

No. 127258

IN THE

## SUPREME COURT OF ILLINOIS

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THE COUNTY OF McHENRY and	)	On Appeal from the Appellate
JOSEPH TIRIO, in his Official	)	Court of Illinois, Second District,
Capacity as the McHenry County	)	No. 2-20-0478
Clerk,	)	
	)	
Petitioners-Appellants,	)	There on Appeal from the
	)	22 <sup>nd</sup> Judicial Circuit Court,
v.	)	McHenry County, Illinois
	)	No. 2020 CH 248
McHENRY TOWNSHIP,	)	
	)	The Honorable
Defendant-Appellee.	)	Kevin G. Costello,
	)	Judge Presiding

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## REPLY BRIEF OF APPELLANTS

COUNTY OF MCHENRY and JOSEPH TIRIO, MCHENRY COUNTY CLERK

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SUPREME COURT CLERK

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PATRICK D. KENNEALLY  
State's Attorney  
NORMAN D. VINTON  
Chief, Civil Division  
CARLA N. WYCKOFF  
Assistant State's Attorney  
McHenry County State's Attorney's  
Office  
2200 N. Seminary Avenue  
Woodstock, Illinois 60098  
815-334-4159  
[ndvinton@mchenrycountyil.gov](mailto:ndvinton@mchenrycountyil.gov)  
[cnwyckoff@mchenrycountyil.gov](mailto:cnwyckoff@mchenrycountyil.gov)  
Counsel for Petitioners-Appellants

## ARGUMENT

In reply to McHenry Township’s (the “Township”) response to the County of McHenry and Joseph Tirio’s (“Tirio”) brief, Tirio states as follows:

**I. Township Misapplies Statutes and Case Law**

In its response to Tirio’s brief the Township misapplies both Illinois statute and case law.

Township asserts that Tirio did not have authority to preclude Township’s referenda question (to dissolve McHenry Township) from being printed on the November 2020 General Election ballot. Township cites to Section 10-8 of the Illinois Election Code (10 ILCS 5/10-8) and two cases (*People ex rel. Gise v. Dillon*, 226 Ill.272 (1914) and *North v. Hinkle*, 295 Ill.App.3d 84 (2d Dist. 1998)) to argue that Tirio is only allowed a facial review of the ballot document to decide whether there was apparent conformity and to determine its ballot status.

Section 10-8 actually states that, “[c]ertificates of nomination and *nomination papers and petitions to submit public questions to a referenda* being filed as required and being in *apparent conformity* with the provisions of this act shall be deemed to be valid unless objection thereto is duly made in writing...” and “[t]he provisions of this Section ... also apply to and govern *petitions* for the submission of public questions under Article 28.” (Emphasis added.) 10 ILCS 5/10-8. Township cites to *Dillon* and *Hinkle* to explain that an apparent conformity analysis allows only a facial review of the ballot

document to determine its compliance. However, Section 10-8 clearly limits the apparent conformity parameters and objections to only *petitions* that are filed to nominate candidates and *petitions* to submit public questions to referenda. 10 ILCS 5/10-8. The statute makes no provision for addressing *governing body resolutions* to submit referenda questions. *Id.*

Neither *Dillon (People ex rel. Gise v. Dillon, 226 Ill.272 (1914))* nor *Hinkle (North v. Hinkle, 295 Ill.App.3d 84 (2d Dist. 1998))* are persuasive as both are clearly distinguishable from the instant case. *Dillon* involved a *petition with voter signatures* to place a referendum question on the ballot for which the town clerk investigated the registration status of individual signers. *Id.*, at 275-276. *North* involved *signed nominating petitions* to place candidates on the ballot which were invalid as there were no statements of candidacy included. *Id.*, at 88-89.

The above apparent conformity parameters are misapplied to the instant situation as neither the statute nor the cases apply to governmental unit governing body *resolutions* to place referenda questions on the ballot. Further, with *Dillon*, the clerk actually investigated the signatures and registrations of individual signers—clearly not at all analogous to the instant case.

## II. **Tirio Does Cite to Authority to Support His Ballot Action**

Township asserts that Tirio cites to no authority to support his action to weigh the statutory referenda requirements and take the necessary action

to exclude what was a question prohibited from being placed on the ballot. Township ignores several sections of the Illinois Election Code which do support Tirio's actions and may even require the action taken here.

Initially, "[e]lection authority means a county clerk." 10 ILCS 5/1-3(8). And, "[t]he county clerks in their respective counties shall have charge of the printing of ballots for all elections, including referenda." 10 ILCS 5/16-5. The Illinois Townships Code provides that, "[b]y resolution, the board of trustees of any township located in McHenry County may submit a proposition to dissolve townships to the electors of that township at the election next following *in accordance with the general election law.*" (Emphasis added.) 60 ILCS 1/24-15.

Section 28-1 of the Illinois Election Code states that, "[t]he initiation and submission of all public questions to be voted upon by the electors of the State or any political subdivision .... shall be subject to the provisions of this Article." 10 ILCS 5/28-1. It is Section 28-7 that requires that any Illinois Constitution Article VII-authorized referenda action must be initiated by this Section and may not be held any more often than once in any 23-month period. 10 ILCS 5/28-7. Section 28-5 provides that, whenever the election authority receives a certification for the submission of a public question that is prohibited from being on the ballot, the authority is specifically charged with providing notice of this prohibition to the local election official who is then responsible for advising the governing board which adopted the

resolution or ordinance. 10 ILCS 5/28-5. Section 28-4 provides that objection procedures apply to *petitions* for candidate nominations and *petitions* to submit questions of public policy. 10 ILCS 5/28-4. There is no provision for objection procedures directed at governing board resolutions. *Id.*

Based on the above statute sections, Tirio had the duty to prepare the ballot, including any referenda; to determine whether any certified ballot submission was prohibited from being on the ballot; and, if so, to advise the local election official of such prohibition who then was obligated to notify the governing board that adopted the prohibited submission. A determination that a submitted proposition is prohibited from being placed on the ballot—which the statute requires--might necessitate looking beyond the resolution document itself.

### **III. The Two Ballot Referenda Questions are the Same**

According to Article VII of the Illinois Constitution, whether or not McHenry Township should be dissolved, is a question that must first be submitted to the voters via a ballot referendum question. Ill. Const. 1970, art. VII §5. And, further, Article VII-authorized referendum questions may not appear on the ballot more often than once in any 23-month period. 10 ILCS 5/28-7.

Township asserts that the two questions at issue are different because they have different effective dates and are, therefore, not subject to this statutory time limitation. To support this the Township relies heavily on a

comparison of the dictionary definitions of the words “same” and “similar.” Township seems to ignore that each such referendum question would have a different effective date because Section 24-20 requires that a township dissolution may not go into effect until at least 90 (ninety) days after the election at which the referendum proposition was approved by the voters. 60 ILCS 1/24-20. To enable circumvention of the measured timetable for these substantive propositions by simply inserting the effective date which, by necessity, would always be different, renders the plain language of Section 28-7, meaningless. 10 ILCS 5/28-7. The courts presume that, in enacting legislation, the legislature does not intend absurdity. *Better Government Association v. Officers of the Special Prosecutor*, 2019 IL 122949. The Court has also said that exceptions, limitations or conditions that are inconsistent with the legislative intent should not be considered. *Hendricks v. Board of Trustees of the Police Pension Fund of Galesburg*, 2015 IL App (3d) 140858.

Township claims that the legislature purposely enacted 60 ILCS 1/24-15 to make it easier to consolidate townships into a county due to “outrage over waste in local government.” McHenry Township Response Brief, page 29. Section 24-15 does, however, require that any resolution from a governing body to dissolve a township must be done, “...in accordance with the general election law.” 60 ILCS 1/24-15. It is the Illinois Election Code which provides the timing and wording requirements to submit such a resolution for ballot placement. 10 ILCS 5/28-1 *et seq.* If the legislature did

purposely provide this “easier” avenue to submit a township dissolution proposition to voters, it cannot be assumed that part of this improved path included relaxation of compliance with the general election law. Township maintains that the legislators were “geniuses” in crafting this referenda provision mandating different dates (McHenry Township Response Brief, page 29) so that propositions would never be the same and would avoid violating the Illinois Election Code requirements. Township does not address the ensuing, axiomatic question why, if this provision does facilitate such consolidations, would it be extended to only townships within McHenry County. 60 ILCS 1/24-15.

#### CONCLUSION

Illinois Constitution Article VII-authorized ballot referenda questions may not appear on the ballot more often than once in any 23-month period. The question at issue was being proposed for inclusion on the November 2020 General Election ballot but the same question had appeared on the March 2020 General Primary ballot just eight months previously. The questions were worded identically except for the effective dates which, by statute, were different as dissolution cannot occur until at least 90 days after the election at which the proposition was approved. Tirio has the statutory duty to prepare all ballots, including referenda; to determine if any of the certified propositions are prohibited from being placed on the ballot; and, if so, to notify the governing board which adopted the prohibited proposition through

the local election official. Tirio met this obligation by confirming that the McHenry Township dissolution question being proposed for the November 2020 General Election ballot had appeared on the ballot in March 2020 with the exact same wording except, by necessity, the effective date. Because the proposed ballot proposition did not meet the once in 23-month limitation, he notified, by registered mail, the local election official who then, pursuant to statute, advised the Township governing board whose members had originally submitted the dissolution referendum proposition.

For all the reasons stated above, Appellants McHenry County Clerk Joseph Tirio and McHenry County respectfully request that this Court reverse the decision of the Appellate Court and affirm the decision of the Circuit Court that Clerk Tirio had the authority to conduct ballot review of the McHenry Township Board of Trustees dissolution resolution referendum and apply the statutory prohibition that the question not appear on the ballot. Appellants Tirio and McHenry County further request that this Court find that the Township's dissolution resolution proposition was the same question as one that appeared on the ballot just eight months previously and was, therefore, prohibited from being on the ballot as it violated the statutory 23-month time restriction.

Patrick D. Kenneally,  
State's Attorney, McHenry County



/s/Carla N. Wyckoff  
Norman D. Vinton (ARDC 6204721)  
Chief, Civil Division  
Carla N. Wyckoff (ARDC 6217072)  
Assistant State's Attorney  
McHenry County State's Attorney's  
Office  
2200 N. Seminary Avenue  
Woodstock, Illinois 60098  
[ndvinton@mchenrycountyil.gov](mailto:ndvinton@mchenrycountyil.gov)  
[cnwyckoff@mchenrycountyil.gov](mailto:cnwyckoff@mchenrycountyil.gov)  
815-334-4159

## CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief , excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 8 pages.

/s/Carla N. Wyckoff  
Carla N. Wyckoff

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THE COUNTY OF McHENRY and JOSEPH  
TIRIO, in his Official Capacity as the  
McHenry County Clerk,

Petitioners-Appellees,

v.

McHENRY TOWNSHIP,

Defendants-Appellants.

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**NOTICE AND PROOF OF SERVICE**

To: Robert T. Hanlon  
Law Offices of Robert T. Hanlon and Associates, P.C.  
131 E. Calhoun St.  
Woodstock, Illinois 60098  
robert@robhanlonlaw.com

I hereby certify that the foregoing Reply Brief of Appellants County of McHenry and Joseph Tirio, McHenry County Clerk was electronically filed with the Clerk of the Illinois Supreme Court, on December 22, 2021, via the efileIL system through an approved electronic filing service provider and was served via email on counsel of record, Robert T. Hanon, at the email address listed above, prior to 4:30 p.m. on December 22, 2021.

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

Date: December 22, 2021

/s/ Susan Rouse  
Susan Rouse, Legal Secretary  
McHenry County State's Attorney's  
Office  
2200 N. Seminary Ave.  
Woodstock, Illinois 60098  
(815) 334-4159  
serouse@mchenrycountyil.gov