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

ALLISON HARNED, Petitioner-Plaintiff, v. EVANSTON MUNICIPAL OFFICERS ELECTORAL BOARD, and its members STEVE HAGERTY, DEVON REID, ANNE RAINEY, in their official capacities, and objectors JANE GROVER, KENT SWANSON, and BETTY HAYFORD, Respondents-Defendants.	)	Case No. 20 COEL 000005 Hon. Maureen Ward Kirby

OBJECTORS' RESPONSE BRIEF IN ADMINISTRATIVE REVIEW

Respondents-Defendants, Jane Grover, Kent Swanson, and Betty Hayford, the objectors to the Petitioner-Plaintiff's proposed referendum (collectively, "Objectors"), for their response to Plaintiff's Petition for Judicial Review and First Amended Complaint for Mandamus, and Memorandum in Support of Petition for Judicial Review, state as follows:

I. INTRODUCTION.

This matter concerns the attempt by Petitioner-Plaintiff, Allison Harned ("Petitioner"), to submit a binding referendum to the voters of the City of Evanston at the primary election on March 17, 2020. The proposed referendum purports to establish a scheme for the initiation, proposal, and passage by Evanston voters of future City ordinances and laws. After Petitioner submitted her proposed referendum to the City Clerk, the Objectors timely filed an objection to the referendum with the City Clerk, in accordance with the Election Code. The City's Municipal Officers Electoral Board ("Electoral Board") was duly convened in accordance with the Election Code, and after

hearing, the Electoral Board sustained the objection and ruled the proposed referendum to be invalid. Petitioner now seeks to overturn the Electoral Board's ruling.

As explained below, the proposed referendum is unconstitutional because it is vague and ambiguous, and because neither the State Constitution nor state law permits a question like that presented by the Petitioner to be a binding referendum. Petitioner's claims to the contrary are without merit, and her attack on the form of the Objectors' objection is inaccurate. This Court should deny the Petitioner's Petition for Judicial Review and Complaint, and uphold the decision and ruling of the Electoral Board.

II. STATEMENT OF FACTS AND SUMMARY OF PROPOSED REFERENDUM.

A. Statement of Facts.

The facts pertinent to this matter are not in dispute. On or about December 16, 2019, Petitioner filed her proposed referendum in the office of the Evanston City Clerk. R478; Pet. Brief, at 2. One week later, the Objectors filed their written objection to the proposed referendum, on two grounds: first, that Illinois law does not permit a binding referendum on local questions of public policy; and second, that the proposed referendum was impermissibly confusing ("Objection"). R433-435. The City then convened its Electoral Board as required by the Illinois Election Code. Pet. Brief, at 3. The Electoral Board first met on January 9, 2020, to consider the proposed referendum and the Objection. R461, at ¶4. At that first meeting, Petitioner presented her Motion to Dismiss the Objection, arguing that the Objection did not comply with the requirements of Section 10-8 of the Election Code. R462, at ¶ 6. The Electoral Board continued its proceedings to January 15, 2020, on which date it heard arguments on the Motion to Dismiss and on the objection. Pet. Brief, at 3. Following those arguments, the Electoral Board: (1) denied the Motion to Dismiss; and (2) sustained the Objection on both grounds advanced by the Objectors. R461-R482. This lawsuit followed.

B. Summary of Proposed Referendum.

To properly adjudicate the constitutionality of Petitioner's proposed 383-word referendum, it is important and helpful to attempt to summarize its several requirements. First, the text of the proposed referendum is as follows:

> "**Shall the people of the City of Evanston provide for a voter petition and referendum process for the consideration and passage of city ordinances as follows:**
>
> The people of Evanston provide that the offices of City Clerk, Mayor and aldermen of the City Council have the power and duty to determine the necessary and proper procedural rules regarding the passage of city ordinances and the express duty to assist the people of Evanston in exercising their right to petition and make known their opinions regarding the consideration and passage of city ordinances. At the request of at least 25 Evanston electors, the City Clerk shall promptly cause a proposal to be drafted into ordinance form, including an official summary of the proposed ordinance. The official summary of the proposed ordinance may be introduced by a petition filed with the City Clerk and signed by a number of electors equal to at least eight percent of the total votes cast in Evanston for candidates for Governor in the preceding gubernatorial election. The procedure for filing the petition and determining its validity and sufficiency shall be established by the City Clerk, who shall make the determination of validity and sufficiency within 21 days of a petition filing.
>
> Upon the determination of a valid and sufficient petition, the City Clerk shall within one business day submit the ordinance proposed by the official petition summary on the agenda of the next City Council meeting for its consideration. The City Council shall take a record roll call vote on the proposed ordinance within 70 days of submission by the City Clerk. If the City Council does not pass the proposed ordinance within the 70 day period, the official summary of the proposed ordinance shall be submitted by the City Clerk to the electors for their approval by referendum at the next regularly scheduled election held in all precincts of the city and held at least 70 days after referendum submission by the City Clerk. If the official summary is approved by a majority of those voting on the question, the proposed ordinance shall have the force and effect of passage by the corporate authorities of the City of Evanston unless it is disapproved by a resolution of the City Council not more than 30 days after the election?"

This scheme, if approved by referendum, contemplates 10 independent steps:

1. At least 25 electors in Evanston file a "request" with the City Clerk concerning a proposal (presumably, a proposal for a new ordinance, though the referendum language does not specify).

2. The Clerk then drafts the proposal into the form of an ordinance (the "Proposed Ordinance"), along with a summary of that Proposed Ordinance (the "Official Summary").

3. Evanston electors then file a petition with the Clerk, introducing the Official Summary (but not the Proposed Ordinance).

4. The Clerk determines if the petition is valid and sufficient, in accordance with procedures established by the Clerk.

5. If the petition is valid and sufficient, then within one business day, the Clerk must submit the Proposed Ordinance (but not the Official Summary) to the City Council.

6. The City Council must consider the Proposed Ordinance at its next City Council meeting.

7. Within 70 days of submission by the Clerk of the Proposed Ordinance, the City Council must take a roll call vote on the Proposed Ordinance.

8. If the City Council does not pass the Proposed Ordinance within that 70-day period, then the Clerk submits the Official Summary (but not the Proposed Ordinance) for a referendum of Evanston electors at the next regularly-scheduled election that occurs at least 70 days after submittal.

9. If the electors approve that referendum on the Official Summary, then the Proposed Ordinance (but not the Official Summary thereof) becomes effective.

10. Notwithstanding the referendum approval, the Proposed Ordinance can be nullified if it is "disapproved" by the City Council within 30 days after the election, by resolution.

III. STANDARD OF REVIEW.

Electoral board decisions are subject to administrative review by the Circuit Court. See *Jackson v. Bd. of Election Com'rs of City of Chicago*, 2012 IL 111928, at ¶46; *Cinkus v. Village of Stickney*, 228 Ill. 2d 200, 209-210 (2008). On administrative review, "the findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct." 735 ILCS 5/3-110. This court's review of a question of law is *de novo*. *Cinkus*, 228 Ill. 2d at 210-211 (2008). Mixed questions of law and fact are reviewed according to the "clearly erroneous" standard. *Id*. at 211-212. Under that standard, the reviewing court is not to disrupt the agency's decision unless it has a "definite and firm conviction that a mistake has been committed."

Id. at 211 (internal citation omitted). The Electoral Board's findings of fact are to be upheld unless against the manifest weight of the evidence. *Bergman v. Vachata*, 347 Ill. App. 3d 339, 348 (1st Dist. 2004).

Under each of these standards, Plaintiffs bear the burden of proof. *Shachter v. City of Chicago*, 2011 IL App (1st) 103582, ¶ 34 (quoting *Marconi v. Chicago Heights Police Pension Bd.*, 225 Ill. 2d 497, 532-33 (2006)).

IV. ARGUMENT.

A. The Proposed Referendum is Unconstitutionally Vague and Ambiguous.

In two opinions in 1986, the Illinois Supreme Court established standards for determining the constitutionality of Section 6(f) referenda. First, in *Leck v. Michaelson*, the Supreme Court reviewed a voter-approved referendum in the Village of Lansing concerning runoff elections for the office of Village trustee. 111 Ill. 2d 523 (1986). The Supreme Court invalidated the referendum, finding that it was "vague and ambiguous". *Id*. at 530. Specifically, the Court found that the referendum did not clarify when the runoff would be triggered, or how it would be conducted. *Id.* at 529, 530. The Court then declared that "[b]ecause 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, which is what section 6(f) requires." *Id*. at 530. The Court therefore held that the referendum "was fatally defective under article VII, section 6(f), of the 1970 Illinois Constitution because of its vagueness and ambiguity." *Id*. at 531.

Seven months later, the Supreme Court issued its *Lipinski v. Chicago Bd. of Election Commissioners* opinion, concerning a referendum for nonpartisan elections in the City of Chicago. 114 Ill. 2d 95 (1986). Relying on *Leck*, the Supreme Court ruled the referendum to be unconstitutional, because it did not include enough specifics about how it was to be implemented. The Court determined that, as in *Leck*, the referendum at issue "required additional provisions not

clearly contemplated by the terms of the referendum proposition." *Id*. at 100 (internal citations omitted). It also found that the referendum "would have to be interpreted, supplemented, and modified in order to be implemented." Thus, as in *Leck*, the referendum was unconstitutional because it was not self-executing, and, accordingly, "too vague and ambiguous." *Id.* at 104-105.

The lessons of *Leck* and *Lipinski* are clear: a referendum proposed under Section 6(f) must be self-executing; that is, "if the referendum submitted to voters is not self-executing – leaving gaps to be filled by either the legislature or municipal body" – then it is unconstitutional. *Lipinski*, 114 Ill. 2d at 99-100. In this case, there are at least ***10*** components of the proposed referendum that are incoherent, full of gaps, or require an illegal act, as follows:

1. "Validity and Sufficiency" of the Petition.

The referendum requires that upon request of 25 electors of the City, the City Clerk is to draft the Proposed Ordinance and the Official Summary. That Official Summary can then become the subject of a petition to be filed with the Clerk by "a number of electors equal to at least eight percent" of the votes cast in the City in the last gubernatorial election. The Clerk is then to "make a determination of validity and sufficiency" concerning that petition. But what makes a petition "valid" or "sufficient"? The proposed referendum provides no guidance. It does contemplate that the Clerk will "establish" a "procedure" for making this determination, but there is no context provided for how the procedure is to be established.

2. Content of the Proposed Ordinance and Official Summary.

The referendum requires the Clerk to draft the Proposed Ordinance and Official Summary in response to a 25-elector request. But who determines whether the drafts are properly reflective of the request? Must the drafts strictly conform to the content of the request, or is "substantial compliance" (whatever that may mean in each case) acceptable? Can the Clerk add provisions to

the drafts that he or she believes to be consistent with the request, and if so, to what end? Or is the Clerk bound to follow only the four corners of the request, no matter how sparse it may be? And what if the requesters do not agree with the drafts produced by the Clerk – what is their remedy? Must all of the requesters concur with the drafts in order for the referendum's scheme to be allowed to proceed? If not, how many must concur, and who makes *that* determination?

3. The Proposed Ordinance vs. the Official Summary.

The referendum states that it is the Official Summary that "may be introduced by a petition filed with the City Clerk" – but not the Proposed Ordinance. And yet it is the Proposed Ordinance that must be reviewed and voted upon by the City Council. What if the Proposed Ordinance is not 100% consistent with the Official Summary? Can the City Council take action on the Proposed Ordinance in that instance? How will anyone know if the electors who sign the Petition actually support the Proposed Ordinance; what if they only support the Official Summary?

A similar gap exists with respect to the ultimate referendum to be held if the Council does not approve the Proposed Ordinance. The proposed referendum states that the future referendum will concern "the official summary of the proposed ordinance" – not the Proposed Ordinance itself. Again, if there is anything less than absolute conformance between the Proposed Ordinance and the Official Summary, what happens? Who decides how much conformance is required, and whether a particular Proposed Ordinance meets that to-be-determined test?

4. Pre-Adoption Amendments by the City Council.

Suppose that the Proposed Ordinance and Official Summary are acceptable to whoever gets to accept them, and that enough electors sign the Petition to require presentment of the Proposed Ordinance to the City Council. What if the City Council desires to amend the Proposed Ordinance before adoption? Can it do that? What are the bounds of such hypothetical

amendments? Do the petitioners have to concur with the pre-adoption amendments, and if so, how many? And how would the City tally *that* vote? Do the initial requesters have any say, and if so, how would *that* process work?

And if the City Council adopted a Proposed Ordinance that is not quite what the Clerk drafted, or what was in the Official Summary: how much of an amendment is too much? That is, how does the Clerk determine whether the Proposed Ordinance was actually "adopted", or if he or she is then bound to submit the Official Summary to a referendum itself?

5. Ballot Access.

If the City Council does not adopt the Proposed Ordinance, then "the proposed ordinance shall be submitted by the City Clerk to the electors for their approval by referendum at the next regularly scheduled election." But what authority does the *Clerk* have to submit *any* kind of referendum? Section 28-7 of the Election Code allows the initiation of a referendum under Article VII of the State Constitution only by either a resolution of the local government's governing body, or by "petition signed by a number of qualified electors equal to or greater than at least 8% of the total votes cast for candidates for Governor in the preceding gubernatorial election." 10 ILCS 5/28-7. There is no provision of the Constitution or statute that allows the *Clerk* to initiate a binding referendum under Article VII. And there is no provision of the Constitution or statute that allows for a binding referendum to have the effect of amending the Constitution or Election Code to authorize such a referendum initiation process.

Petitioner will likely argue that the Clerk can submit the referendum because the petition initiating the Proposed Ordinance will have been executed by the same 8% of electors. That is a bait-and-switch argument: the petition contemplated by the proposed referendum is *not* for a ballot referendum; it is for an ordinance to be approved by the City Council. There will be no petition

filed with the Clerk for a ballot referendum. And, therefore, the Clerk will have no authority under Illinois law to submit the previously-submitted *ordinance* petition to a popular vote. To convert that petition into a form that properly initiates a referendum will require further action by either the City Council or the electorate – an action not provided in the proposed referendum.

6. The Disapproval Resolution.

According to the proposed referendum, if a referendum on a Proposed Ordinance is approved by the voters of Evanston, the City Council may still defeat it by, in essence, repealing it through passage of a resolution within 30 days after the referendum election. But this violates the doctrine of like dignity for legislative enactments. An ordinance can only be repealed by another ordinance, and cannot be repealed by a resolution. *Naperville Police Union, Local 2233 et al. v. City of Naperville*, 97 Ill. App. 3d 153, 156 (2nd Dist. 1981). The proposed referendum's scheme includes a step that is not allowed under Illinois law. Can the City Council instead disapprove an approved referendum by ordinance? Can it establish some alternate procedure to fill the gap left by the illegality inherent in the proposed referendum? Or will it be stuck with a referendum-approved Proposed Ordinance, despite the clear intent of the Petitioner to provide otherwise?

7. Special Statutory Requirements.

Certain types of municipal legislative action require a supermajority vote. *See, e.g.*, 65 ILCS 5/8-2-9.10 (abandonment of the budget officer system requires a 2/3 vote); 65 ILCS 5/8-9-1 (approval of a bid without advertising requires 2/3 vote); 65 ILCS 5/11-76.2-3 (exchange of real estate requires a 3/4 vote); 65 ILCS 5/11-91-1 (vacation of right-of-way requires 3/4 vote). If the Proposed Ordinance relates to a subject that would otherwise require a supermajority vote under Illinois law, must the City Council's vote match the statutory requirement, or does the proposed

referendum somehow contemplate a simple majority vote in all instances? If the Council vote is in excess of a simple majority but does not reach the supermajority plateau, does that trigger the referendum requirement? And if the Proposed Ordinance makes it to a referendum, is the electoral tally subject to the normal supermajority requirement, or a simple majority?

Or what if the Proposed Ordinance concerns a matter that normally requires notice and hearing, like an amendment to the City's zoning map (see 65 ILCS 5/11-13-14) or enactment of a tax-increment-financing district (see 65 ILCS 5/11-74.4-5)? How would the City process the Proposed Ordinance, within the timeline stated, while also complying with the required statutory procedures? Or does Petitioner propose that those procedures would not apply?

8. Unconstitutional or Illegal Questions.

What if the Proposed Ordinance is of a substance that is inherently unconstitutional or otherwise prohibited by law? Can the City Council refuse to take action on that basis? For that matter, can the Clerk flatly reject a 25-elector request that is unconstitutional or illegal? Or can the Clerk modify the request however the Clerk deems appropriate to make it permissible? Or will the City be stuck with a patently-illegal Proposed Ordinance on the books because it somehow gets all the way through a referendum?

9. Post-Approval Amendments to the Proposed Ordinance.

Suppose that the voters in Evanston approve a referendum concerning a particular Proposed Ordinance. And suppose that the City Council does not pass a disapproval resolution within the 30-day period. But then, sometime in the future, the City Council desires to *amend* the Proposed Ordinance. Can it do that? What type of amendments are permitted? Must the City Council wait some designated amount of time before it can amend a referendum-approved Proposed Ordinance? Who determines what type of amendments are going to be allowed, and

when they can be enacted? Or must any amendments to a referendum-approved Proposed Ordinance also be approved by future referendum? And how would that process work?

10. Repeal of Proposed Ordinance.

Take the prior example one step further: what if the City Council desires to entirely repeal a Proposed Ordinance approved by referendum? Suppose, some years into the future, the Proposed Ordinance has become obsolete in the wake of technological developments and societal change. Is the City nevertheless stuck with the Proposed Ordinance? Or is there some length of time that can pass, after which repeal is allowed? Or must repeal be approved by referendum – and how would that work?

Neither the Petitioner, nor the proposed referendum, has any cogent answer for any of these questions. There are, then, several gaps in the scheme directed by the referendum that must be filled by a municipal officer, and it is not self-executing – assuming all of these questions can be resolved (some of them cannot), that resolution can only come through further action by the City or its officials. Under the Supreme Court's clear guidance in *Leck* and *Lipinski*, that renders the referendum unconstitutional. *See Lipinski*, 114 Ill. 2d at 99-100.

B. The Evanston Voter Initiative is Not Authorized Under Either Section 6(f) or Section 11 of the Illinois Constitution.

Article VII of the Illinois Constitution provides a home rule municipality the power to adopt, alter, or repeal a form of government provided for by law, subject to approval by referendum. Ill. Const. 1970, art. VII, sec. 6(f). Illinois law provides a closed-set list of forms of government that a municipality may adopt, and thereafter alter. As provided by Articles 3.1 through 6 of the Illinois Municipal Code, these forms of government are: (i) Aldermanic or Trustee (Article 3.1); (ii) Commission (Article 4); (iii) Managerial (Article 5); or (iv) Strong Mayor

(Article 6). See 65 ILCS 5/3.1-5-5 *et seq*. But while the municipality and its electors can choose from among the forms provided by statute, the power to *create* forms of government is the exclusive prerogative of the General Assembly. See *Flowers v. City of Moline*, 251 Ill. App. 3d 348, 351 (1993); 7 Record of Proceedings, Sixth Illinois Constitutional Convention, p. 1667. There is no basis in law for a municipality itself to create its own form of government. Moreover, leaving questions of public policy to the people at large is an arbitrary use of governmental power, the delegation of which violates State and Federal guarantees of due process of law. See *City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668, 673 (1976)(Stevens, J., dissenting). Accordingly, even if the proposed referendum was not unconstitutionally vague and ambiguous, the Electoral Board's decision should be upheld because the referendum is substantively unconstitutional.

1. Petitioner Improperly Seeks to Create a New Form of Municipal Government.

Municipal corporations are not sovereign states created in "laboratories of democracy". Pet. Brief, at 18. Rather, municipal corporations are mere political subdivisions of the state, as that phrase is used in Article I of the Illinois Constitution. See Ill. Const. 1970, art. I. The State of Illinois has provided a distinct set of alternative forms of government to be selected by a municipal corporation. The goal of greater flexibility, as noted by the 1970 Constitutional Convention's Local Government Committee and cited by Petitioner, is attained not by allowing voters to create a form of government from their own imagination, but rather by the ability to alter those forms provided by the Municipal Code to suit the unique needs and challenges of that municipality. As the Appellate Court has noted, voters have "the right to be governed in a manner *provided by statute* and altered only according to law…". *Flowers v. City of Moline*, 251 Ill. App. 3d 348, 351 (3rd Dist. 1993). Moreover, the creation of municipalities remains the prerogative of the state

legislature, unfettered by any consideration of home rule authority or otherwise. See *Town of Godfrey v. City of Alton*, 33 Ill. App. 3d 978, 983 (1975).

The commentary from the 1970 Constitutional Convention reveals a clear intent that a home rule unit may not "create" its own form of government; rather, it may only "…adopt, alter, and repeal alternative forms of government provided by general law." 7 Record of Proceedings, Sixth Illinois Constitutional Convention, p. 1579. The use of the phrase "forms of government" contemplates that various plans for the election of municipal governing boards and for the relationship of legislative and executive branches of government within municipalities *will be provided by the General Assembly* for selection by various municipalities through referendum. 7 Record of Proceedings, Sixth Illinois Constitutional Convention, p. 1667 (emphasis added). Although Section 6(f) grants robust power for a home rule unit to decide matters of local concern, the grant of home rule power does not abrogate the State's exclusive power to decide how local governments are formed.

Each case cited by Petitioner relates to alterations in government, a distinct power within Section 6(f) which is not contested in the present matter. That power, in the simplest sense, is to take a form provided by the General Assembly and tweak it to suit the needs of a particular municipality. As Petitioner correctly notes, there is no question that changing to a nonpartisan election is an alteration in government. See *Boytor v. City of Aurora*, 81 Ill. 2d 308 (1980). Nor is changing to an appointed clerk or changing the number of elected trustees. See *Clarke v. Arlington Heights*, 57 Ill. 2d 50, 62 (1974). Petitioner, however, does not seek to merely adopt partisan elections or change from an appointed to elected clerk. Petitioner seeks to create an entirely new, novel manner for adopting local laws - a role which, according to all established precedent, and

the commentary to the 1970 Constitutional Convention, is the exclusive prerogative of the General Assembly.

The notable differences in the forms of government provided by the Municipal Code are in the varying powers of the legislative and executive arms of the municipal corporation, which implicates referendum when such powers are shifted between legislative and executive functions. See *Pechous v. Slawko*, 64 Ill. 2d 576, 582 (1976). But no matter the form of government, the Municipal Code provides that the "corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper and necessary, to carry into effect the powers granted to municipalities…" 65 ILCS 5/1-2-1. In Evanston, the province of legislation is *exclusively* that of the City Council, and nobody else. Further, delegation of legislative power is forbidden, as necessarily involving a discretion as to what the law shall be. *People ex rel. Adamowski v. Chicago Land Clearance Commission*, 14 Ill. 2d 74, 80 (1958); *City of Chicago v Stratton*, 162 Ill. 494, 505 (1896).

In the present case, the referendum question creates a new form of legislative body that is empowered to develop and pass legislation through petitions and referendum, leaving the City Council only the power to veto the outcome of that referendum. Granting the public at-large the power and authority to initiate, propose, and pass ordinances is not an "alteration" of a form of government provided by law; it is a fundamental creation of a brand-new form of government, and no matter how well intentioned, the proposed system is practically and legally unworkable under the Illinois constitution. There is no form of government provided by Illinois law that is remotely like the structure proposed by the referendum. The characteristics of Petitioner's proposed scheme are so fundamentally different than the forms of government provided by the General Assembly that the referendum is inherently impermissible under Section 6(f) of the Illinois Constitution.

2. The Subsequent Referenda Contemplated by Petitioner's Proposal Would Be Inherently Unconstitutional.

Petitioner's referendum is in fact a petition for two separate sets of referenda. The first is the binding referendum that is under immediate consideration (i.e. creation of a new form of government). The second and subsequent referenda are those that will come later, upon a refusal of the City Council to act on any legislative proposal petitioned by 25 electors. To allow legislative action to be carried out by subsequent, binding referenda is not permitted by either the Illinois Constitution or the Election Code. Accordingly, the question posed is inherently unconstitutional and in improper form.

Despite the revered quality Petitioner assigns to referenda, voters have no inherent or constitutional right to require the governing body of the municipality to submit any legislation to a referendum. See *Boytor v. City of Aurora*, 81 Ill. 2d 308 (1980); *City of Mt. Olive v. Braje*, 366 Ill. 132 (1937). To do so usurps the authority of the General Assembly to "provide by law" for the creation of municipalities, as expressly stated in Article VII of the Constitution.

There is nothing at present that precludes Petitioner from introducing a proposed ordinance to the City Council. Her right to petition the City is protected pursuant to Article I of the Illinois Constitution and the First and Fourteenth Amendments to the Constitution of the United States. However, Petitioner does not seek to petition her government; she is looking to bind her government to adopt a particular piece of legislation. Questions of public policy that have a binding legal effect shall be submitted to referendum only as authorized by statute or by the Illinois Constitution. 10 ILCS 5/28-1. The proposed referendum question conceives a scheme whereby all subsequent matters of public policy which the corporate authorities of the City refuse to consider will be presented as referenda with binding legal effect on the City. Neither the Constitution nor statute allow for such binding referenda.

To illustrate: under Petitioner's inventive form of government, if 25 electors desire to adopt a budget for the City, and the City refuses to consider their budget, the successful passage of that budget by referendum will bind the City to its adoption unless some illusory veto power is exercised. Neither the Constitution nor statute provides for a referendum question on the subject of passage of a budget. Yet, under Petitioner's proposal, this is the precise situation that results. The exact same dilemma exists with a myriad of other corporate functions of the city: passing a tax levy, approval of a zoning amendment, revision of fines for City Code violations, approval of a particular public works contract, and so on. It would be absolutely implausible, and entirely unconstitutional, to submit any of these questions to a binding referendum without some provision for such referenda in law. There is no power provided in Illinois law to adopt corporate affairs of the City by binding referendum. Thus, there is no set of circumstances under which the present referendum question could actually be implemented in a constitutional manner. Accordingly, this court should uphold the Electoral Board's ruling because, in substance, the proposed referendum is unconstitutional.

3. The Electoral Board is Empowered to Review the Constitutionality of the Proposal.

The fundamental role of the Electoral Board under the Election Code is to ensure that the petition under consideration is in the proper form. See 10 ILCS 5/10-10. A plain reading of Section 10-10 illustrates that a petition cannot be in proper form if its wording calls for an unconstitutional result. Petitioner argues, however, that the power of the Electoral Board is limited to ensuring compliance with procedural requirements. There is no such limitation in the Election Code. To support their misinterpretation of Section 10-10, Petitioner cites *Coalition for Political Honesty*, 65 Ill. 2d 453 (1976). However, *Coalition for Political Honesty* stands for a completely different proposition: in that case, the Supreme Court held that it was the intention of the constitutional

convention that the courts were to determine whether constitutional requirements for a *proposed constitutional amendment* are satisfied. *Id*. at 457. The present case relates to a petition for a public policy referendum – a subject not at all addressed by *Coalition for Political Honesty*. Moreover, under the plain language of the Election Code, the Objection squarely falls within the authority of the Electoral Board to decide. Petitioner cites no other case to challenge this, and indeed, several court opinions relate to constitutional challenges to ballot propositions. *See, e.g.*, Leck, 111 Ill. 2d 523 (1986). Accordingly, determining whether the form of question presented in a referendum petition is constitutional is within the Electoral Board's authority.

C. The Objectors Sufficiently Stated Their Interest.

In an apparent attempt to avoid the substantive fatal flaws in the proposed referendum question, Petitioner claims that the referendum should be approved because the Objectors' objection should have been dismissed by the Electoral Board. The sole basis for this argument is that the Objectors allegedly did not "state the interest of the objector." Pet. Brief, at 4-11; 10 ILCS 5/10-8. Section 10-8 of the Election Code requires that: "[t]he objector's petition shall give the objector's name and residence address, and shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question, and shall state the interest of the objector and shall state what relief is requested of the electoral board." 10 ILCS 5/10-8. Petitioner apparently believes that an objection must actually use the word "interest" to be valid under the Election Code, and lobbies this court to dismiss the objection solely because that one word does not appear in the Objectors' papers.

Petitioner argues that "Objectors do not state any interest at all." Pet. Brief, at 5. Petitioner is wrong: the Objection clearly sets out the interest of the Objectors. They state that they are "Evanston residents and registered voters," and identify their concern that the proposed

referendum will violate State law and confuse Evanston voters. R433. It is true that the Objectors never explicitly used the word "interest" to reflect their concern about the constitutionality and legality of the referendum, or about possible confusion over the text of the referendum, or their status as registered Evanston voters. But it is also plainly obvious from the four corners of the Objection what their interest is.

Petitioner argues that the Objectors cannot "use their status as 'registered voters' to satisfy both requirements of legal standing and the statement of interest in Section 10-8," and that Objectors cannot have "'the basis of their objection'…perform double duty for the Objectors to serve as their 'statement of interest.'" Pet. Brief, at 8. But why not? In a case involving a challenge to a Section 6(f) referendum, our Appellate Court declared that "the right to be governed in a manner provided by statute and altered only according to law is shared equally by all residents and voters" of the municipality. *Flowers v. City of Moline*, 251 Ill. App. 3d 348, 351 (3rd Dist. 1993). Indeed, in a referendum challenge, "[n]o one could bring a keener interest to the controversy or sharpen the issues better than the plaintiff" – a resident and voter of the municipality in question. *Id*. Thus, the mere fact that the objector to a Section 6(f) referendum is a registered voter of the municipality *does* indeed double as the declaration of interest. Petitioner cites no case that requires an objector to actually state, for example: "I have standing because I am a registered voter of the City, and my interest is that I am a registered voter of the City." Surely, the statute does not demand such slavish, hyper-technical writing, particularly in a case in which the Objectors have an obvious "keen" interest in the referendum because they are Evanston residents and voters.

Finally, Petitioner worries that if this Court allowed the Objectors' statements of standing and the basis of their objection to "double" as their statement of interest, then such a ruling "would render the statement of interest requirement superfluous." Pet. Brief, at 8. This supposition is

misplaced. In *this* case, the Objectors' status as residents and registered voters, and the nature of their objections, validly demonstrate their interest in pursuing the Objection, for all the reasons stated above. It may be that the statement of interest for a different objection to a different ballot proposition may require more, or something different, than the Objectors' standing or rationale. But this Court need not consider such a facial approach to Section 10-8. The only question before this Court is whether these Objectors have stated an interest in the Objection – and clearly, they have.

Petitioner's argument concerning the statement of interest of Objectors is without merit, and provides no basis for this Court to overturn the decision of the Electoral Board.

V. CONCLUSION.

WHEREFORE, for the reasons set forth above, Objectors respectfully request that this Court affirm the decision and ruling of the Electoral Board, and enter judgment in their favor.

Dated: February 10, 2020

Respectfully submitted,

JANE GROVER, KENT SWANSON, and BETTY HAYFORD

By: /s/ Hart M. Passman
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