ill. 2d 236 (1980)(Coalition II); *Lousin v. State Bd. of Elections*, 108 Ill. App. 3d 496 (1st Dist. 1982); *Chicago Bar Ass'n v. State Bd. of Elections*, 137 Ill. 2d 394 (1990)(CBA I); *Chicago Bar Ass'n v. Illinois State Bd. of Elections*, 161 Ill. 2d 502 (1994)(CBA II); *Clark v. Illinois State Bd. of Elections*, 2014 IL App (1st) 141937; *Hooker v. Illinois State Bd. of Elections*, 2016 IL 121077. The Secretary of State was named as a nominal defendant in only two of these cases (*Lousin* and *CBA II*), but no relief was sought or ordered against the Secretary.

It is also worth noting that even the case the Board cited to support its claim that it is not the proper party is captioned against the *Board of Election Commissioners of the City of Chicago*. *Quinn v. Board of Election Commissioners*, 2019 IL App. (1st) 190189. It is not *Quinn v. City Clerk of the City of Chicago*, or *Quinn v. City of Chicago*. Moreover, in that case, plaintiff sought a writ of mandamus forcing the Board to include a referendum question on the ballot. That case involved only the legal question of whether the statutory provision limiting a municipal ballot to three referenda questions per election precluded the inclusion of a referendum imposing term limits on the office of Mayor of Chicago, and if so, whether the statute was unconstitutional. *Id.* at ¶ 1, 4. This Court affirmed the Circuit Court's decision that the referendum question was ineligible to appear on the ballot and enjoining the Board from including the question in the election. *Id.* at ¶ 59, 60.

Importantly, in *Quinn*, the petitions proposing the referendum question were filed with the City Clerk, who transmitted the question to the Board. *Id.* at ¶ 3. The Clerk thus performed the same function as she did in this case – transmitting the referendum to the Board. Interestingly, at no point in *Quinn*, however, did the Board suggest that it was not the proper party, or that the Clerk was a necessary party. In fact, the outcome of the case shows the opposite. The Board was

completely able to implement the court’s order (exclude the referendum from the ballot) without including the Clerk as a defendant. *Id.* at ¶ 3.

The Board is a necessary party because, as in *Quinn*, it is likewise completely able to implement the Circuit Court’s order in this case. The Board is the only necessary defendant in this case because it alone can provide the relief ordered by the Circuit Court. That fact is borne out by the fact that the Board has acknowledged that it is prepared to implement the Circuit Court’s order.

E. Courts Routinely Consider Whether a Proposed Referendum Question Satisfies the Applicable Eligibility Requirements.

Before the Circuit Court, the Board speciously argued both that the relief requested was “premature” and that there was not “active controversy.” As voting as already begun in this election, it cannot be seriously argued that the case is premature. Also, given the flurry of activity in this Court this week, it is difficult to imagine a more “active” controversy.

Setting that aside, the gist of the Board’s argument relies upon a series of cases to *Payne v. Emmerson*, 290 Ill. 490 (1919), *Fletcher v. City of Paris*, 377 Ill. 89 (1941), *Slack v. Salem*, 31 Ill.2d 174 (1964) and *Sachen v. Illinois State Board of Elections*, 2022 IL App (4th) 220470, that stand for the proposition that courts will not review a proposed referendum case challenging the legal effect of the referendum, if passed, before the election.²

Plaintiffs, in contrast, relied upon *Coalition for Political Honesty v. State Bd. of Elections*, 65 Ill. 2d 453 (1976)(Coalition I); *Chicago Bar Ass’n v. State Bd. of Elections*, 137 Ill. 2d 394 (1990)(CBA I); *Chicago Bar Ass’n v. Illinois State Bd. of Elections*, 161 Ill. 2d 502 (1994)(CBA II); *Clark v. Illinois State Bd. of Elections*, 2014 IL App (1st) 141937; and *Hooker v. Illinois State Bd. of Elections*, 2016 IL 121077 (and other cases cited above)³, all of which stand for the

² In the hearing before the Circuit Court, these were referred to as the *Fletcher* cases.

³ In the hearing, these were referred to as the *Coalition I* cases.

proposition the courts can, and have, considered pre-election complaints challenging only whether the referendum question satisfies the established eligibility rules for placing referendum questions on the ballot.

1. The *Fletcher* Line of Cases Prohibit Challenges to the *Effect* of the Referendum Question if it Passed.

In *Payne v. Emmerson*, 290 Ill. 490 (1919), the plaintiffs sought to strike an advisory referenda concerning the Legislature’s Fifth Constitutional Convention. Not only was it advisory, but it was also advisory as to what might be considered by the Legislature at a Constitutional Convention. The Court prevented the referendum because the issue was still firmly within the legislative process, and doubly advisory because it would remain so even if the referendum passed. As a result, the Court concluded that the case was not an “active controversy” and was premature. *Id.* at 492-494.

In *Slack*, a city treasurer sought to enjoin a referendum question seeking approval to issue bonds under the Building Revenue Bond Act on the basis that the Act itself was unconstitutional. *Slack*, 31 Ill.2d at 175. In other words, the treasurer claimed that the referendum, if it passed, would enable the municipality to issue revenue bonds under a statute that was unconstitutional. The Court rejected this argument, finding that a challenge to the *effect* of the ordinance (the issuance of the bonds) was improper until the ordinance became effective. *Id.* at 177.

In *Fletcher*, the plaintiffs sought to enjoin an election on a referendum question concerning the construction of a municipal light and power plant. *Fletcher*, 377 Ill. at 92. The Supreme Court affirmed the dismissal of the case, finding that the “ultimate object of the suit” was a declaration that the ordinance permitting construction of the plant was unconstitutional. *Id.* at 95. The Court further concluded that a challenge to the *effect* of the ordinance (the construction of the plant) could not occur until after the ordinance had become effective.

In *Sachen*, plaintiffs sought to enjoin a constitutional amendment referendum on the 2022 Workers' Rights amendment to the Illinois Constitution. *Sachen*, 2022 IL App (4th) 220470, ¶ 4. Plaintiffs alleged that the amendment, if passed, would violate the National Labor Relations Act and would be pre-empted by federal law under the Supremacy Clause. *Id.* at ¶ 5. In other words, plaintiffs sought to enjoin the election because the *effect* of the amendment, if passed, would have been unconstitutional.

All of the cases in the *Fletcher* line stand for the same proposition: courts will not enjoin an election on a referendum where the challenge is to the *effect* the new law if it were to pass. This is not the case here. Plaintiffs do not, for example, seek to block the referendum question on the basis that the tax, if passed, would violate the Uniformity Clause of the Constitution, or would otherwise be unconstitutional. Instead, Plaintiffs here seek to block the referendum question because the referendum was placed on the ballot in violation of the statutory and constitutional rules regulating such referendum questions. This puts this case squarely in line with the *Coalition I* line of cases, all of which permit challenges to noncompliance with the necessary eligibility requirements to place the referendum question on the ballot.

2. The *Coalition I* Line of Cases Permit Challenges to Noncompliance with the Eligibility Requirements for Placing Referendum Questions On the Ballot.

In contrast with the *Fletcher* line of cases which prohibit challenges to the *effects* that a referendum question might have if it were to pass, the *Coalition I* cases expressly permit challenges that a proposed referendum question was placed on the ballot in violation of the eligibility rules governing placement of the question on the ballot.⁴

⁴ The *Sachen* Court provides an informative discussion of distinction between the two lines of cases.

Illinois law imposes rules and procedures governing the placement of referendum questions on the ballot. Municipal referenda are governed by Article VII, Section 6(f) of the Illinois Constitution (ILL.CONST.1970, art. VII, § 6(f)); the Election Code (10 ILCS 5/28-1); and the Municipal Code. 65 ILCS 5/8-13-19. The process and regulation controlling amendments to the Illinois Constitution are found in Article XIV, Section 3 of the Illinois Constitution. ILL.CONST.1970, art. XIV, § 3. In addition, all referendum questions must satisfy the requirements of Article III, Section 3 of the Constitution. ILL.CONST.1970, art. III, § 3, and must also not be vague or ambiguous, and must be self-executing. Both the Supreme Court and this Court have long taken up and resolved cases alleging that a referendum question was placed on the ballot in violation of these controlling regulations and processes.

In *Coalition I*, the Supreme Court considered a challenge to a proposed constitutional amendment making three separate changes to the Constitution’s legislative article. *Coalition I*, 65 Ill.2d at 458. In order to be eligible to appear on the ballot, the proposed question had to comply with the Article XIV, Section 3 requirement limiting questions to the “structural and procedural” subjects of the legislative article. *Id.* at 457. The Supreme Court removed the question as ineligible for the ballot because the proposed question did not satisfy the “structural and procedural” requirement of Article XIV, Section 3.

The Supreme Court considered the same challenge to the next proposed constitutional amendment in *Coalition II*, which proposed reducing the size of the Illinois House of Representatives and provided for election from single member districts. *Coalition II*, 83 Ill. 2d at 241. The Supreme Court permitted the question to appear on the ballot after concluding that the question was eligible because it satisfied the “structural and procedural” requirement.

In several other cases, both the Supreme Court and this Court have considered, and decided, whether a proposed referendum question was eligible to appear on the ballot based on whether the question satisfied the eligibility requirements of Article XIV, Section 3. *Lousin*, 108 Ill. App. 3d 496 (directive legislative initiative referendum ineligible to appear on the ballot); *CBA I*, 137 Ill. 2d 394 (tax accountability referendum ineligible to appear on the ballot); *CBA II* (term limits referendum ineligible to appear on the ballot); *Clark s*, 2014 IL App (1st) 141937 (term limits referendum ineligible to appear on the ballot); *Hooker*, 2016 IL 121077 (legislative redistricting referendum ineligible to appear on the ballot). In *Clark*, this Court also ruled the referendum question ineligible for violating the free and equal clause. *Clark*, 210 IL App (1st) at ¶ 28.

The same is true for proposed municipal referenda questions. Most recently, in *Henyard v. Municipal Officers of Dolton*, 2022 IL App (1st) 220898, plaintiff challenged the ballot eligibility of two proposed referendum questions passed by the village council empowering voters to recall elected municipal officers. This Court ruled that the first referendum question was ineligible to appear on the ballot because it was “fatally vague and ambiguous” and the second was ineligible because it violated Article VII, Section 6(f) of the Constitution. *Id.* at ¶ 53, 56. Thus, this Court ruled that the questions could not to appear on the ballot because they did not meet the applicable eligibility requirements, and entered a permanent injunction against the County Clerk (the election authority for suburban municipalities) from canvassing or proclaiming the results of the referenda elections.” *Id.* at 59.

The most recent referenda case involving the Defendant Board is similar. In *Quinn*, former Governor Quinn sought a writ of mandamus forcing the Board to include a mayoral term limits referendum question on the ballot. This Court affirmed the decision of the Circuit Court that the question was ineligible to appear on the ballot because the City had already placed three referenda

questions on the ballot for the same election. The Court concluded that the “rule of three” provision of the Election Code (10 ILCS 5/28-1) precluded including the question on the ballot. *Quinn*, 2019 IL App. (1st) 190189 at ¶ 1, 4.

The number of cases where courts have considered the ballot eligibility of referenda questions passed by municipal councils is too large to cite. See, e.g., *Johnson v. Ames*, 2016 IL 121563 (term limits); *Burns v. Municipal Officers Electoral Board of the Village of Elk Grove Village*, 2020 IL 125714 (term limits); *Jones v. City of Calumet City*, 2017 IL App (1st) 170236 (term limits); (*Clarke v. Village of Arlington Heights*, 57 Ill. 2d 50 (1974)(changing elected office to appointed); *Lipinski v. Chicago Board of Election Commissioners*, 114 Ill. 2d 95, 99-100, 106 (1986)(shift from partisan to nonpartisan elections).

This cases challenges three eligibility requirements governing whether municipal referendum question can appear on the ballot. First, the Complaint alleges that the question is ineligible to appear on the ballot because it impermissibly combines a tax decrease with a tax increase in violation of the Municipal Code provision governing transfer tax referenda questions. Second, the Complaint challenges the referenda question for impermissibly combining three separate questions into a single question in violation of the free and equal clause of the Illinois Constitution. Finally, the Complaint, as in *Henyard*, challenges the referenda on the basis that it is vague and ambiguous, and not self-executing. All three of these challenges fall squarely within the *Coalition I* line of cases. As a result, the Circuit Court properly exercised its jurisdiction to resolve these questions.

F. A Motion for Judgment on the Pleadings was Proper

The Board also incorrectly argues that a motion for judgment on the pleadings was improper without an answer to the complaint. The motion was procedurally proper. The Illinois

Code of Civil Procedure simply states the following with respect to a motion for a judgment on the pleadings:

(e) Any party may seasonably move for judgment on the pleadings

735 ILCS 5/2-615(e).

When the Illinois Code of Civil Procedure or Supreme Court Rules requires that something be done in a specific sequence or timeframe, it states so clearly and directly. For example, a summary judgment motion may only be filed by a plaintiff after the other party has appeared or after the time to appear has expired. 735 ILCS 5/2-1005(a). Motions for a directed verdict or for judgment notwithstanding a verdict are also given specific timeframes and methods. 735 ILCS 5/2-1202, 1203. Discovery can only be initiated after the parties were to appear or have appeared. Ill. Sup. Ct. R. 201(d).

Here, the language of the Code of Civil Procedure simply provides that a party may move “seasonably.” It does not require that an answer be on file. If it did, like other provisions in the Code and Supreme Court Rules, that section would say so. Because it is unambiguous that no answer is required the Court need not go any further. *People v. Collins*, 2020 IL App (1st) 181746, ¶22.

But, even if it did, the cases cited to by the Board do not support this. None of these cases reversed on the basis of no answer being on file. Indeed, in one of the very cases cited to by the Board, this Court explained that a motion for judgment on the pleadings may be granted if there is no genuine issue of material fact and that a party is entitled to judgment as a matter of law – similar to the standard for a motion for summary judgment. *Pollack v. Marathon Oil Co.*, 34 Ill.App.3d 861, 867(5th Dist. 1976). Similarly, a motion for summary judgment also does not require that an answer be on file before said motion can be made. 735 ILCS 5/2-1005; *Y-Not Project, Ltd. v.*

Waterway Agency, 2016 IL App (2d) 150502, ¶54-55; *Wooding v. L&J Press Corp.*, 99 Ill.App.3d 382, 387 (1st Dist. 1981). Again, the Board’s own citations demonstrate that there it is proper for a motion for judgment on the pleadings to be made prior to an answer being filed. *Pollack*, at 867.

There is also nothing in the Code of Civil Procedure that requires a motion to dismiss be decided prior to a motion for judgment on the pleadings and the Board offers no explanation as to what “genuine issue of material fact” it was deprived of raising by not having an answer on file prior to the Court’s ruling on the motion for judgment on the pleadings. Does the Board dispute what the language of the proposed referendum is? The dates that votes were taken at City Council? The date that the referendum would be placed on the ballot? Obviously it does not. Further, it is simply logically inconsistent that a Court would hold that a motion for judgment on the pleadings, which is a largely similar to a motion for summary judgment but considers only the pleadings, would require an answer, but a motion for summary judgment does not. A motion for judgment on the pleadings is frequently used in election cases as an appropriate procedural device given the short timeframes and it was properly used here. *Clark v. Ill. State Bd. of Elections*, 2014 IL App (1st) 141937, ¶ 2 (Following cross-motions for judgment on the pleadings, the court found the Term Limits Initiative invalid.”); *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, ¶16 (“The plaintiffs moved for judgment on the pleadings pursuant to section 2- 615(e) of the Code of Civil Procedure asking that the court grant both declaratory and injunctive relief. Independent Maps filed a cross-motion for judgment on the pleadings, seeking dismissal of the plaintiffs' complaint with prejudice.”).

The motion for judgment on the pleadings was procedurally proper.

G. The Board Has Waived Any Arguments Regarding the Merits of the Claims Set Forth in the Complaint and Cannot Raise the Bases of Its Motion to Dismiss on Appeal.

The Board did not raise any arguments in opposition to the Plaintiffs' claims that the proposed referendum is unconstitutional and unlawful at the circuit court level. And they cannot do it here. Arguments not raised at the trial court level cannot be raised for the first time on appeal. These arguments are all waived and should be disregarded by the Court. *Haudrich v. Howmedica, Inc.*, 169 Ill.2d 525, 536, 662 N.E.2d 1248, 1253 (1996).

Additionally, the Board spends large portions of its brief arguing the bases of its motion to dismiss. What the Board fails to do, is to explain why the Court has jurisdiction over a denial of a motion to dismiss. Not only was the motion to dismiss denied, there was no Rule 304(a) language given or requested. The denial of a motion to dismiss is not a final judgment and is non-appealable. *Desnick v. Dept. of Prof. Regulation*, 171 Ill.2d 510, 540 665 N.E.2d 1346, 1362 (1996)(holding that the denial of a motion to dismiss is not appealable); *See also* Ill. Sup. Ct. R. 301, 303, 304. The Board fails to identify any rule, case, or principle of law that would allow the Court to substantively consider a motion to dismiss that had been denied on appeal and even reverse. Thus, the Court is without jurisdiction to hear any arguments related to the Board's motion to dismiss and those arguments should be stricken and disregarded. *See* Board-Appellant brief, p. 11-18.

All that the Board can appeal is if the motion for judgment on the pleadings was properly granted despite the arguments made by the Board in opposition to the motion.

H. The Amicus Curiae Briefs Raise Impermissible Arguments, And Cannot Overcome the Fact that Referendum Question Does Not Satisfy the Eligibility Requirements to Appear on the Ballot.

1. The Amicus Curiae Briefs Impermissibly Raise Arguments Not Raised by the Parties in the Circuit Court or on Appeal.

The Board does not raise here, nor did it before the Circuit Court, any arguments or points challenging the merits of Plaintiffs' Motion for Judgment on the Pleadings. Accordingly, the Board

has waived those arguments. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996) ("It is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal."). As set forth in Section C above, the City, as a nonparty, has no standing to appeal the Circuit Court's ruling granting the Motion for Judgment on the Pleadings. Instead, the City's appeal is properly limited to the Board's argument that it is not a proper party, and that the case was "premature." While the City may have been entitled to appeal the denial of its intervention, that issue is now moot. Both of the *amici*, nonetheless, have submitted briefs directed at challenging Circuit Court's decision on the merits of Plaintiffs' Motion for Judgment on the Pleadings – an argument that the Board (the only Defendant in the case) has not raised.

The Supreme Court has repeatedly rejected attempts by *amicus* to raise issues not raised by the parties to the appeal. *Frye v. Medicare–Glaser Corp.*, 153 Ill.2d 26, 30, (1992); *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill.2d 107, 117, (1990). It is also well settled that "[a]n *amicus curiae* is not a party to the action but is, instead, a 'friend' of the court. As such, the sole function of an *amicus* is to advise or to make suggestions to the court." *People v. P.H.*, 145 Ill.2d 209, 234 (1991); *see also Zurich Insurance Co. v. Raymark Industries, Inc.*, 118 Ill.2d 23, 59 (1987). Indeed, "[a]n *amicus* takes the case as he finds it, with the issues framed by the parties." When an *amicus* raises issues or arguments not raised by the parties, the Court "will decline to address it." *Burger v. Lutheran Gen. Hosp.*, 198 Ill. 2d 21, 61–62 (2001); *see also Oswald v. Hamer*, 2018 IL 122203, ¶ 41, *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 15 n.1.

As in *P.H.*, *Bruns* and these other cases, the *amici* have raised issues and arguments not raised the by the Board (or properly, by the City). Accordingly, this Court should decline to address them.

2. Even if Accepted, the Arguments by the Amici Cannot Save the Fatally Flawed Referendum Question.

Plaintiffs' Motion for Judgment on the Pleadings asserted that referendum question (1) violates Section 8-3-19 of the Illinois Municipal Code (65 ILCS 5/8-13-19(d)), (2) violates the free and equal clause of Article III, Section 3 of the Illinois Constitution, (ILL.CONST.1970, art. III, § 3), and (3) is vague, ambiguous and not self-executing.

a. The Plain Language of the Municipal Code Prohibits Combining Tax Increases and Tax Decreases in the Same Referendum Question.

The Illinois Municipal Code permits a home rule municipality to “impose a new real estate transfer tax” or to “increase” an existing real estate transfer tax only upon “prior referendum approval.” 65 ILCS 5/8-13-19(d). The same section of the Code permits a home rule municipality to “amend an existing real estate transfer tax” ordinance “without approval by referendum” so long as the amendment does not increase the transfer tax rate or add transactions covered by the tax. *Id.*

The complete section reads as follows:

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

65 ILCS 5/8-13-19(d)(emphasis added). Thus, the Municipal Code permits three separate actions regarding the real estate transfer tax: (1) imposition of a new transfer tax (which requires prior referendum approval); (2) an increase of an existing transfer tax (which requires prior referendum approval); and (3) an amendment to an existing transfer tax that does not increase the rate (which can be done without referendum approval).

The Referendum presented here violates Section 8-3-19 of the Municipal Code because it not only proposes to “increase” the City’s current real estate transfer tax rate on some transfers by referendum, but it also proposes, in the same referendum, to amend (by decreasing) the real estate transfer tax rate on other transfers. The increase requires “prior approval by referendum,” but the other amendment (the decrease) “may” be done “without prior approval by referendum.”

Thus, the plain language of the statute contemplates two changes with “prior approval by referendum” (imposition of a new transfer tax or an increase in the rate of an existing tax), and any other amendment (such as a decrease in the rate of tax) being done “without prior approval by referendum.” When construing a statute, the court’s “goal is to determine and effectuate the legislature's intent, best indicated by giving the statutory language its plain and ordinary meaning.” *People v. Hardin*, 238 Ill.2d 33, 40 (2010). Courts “will not depart from the statute's plain language by reading in exceptions, limitations, or conditions in conflict with the legislature's intent.” *Id.*

In addition, Courts must construe the statute’s words and phrases in light of other relevant provisions and not in isolation. *Id.* Moreover, courts “may consider the reason for the law, the problems to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another.” *People v. Burlington*, 2018 IL App (4th) 150642, ¶ 16.

Here, the Municipal Code permits the imposition or an increase in the real estate transfer tax by referendum but does not permit a corresponding decrease in the tax by referendum, and certainly not by the same referendum. The “purposes to be achieved” by this law, and the “problems to be remedied” is to prevent precisely the type of ballot manipulation that happened here.

On July 21, 2021, Resolution R2021-919 (C. 25) was introduced proposing a referendum to only increase the real estate transfer tax from \$3.75 to \$13.25 for every \$500 in the value of the

transferred property above \$1M (a 253% increase). That resolution did not pass.⁵ On December 14, 2022, Resolution R2022-1409 (C. 32), was introduced also proposing to only raise the real estate transfer tax from \$3.75 to \$13.25 for every \$500 in the value of the transferred property above \$1M (a 253% increase). That Resolution also did not pass. *Id.*

On September 13, 2023, four months after Resolution R2021-919 and Resolution R2022-1409 were declared lost, Resolution R2023-4166 (the subject of this litigation) was introduced, proposing to *reduce* the real estate transfer tax on properties valued at less than \$1M by 20%, while *in the same question*, proposing to *increase* the tax rate for property valued between \$1M and \$1.5M by 166.67%; and to *increase* the tax rate on property transfers valued above \$1.5M by a staggering 300%.

In short, there was insufficient support in the City Council to pass a resolution increasing the transfer tax rate alone, and only by combining it with a proposition to also reduce the rate on some transfers did it muster sufficient votes to pass. This is a textbook example of “‘logrolling’ or ‘bundling unpopular legislation with more palatable bills, so that the well-received bills would carry the unpopular ones to passage.’” *See Wirtz v. Quinn*, 2011 IL 111903, ¶ 13.

In Illinois, the prohibition against legislative logrolling appears in the single subject rule of Article IV, Section 8(d) of the Illinois Constitution. ILL.CONST.1970, art. IV, § 8(d). The rule is designed to prevent the passage of legislation that, if standing alone, could not muster the necessary votes for enactment. *People v. Sypien*, 198 Ill.2d 334, 338 (2001), *citing Geja's Cafe v Metropolitan Pier & Exposition Authority*, 153 Ill. 2d 239, 258 (1992). “Such ‘logrolling’ by legislators is a practice strictly prohibited by this state's constitution.” *Id.*; *People v. Cervantes*,

⁵ <https://occprodstoragev1.blob.core.usgovcloudapi.net/lsmatterattachmentspublic/452ec73a-2459-4872-952b-96ab0891a299.pdf>

189 Ill. 2d 80, 98 (1999); *People v. Wooters*, 188 Ill. 2d 500, 518 (1999). The prohibition against logrolling “ensures that the legislature addresses the difficult decisions it faces directly and subject to public scrutiny, rather than passing unpopular measures on the backs of popular ones.” *Johnson v. Edgar*, 176 Ill.2d 499, 514 (1997).

Johnson v. Edgar is particularly instructive here because, in that case, the Supreme Court invalidated an equally egregious example of logrolling. The General Assembly passed legislation combining, as here, a tax increase (on motor fuel) with the creation of the State’s first sex offender notification law for predatory criminal sexual assault of a child. *Id.* at 516. The Court struck down the legislation in its entirety. *Id.*

Given the prohibition against logrolling imposed on the General Assembly by the Illinois Constitution, it directly follows that the General Assembly would impose similar restrictions on municipalities governing their deliberations. Viewed through this lens, the prohibition against combining tax increases with tax decreases in the same referendum question set forth in Section 8-13-19(d) is simply an anti-logrolling provision designed to prevent exactly what happened here. That is why the plain language of Section 8-13-19(d) prohibits combining both a transfer tax increase and a decrease in the same question.

Even if, despite the foregoing, Section 8-13-19(d) were ambiguous, it must still be read to prevent the referendum at issue here. “Where a statute is susceptible to more than one equally reasonable interpretation, then the statute is ambiguous, and the court may consider extrinsic aids of construction to discern the legislative intent.” *Policemen’s Benevolent Labor Comm. v. City of Sparta*, 2019 Ill.App. (5th) 190039-U, ¶ 17. One of the better known rules of statutory construction is the doctrine of *expressio unius est exclusio alterius* (the expression of one thing means the

exclusion on another), when a statute lists certain things, those things omitted were intended as exclusions. *People ex rel. Klaeren v. Village of Lisle*, 316 Ill. App. 3d 770, 781 (2nd Dist., 2000).

Here, Section 8-13-19(d) enumerates two actions regarding a real estate transfer tax that municipalities may take with prior referendum approval: (1) imposition of a new transfer tax; and (2) an increase in the rate of an existing transfer tax. Under the *expressio unius* rule, the omission of allowing a decrease in the transfer tax rate amongst the actions permitted with prior referendum approval must be read as an intentional exclusion. This interpretation is bolstered by the final sentence of Section 8-13-19(d), which provides: “An existing ordinance ... imposing a real estate transfer tax may be amended without approval by referendum ... if the amendment does not increase the rate of the tax...” 65 ILCS 5/8-13-19(d).

The General Assembly preempted home rule municipalities’ ability to enact or change real estate transfer taxes in any manner inconsistent with Section 8-13-19(d). 65 ILCS 5/8-3-19(g)(“A home rule municipality may not impose real estate transfer taxes other than as authorized by this Section. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.”). By combining a decrease in the transfer tax rate on some, mostly residential properties, with a large increase in the transfer tax rate on commercial and industrial (and higher valued residential properties), Resolution R2023-4166 is not authorized by Section 8-13-19(d) and the referendum question it calls for is, therefore, ineligible to appear on the ballot.

b. The Referendum Combines Three Separate Questions in Violation of Article III, Section 3.

Article III, Section 3 of the Illinois Constitution provides that “[a]ll elections shall be free and equal.” ILL.CONST.1970, art. III, § 3. The free and equal clause guarantees the right to vote in Illinois and reflects a broad public policy to expand the opportunity to vote. *Clark v. Illinois State*

Board of Elections, 2014 IL App (1st) 141937, ¶ 27; *Orr v. Edgar*, 283 Ill. App. 3d 1088, (1st Dist., 1996). Under the clause, every qualified voter has a right to vote, and all votes must have equal influence. *Chicago Bar Ass’n v. White*, 386 Ill.App.3d 955, 959 (1st Dist., 2008). The free and equal clause gives constitutional priority to the state's public policy of encouraging the full and effective participation of the entire electorate. *Clark*, 2014 IL App (1st) 141937, ¶ 27; *Orr*, 283 Ill. App. 3d at 1102.

The free and equal clause is violated when separate and unrelated questions are combined in a single proposition on a ballot. *Coalition II*, 83 Ill.2d 236. Combining separate and unrelated questions prevents a voter from giving a free and equal expression of preference as to each proposition. *Clark*, 2014 IL App (1st) 141937, ¶ 28; *see also Rouff v. Barrett*, 396 Ill. 322, 332 (1947); *People ex rel. Hall v. Bopp*, 396 Ill. 80, 83 (1947).

In *Clark*, this Court affirmed the Circuit Court’s decision finding that a proposed referendum question that included separate and unrelated components violated Article III, Section 3. *Clark*, 2014 IL App (1st) 141937, ¶ 29. The referendum in *Clark* proposed several changes to the Constitution’s legislative article, including term limits for legislators and increasing the number of votes needed to override the governor’s veto. *Id.* at ¶ 30. In affirming the Circuit Court, this Court noted that “[b]oth the term limits and veto provisions could easily stand as independent propositions without affecting the rest of the proposed changes” and therefore held that “the proposed amendment is invalid under the free and equal clause.” *Id.*

Here, as in *Clark*, the fact that the tax increase provisions could stand as “independent propositions” is not seriously debatable. This conclusion is highlighted by the fact that the tax decrease provision of Section 8-13-19(d) does not even contemplate a referendum proposition, but specifically states that a decrease in the transfer tax rate be effectuated “without approval by

referendum.” 65 ILCS 5/8-13-19(d). By combining the increase provisions with the decrease provision, the referendum question deprives the voter of the opportunity to vote in favor of a tax decrease, without at the same time, voting in favor of a tax increase. The combination of the two was for rather obvious political reasons.

In determining whether a proposed referendum violates Article III, Section 3, the Supreme Court has also considered the possibility that if the combined propositions were presented to voters as separate questions “incongruous results might follow.” *Coalition II*, 83 Ill.2d at 254. In *Coalition II*, the Court held that could be the case where a referendum proposed changing the Illinois House of Representatives from multimember to single member districts and also proposed repealing cumulative voting. In ruling that the referendum was eligible to appear on the ballot, the Court noted that if the questions were separated, “the voters might vote to retain cumulative voting and adopt single-member districts”, resulting in an incongruous result. *Id.*

Here, there is no such risk of an incongruous result. If, despite the prohibition of Section 8-13-19(d), the tax increase questions and the tax decrease questions were separated into separate propositions, no incongruous result could occur. Instead, the likely outcome would be that voters would approve the tax decrease provisions and reject the tax increase provisions. Regardless, if the questions were separated, there would be no possibility of the type of incongruous results the Court recognized in *Coalition II*.

The Referendum proposed in this case calls for three separate questions: (1) shall the transfer tax rate be lowered for purchase value of less than \$1M?; (2) shall the transfer tax rate be raised for purchase value between \$1M and \$1.5M?; and (3) shall the transfer tax rate be raised even more for purchase value above \$1.5M? Because the Referendum question proposes a compound question combining three separate questions, it violates Plaintiffs’ (and all voters) right

to vote on the three propositions separately in violation of Article III, Section 3 of the Illinois Constitution.

c. The Referendum Question is Vague, Ambiguous and Not Self-Executing in Violation of Illinois Law.

The Illinois Supreme Court has established that a municipal referendum must be self-executing, meaning that the question must “stand on its own” without “leaving gaps to be filled by the legislature or municipal body...” *Lipinski v. Chicago Board of Election Comm’rs*, 114 Ill.2d 95, 99 (1986); *Leck v. Michaelson*, 111 Ill.2d 523, 530-31 (1986) (referendum must be able to stand on its own terms and may not be vague and ambiguous regarding the information needed for its implementation and enforcement.). A referendum requiring such “additional provisions ‘not clearly contemplated by the terms of [the referendum] proposition’” renders the proposition fatally “vague and ambiguous.” *Lipinski*, 114 Ill.2d at 100, quoting *Leck*, 111 Ill.2d at 528.

In *Lipinski*, the Supreme Court invalidated a proposed referendum altering the process of electing Chicago City officials from partisan to non-partisan. *Id.* at 106. In doing so, the Court enunciated numerous questions and gaps left unanswered by the referendum question, such as when it would take effect, how many signatures would candidates be required to submit, and which candidates would qualify for a runoff election. *Id.* at 100-104. As a result, the Court held “the nonpartisan referendum proposition is too vague and ambiguous to qualify ... because it leaves in its wake significant questions unanswered and details which conflict with the Election Code.” *Id.* at 106.

In *Leck*, the Supreme Court considered the constitutionality of a municipal referendum creating a runoff election system. *Leck*, 111 Ill.2d at 526. The Supreme Court ruled that referendum ineligible because “the terms of the proposition did not indicate how or when that runoff would be conducted.” *Id.* at 529. Specifically, the Court concluded that:

What is clear is that the bare concept contained in the referendum proposition had to be interpreted, supplemented and modified in order to be implemented. Because the referendum could not stand on its own terms, however, the voters of Lansing cannot be said to have approved a coherent scheme for altering the election of their officials...

Id. at 530. As a result, the referendum was ineligible due to its “vagueness and ambiguity.” *Id.*

Just two years ago, in *Henyard*, this Court ruled that the two recall referenda questions proposed by the Dolton Village Council were “fatally vague and ambiguous under the doctrines enunciated by our supreme court in *Leck* and *Lipinski*.” *Henyard*, 2022 IL App (1st) 220898, ¶ 53.

In particular, the Court found that:

The verbal gymnastics necessary to draft the two referenda in a way that would allow *Henyard* to be removed midterm resulted in an enormously convoluted, confusing, and ambiguous question, which clearly violates the clarity and precision requirements that our supreme court set forth in *Leck* and *Lipinski*.

Id. at ¶ 53.

This Referendum also fails the Supreme Court’s vague and ambiguous test. The question provides that the revenue generated will be used for the vague and ambiguous “purpose of addressing homelessness” without any further explanation to the voters as to what will, and will not, be done with the funds raised, and who will make those decisions. The vague and ambiguous reference to “addressing homelessness” will require additional action by the City Council to decide precisely how the additional revenue will be used.

The fact that Resolution R2023-4166 is not self-executing is borne out by the fact that Alderpersons Hadden, Martin and Ramirez-Rosa filed a draft Ordinance (C. 39) with the City Clerk on September 29, 2023 calling for: (1) the creation of a “Bring Chicago Home Fund” within the City government to receive revenues from the increased real estate transfer tax, and setting forth the “eligible uses” for the funds deposited in the Bring Chicago Home Fund as “any support provided by the City or a delegate agency selected by the City to people experiencing or at risk of homelessness, including providing permanent affordable housing and the services necessary to

obtain and maintain permanent housing...” None of this is included in the proposition to be put to the voters.

The proposed Ordinance also specifically provides that “law enforcement operations” is not an eligible use of the funds. This is also not included in the proposition to be put to the voters. The proposed ordinance further calls for the creation of a Bring Chicago Home Advisory Board consisting of fifteen (15) board members appointed by the Mayor (and several other non-voting members) to make recommendations regarding the percentage of funds to be expended annually on the eligible uses from the Bring Chicago Home Fund. This is not included in the proposition to be put to the voters.

The proposed Ordinance further empowers the City Budget Director, in conjunction with the Advisory Board and City departments, to determine what percentage of the Fund should be annually used for eligible purposes. This too is not set forth in the proposition to be put to the voters.

Resolution R2023-4166 is vague and ambiguous leaving many questions unanswered that will require additional action by the City Council to implement. As a result, the Referendum is not self-executing, and therefore is not eligible to be placed on the ballot at the March 19, 2024, Primary Election.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully pray that this Court enter an order affirming the decision of the Circuit Court, and grant any other relief as is just and proper.

Respectfully Submitted,

Plaintiffs

By : /s/ Michael Kasper

Michael J. Kasper (ARDC No. 6201411)
151 N. Franklin, Suite 2500
Chicago, IL 60606
312.704.3292
mjkasper60@mac.com
Cook County Attorney No. 33837

By: /s/ Michael T. Del Galdo

Michael T. Del Galdo (ARDC No. 6255825)
Cynthia S. Grandfield (ARDC No. 6277559)
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Avenue
Berwyn, Illinois 60602
(708) 222-7000 (t)
delgaldo@dlglawgroup.com
grandfield@dlglawgroup.com
Cook County Firm ID No. 44047

SUPREME COURT RULE 341(c) CERTIFICATION

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 42 pages and 13,790 words.

/s/ Michael Kasper

Michael J. Kasper
151 North Franklin Street, Suite 2500
Chicago, Illinois 60606
(312) 704-3292
mkasper60@mac.com

CERTIFICATE OF FILING AND SERVICE

I, Cynthia S. Grandfield, an attorney, hereby certify that I caused this brief to be electronically filed with the Appellate Court of Illinois, First District, 160 N. LaSalle St., Chicago, IL 60601, and that a copy of same was served upon all counsel of record via File and Serve Illinois on March 4, 2024.

- (x) Under penalties as provided by law pursuant to 735 ILCS 5/1-109,
I certify that the statements set forth herein are true and correct.

By: /s/ Cynthia Grandfield
Cynthia S. Grandfield

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

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

BUILDING OWNERS AND MANAGERS
ASSOCIATION, *et al*,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants

And

THE 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

REPLY BRIEF OF DEFENDANTS-APPELLANTS

Attorney for Defendants-Appellants

Rosa M. Tumialán ARDC No.: 6226267

rtumialan@tresslerllp.com

Taylor A. Brewer

tbrewer@tresslerllp.com

Tressler LLP

233 S. Wacker Drive, 61st Floor

Chicago, IL 60606

T. 312-627-4191

F. 312-627-1717

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES**CASES**

| | |
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| <i>Burns v. Municipal Officers Electoral Board of Village of Elk Grove Village,</i> 2020 IL 125714 | 11 |
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OTHER AUTHORITIES

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ARGUMENT

The crux of this appeal is whether plaintiffs were entitled to the declaratory and injunctive relief awarded them based on a complaint challenging the inclusion of an advisory referendum on the March 19, 2024, primary ballot where that complaint is directed solely against the Board of Election Commissioners, a ministerial body with no role in the drafting of this or any other advisory referendum. Plaintiffs insist that: the grant of judgment on the pleadings to plaintiffs was proper because the Board did not challenge the substantive merits of the dispute and any such argument is now waived; the Board is the only defendant that need be named in the complaint; and this Court cannot review a denial of a motion to dismiss. Each of these arguments misses the mark. The trial court's order should be reversed, and the relief awarded to plaintiffs (which deviates from that requested in their complaint) should be vacated.

I. THE GRANT OF JUDGMENT ON THE PLEADINGS WAS IN ERROR ABSENT A LEGALLY VIABLE COMPLAINT.

This appeal is from a grant of judgment on the pleadings under section 2-615(e), which rulings are reviewed *de novo*. *National Fire Ins. Co. of Hartford and Continental Ins. Co. v. Visual Pak Co., Inc.*, 2023 IL App (1st) 221160, ¶ 27. *De novo* review means that this Court performs the same analysis that the trial court should have conducted and owes no deference to the trial court's decision. *Almazan v. 7354 Corporation*, 2023 IL App (1st) 220794, ¶ 27. The entry of the final order renders final all orders that led to its entry, which here includes the order denying the motion to dismiss at the same hearing that the trial court granted plaintiffs' motion for judgment on the pleadings. *Direct Auto Ins. Co. v. Bahena*, 2019 IL App (1st) 172918, ¶ 43 (this Court observing that it could consider an order denying a motion to dismiss that was a necessary step leading to entry

of the final order). The trial court denied the motion to dismiss and granted judgment on the pleadings without making a single finding and without providing any analysis. *See*, A 005-027. The denial of the motion to dismiss was a necessary step leading to the entry of the motion granting plaintiffs' motion for judgment on the pleadings. Appellate review includes consideration of the motion to dismiss as well as the motion to strike the motion for judgment on the pleadings, which incorporated by reference all the arguments advanced in the motion to dismiss. C. 186-284; 299-311; 314-19.

A. Plaintiff's Did Not Plead a Viable Claim for Declaratory Relief.

Judgment on the pleadings contemplates the parties being at issue, which usually means that the defendant filed an answer responding to the allegations asserted against him. Indeed, a motion for judgment on the pleadings is akin to a motion for summary judgment limited to the pleadings. *Visual Pak*, 2023 IL App (1st) 221160, ¶ 27. The analysis is the same—a party is entitled to judgment on the pleadings only where there is no genuine issue of fact, and the movant is entitled to judgment as a matter of law. *Id.* The Board here did not answer the complaint but instead moved to dismiss it and moved to strike the motion for judgment on the pleadings which response alternative responded to the motion. Plaintiffs do not address these arguments and instead insist that the Board was the sole proper party because it is the only entity that can implement the trial court's order. This assertion is an exercise in semantics designed to avoid the fact that plaintiffs pled no legally viable cause of action. In addition to injunctive relief entered against the Board, the trial court entered a declaratory judgement that the City's referendum was legally deficient and not qualified to be voted upon, and the City's rights and interests were thereby directly and adversely impacted by the court's ruling. Nonetheless,

plaintiffs merely ignore the arguments raised by both the Board and the City that the City of Chicago is a necessary party to this lawsuit.

B. The Board Lacks an Opposing Interest.

While it is true that the Board is the entity that actually generates the ballots and counts the votes, the Board's authority is derived from Article 6 of the Illinois Election Code ("Article 6"). *See* 10 ILCS 5/6-1. The Board is a creature of statute and has no authority other than that conferred on it by the Election Code. *Id.*; C. 284. Plaintiffs' generalization that only the Board can comply with a trial court's order directing it to suppress the counting of ballots ignores this well-established reality. It also ignores the fact that the trial court entered a declaratory judgement that directly and adversely affected the City's rights and interests.

Moreover, the Board lacks the authority to defend the integrity of the referendum against plaintiffs' challenge. The Election Code 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.* *See also, Quinn v. Bd. Of Election Comm'rs for Chi. Electoral Bd.*, 2019 Ill. App. (1st) 190189. The Board merely has a nondiscretionary duty to comply with the referendum ballot certification issued to it by the City Clerk pursuant to 65 ICLS 5/8-3-19(e). The propriety of whether the referendum at issue here can appear on the ballot is the sole premise of plaintiffs' declaratory complaint and that relief is directed solely at the City of Chicago. *See e.g.,* C. 20 (prayer for relief seeks a declaration that the Resolution is unconstitutional and preventing its inclusion on the March 19, 2024, primary ballot).

The Board argued, in both its motion to dismiss, motion to strike the motion for judgment on the pleadings and alternative response to that motion, that plaintiffs failed to plead an actual controversy because the only party they chose to name has no interest in the dispute. C. 186-188. This is a critical element of any request for declaratory relief. *Mendez v. City of Chicago*, 2023 IL App (1st) 211513, ¶ 11; *see also*, 735 ILCS 5/2-701(a). The lack of a party with an opposing interest in and of itself should have prompted denial of the motion for judgment on the pleadings and dismissal of the complaint. Plaintiffs' contention in their response brief that they are hard pressed to envision a more actual controversy because of the flurry of court activity in the past few weeks more than misses the mark.

Plaintiffs rely extensively on *Quinn*, 2019 Ill. App. (1st) 190189, for the proposition that the Board is the sole proper defendant. But their reliance on *Quinn* is inapposite.

A close reading of *Quinn* shows that the plaintiffs in that case challenged an administrative decision ***rendered by the Board*** (through an appointed hearing officer) challenging certain referenda petitions. *Quinn*, 2019 IL App (1st) 190189 at ¶ 3-6. In that case, the Board was acting *ex officio* as an electoral board to hear and pass upon objections to the legality of a citizen-initiated referendum petition. That authority is granted to the Board, as an electoral board, in relation only to referendum petitions – not in relation to referenda initiated by municipal resolutions or ordinances – pursuant to 10 ILCS 5/28-4 and 10 ILCS 5/10-8 through 10-10.1. Moreover, the hearing officer's decision in *Quinn* did not address constitutional challenges or validity issues raised by the objectors. *Id.* at ¶ 6. The Board adopted the hearing officer's recommended decision,

including declining to consider the constitutional and validity issues. *Id.* at ¶ 7. A subsequent complaint for writ of *mandamus* directed against the Board raising, among other things, the constitutional and validity questions was later dismissed. *Id.* at ¶ 20. This Court affirmed the dismissal, finding that the Board lacked the authority to perform the action sought in the *mandamus* request. *Id.* at ¶ 45. This Court rejected the “scant allegations” advanced by the plaintiffs in *Quinn* that the *mandamus* request was legally sufficient because of the role the Board plays in the election process. *Id.* at ¶ 45-46. Importantly, the “scant allegations” advanced in *Quinn*, (see *Id.* at ¶ 45 (“the Board of Election and its members were ‘responsible for placing referendums on the ballot for the City of Chicago and for canvassing and certifying the results of the elections,’ . . .”)) are similar to those advanced here. C. 114; 300; and Response Brief at p. 18-19.

As in *Quinn*, the Board here lacks the authority to defend the merits of a referendum it had no role in initiating, drafting or certifying.

C. The Dispute Plaintiffs Purport to Plead is Premature.

The Board also asserted that, even if an actual controversy between two parties with opposing interests was pled (which it was not), the dispute is nevertheless premature under the well-established rule announced in *Fletcher v. City of Paris*, 377 Ill. 89 (1941) and its progeny. *Fletcher* teaches that where, as here, the principal goal of a complaint is to declare invalid an ordinance before it becomes effective, the relief sought is premature. *Id.* at 94-95. This is because “courts have no jurisdiction to enjoin the holding of an election.” *Id.* at 92. The opposite result plaintiffs seek here threatens the integrity of elections:

“The reason is that an election is a political matter with which courts of equity have nothing to do, and that such an attempt to check the free expression of opinion, to forbid

the peaceable assemblage of the people, to obstruct the freedom of elections, if successful, would result in the overthrow of all liberties regulated by law.”

Id. at 93, (quoting *Payne v. Emmerson*, 290 Ill. 490, 495 (1919); accord, *Sachen v. The Ill. State Bd. Of Elections*, 2022 IL. App. (4th) 220470, ¶ 27.

Apparently acknowledging this significant hurdle, plaintiffs purport to draw a distinction in this Court that they did not fully articulate in the trial court.

Plaintiffs claim that their dispute is not premature because their claims fall within the narrow exception to *Fletcher* recognized in *Coalition for Political Honesty v. State Board of Elections*, 65 Ill. 2d 453 (1976) (*Coalition I*). Simply stated, plaintiffs now contend that they pled a challenge to the *eligibility* of the referendum as opposed to a challenge to the *effect* of the referendum. See Response Brief at p. 22-27. But this is not how plaintiffs framed the question in the trial court where plaintiffs expressly represented that they would be adversely impacted by the *effect* of the referendum if it were to remain on the ballot. See, e.g., C. 302-03 (“the Plaintiffs are commercial property owners, voters or otherwise interested parties that are directly tied to commercial properties that will be directly effected [sic] by the imposition of a tax upon property valued at more than \$1M.”); see also, C. 11-13; 61-63, 89.

The balance of plaintiffs’ argument relating to the distinction between effect versus eligibility requires a discussion and advocacy of the ultimate merits of the challenged referendum—subject matter that the Board lacks the authority to substantively address, underscoring the error in denying the City of Chicago’s petition to intervene. While the Board did not, could not and took great pains to avoid defending the merits of the referendum in the trial court, this does not alleviate this Court of its role to review the propriety of the relief awarded. Plaintiffs’ arguments to the contrary notwithstanding,

this Court may (and should) consider whether the trial court's order comports with Illinois law.

II. THE BOARD CANNOT WAIVE ARGUMENTS IT LACKS AUTHORITY TO ASSERT.

Plaintiffs attempt to sidestep a substantive analysis of the merits by claiming that, since the Board is the only party that need be named in the complaint and it failed to raise substantive defenses to the legal arguments advanced in the motion for judgment on the pleadings, the arguments are waived, leaving this Court with no alternative but to affirm the trial court's order.

A. Waiver is a Limitation on the Parties Not the Court.

As a threshold matter, waiver is a limitation on the parties, not the Court. *Galarza v. Direct Auto Ins. Co.*, 2023 IL 129031, ¶ 34. The question presented by the Board's arguments in response to plaintiffs' complaint and response to the motion for judgment on the pleadings plainly articulated the procedural impediments to the relief sought. Plaintiffs' motion for judgment on the pleadings set out the arguments on the substantive question relative to the inclusion of the referendum on the March 19, 2024, primary ballot. This question was further addressed by the City of Chicago in its submissions. There is ample support in the record for this Court to conduct its *de novo* review. *See Foutch v. O'Bryant*, 99 Ill. 2d 389, 390-92 (1984) (party appealing has the burden of providing reviewing court with a record capable of meaningful review).

In addition to the developed record, the Court has the benefit of amici briefs for which leave to file this Court granted. Plaintiffs summarily assert that the arguments made in the *amicus* briefs cannot be considered these issues were not raised by the Board—even though the Board is not empowered to address arguments about the

constitutionality of the referendum or interpretation of 65 ILCS 5/8-3-19. But every case cited on page 31 of Appellees' brief involved an appellate court refusing to address arguments *no* party to the case raised. *Amici* here responded to plaintiffs, and this Court may properly consider those arguments, particularly where the trial court denied the real party in interest the opportunity to raise them. To the extent waiver occurred here—a questionable notion given that the Board was prevented from addressing the arguments at issue—this Court is well within its power to consider *amici*'s arguments in the interests of justice and to ensure a full hearing of the relevant issues. *Carpetland U.S.A., Inc. v. Ill. Dep't of Employment Security*, 201 Ill. 2d 351, 397, 776 N.E.2d 166 (2002) (“[T]he doctrine of waiver may be relaxed ... where the interests of justice so require.”); *cf. also People v. Boston*, 2016 IL App (1st) 133497, ¶ 56 (in criminal case court may review issue forfeited for appeal through plain error doctrine).

B. The Board Could Only Argue the Procedural Deficiencies.

Plaintiffs' dispute implicates evaluation of the decision of the City Council, and it is that body that has a direct interest in defending its own Referendum as well as its inclusion on the primary ballot. The Board tailored its arguments accordingly. Its assertions were rejected by the trial court with no basis for the decision reached. A. 005-027.

Plaintiffs string cite a series of cases for the proposition that each case involved the election authority as a defendant to maintain that the Board could and should have litigated the merits of this dispute. But Plaintiffs ignore the important specifics as to why the election authority was as a defendant in these cases.

For instance, *Coalition I*, 65 Ill. 2d at 461; *Lousin v. St. Bd. of Elections*, 108 Ill. App. 3d 496 (1st Dist. 1982); *Chicago Bar Ass'n v. St. Bd. of Elections*, 137 Ill. 2d 394, 396 (1990) (*CBA I*); *Chicago Bar Ass'n v. Bd. of Elec.*, 161 Ill. 2d 502, 506 (1994) (*CBA II*); *Clark v. Ill. State Bd. of Elections*, 2014 Ill. App. (1st) 141937, ¶ 1; and *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, ¶ 8, were taxpayer suits to enjoin using public funds to hold elections on proposed constitutional amendments. The State Board of Elections was named because it is the body, sitting *ex officio* as the State Officers Electoral Board, which approves signatures on petitions and declares petitions to be valid whereas the City Council referendum at issue in the case at hand was *not* initiated by petition signatures. *See e.g., Coalition I*, 65 Ill. 2d at 463 (observing that state electoral board determines validity and sufficiency of petitions); *Coalition for Political Honesty v. State Bd. of Elections*, 83 Ill.2d 236 (1980) (*Coalition II*) (majority noting consideration of petition by State Board of Elections; dissent noting that the Secretary of State forwarded the petition to the State Board of Elections for determination of its validity and sufficiency). *See also Hooker*, 2016 IL 121077 at ¶ 7 (noting that the State Board of Elections determined a petition received more than the required number of signatures).

The State Board of Elections was named as a defendant in the above cases because the plaintiffs challenged non-ministerial acts of that body. *See e.g., Coalition II*, 83 Ill.2d at 237, 243-45 (petitioners were granted a writ of *mandamus* directing the election authority to certify a proposed constitutional amendment after the election authority sustained objections to the proposal); *Burns v. Municipal Officers Electoral Board of Village of Elk Grove Village*, 2020 IL 125714, ¶¶ 3-5 (affirming the election board's decision to sustain an objection to a proposed referendum); and *Lipinski v.*

Chicago Bd. Of Election Com'rs, 114 Ill.2d 95 (1986) (petitioners sought judicial review of the election authority's decision to exclude a proposed referendum from the ballot). Unlike the Board here, the election authorities in the above cases had a direct interest in the controversy and had authority to comply with the relief granted. The Board may be able to comply with the injunctive relief issued by the trial court, but it is only the City that has an interest in, and which was adversely affected by, the declaratory judgment entered by the trial court.

Plaintiffs also ignore that many of the cases they cite regarding the legality of proposed municipal referenda questions include municipal governments and clerks as defendants. *See e.g., Henyard v. Municipal Officers of Village of Dolton*, 2022 IL App (1st) 220898 (naming village trustees and the county clerk, but not election authorities, as defendants); *Jones v. City of Calumet City*, 2017 IL App (1st) 170236 (naming the municipal corporation and city and county clerks); and *Clarke v. Village of Arlington Heights*, 57 Ill.2d 50 (1974) (citizen and taxpayer action filed against the municipal corporation and its clerk).

Plaintiffs also cite *Johnson v. Ames*, 2016 IL 121563, ¶ 7, where the supreme court directed the Cook County clerk to release election results. These cases demonstrate that the proper parties in cases regarding the legality of proposed municipal referenda are municipal corporations and their clerks. Notably absent from plaintiffs' briefs in the trial court and now on appeal is a single case where an election authority was named as the sole defendant in a suit involving the legality of a referendum initiated by resolution of the municipal corporation where the cause of action did not arise from an action by that election authority.

III. ALLOWING PLAINTIFFS' LITIGATION STRATEGY TO STAND ENCOURAGES STRAW MAN COMPLAINTS.

The Board is not vested with the authority to defend the merits of advisory referenda initiated and certified by the City Council and so lacks the necessary opposing interest to satisfy the elements of a claim for declaratory relief. The Board then is nothing more than a straw man in this litigation. The Board asserted procedural objections to its inclusion in the complaint, which arguments are summarily rejected in the trial court. The only substantive challenge to plaintiffs' complaint was advanced by the unnamed necessary party whose petition to intervene was denied. Having rejected the Board's procedural objections and eliminated the need to address the intervenor's arguments, plaintiffs secured the full and complete relief they sought in what is otherwise a legally deficient complaint. Plaintiffs then contend on appeal that the judgment should be affirmed because all substantive arguments are waived. In other words, the review that was not performed in the trial court also need not be conducted here. Plaintiffs' straw man litigation strategy, which impacts the ability of the Board to perform its statutory election function and compromises the conduct of future elections in general, should not be condoned.

The order granting plaintiffs' motion for judgment on the pleadings 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 5, 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**

Rosa M. Tumialán (ARDC# 6226267)
rtumialan@tresslerllp.com
 Taylor A. Brewer
tbrewer@tresslerllp.com
 TRESSLER, LLP
 233 S. Wacker Drive, 61st Floor
 Chicago, IL 60606
 (312) 627-4191
 (312) 627-1919

CERTIFICATE OF PLAINTIFF/APPELLEE

I certify that this Reply Brief conforms to the requirements of Rules 341(a) and (b). The length of Defendants/Appellants' brief is 14 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**

Rosa M. Tumialán (ARDC# 6226267)
rtumialan@tresslerllp.com
Taylor A. Brewer
tbrewer@tresslerllp.com
TRESSLER, LLP
233 S. Wacker Drive, 61st Floor
Chicago, IL 60606
(312) 627-4191
(312) 627-1919

PROOF OF SERVICE

The undersigned hereby certifies that, on March 5, 2024, she electronically filed the **Reply 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

Rosa M. Tumialán (ARDC# 6226267)

rtumialan@tresslerllp.com

Taylor A. Brewer

tbrewer@tresslerllp.com

TRESSLER, LLP

233 S. Wacker Drive, 61st Floor

Chicago, IL 60606

(312) 627-4191

(312) 627-1919

4870-6270-6347, v. 4

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

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

BUILDING OWNERS AND MANAGERS
ASSOCIATION, et al.,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants,

and

CITY OF CHICAGO,

Intervenor-Nonparty-Appellant.

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

REPLY BRIEF OF INTERVENOR-NONPARTY APPELLANT

MARY B. RICHARDSON-LOWRY
Corporation Counsel
of the City of Chicago
2 N. LaSalle Street, Suite 580
Chicago, Illinois 60602
(312) 744-3564
myriam.kasper@cityofchicago.org
appeals@cityofchicago.org

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

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ARGUMENT

As we explain in our opening brief, plaintiffs’ effort to suppress the vote on the City’s proposed amended real estate transfer tax referendum – and to exclude the City from this litigation in the process – has no basis in law. In response, plaintiffs misrepresent the case law and wholly fail to grapple with, or even to address, key arguments. The judgment should be reversed and the case dismissed.

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

The City is properly before this court on all issues. Denial of intervention was an abuse of discretion, and the City may challenge all aspects of the judgment as a non-party appellant regardless. City Br. 12-18.

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

The denial of leave to intervene was an abuse of discretion. At the outset, we note that the circuit court gave no explanation for denying intervention, suggesting it did not exercise any discretion at all. In that circumstance, a discretionary ruling is not entitled to deference. E.g., Seymour v. Collins, 2015 IL 118432, ¶ 50.

Plaintiffs lead with the argument that the City’s petition to intervene was untimely because it came 35 days after the lawsuit was filed, but rely only on their hyperbole that 35 days is “an eternity in an election case” to

support their argument. Plaintiffs Br. 10. The record reflects that the City did not sit idly by for 35 days while the litigation progressed without it. Plaintiffs filed a motion for judgment on the pleadings soon after they filed their lawsuit, on January 16, 2024, C. 48, and the circuit court promptly ordered an expedited briefing schedule, C. 72. At that point, the City quickly prepared its petition to intervene, and combined motion to dismiss and response to motion for judgment on the pleadings, and filed those on February 9, 2024, on the exact same expedited schedule that the Board and plaintiffs were following. C. 130, 134. That was still 39 days before the election. The timing of the briefing and decision would not have been different had the City filed its petition earlier. Plaintiffs cite no case where intervention was denied as untimely under similar circumstances.

And, on these facts, plaintiffs' assertion that the City deliberately delayed intervention in order to push a final resolution closer to the election, Plaintiffs Br. 11, is absurd. The City did not delay the proceedings at all. The assertion is also hypocritical, when plaintiffs inexplicably waited 59 days after the resolution passed – even longer than an “eternity in an election case” – before filing suit.

On the inadequacy of representation factor, plaintiffs assert that the Board has “vigorously defended the case” by filing “the same two pleadings that the City proposed to file – a motion to dismiss and a response to the motion for judgment on the pleadings.” Plaintiffs' Br. 12. In making this

argument, plaintiffs willfully ignore the substance of those filings, including, most importantly, the Board's repeated assertions about the substantive arguments that it would *not* make. While the Board raised procedural defects and argued that the circuit court lacked subject matter jurisdiction, see C. 186, 237, it expressly declined to make any arguments on the merits of the claims that the referendum was unlawful, explaining that it had no authority to weigh in on those arguments. The arguments that the referendum was unlawful are the heart of plaintiffs' case. It should go without saying that the Board's determination to provide no defense on the merits of plaintiffs' claims meant its representation of the City's interests was woefully inadequate.

We also argued in our opening brief that the City should have been allowed to intervene as a necessary party based on the City's need to protect its interests, which the judgment materially affects. City Br. 13-14. Plaintiffs respond with the extraordinary claim that "[t]he City has no interest that was materially affected by the Circuit Court's Order," and that "the City is not at all impacted by the Circuit Court's Order, either directly or indirectly." Plaintiffs Br. 19. Along the same lines, plaintiffs assert that the City is not even "bound" by the judgment, since it "plays no role" in "preparing ballots, conducting elections, and tallying results." Plaintiffs Br. 13. These arguments are disingenuous. Whether or not the City has not been ordered to take action under the judgment, that judgment undermines

its own legislative prerogatives. It is, after all, the City Council's resolution that put the referendum on the ballot, and the circuit court has now ruled that the referendum is unlawful. That means that as long as the judgment is in place, the City is hamstrung and cannot proceed with the proposed ordinance to amend the transfer tax.¹ The material effect of the judgment on the City is obvious and substantial. The refusal to allow the City to defend its own measure was legal error. An error of law is always an abuse of discretion. E.g., North Spaulding Condominium Association v. Cavanaugh, 2017 IL App (1st) 160870, ¶ 46.

Plaintiffs' attempt to distinguish Lurkins v. Bond County Community Unit No. 2, 2021 IL App (5th) 210292, which reversed a temporary restraining order because necessary parties had not been joined, is unavailing. Plaintiffs state that in Lurkins, the Governor and other state officials were necessary parties only because they were an “additional source of enforcement” of the mask mandate. Plaintiffs Br. 20 (quoting Lurkins, 2021 IL App (5th) 210292, ¶ 9). But that was merely the reason those parties were necessary to “completely resolve the controversy.” Lurkins, 2021 IL App

¹ Plaintiffs also say that although the City has the right to appeal from the denial of its petition to intervene, that issue is now “moot” because the Board filed an appeal; this deprived the circuit court of jurisdiction over the case, so there is no longer any case in which to intervene. Plaintiffs' Br. 13-14. This does not make sense. Under plaintiffs' argument, no party who was denied intervention would ever be able to appeal after final judgment; but case law is clear that the denial of intervention is, indeed, appealable after final judgment. E.g., In re RJ, 2022 IL App (1st) 211542, ¶ 51.

(5th) 210292, ¶ 9. Plaintiffs omit the part of the decision where the court ruled that the State officials were necessary because the defendant was merely carrying out the Governor’s Executive Order and related regulations. Id. It was for that reason that the court ruled that the Governor and other agencies “have an interest in this matter that would be materially affected by a judgment entered in their absence, and their participation is required to protect that interest.” Id. The same is true here.

Plaintiffs also argue that the judgment does not affect the City’s right to have a referendum because the City could just pass another resolution “at any time” and have another referendum about the real estate transfer tax. Plaintiffs’ Br. 20. But the City is entitled to defend the validity of *this* referendum. The City’s authority to pass a different resolution does not nullify the harm caused by a circuit court judgment that blocks the referendum that the City already submitted for this ballot. The City’s legislative process has been thwarted and the voters’ ability to approve the implementation of a vital City policy to combat homelessness has been, at a minimum, substantially delayed.

Finally, plaintiffs assert that the Board is the “only” necessary defendant, Plaintiffs Br. 22, attempting to analogize to cases involving petitions to amend the constitution and stating those were brought only against the election agency, id. at 20-21 (citing Hooker v. Illinois State Board of Elections, 2016 IL 121077; Chicago Bar Association v. Illinois State Board

of Elections, 161 Ill. 2d 502 (1994); Chicago Bar Association v. State Board of Elections, 137 Ill. 2d 394 (1990); Coalition for Political Honesty v. State Board of Elections, 83 Ill. 2d 236 (1980) (“Coalition II”); Coalition for Political Honesty v. State Board of Elections, 65 Ill. 2d 453 (1976) (“Coalition I”); Quinn v. Board of Election Commissioners of the City of Chicago, 2019 IL App (1st) 190189; Clark v. Illinois State Board of Elections, 2014 IL App (1st) 141937; Lousin v. State Board of Elections, 108 Ill. App. 3d 496 (1st Dist. 1982)). None of these cases suggests that the City was not a necessary party in this case. On the contrary, in every single one of these cases, the proponent of the petition was either permitted to intervene as a defendant or was a plaintiff – those entities were never kept from participating in the case. None of these cases, therefore, can support the proposition that such an entity may be left out of litigation challenging its proposed referendum.²

B. The City Has Non-Party Standing To Challenge The Judgment.

Even apart from intervention, the City has standing to appeal all aspects of the judgment as a non-party. City Br. 16-18. Plaintiffs assert that the City does not satisfy the criteria for non-party standing, again stating that “the City’s legal rights are completely unaffected by this ruling” because

² Indeed, in cases involving objections to citizen petitions, the objector must serve the proponent of the petition. 10 ILCS 5/10-8. Plainly, the purpose of that requirement is to give the proponent an opportunity to defend the petition. The City was denied the opportunity to defend its referendum here.

all the judgment does is order the votes on the referendum not to be counted, and the City does not count votes anyway. Plaintiffs Br. 16. This argument is no more persuasive in the context of non-party standing. The City is required to seek a referendum before it can move forward with its amended real estate transfer tax. The judgment slams the brakes on the City's ability to do so. The City is profoundly affected by the judgment.

Plaintiffs' cases do not help them. In People v. Bluett, 166 Ill. App. 3d 593 (2d Dist. 1988), the court ruled that the Secretary of State lacked non-party standing to appeal from a judgment directing it to issue a judicial driving permit to the defendant, where the Secretary could point only to its general "administrative and ministerial responsibilities relating to the Illinois Vehicle Code" to support standing as a non-party. Id. at 598-99. The City's legislative interest here extends well beyond any administrative and ministerial responsibilities. Hurlburt v. Brewer, 386 Ill. App. 3d 1096 (4th Dist. 2008), which plaintiffs cite for the proposition "that exceptions to when a non-party can seek relief is [sic] narrow under Section 2-1401," Plaintiffs Br. 15, undermines plaintiffs' position. The court there ruled that an insurance company had non-party standing to seek post-judgment relief where the judgment increased the company's potential liability to plaintiffs by \$400,000. Id. at 1103-04. The City's interest here is just as direct as the insurance company's in Hurlburt; again, it was the City's resolution that put the referendum on the ballot, and the circuit court's order stopped that

referendum in its tracks.³

Because the City has non-party standing, this court can decide all questions of law presented, including the grant of judgment on the pleadings, without remanding for further proceedings, and should do so. City Br. 17-18, 33-34 (citing Citicorp Savings of Illinois v. First Chicago Trust Co., 269 Ill. App. 3d 293 (1st Dist. 1995); Ill. Sup. Ct. R. 366). Plaintiffs assert that in Citicorp, this court relied on Rule 366 only “as a way to additionally affirm the ruling of the trial court,” and not “to grant a motion to dismiss that has been denied, or alternatively, overturn a dispositive motion (such as the motion for judgment on the pleadings in this case), based on arguments an intervenor was not given leave to make at the circuit court level.” Plaintiffs Br. 16-17. This argument is flawed in several ways. To start, Rule 366 authorizes this court to do more than affirm a judgment on an additional ground – it broadly authorizes this court to “enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief . . . that the case may require.” Ill. Sup.

³ Plaintiffs assert that a claimed loss of tax revenue would not be enough for non-party standing. Plaintiffs’ Br. 15 (citing Lake County Forest Preserve District v. First National Bank of Waukegan, 213 Ill. App. 3d 309, 314 (2d Dist. 1991); City of Chicago v. ProLogis, 383 Ill. App. 3d 160, 168-72 (1st Dist. 2008)). This argument is a red herring. The City does not assert non-party standing based on lost revenue; rather, that standing is based on the direct and material impact of the judgment to its legislative process. Plaintiffs never come to grips with this point.

Ct. R. 366(a)(5). The court in Citicorp invoked this rule in the interest of judicial economy to address legal issues that were fully briefed. 269 Ill. App. 3d at 299-300. We seek the same treatment here. Plaintiffs, the City, and the Board are all before this court and all legal issues are fully briefed. The court is well within its authority to decide those issues under Rule 366.

Moreover, if this court concludes, in reviewing the arguments on the motion for judgment on the pleadings, that plaintiffs' claims have no merit, it should order the complaint dismissed. After all, a motion for judgment on the pleadings "tests the sufficiency of the pleading as a matter of law," e.g., Beyer v. Board of Education of City of Chicago, 2019 IL App (1st) 191152, ¶ 31 (internal quotation marks omitted), and review is de novo, e.g., Pekin Ins. Co. v. Wilson, 237 Ill. 2d 446, 455 (2010). When this court reverses judgment for a plaintiff and it is clear, based on undisputed facts, that defendants are entitled to judgment as a matter of law, the appellate court may enter judgment pursuant to Rule 366. E.g., James v. Erlinder Manufacturing Co., 80 Ill. App. 3d 4, 9 (1st Dist. 1979). Thus, if this court concludes that plaintiffs' complaint fails as a matter of law, Rule 366's broad grant of authority amply supports the relief of dismissal.

II. THE CIRCUIT COURT LACKED AUTHORITY TO INTERFERE WITH THE LEGISLATIVE PROCESS AND TO DECIDE THE CASE WITHOUT A NECESSARY PARTY.

The circuit court lacked authority to halt the legislative process. City Br. 18-20. Fletcher v. City of Paris, 377 Ill. 2d 89 (1941), straightforwardly provides that courts may not “interfere with or prevent the holding of an election which is one step in the legislative process for the enactment or bringing into existence a city ordinance.” Id. at 96. Subsequent cases are in accord. E.g., Slack v. City of Salem, 31 Ill. 2d 174, 177-78 (1964); Sachen v. Illinois State Board of Elections, 2022 IL App (4th) 220470, ¶ 27.

In a separate line of cases, the supreme court has considered challenges to efforts to amend the Illinois Constitution via petition pursuant to Ill. Const. art. XIV, § 3. E.g., Coalition I, 65 Ill. 2d at 456. The court in Coalition I distinguished Fletcher and its progeny by explaining that Coalition I was “not concerned with an election or a legislative referendum, but rather, with the question whether proposed amendments to our constitution satisfy the Constitution’s own requirements for its amendment.” 65 Ill. 2d at 460; accord Sachen, 2022 IL App (4th) 220470, ¶ 30 (explaining that there is an “exception” to the rule in Fletcher and Slack for cases where the question is whether “the constitution’s own requirements for its amendment were . . . properly followed”). This case plainly falls outside that exception because it does concern a legislative referendum, and not a petition to amend the constitution.

Tellingly, all of the cases on which plaintiffs principally rely, Plaintiffs Br. 26, concern petitions to amend the constitution. See Chicago Bar Association, 161 Ill. 2d at 504; Chicago Bar Association, 137 Ill. 2d at 395; Coalition I, 65 Ill. 2d at 456; Coalition II, 83 Ill. 2d at 239; Hooker, 2016 IL 121077, ¶ 1; Clark, 2014 IL App (1st) 141937, ¶ 1; Lousin, 108 Ill. App. 3d at 497. Nevertheless, plaintiffs attempt to force this case into the Coalition I line of cases by arguing that the Fletcher line deals with challenges to the “effect” of an enactment, while the Coalition I line deals with questions about whether a “referendum question satisfies the established eligibility rules for placing referendum questions on the ballot.” Plaintiffs Br. 23 (emphasis omitted).

But plaintiffs’ gloss on these cases is not how the Illinois Supreme Court sees it. In Coalition I, the supreme court held that Fletcher controls challenges to “a legislative referendum,” while Coalition I applies where the issue is whether a proposed constitutional amendment comports with “the Constitution’s own requirements for its amendment.” 65 Ill. 2d at 460. And although plaintiffs agree that Sachen sets forth “an informative discussion of [the] distinction between the two lines of cases,” Plaintiffs Br. 24, they ignore that Sachen itself explained that the “important distinction” was that Coalition I dealt with the constitution’s amendment requirements. 2022 IL App (4th) 220470, ¶ 30. This case involves a legislative referendum, so the Fletcher line controls.

The supreme court's distinction makes sense given the fundamental differences between legislative referenda and the petition process to amend the constitution. Since the petition cases involve efforts to amend the constitution pursuant to a process that does not involve the General Assembly, see Ill. Const. art. XIV, § 3, the process is not "legislative." Indeed, Coalition I distinguished these constitutional amendment cases from Fletcher on the ground that they do not involve "a *legislative* referendum." 65 Ill. 2d at 460 (emphasis added). For this reason, the principle in Fletcher that courts cannot enjoin a "step in the legislative process," 377 Ill. at 96, does not apply to the petition cases. Here, by contrast, City Council passed a resolution to put the referendum on the ballot, and any eventual amendment to the City's transfer tax will need to be enacted by City Council in a subsequent vote. So the process here is thoroughly "legislative," and Fletcher plainly controls plaintiffs' effort to enjoin it.

Relatedly, in the petition cases, approval at the general election was the only vote needed to change the law. See Ill. Const. art. XIV, § 3 (providing that "the proposed amendment shall . . . become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election"). Here, by contrast, voter approval of the City's referendum is just one part of a larger process that involves multiple steps. City Council had to vote to approve putting the referendum on the ballot, and if the referendum passes, City Council will need to vote to

enact an ordinance amending the transfer tax. So the referendum vote in this case is an intermediate step in the process.

Plaintiffs also rely on Henyard v. Municipal Officers of Village of Dolton, 2022 IL App (1st) 220898, but Henyard is similar to the cases under Ill. Const. art. XIV, § 3, in that the referenda at issue there sought changes that would have taken effect immediately upon voter approval. Id. ¶¶ 4-5. The village board of trustees in that case approved two referenda. Id. ¶ 1. One would have established a procedure to recall the mayor, and the other would have recalled the incumbent mayor. Id. So, unlike here, no further legislative action after the referenda vote was necessary. Moreover, the parties defending the referenda in Henyard did not press an argument that the court lacked authority to enjoin an election under Fletcher. See id. ¶ 18 (summarizing appellants' arguments). So Henyard is inapposite, and Fletcher controls.

For similar reasons, Quinn v. Board of Election Commissioners, 2019 IL App (1st) 190189, does not advance the argument that a court may enjoin a referendum that is part of a legislative process simply because the challenge is to eligibility requirements. Plaintiffs' Br. 26-27. In Quinn, the referendum was not part of a legislative process. Rather, former Governor Quinn along with an organization and several other individuals, had filed a petition to place on the ballot a referendum seeking mayoral term limits. 2019 IL App (1st) 190189, ¶ 3. Thus, regardless of whether the objectors

challenged the eligibility requirements for placing the referendum on the ballot, nothing about the court's resolution of the case threatened to bring any legislative process to a halt, as it does here. Likewise, Johnson v. Ames, 2016 IL 121563, involved a referendum petition introduced by an individual, id. ¶ 3, and was not part of a legislative process. See also Burns v. Municipal Officers Electoral Board of the Village of Elk Grove Village, 2020 IL 125714, ¶ 3 (individual, not legislative body, sought to include term limits referendum on ballot); Lipinski v. Chicago Board of Election Commissioners, 114 Ill. 2d 95, 97 (1986) (individuals, not legislative body, proposed referendum to shift from partisan to nonpartisan elections).

Plaintiffs cite two cases that do involve referenda placed on the ballot as part of a legislative process. But those cases involve challenges brought *after* the legislative process, including the referendum, was complete. In Jones v. City of Calumet City, 2017 IL App (1st) 170236, for instance, the plaintiff sought to enjoin implementation of the term limit that had already been approved by referendum, id. ¶ 1; the court was not asked to, and did not, interfere with the legislative process before it was complete. Similarly, in Clarke v. Village of Arlington Heights, 57 Ill. 2d 50 (1974), a citizen and taxpayer challenged a municipal referendum after it had passed. Id. at 51. None of these cases, therefore, stands for the proposition that, simply because a party challenges a referendum on “eligibility” grounds, a court can enjoin a referendum that is a necessary part of a legislative process. Plaintiffs Br. 27.

The second way in which the circuit court acted outside its authority is by entering judgment without the City in the case. City Br. 20-22. A circuit court lacks authority to enter orders without jurisdiction over a necessary party. E.g., Lurkins, 2021 IL App (5th) 210292, ¶ 9. Plaintiffs challenge the City's status as a necessary party, but their arguments are unavailing for all the reasons we have stated. And plaintiffs do not dispute that if the City was a necessary party, the circuit court's refusal to join the City renders its orders and judgment void.

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

Plaintiffs' claims also fail on the merits, as we now explain.

A. The Referendum Complies With The Municipal Code.

The Municipal Code does not preempt the City's home rule authority to amend its transfer tax by way of the referendum at issue in this case. Under the Code, "no home rule municipality shall impose an increase of the rate of a current real estate transfer tax without prior approval by referendum." 65 ILCS 5/8-3-19(d). Further, "[a]n existing ordinance or resolution imposing a real estate transfer tax may be amended without approval by referendum if the amendment does not increase the rate of the tax or add transactions on which the tax is imposed." Id. The Code preempts home rule units from imposing transfer taxes except "as authorized by this Section." 65 ILCS 5/8-3-19(g). The City's effort to amend its transfer tax pursuant to the referendum at issue here is "authorized by" section 8-3-19, because the

statute does not prohibit tax decreases via referendum. Accordingly, the City's home rule authority to pursue that course of action is not preempted.

We said all this in our opening brief, City Br. 22-24, but plaintiffs respond only to the arguments in the amicus briefs supporting reversal, Plaintiffs Br. 32-36. In any event, plaintiffs' arguments are meritless. To begin, they mischaracterize section 8-3-19 by asserting that it "permits" three municipal acts: imposing a new transfer tax via referendum; increasing an existing transfer tax via referendum; and changing an existing tax – in a way that does not involve a rate increase – without a referendum. Plaintiffs Br. 32. In fact, section 8-3-19 *prohibits* two things: "impos[ing] a new real estate transfer tax," and "increas[ing] . . . the rate of a current real estate transfer tax" without a referendum vote. Nothing else is prohibited. The City is not attempting either to enact or increase a transfer tax without a referendum, and so its authority is not preempted.

Section 8-3-19 also states that a municipality "may" change an existing transfer tax without a referendum as long as the change does not increase the tax rate. 65 ILCS 5/8-3-19(d). Plaintiffs rely on this language to argue that the City may not decrease its tax with a referendum. Plaintiffs Br. 33. That argument is irreconcilable with settled home rule principles. Any statute purporting to preempt home rule authority must include language specifying "to what extent it is a limitation on or denial of the power or function of a home rule unit." 5 ILCS 70/7. Absent language specifically

preempting the home rule power at issue, a statute does not preempt that power. Section 8-3-19 does not expressly prohibit putting a tax decrease to a referendum. The statute, therefore, does not preempt the City's authority to advance the referendum at issue here.

Lintzeris v. City of Chicago, 2023 IL 127547, is especially instructive because it rejected a preemption claim similar to plaintiffs'. In Lintzeris, the complaint alleged that an Illinois Vehicle Code provision authorizing municipalities to charge fees associated with vehicle impoundments preempted other kinds of charges, such as penalties. Id. ¶ 31. The Vehicle Code provision in question states that a municipality "may" charge fees, but it does not contain "express language of prohibition or exclusion . . . stating that only fees may be charged." Id. ¶¶ 33-34. Absent language prohibiting home rule units from charging penalties, the City's authority to charge penalties was not preempted. Id. ¶ 35.

Like the Lintzeris plaintiffs, plaintiffs here attempt to base preemption on statutory language that is permissive, rather than prohibitive. Specifically, plaintiffs contend that section 8-3-19's language that a municipality "may" decrease a transfer tax without a referendum means that a decrease pursuant to a referendum vote is prohibited. Plaintiffs Br. 33. But Litzeris forecloses that argument. It makes clear that home rule authority cannot be preempted absent language expressly prohibiting the municipal action in question. 2023 IL 127547, ¶ 34. Plaintiffs cannot point

to language expressly prohibiting transfer tax decreases via referendum, so their preemption argument fails.

Along similar lines, plaintiffs' argument that any ambiguity in section 8-3-19 weighs in favor of preemption, Plaintiffs Br. 35-36, flatly contradicts the requirement that a statute purporting to preempt home rule do so expressly. And the "[p]owers and functions of home rule units shall be construed liberally." Ill. Const. art. VII, § 6(m). So preemption cannot be based on an ambiguous statute. Section 8-3-19 is not ambiguous, but if it were, that would only weigh in favor of upholding the City's home rule authority here.

Finally, we explain in our opening brief that plaintiffs' logrolling argument fails for many reasons: the Illinois Constitution's single subject rule does not apply to municipal ordinances; section 8-3-19 does not contain a prohibition against municipal logrolling; and the referendum at issue here does not engage in logrolling. City Br. 24-28. Plaintiffs simply repeat the arguments they made below as if we had not already addressed them. Plaintiffs Br. 34-35. And none of the cases plaintiffs cite supports their argument that the referendum here constitutes unlawful logrolling, including Johnson v. Edgar, 176 Ill. 2d 499 (1997), Plaintiffs Br. 35, involves a municipal enactment, or describes a measure similar to the referendum here. Nor do votes on prior resolutions, by different legislators, suggest that the referendum at issue now deals with more than one subject. Plaintiffs Br. 33-

34. That determination can be made only by looking at the language of the present referendum. And as we have explained, it does not concern more than one subject.

Accordingly, plaintiffs' argument that a referendum cannot combine a proposal to decrease the tax rate for some transactions with a proposal to increase others fails.

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

Plaintiffs' claim that the referendum violates the Free and Equal Elections Clause in the Illinois Constitution fares no better. As the Illinois Supreme Court has made clear time and again, "it is only separate and *unrelated* questions that cannot be combined in a single proposition." Coalition II, 83 Ill. 2d at 254 (emphasis added) (citing Village of Deerfield v. Rapka, 54 Ill. 2d 217, 223-24 (1973); Schoon v. Board of Education, 11 Ill. 2d 91 (1957); Roll v. Carrollton Community Unit School District No. 1, 3 Ill. 2d 148, 151-52 (1954); Routt v. Barrett, 396 Ill. 322 (1947)). Plaintiffs barely even pay lip service to the controlling principle that only the combination of *unrelated* questions runs afoul of the Free and Equal Clause. They do not – and cannot – explain how the tax decrease and tax increase components of the proposed graduated tax scheme for real property transfer taxes can possibly be considered "unrelated."

Here, as in Coalition II and Village of Deerfield, the components of the City's referendum are closely related and geared toward a common objective

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

Plaintiffs argue that this referendum is like the one in Clark, where this court held that a referendum violated the Free and Equal Elections Clause because “[b]oth the term limits and veto provisions could easily stand as independent propositions without affecting the rest of the proposed changes.” Plaintiffs Br. 37 (quoting Clark, 2014 IL App (1st) 141937, ¶ 30). Not so. Here, the decrease and increases in the tax rate are not independent propositions – they are interdependent. The City obviously cannot accomplish a graduated taxation scheme unless the tax rates are different at different price points. The referendum must, therefore, communicate the tax rates that must apply at all price points for the sliding scale to work. And, of course, City Council is only proposing to decrease the portion of the property priced below one million in tandem with the increases at higher levels. Both pieces are essential; and if both are not placed on the same referendum, that could only lead to confusion about the single, comprehensive scheme being

proposed.

Chicago voters are entitled to a referendum that clearly communicates the comprehensive graduated tax rate being proposed. Nothing in the Free and Equal Elections Clause prohibits presenting this option to the electorate for approval.

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

Last, plaintiffs argue that “a municipal referendum must be self-executing, meaning that the question must ‘stand on its own’ without ‘leaving gaps to be filled by the legislature or municipal body.’” Plaintiffs Br. 39 (quoting Lipinski, 114 Ill. 2d at 99). They argue that City Council’s resolution “is vague and ambiguous leaving many questions unanswered that will require additional action by the City Council to implement.” Id. at 41. They also argue that the resolution’s stated purpose to generate revenue to be used for “the purpose of addressing homelessness” is too vague, id. at 40, and complain that the referendum does not include the sort of details about how City Council will manage and allocate the funds that can be found in a draft ordinance that contains a proposal for implementing the fund, id. at 41. This line of argument collapses because plaintiffs the referendum is not required to be self-executing. Moreover, the referendum does clearly communicate all relevant information about the sliding scale tax the City is proposing.

Plaintiffs rely on the supreme court’s decisions in Lipinski and Leck v.

Michaelson, 111 Ill. 2d 523 (1986), as well as this court’s decision in Henyard. As we explain in our opening brief – and which plaintiffs completely ignore – this line of cases has nothing to do with the requirements for a referendum under section 8-3-19 of the Illinois Municipal Code, or any similar law. All of those cases concern article VII, section 6(f) of the Illinois Constitution; that provision gives home rule units the authority to provide for the manner of selection and terms of office of its officers, which must be approved by “binding referenda,” Lipinski, 114 Ill. 2d at 105, that “must be able to ‘stand on its own terms,’” id. at 99 (quoting Leck, 111 Ill. 2d at 530).

The City has not proposed a referendum under article VII, section 6(f). The proposed referendum does not concern the manner of selection and terms of office of its officers and it is not “binding” in the way that Article VII, section 6(f) referenda are. The referendum is pursuant to section 8-3-19 of the Illinois Municipal Code, and nothing in that statute requires a referendum to be “self-executing.” Nor does it require that a referendum to increase the real property transfer tax declare exactly what the increased tax revenue will be used for, or every detail about how to implement those expenditures.

Nor is this case anything like the two referenda at issue in Henyard which attempted to enact procedures for removing a mayor midterm, and to accomplish removal of the current mayor in the same election. 2022 IL App (1st) 220898, ¶ 1. This court held that the combination of the two questions

“resulted in an enormously convoluted, confusing, and ambiguous question.”

Id. ¶ 50. The questions here are not comparable. In Henyard, the second question would not even be relevant if the voters’ answer to the first did not adopt the removal procedure. The referendum at issue here, by contrast, presents a single question with three component parts that, taken together, leave no gaps that create uncertainty about the nature of the tax amendment the voters are being asked to approve. As we explain above and in our opening brief, all of these components are necessary to clearly communicate the nature of the amended tax the voters are being asked to approve. Nothing more, and nothing less, was required under section 8-3-19 or any provision of the Illinois Constitution.

IV. PLAINTIFFS ARE NOT ENTITLED TO AN INJUNCTION.

As we also explain in our opening brief, City Br. 32-33, plaintiffs have not satisfied the requirements for injunctive relief. In particular, a party seeking an injunction must show, among other things, that they have “a clear and ascertainable right in need of protection,” and “that he or she will suffer irreparable harm if the injunction is not granted.” Kopchar v. City of Chicago, 395 Ill. App. 3d 762, 772 (1st Dist. 2009). Plaintiffs do not even attempt to explain how they satisfy either requirement. The injunction was entirely unwarranted.

CONCLUSION

For the foregoing reasons, the circuit court's judgment should be reversed.

Respectfully submitted,

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

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

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents, points, and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 5,935 words.

/s/ Myriam Zreczny Kasper
MYRIAM ZRECZNY KASPER, Attorney

CERTIFICATE OF FILING/SERVICE

I certify under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and that the foregoing brief was electronically filed with the office of the Clerk of the Court using the File and Serve Illinois system and served via email, to the persons named below at the email addresses listed, on March 5, 2024.

Persons served:

Ed Mullen (ed_mullen@me.com)

Michael Del Galdo (delgaldo@dlglawgroup.com)

Chicago Docket (chicagodocket@tresslerllp.com)

Cynthia Grandfield (grandfield@dlglawgroup.com)

Michael Kasper (mjkasper60@mac.com)

Charles LeMoine (clemoine@tresslerllp.com)

Rosa Tumialán (rtumialan@tresslerllp.com)

Molly Thompson (mthompson@tresslerllp.com)

Taylor Brewer (tbrewer@tresslerllp.com)

Daniel Schneider (dschneider@legalactionchicago.org)

/s/ Myriam Zreczny Kasper
MYRIAM ZRECZNY KASPER, Attorney

2024 IL App (1st) 240417

Nos. 1-24-0417 & 1-24-0431 (consol.)

Opinion filed March 6, 2024

FIFTH DIVISION

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|--------------------|
| BUILDING OWNERS AND MANAGERS |) | Appeal from the |
| ASSOCIATION, <i>et al.</i> , |) | Circuit Court of |
| Plaintiffs-Appellees, |) | Cook County. |
| |) | |
| v. |) | No. 24 COEL 1 |
| |) | |
| COMMISSION OF THE BOARD OF |) | Honorable |
| ELECTIONS of the CITY OF CHICAGO, <i>et al.</i> , |) | Kathleen M. Burke, |
| Defendants-Appellants, |) | Judge, presiding. |
| |) | |
| and |) | |
| |) | |
| CITY OF CHICAGO, |) | |
| |) | |
| Intervenor/Nonparty-Appellant. |) | |
| |) | |

PRESIDING JUSTICE MITCHELL delivered the judgment of the court, with opinion.
Justice Lyle and Justice Navarro concurred in the judgment and opinion.

OPINION

¶ 1 The City of Chicago and Defendants Board of Election Commissioners for the City of Chicago appeal a final order of the circuit court in favor of the Plaintiffs, a collection of local business and real estate organizations. At issue is whether the circuit court erred by enjoining the Board of Elections from counting and reporting votes related to a referendum on the March 19, 2024, general primary ballot in Chicago commonly known as “Bring Chicago Home.” The referendum relates to a legislative effort to create a graduated transfer tax on real estate in Chicago where state statute requires voter approval whenever the City intends to raise the rate of taxation

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or impose a new tax. Because we conclude that the circuit court erred, we vacate the judgment of the circuit court and remand with instructions to dismiss the complaint for want of jurisdiction.

¶ 2

I. BACKGROUND

¶ 3 On November 7, 2023, the Chicago City Council passed a resolution directing the Board of Election Commissioners to place the following referendum question on the March 19, 2024, primary ballot:

“Shall the City of Chicago impose:

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

The current rate of the real estate transfer tax is \$3.75 per \$500 of the entire transfer price, or fraction thereof, and the revenue is used for general corporate purposes. The revenue from the increase (the difference between revenue generated under the increased rate and the current rate) is to be used for the purpose of addressing homelessness, including providing permanent affordable housing and the services necessary to obtain and maintain permanent housing in the City of Chicago.” Chi. City Clerk J. Proc. 5841 (November 7, 2023).

¶ 4 The referendum presents voters with the option to select a checkbox for “Yes” or “No.”

¶ 5 The Illinois Municipal Code requires that home rule municipalities (like the City) obtain voter approval through a referendum before they can impose or increase a real estate transfer tax.

Nos. 1-24-0417 & 1-24-0431 (consol.)

65 ILCS 5/8-3-19(d) (West 2022). If a majority of electors voting on the referendum approve it, the municipality may impose or increase the transfer tax. *Id.* § 5/8-3-19(e).

¶ 6 On January 5, 2024, Plaintiffs filed a complaint for declaratory judgment and injunctive relief in the circuit court of Cook County against Defendants Board of Election Commissioners. The complaint alleged that the referendum violated both the Illinois Municipal Code and Illinois Constitution and sought to enjoin the Board from certifying or including the referendum on the March 19 primary election ballot.

¶ 7 On January 16, Plaintiffs moved for judgment on the pleadings. On February 9, Defendants filed a response or alternatively a motion to strike Plaintiffs' motion for judgment on the pleadings. Defendants also filed their own motion to dismiss. On the same day, the City filed a petition to intervene in the case, as well as its own motion to dismiss and response to the motion for judgment on the pleadings. After briefing and argument, the circuit court denied Defendants' motion to dismiss and granted Plaintiffs' motion for judgment on the pleadings in an oral ruling on February 23. The circuit court also denied the City's motion to intervene. The circuit court enjoined the Board from counting any votes cast on the referendum. The City moved to stay the enforcement of the judgment, which the circuit court denied.

¶ 8 The City filed a timely notice of appeal (No. 1-24-0417). Ill S. Ct. R. 303 (eff. July 1, 2017). Defendants Board of Elections also filed a timely notice of appeal (No. 1-24-0431). *Id.* We consolidated the appeals.

Nos. 1-24-0417 & 1-24-0431 (consol.)

¶ 9

II. ANALYSIS

¶ 10 The City and Defendants Board of Elections raise a raft of issues with the circuit court's order. For reasons that we explain more fully below, we are treating the City as a party to this appeal and have considered its arguments along with the arguments raised by every other party. Like the parties, we are left guessing as to the bases for the circuit court's ruling because the lower court gave no reasons for its ruling. Rather, the circuit court read the parties' briefing *verbatim* in open court and then made its oral ruling: "I am going to grant their motion for judgment on the pleadings and grant the relief requested in the Complaint." Three days later, the circuit court issued a written order that stated, "For the reasons stated in open court and on the record, Plaintiffs' Motion for Judgment on the Pleadings is Granted."

¶ 11 The issues related to the referendum are purely legal and were decided on a motion for judgment on the pleadings. 735 ILCS 5/2-615 (West 2022). We are in as good a position as the circuit court to consider these questions, and our review is *de novo* without any deference to the judgment below. *Hooker v. Illinois State Board of Elections*, 2016 IL 121077, ¶ 21.¹

¶ 12

A.

¶ 13 Plaintiffs' chief argument is that the referendum as framed violates the Municipal Code because it proposes to increase the real estate transfer tax on high dollar transactions and to

¹ We granted leave for four *amicus curiae* briefs: the End Homelessness brief, filed by a coalition of 18 Chicago-based individuals and entities in support of Defendants; the Chicago Community and Public Interest Organizations and Community Leaders brief, filed by a collection of 141 Chicago-based community and public interest organizations and community leaders, in support of Defendants; the Illinois Policy brief, filed by Illinois Policy, a non-profit public policy organization, in support of Plaintiffs; and the Illinois Chamber of Commerce brief, filed by the Illinois Chamber of Commerce on behalf of itself and 11 business associations in the Chicago area in support of Plaintiffs.

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decrease the transfer tax on lower dollar transactions. Again, the Municipal Code requires that a home rule municipality like the City first obtain approval by referendum before raising the transfer tax:

“(d) Except as provided in subsection (i), no home rule municipality shall impose a new real estate transfer tax after the effective date of this amendatory Act of 1996 without prior approval by referendum. Except as provided in subsection (i), no home rule municipality shall impose an increase of the rate of a current real estate transfer tax without prior approval by referendum. A home rule municipality may impose a new real estate transfer tax or may increase an existing real estate transfer tax with prior referendum approval. The referendum shall be conducted as provided in subsection (e). An existing ordinance or resolution imposing a real estate transfer tax may be amended without approval by referendum if the amendment does not increase the rate of the tax or add transactions on which the tax is imposed.” 65 ILCS 5/8-3-19(d).

Plaintiffs contend that this provision authorizes only the imposition of a new transfer tax or increase in the rate of taxation with approval by referendum, and that any other change (such as a tax decrease) must be accomplished without prior approval by referendum.

¶ 14 Illinois courts, however, have declined to exercise jurisdiction over challenges to referenda that are part of the legislative process. It is well settled that courts cannot “enjoin the holding of an election” on such a referendum. *Fletcher v. City of Paris*, 377 Ill. 89, 92 (1941). In *Fletcher*, a group of taxpayers challenged the validity of a proposed municipal ordinance that was set for referendum vote. *Id.* Under the relevant state law, a referendum was among the “fundamental requirements for the enactment of such an ordinance.” *Id.* at 95. Our supreme court described the

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challenge as “premature” and affirmed the lower court decision declining to exercise jurisdiction over the challenge:

“That the courts cannot interfere with the exercise of these legislative functions is too well settled to now be questioned. The courts have no more right to interfere with or prevent the holding of an election which is one step in the legislative process for the enactment or bringing into existence a city ordinance, than they would have to enjoin the city council from adopting the ordinance in the first instance.” *Id.* at 96.

¶ 15 This rule stems from two bedrock principles. *First*, Illinois’s constitutional system of government is one of separation of powers. In it “[t]he judiciary has no supervision over the legislative branch of government.” *Id.* Therefore, “[t]he courts can neither dictate nor enjoin the passage of legislation.” *Id.* The holding of an election for the purpose of passing a referendum to empower a municipality to adopt an ordinance is a step in the legislative process of the enactment of that ordinance. Courts do not, and cannot, interfere with the legislative process.

¶ 16 *Second*, we do not issue advisory opinions. Courts are empowered to rule on the validity of legislative enactments only after they have been enacted. “[U]ntil the legislative process has been concluded, there is no controversy that is ripe for a declaratory judgment.” *Slack v. City of Salem*, 31 Ill. 2d 174, 178 (1964) (Schaefer, J.). In *Slack*, our supreme court reiterated the rule from *Fletcher* against enjoining referendum elections and offered this additional rationale beyond separation of powers: whether a bill or referendum actually passes and becomes law is purely speculative and the “issues upon which opinion of this court is sought may never progress beyond the realm of the hypothetical.” *Id.*

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¶ 17 Nor can it be said that the holdings of *Fletcher* and *Slack* are outdated or somehow no longer controlling. Illinois courts have repeatedly reaffirmed *Fletcher* in the years since it was decided. See, e.g., *Coalition for Political Honesty v. State Board of Elections (Coalition I)*, 65 Ill. 2d 453, 460 (1976) (distinguishing the initiative petition before the court from the referendum that was a step in the legislative process in *Fletcher*); *Chicago Bar Ass’n v. Illinois State Board of Elections (CBA II)*, 161 Ill. 2d 502 (1994) (Harrison, J. dissenting) (acknowledging the continued validity of *Fletcher*). As recently as 2022, the Illinois Appellate Court favorably cited *Fletcher*. *Sachen v. Illinois State Board of Elections*, 2022 IL App (4th) 220470, ¶ 32 (“[The] proposed action would seek judicial interference with a legislative process that is constitutionally authorized. Such interference is improper as expressed in *Fletcher* ***.”). Plaintiffs assert that this line of authority is limited to considering the “effects” of referenda. Not so. The core holdings of *Fletcher* and *Slack* express a basic principle of judicial restraint and a refusal to interfere with a step in the legislative process.

¶ 18 Plaintiffs further argue that the Illinois Supreme Court has recognized an exception to the rule against enjoining a referendum election where the challenge is based on noncompliance with the eligibility requirements for placing referendum questions on the ballot. However, no Illinois court has ever sanctioned a challenge to a referendum that was a step in the legislative process. The *Coalition I* line of cases, on which Plaintiffs heavily rely, involves a determination of whether “proposed amendments to our constitution satisfy the Constitution’s own requirements for its amendment.” *Coalition I*, 65 Ill. 2d at 460; see also *Coalition for Political Honesty v. State Board of Elections (Coalition II)*, 83 Ill. 2d 236 (1980) (hearing a challenge to a petition to amend the Illinois Constitution on the grounds that the referendum seeking to amend the constitution did not

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comport with constitutional procedures for amending the constitution); *Lousin v. State Board of Elections*, 108 Ill. App. 3d 496 (1982) (same); *Chicago Bar Ass’n v. State Board of Elections (CBA I)*, 137 Ill. 2d 394 (1990) (same); *CBA II*, 161 Ill. 2d 502 (1994) (same); *Clark v. Illinois State Board of Elections*, 2014 IL App (1st) 141937 (same); *Hooker*, 2016 IL 121077 (same). The other cases that Plaintiffs cite involve appeals that seek to compel that an election take place, not to enjoin one from being held, (*Quinn v. Board of Election Commissioners*, 2019 IL App (1st) 190189; *Johnson v. Ames*, 2016 IL 121563; *Burns v. Municipal Officers Electoral Board of the Village of Elk Grove Village*, 2020 IL 125714; *Lipinski v. Chicago Board of Election Commissioners*, 114 Ill. 2d 95 (1986)), or that were decided after the election was held (*Jones v. City of Calumet City*, 2017 IL App (1st) 170236; *Clarke v. Village of Arlington Heights*, 57 Ill. 2d 50 (1974); *Henyard v. Municipal Officers of Village*, 2022 IL App (1st) 220898).

¶ 19 Thus, Plaintiffs’ complaint is premature. Fealty to our constitutional system of government and to well-settled concepts of justiciability requires us to decline to interfere with the legislative process. Accordingly, the circuit court erred when it exercised jurisdiction over the complaint.

¶ 20 B.

¶ 21 Plaintiffs contend that various arguments advanced by the Board were “waived.” But as to the issues critical to this appeal, the arguments relate to jurisdiction and cannot be waived. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 333 (2002). Further, all arguments that we have considered in this appeal were squarely presented to the circuit court. Finally, we have allowed the City to participate in this appeal as if it was a party in all respects for two reasons. *First*, the City has a direct and substantial interest in this case and risked being unfairly prejudiced by the circuit court’s judgment if not allowed to appeal. *Citicorp Savings of*

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Illinois v. First Chicago Trust Co., 269 Ill. App. 3d 293, 299 (1995) (“[I]t is settled law that a non-party may bring an appeal when that person has a direct, immediate and substantial interest in the subject matter, which would be prejudiced by judgment or benefited by its reversal.”). Plaintiffs’ contentions to the contrary are without merit. The City has a clear and direct interest in defending the referendum, which is the product of a City Council resolution.

¶ 22 *Second*, the circuit court committed an abuse of discretion in denying the City’s petition to intervene. Under the Code of Civil Procedure, “upon timely application anyone shall be permitted as of right to intervene in an action *** when the representation of the applicant’s interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action.” 735 ILCS 5/2-408(a)(2) (West 2022). Therefore, when considering a party’s motion to intervene as of right, a circuit court’s discretion is limited only to determining “whether the petition to intervene is timely, whether the petitioner’s interest is sufficient, and whether that interest is being adequately represented by someone else in the lawsuit.” (Internal quotation marks omitted.) *Flood v. Richey*, 2016 IL App (4th) 150594, ¶ 15. If these threshold requirements are met, then the “plain meaning of the statute directs that the petition be granted.” *City of Chicago v. John Hancock Mutual Life Insurance Co.*, 127 Ill. App. 3d 140, 144 (1984). We review the circuit court’s order denying a petition to intervene for an abuse of discretion. *In re County Treasurer & Ex-Officio County Collector*, 2017 IL App (1st) 152951, ¶ 15.

¶ 23 Here the City filed its petition to intervene, proposed motion to dismiss, and response to Plaintiffs’ motion for judgment on the pleadings 35 days *after* Plaintiffs filed their complaint and 14 days *before* the circuit court made its oral ruling. See *Citicorp Savings*, 269 Ill. App. at 299 (abuse of discretion to deny intervention as untimely where intervenor filed its motion before final

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judgment and 31 days after obtaining notice of the litigation).² The referendum is the result of a resolution passed by the Chicago City Council, and it is a step in the legislative process mandated by the Municipal Code. 65 ILCS 5/8-3-19; *In re County Treasurer*, 2017 IL App (1st) 152951, ¶ 17 (abuse of discretion to deny intervention where intervenors had a direct interest). Further, the only defendant in the case, the Board of Elections, asserted that it had no role in addressing whether the referendum complied with the Municipal Code or the Illinois Constitution, and thus it could not represent the City's interest. See *Kozenczak v. Du Page County Officers Electoral Board*, 299 Ill. App. 3d 205, 207 (1998); 10 ILCS 5/6-1 *et seq.* (West 2022); *Flood*, 2016 IL App (4th) 150594, ¶¶ 18-21 (abuse of discretion to deny intervention where intervenor's interests were inadequately represented). Against this backdrop, the City's petition amply demonstrated its right to intervene, and the circuit court committed an abuse of discretion in concluding otherwise.

² In the few cases where a petition to intervene filed prior to judgment was deemed untimely, the period of delay was much greater than 35 days. See, *e.g.* *Lewis v. Lead Industries Ass'n, Inc.*, 2022 IL App (1st) 211443-U, ¶¶ 8-10 (holding that a petition to intervene filed after a delay of more than 20 years was untimely). Several cases have even allowed intervention post-judgment. See, *e.g.*, *Brandt v. John S. Tilley Ladders Co.*, 145 Ill. App. 3d 304, 308-09 (1986).

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¶ 24

III. CONCLUSION

¶ 25 We offer this gentle reminder that seems warranted in light of some of the contentions raised by *amici*: we have decided this case exercising our best judgment in strict accordance with the law. Nothing in this decision is intended to suggest that we have any opinion one way or the other on the merits of the referendum at issue. That is a question wisely entrusted not to judges but to the people of the city of Chicago.

¶ 26 For all these reasons, the judgment of the circuit court of Cook County is vacated and the case is remanded with instructions to dismiss the complaint for want of jurisdiction.

¶ 27 Judgment vacated; remanded with instructions.

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Building Owners and Managers Association v. Commission of the Board of Elections of the City of Chicago, 2024 IL App (1st) 240417

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 24-COEL-1; the Hon. Kathleen M. Burke, Judge, presiding.

Attorneys for Appellees: Michael Kasper, of Chicago, Michael Del Galdo and Cynthia Grandfield, of Del Galdo Law Group, LLC, of Chicago for plaintiffs-appellees.

Attorneys for Defendant-Appellant: Rosa Tumialán and Taylor Brewer, of Tressler LLP, of Chicago, for defendants-appellants.

Attorneys for Intervenor/Nonparty-Appellant: Mary B. Richardson-Lowry, Myriam Zreczny Kasper, Suzanne M. Loose, and Stephen Collins, of Corporation Counsel of the City of Chicago, of Chicago, for intervenor/nonparty-appellant.

Amici curiae:

Ed Mullen, of Mullen Law Firm, of Chicago, Michael Kreloff, of Northbrook, and Amanda S. Yarusso, of Chicago, for *amici curiae* End Homelessness, Supporting Bring Chicago Home, *et al.* in support of Appellants;

John Bouman and Daniel Schneider, of Legal Action Chicago, of Chicago, for *amici curiae* Chicago Community and Public Interest Organizations and Community Leaders in Support of Appellants;

Jacob Huebert, Jeffrey M. Schwab, James J. McQuaid, of Liberty Justice Center, of Chicago, Mailee R. Smith, of Illinois Policy, of Chicago, for *amicus curiae* Illinois Policy in support of Appellees;

Andrew Y. Acker, of Storino Ramello and Durkin, of Rosemont, for *amici curiae* Illinois Chamber of Commerce, *et al.*, in support of Appellees.

IN THE SUPREME COURT OF ILLINOIS

No. _____

| | | |
|---------------------------------|---|---|
| BUILDING OWNERS AND MANAGERS |) | Petition for Leave to |
| ASSOCIATION, <i>et al.</i> , |) | Appeal from the Appellate |
| |) | Court of Illinois for the First |
| <i>Petitioner-Appellant,</i> |) | Judicial District, Fifth Division |
| |) | Appellate Court Nos. 1-24-0417, and 1-24- |
| v. |) | 0431, consolidated |
| |) | |
| BOARD OF ELECTION |) | There Heard on |
| COMMISSIONERS FOR THE CITY OF |) | Appeal from the Circuit Court of |
| CHICAGO, <i>et al.</i> , |) | Cook County, County Department, |
| |) | County Division, No. 24-COEL-1 |
| <i>Respondents – Appellees.</i> |) | |
| |) | Honorable Kathleen M. Burke, |
| |) | Judge Presiding. |
| |) | |

NOTICE OF FILING

To: See service list.

PLEASE TAKE NOTICE that on March 11, 2024, I caused to be filed the Petitioner-Appellant's PETITION FOR LEAVE TO APPEAL with the Clerk of the Illinois Supreme Court, a copy of which is attached.

Respectfully submitted,

By: /s/ Cynthia S. Grandfield
Cynthia S. Grandfield

Michael T. Del Galdo (#6255825)
Cynthia S. Grandfield (#6277559)
DEL GALDO LAW GROUP, LLC
1441 S. Harlem Ave
Berwyn, IL 60402
(708) 222-7000
(708) 222-7001 Fax
delgaldo@dlglawgroup.com
grandfield@dlglawgroup.com

CERTIFICATE OF SERVICE

I, Cynthia S. Grandfield, an attorney, do hereby certify that I caused a copy of this notice and PETITION FOR LEAVE TO APPEAL to be served on all counsel of record via email on March 11, 2024.

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

By: /s/ Cynthia S. Grandfield

SERVICE LIST

Michael Kasper
151 N. Franklin
Suite 2500
Chicago, IL 60606
312-704-3292
mjkasper60@mac.com,
myriam.kasper@cityofchicago.org,
appeals@cityofchicago.org,
clemoine@tresslerllp.com,
rtumialan@tresslerllp.com,
mthompson@tresslerllp.com,
tbrewer@tresslerllp.com,
Susan.Jordan@cityofchicago.org,
Scott.Crouch@cityofchicago.org

Chuck LeMoine
Rosa Tumialan
Molly Thompson
Taylor A. Brewer
Tressler LLP
233 South Wacker Drive, 61st Floor
Chicago, IL 60606
312-627-4000
312-627-1717 Fax
clemoine@tresslerllp.com
rtumialan@tresslerllp.com
mthompson@tresslerllp.com
tbrewer@tresslerllp.com

Myriam Zrecny Kasper
Deputy Corporation Counsel
2 North LaSalle St.
Suite 580
Chicago, IL 60602
312-744-3564
myriam.kasper@cityofchicago.org
appeals@cityofchicago.org

Susan P. Jordan
Scott M. Crouch
City of Chicago – Department of Law
Revenue Litigation Division
2 N. LaSalle St.
Suite 440
Chicago, IL 60602
312-744-6921/8369
Susan.Jordan@cityofchicago.org
Scott.Crouch@cityofchicago.org