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BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO AS A DULY CONSTITUTED ELECTORAL BOARD

Objections of: Brett Allen Czaja, and Karen Larson	)
	)
	)
To the: Petition for the "Take Charge Chicago" Referenda and Pat Quinn, as principal proponent	) No.: 18-EB-QPP-01
	)
	) Rel.: 18-EB-QPP-02; 18-EB-QPP-03; and
	) 18-EB-QPP-04
	)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for the City of Chicago Commissioners Marisel A. Hernandez, William J. Kresse, and Jonathan T. Swain, organized by law in response to a Call issued by Marisel A. Hernandez, Chairwoman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of Brett Allen Czaja, and Karen Larson ("Objectors") to the Petition for the "Take Charge Chicago" Referenda (the "Petition") and Pat Quinn as principal proponent ("Respondent") for citywide referenda in the City of Chicago, Illinois ("Petition") at the General Election to be held on Tuesday, November 6, 2018. The Electoral Board, having convened on Monday, August 20, 2018, at 9:30 a.m. in Room 800, 69 West Washington Street, Chicago, Illinois, and having heard and determined the Objections to the Petition in the above-entitled matter, finds that:

1. Objections to the Petition herein were duly and timely filed in the office of the Clerk for the City of Chicago.

2. The Electoral Board was legally constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chairwoman of the Electoral Board and served upon the members of the Electoral Board, the Objectors and the Respondent, by registered or certified mail and by Sheriff's service, as provided by statute, or those parties waived their right to statutory service.

4. A public hearing held on these Objections commenced on Monday, August 20, 2018 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Barbara Goodman for further hearings and proceedings.

6. The Objectors and the Respondent were directed by the Electoral Board's Call to appear before the Hearing Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objectors, Brett Allen Czaja, and Karen Larson, through their Attorneys Michael J. Kasper and James Hartmann; and the Respondent, Petition for the Take Charge Chicago Refendums and Pat Quinn, as principal proponent, through their attorneys Ed Mullen and Pat Quinn.

7. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Petition is legally invalid for ballot certification because it contains two separate propositions in violation of 10 ILCS 5/28-3 and because the Chicago City Council had previously initiated three advisory questions to appear on the ballot, thus triggering the three-question limit in 10 ILCS 5/28-1.

8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's

recommended findings and conclusions of law. A copy of the Hearing Officer Report and Recommendation is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

9. Specifically, the Electoral Board finds that it has subject matter jurisdiction over the legal issues raised in the Objectors' Petition, in accord with the Board's own past precedent that was affirmed by the Circuit Court of Cook County on judicial review, and which was undisturbed by the Illinois Supreme Court after its appellate review (although the Supreme Court was presented with the issue of a "Rule of Three" objection to an Article VII referendum petition, the Court did not address that issue and did not affirm, reverse, overrule or vacate the Electoral Board's decision regarding jurisdiction because the Court found the petition to be legally invalid on other grounds). See *Cotton v. Lipinski*, 86-EB-QPP-1 (CBEC 1986), and *Lipinski v. Chicago Bd. of Election Commissioners*, 114 Ill.2d 95, 99, 500 N.E.2d 39, 41 (1986). Although the Board lacks the authority to directly order that a candidate or referendum be certified to or removed from the ballot under *Kozel v. State Bd. of Elections*, 126 Ill.2d 58 (1988), it is nonetheless empowered by 10 ILCS 5/10-10 to determine whether petitions are legally valid and thereby eligible for ballot certification.

10. The Electoral Board finds that Section 28-7 of the Election Code (10 ILCS 5/28-7) governs the Petition and that, by its own express terms, it supersedes other statutory provisions only to the extent that there is a conflict of law. The Electoral Board finds no conflict between Section 28-7 and the relevant provisions of Sections including but not limited to 28-1, 28-2, 28-3 and 28-5, and those other sections therefore also govern the Petition. Notably, this includes the "Rule of Three" limitation in Section 28-1 and the form-of-petition requirements set forth in Section 28-3.

11. The Electoral Board finds that the Petition is legally invalid for purposes of eligibility for ballot certification for the November 6, 2018, general election due to the three-question limit set forth in 10 ILCS 5/28-1 and the Chicago City Council resolutions for three advisory referenda that it passed prior to the filing of Respondent's Petition.

12. The Electoral Board finds that 10 ILCS 5/28-3 allows only one question of public policy on each petition, and that the Respondent's Petition is legally invalid as to any and all future elections because it contains two separate and distinct propositions in violation of law.

13. The Electoral Board finds that under 10 ILCS 5/3-1.2 a person is not eligible to sign the Petition unless he or she was registered to vote at the residence address stated on the Petition at the time that qualified elector signed the Petition. The Board also finds that it has a duty under 10 ILCS 5/10-8, *et seq.*, to hear and rule upon the Objections lodged by the Objectors, and that the Board is not responsible for nor empowered to remedy any civil rights violations allegedly caused by the substance of, or the manner in which the Objectors lodged, their Objections.

14. The Board finds that the Respondent has lodged challenges to the constitutionality of certain Election Code provisions or the Board's enforcement thereof, but that the Board lacks subject matter jurisdiction to consider and rule upon such challenges. See, for example, *Goodman v. Ward*, 241 Ill.App.2d 398 (2011) ("the electoral board has no authority to declare statutes unconstitutional or even to question their validity").

15. Because the Electoral Board finds the Respondent's Petition to be invalid for the reasons set forth above, the Board finds that in the interests of judicial economy it need not address the issue of whether the Petition is also invalid due to an alleged violation of the free-and-equal elections clause in Article III, Section 3, of the Illinois Constitution of 1970.

(Objector's Petition, paragraph 12.) The Electoral Board therefore reserves ruling on that issue unless and until the matter is remanded back to it following judicial review or appeal, which is in accord with its past practices in cases including, but not limited to, *Cotton v. Lipinski, supra.*

16. For the reasons stated above, the Electoral Board finds that the Objections filed in this matter should be sustained and that the Respondent's Petition is legally invalid. The Board therefore and hereby denies Respondent's Motion to Revise Proposed Rules of Procedure for Objections to Satisfy the Constitutional Requirements for Article VII Referendum Petitions, the Respondent's Motion to Strike and Dismiss, and the Respondent's Rule 20 Motion.

IT IS THEREFORE ORDERED that the Objections of Brett Allen Czaja and Karen Larson to the Petition for the "Take Charge Chicago" referenda and Respondent Pat Quinn as principal proponent are hereby SUSTAINED and said Petition is hereby declared legally invalid and the two citywide referenda sought by the Petition are therefore not eligible to be certified to or printed upon the official ballot for the General Election to be held on Tuesday, November 6, 2018, nor any other election.

Dated: Chicago, Illinois, on September 12, 2018.

Marisel A. Hernandez, Chairwoman

William J. Kresse, Commissioner

Jonathan T. Swain, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 5 days after service of the decision of the Electoral Board.

BEFORE THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS THE DULY CONSTITUTED ELECTORAL BOARD

Brett Allen Czaja and Karen Larson	)	
	)	
Petitioner-Objectors	)	**18 EB QPP 01, 03**
-v-	)	
	)	
Petition for the Take Charge Chicago Referendums and Pat Quinn, as principal proponent	)	
	)	
Respondent	)	

HEARING OFFICER'S REPORT AND RECOMMENDATION

This matter was first heard on August 20, 2018. The Objectors were represented by Michael Kasper and James Hartmann. The Respondent was represented by Ed Mullens and by Pat Quinn, who is also the principal proponent of the petition. [1]

The parties were given an opportunity to file preliminary motions and the matter was continued to August 29, 2018 for further hearing. The Respondent filed a Motion to Strike Objector's Petition. The Objectors filed Objector's Response to Motions to Strike and Dismiss. The Respondent filed Proponent's Reply in Support of Motion to Strike. It was also agreed by the parties that inasmuch as the Objectors' Petition contained only matters of law, the rulings on the motions would be dispositive in the case.

[1] Two identical Objectors' petitions were filed. One was filed in the office of the City Clerk and the other was filed in the office of the Board of Election Commissioners. Inasmuch as both were timely filed and contained the same issues, they were consolidated for hearing purposes.

BACKGROUND

The instant matter involves a petition containing two referendum questions to be presented to the voters of the City of Chicago at the General Election to be held on November 6, 2018 (the "Petition"). The first question proposes the imposition of term limits on the office of Mayor of the City of Chicago. Specifically, the first question reads as follows:

> "Shall Chicago adopt the following term limit for the office of Mayor effective for the mayoral election in 2019 and thereafter: No person may hold the office of mayor for more than two consecutive elected 4-year terms (with all prior consecutive elected terms of the current officeholder counted in determining the term limit for that officeholder)?"

The second question proposes the creation of a new office of elected consumer advocate and reads, in pertinent part, as follows:

> "Shall Chicago establish an elected Consumer Advocate for taxpayers and consumers to replace the appointed Commissioner of the Department of Business Affairs and Consumer Protection?"

The Petition was filed in the office of the Chicago City Clerk on August 6, 2018, the last day for submission of said petitions. At the time the Petition was filed, the Chicago City Council had adopted resolutions to place three questions on the ballot at the November 6, 2018. The resolutions were adopted and filed with the City Clerk on June 27, 2018.

On August 13, 2018, an Objectors' Petition was filed with the Chicago City Clerk and an identical Objector's Petition was filed with the Chicago Board of Election Commissioners ("Objectors' Petition"). In their Objectors' Petition, the Objectors alleged that the questions contained in the referendum petition was invalid and the questions contained therein could not be placed on the November 6, 2018 ballot as a result of Section 28-1 which sets forth a limit of three questions that can be submitted to referendum with respect to a unit of government at the

same election ("Rule of Three"). 10 ILCS 5/28-1. Objectors also alleged that the petitions were invalid because they contained more than one question in the same petition in violation of Section 28-3 of the Election Code. 10 ILCS 5/28-3.

SUMMARY OF OBJECTORS' POSITION

The Objectors contend that Section 28-1 clearly limits the number of referenda questions that may be submitted to the electors of a political subdivision at one election. According to the Objectors, this limitation is irrespective of the manner of initiation or the type of question presented. It is the Objectors' further contention that case law, and most recently and notably, *Jones v Qualkinbush*, 892 F2d 935 (2018), supports their position here. Per the Objectors, the In Re *Jones* court rejected the arguments that the city council, by placing three questions on the ballot, somehow violated the plaintiff's constitutional rights.

Objectors further argue that Section 28-1 which sets forth the Rule of Three and Section 28-7 do not conflict in any way and, therefore, according to the Objectors, the Respondent's contention that Section 28-7 supersedes Section 28-1 is erroneous. Per the Objectors, if this were the case, then all of the other provisions of the Election Code which set forth the requirements for the form of the petitions, the filing dates and so forth would also be superseded by Section 28-7. The Objectors contend that this approach is inconsistent with the obligation to read statutes in *pari materia* so that all statutes are given effect.

Objectors also argue that Section 28-1 clearly sets out the exceptions to the Rule of Three and nowhere in the statute are the petitions authorized by Article VII of the Constitution and filed pursuant to Section 28-7 as are at issue here exempted from the Rule of Three. Objectors point out that the Section 28-1 specifically carves out five exceptions to the Rule of Three as set forth as follows:

> Irrespective of the method of initiation, not more than 3 public questions other than (a) back door referenda, (b) referenda to determine whether a disconnection may take place where a city coterminous with a township is proposing to annex territory from an adjacent township, (c) referenda held under the provisions of the Property Tax Extension Limitation Law in the Property Tax Code, (d) referenda held under Section 2-3002 of the Counties Code, or (e) referenda held under Article 22, 23, or 29 of the Township Code may be submitted to referendum with respect to a political subdivision at the same election. 10 ILCS 5/28-1

Objectors argue that as is evidence from a plain reading of the statute, the Petition in the instant case does not fall within any of the excepted categories.

Objectors also contend that the Petition is invalid because it contains more than one proposition in violation of Section 28-3 of the Election Code. It is the Objector's position that the use of singular references in Section 28-3 compels the conclusion that the General Assembly intended that only one question be submitted per petition. In support of their position, Objectors point to the several instances in which the singular is used in the statute. Objectors compare and contrast the language used in Section 7-10 and 10-4 where plural references were used to support the conclusion that the General Assembly intended for only one question to be submitted per petition.

SUMMARY OF RESPONDENT'S POSITION

In his Motion to Strike, Respondent contends that the Electoral Board lacks jurisdiction to consider the Rule of Three in determining whether or not the petitions are valid. According to the Respondent, Section 10-10 of the Election Code precludes consideration of the question by an Electoral Board because such consideration is not specifically identified within the scope of the Election Board's authority. Section 10-10 provides in pertinent part as follows:

> The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers

> or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1

According to the Respondent, the Electoral Board is limited to determining whether petitions are in proper form and whether they contain a sufficient number of signatures.

Respondent further contends that the Rule of Three limitation in Article 28-1 is inapplicable to petitions authorized by Article VII of the Illinois Constitution and filed pursuant to Article 28-7 of the Election Code. In support of his contention, Respondent points to the following language in Section 28-7:

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

According to the Respondent, as long as the petition contains signatures of more than the required number and are in proper form, the questions must be submitted to the voters.

Respondent also argues that applying the Rule of Three to Article VII referenda would violate the Illinois Constitution. While Respondent recognizes that "electoral boards do not have the authority to declare a statute unconstitutional, Respondent nonetheless argues that there is an 'obligation to construe legislative enactments so as to sustain their constitutional where such construction is a reasonable alternative'" (Respondent's Motion to Strike at page 10).

Respondent further contends that the Objectors' allegation that the petition is invalid because it presents two questions should be stricken. In support thereof, Respondent relies on the language of Section 28-3 regarding multiple sets of petitions. Section 28-3 provides in

pertinent part as follows:

> If multiple sets of petitions for submission of the same public questions are filed, the State Board of Elections, appropriate election authority or local election official where the petitions are filed shall within 2 business days notify the proponent of his or her multiple petition filings and that proponent has 3 business days after receipt of the notice to notify the State Board of Elections, appropriate election authority or local election official that he or she may cancel prior sets of petitions. If the proponent notifies the State Board of Elections, appropriate election authority or local election official, the last set of petitions filed shall be the only petitions to be considered valid by the State Board of Elections, appropriate election authority or local election official. If the proponent fails to notify the State Board of Elections, appropriate election authority or local election official then only the first set of petitions filed shall be valid and all subsequent petitions shall be void.

Respondent argues that the foregoing language of Section 28-3 authorizes a singular proponent to submit plural "public questions" on a singular set of petitions. Respondent also argues that Section 11(a) of Article VII of the Illinois Constitution allows multiple questions to appear on one petition sheet. Section 11(a) states:

> Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution of the governing board of a unit of local government or by petition of electors in the manner provided by law. Illinois Constitution, art. VII, section 11(a)(1970)

According to Respondent "the Illinois Constitution, which takes precedence over the Election Code, establishes that plural 'proposals for action' can be initiated and submitted to the electors by a singular 'petition of electors'". (Respondent's Motion at page 12).

Finally, Respondent contends that the Objector's Petition must be stricken because it was filed in the wrong office and that the proper place of filing was the office of the Chicago City Clerk. At the hearing, Respondent also contended that the petitions were not timely filed.

DISCUSSION OF ISSUES PRESENTED

Whether the Electoral Board has jurisdiction to consider the rule of three limitation set forth in Section 28-1

A plain reading of Section 10-10 establishes that the board does, in fact, have jurisdiction in this matter. Pursuant to Section 10-10, it is the electoral board's responsibility (among others) to determine whether the petitions on file are valid and filed under the conditions required by law and whether the objections thereto should be sustained. Section 10-10 not only gives the Electoral Board the authority to consider such matters, it obligates the Electoral board to do so and it is well settled that a determination of whether the petitions on file are valid often requires consideration of other statutory requirements and restrictions. By way of example, the Objector has correctly pointed out that an Electoral Board must consider residency and eligibility requirements, indebtedness issues, and other considerations beyond the form of the petition and the validity of the signatures on the pages in determining the overall validity of the petitions.

Respondent relies on the case of *Kozel v State Board of Elections, 126 Ill. 2d 58 (2988),* in support of his contention that the Electoral board's authority is limited to consideration of whether the petitions have sufficient signatures and are in proper form. However, the conclusion drawn by the Respondent is not supported by the *Kozel* decision. The question the court was addressing in *Kozel* was whether it was the function of an electoral board to include in its decision reference to certification of a candidate for the ballot. The *Kozel* Court found that the electoral board's reference to certification of the candidate's name was not within the scope of its authority as the Election Code specifically assigns the responsibility of the certification process to election authorities. Nothing in *Kozel* precludes the Electoral Board from determining whether the Petitions at issue here is valid and filed under the conditions required by

law and nothing in *Kozel* limts the scope of inquiry by the Electoral Board to only matters regarding signatures and the form of the petitions.

Indeed, the Objectors' Response is replete with examples which directly rebut Respondent's contention and demonstrate that Electoral Boards routinely address issues related to candidate's residency, candidate's qualifications and candidate's eligibility among other issues and are not confined in their scope of inquiry as the Respondent asserts. As the Objectors point out, the Electoral Board in *Cotton v Lipinski* 86-EB-QPP-01 determined that the Electoral Board had jurisdiction to consider whether the Rule of Three provision of Section 28-1 prevented the placement of a referendum question on the ballot. The majority of the Board ruled that it did have jurisdiction to consider the question and there has been no ruling since that time that has determined otherwise. Notwithstanding this fact, the Respondent has asked that this Electoral Board to follow the dissent's position that would have held to the contrary. Despite Respondent's urging, there is simply no basis to adopt the dissenting opinion.

Accordingly, it is my recommendation that Respondent's motion to strike the allegation regarding the Rule of Three on the basis that the Electoral Board has no jurisdiction to consider the issue *be denied.* It is my further recommendation that the Electoral Board find that it has jurisdiction to consider the question presented.

Whether Section 28-7 supersedes the Rule of Three limitation in Section 28-1

Having determined that the Electoral Board has the authority to consider matters beyond the form of petitions and the sufficiency of signature, it is important to remember that there are some limits on an Electoral Board's authority. It is well established that an Electoral Board does not have the authority to create new law or carve out exceptions to existing law where neither the General Assembly nor the courts have seen fit to do so. Moreover, regardless of the number of

signatures in a referendum petition or the importance of the questions presented therein, the electoral board has no authority to ignore controlling statutes and caselaw. Yet, this is precisely what the Respondent has asked of this Electoral Board. The Respondent has requested that as it relates to the Rule of Three limitation in Section 28-1, this Electoral Board find that either the petitions initiated under 28-7 fall within an exception where no such exception actually exists or find that 28-7 conflicts with Section 28-1 where no such conflict actually exists.

The exceptions to the Rule of Three limitation are clearly set forth in Section 28-1. As indicated above, there are five exceptions that the General Assembly has carved out in the statute. A petition authorized by Article VII of the Constitution and submitted pursuant to Section 28-7 is not one of them. However, it is important to note that the omission of Article VII authorized petitions as one of the exceptions to the Rule of Three was not simply an oversight on the part of the General Assembly or a result of the General Assembly's lack of consideration of Article VII in general. To the contrary, it is apparent that the General Assembly considered the relationship between Section 28-1 and Article VII petitions by including in Section 28-1 the following additional limitation:

> "...[E]xcept as expressly authorized by law not more than one proposition to change the form of government of a municipality pursuant to Article VII of the Constitution may be submitted at an election. 10 ILCS 5/28-1

No further reference to Article VII petitions is contained in the statute and the exception that Respondent has asked the Electoral Board to find simply does not exist.

Moreover, Respondent's argument that 28-7 supersedes Section 28-1 because 28-1 somehow conflicts with 28-7 is not supported by a plain reading of Section 28-1. To make this determination, one need only note the matters that 28-7 *actually* addresses. Section 28-7 provides how the public question may be initiated ("by the government body of the unit of local

government by resolution... or by a petition signed by a number of qualified electors equal to or greater than 8%...") , it addresses what happens when more than one unit of local government is involved ("the proposal shall be submitted to the voters of such governmental units by election authorities with jurisdiction over the territory of the governmental units...") and it further addresses a limitation as to the time period in which the same proposition may be submitted ("Referenda provided for in this Section may not be held more than once in any 23 month period on the same proposition, provided that in any municipality a referendum to elect to not be a home rule unit may be held only once in any 47 month period"). In order to find a conflict between 28-1 and 28-7, there would have to be an inconsistent overlap of subject matter between the statutes and it is clear that none exists.

In further analyzing the question of whether a conflict exists so as to justify ignoring the Rule of Three in Section 28-1, the Objectors have correctly identified the applicable rules of statutory construction. Objectors cite *In re Godfrey, 243 Ill. App. 3d* in which the Court held that "[i]t is presumed that the legislature intended its enactments to be consistent and harmonious and where provisions are in *pari materia*, the provisions must be construed in reference to each other and in harmony with each other." Id at 917. Moreover, in *Cinkus v Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200 (2008) the Supreme Court made clear that when construing election related statutes, "[a] court presumes that the legislature intended that two or more statutes which relate to the same subject are to be operative and harmonious. A court must compare statutes relating to the same subject and construe them with reference to each, so as to give effect to all of the provisions of each if possible". Id at 208.

Objectors point out, if Section 28-7 supersedes Section 28-1, then, according to Respondent's argument, Section 28-7 must supersede all other requirements contained in Article

28 of the Election i.e. filing deadlines in 28-2, and notarization, binding and numbering requirements in 28-5. Clearly, there is no cognizable basis to reach such a conclusion. Rather, as the Objector points out, "all of the sections of Article 28 are to be read in *pari materia* so that all sections are given effect. Section 28-7 provides citizens an opportunity to submit Article VII referendum questions by petition, but those petitions are subject to the filing deadline of Section 28-2, the format requirement of Section 28-5 and the limitations of Section 28-1." (Objectors' Response to Motion to Strike at page 7)

Further, as the Objectors contend, it is a well established rule of statutory construction that an interpretation that renders any part of a statute superfluous or produces an absurd result must be avoided. *In re Godfrey*, 243 Ill App 3d at 917. According to Respondent's argument, because of the inapplicability of Section 28-1, there is no limit on the number of questions that can be submitted pursuant to Section 28-7. Thus, following Respondent's argument to its logical conclusion, election authorities could be required to place an *unlimited* number of questions on the ballot and Respondent readily concedes that this his position. However, such a conclusion runs afoul of the many cases that have found that the Rule of Three limitation supports a valid concern regarding ballot clutter and to adopt Respondent's interpretation not only renders the Rule of Three meaningless but also could, in fact, lead to an absurd result. Respondent dismisses the concerns about ballot clutter as unrealistic when the signature requirement for Article VII petitions is so high. In doing so, the Respondent, in essence, is asking the Electoral Board to interpret the relationship of the statutes in terms of the *probability* of an absurd result rather than the *possibility* of an absurd result. However, Respondent cites no support to compel an analysis in this manner.

In addition to the rules of statutory construction that support Objectors' position, Objectors further contend that the very recent case of *In Re Jones v Markiewicz-Qualkinbush*, 892 F. 3d 935 (2018) is directly on point here. In *In Re Jones*, a petition was filed to present the question of term limits to the voters of Calumet City. Prior to the filing of the petition, the City Council had passed a resolution authorizing the placement of three questions on the ballot. In recognizing the importance of the Rule of Three held that:

> Limiting the number of referenda improves the chance that each will receive enough attention, from enough voters, to promote a well-considered outcome. There's nothing magical about three…but the benefit of some limit is plain. That is enough to show that the rule used in Illinois is valid. Id. at 938

A plain reading of Sections 28-1 and 28-7, using well established rules of statutory construction compel the conclusion that the Rule of Three limitation set forth in 28-1 is applicable to the petition at issue here and the *In Re Jones* case reinforces said conclusion. Accordingly, it is my recommendation that Respondent's request to strike the Objectors' objection to the petitions on the basis that the Rule of Three makes the questions ineligible for placement on the ballot be denied. It is my further recommendation that the Electoral Board find that the questions set forth in the petition are, as a result of the Rule of Three limitation, invalid and ineligible for placement on the ballot.

Whether the Election Code allows for multiple questions to be presented in the same petition

The Objectors' Petition alleges that the Referendum Petition is invalid because it contains more than one question in violation of Section 28-3 of the Election Code. The Respondent has asked that this allegation be stricken.

Section 28-3 provides, in pertinent part, as follows:

Sec. 28-3. Form of petition for public question. Petitions for the submission of

> public questions shall consist of sheets of uniform size and each sheet shall contain, above the space for signature, an appropriate heading, giving the information as *to the question of public policy* to be submitted, and specifying the state at large or the political subdivision or district or precinct or combination of precincts or other territory in which *it is to be submitted* and, where by law *the public question* must be submitted at a particular election, the election at which it is to be submitted. (10 ILCS 5/28-3)

Objectors point out that all references in Section 28-3 are in the singular which establishes that the General Assembly intended that only one public question be submitted per petition. Objectors further point out that where the General Assembly intended for submission in the plural, they have specifically provided for same. In support of this argument, Objectors point to other sections of the Election, specifically, Sections 7-10 and 10-4 which contain references in the plural.

Section 7-10 provides, in pertinent part as follows:

> Sec. 7-10. ... We, the undersigned, members of and affiliated with the .... party and qualified primary electors of the .... party, in the .... of ...., in the county of .... and State of Illinois, do hereby petition that the following named *person or persons* shall be *a candidate or candidates* of the .... party for the nomination for (or in case of committeemen for election to) the office or offices hereinafter specified, to be voted for at the primary election to be held on (insert date)
>
> Each sheet of the petition other than the statement of candidacy and candidate's statement shall be of uniform size and shall contain above the space for signatures an appropriate heading giving the information as to *name of candidate or candidates*, in whose behalf such petition is signed; the office, the political party represented and place of residence; and the heading of each sheet shall be the same. (10 ILCS 5/7-10)

Section 10-4 provides in pertinent part as follows:

> Sec. 10-4. Form of petition for nomination. All petitions for nomination under this Article 10 for candidates for public office in this State, shall in addition to other requirements provided by law, be as follows: Such petitions shall consist of sheets of uniform size and each sheet shall contain, above the space for signature, an appropriate heading, giving the information as to name of *candidate or candidates* in whose behalf such petition is signed (10 ILCS 5/10-4);

Succinctly put, Objectors argue that the General Assembly knows how to make something plural when it wishes to do so and in the case of the Petition at issue here, has chosen not to do so.

To support a finding that multiple questions in the same petition are permitted, Respondent relies on a different Section 28-3 which addresses multiple sets of petitions, to wit:

> If multiple sets of petitions for submission of the same public questions are filed, the State Board of Elections, appropriate election authority or local election official where the petitions are filed shall within 2 business days notify the proponent of his or her multiple petition filings and that proponent has 3 business days after receipt of the notice to notify the State Board of Elections, appropriate election authority or local election official that he or she may cancel prior sets of petitions. If the proponent notifies the State Board of Elections, appropriate. (10 ILCS 5/28-3)

Respondent contends that the foregoing portion of Section 28-3 "anticipates that 'public questions' will have one 'proponent' and will be contained on one 'set of petitions'" (Respondent's Motion to Strike and Dismiss at page 11). According to Respondent, this language supports a conclusion that one set of petitions may contain multiple questions.

Respondent's argument is unpersuasive as Section 28-3 has no relevance here and the statute does not support the conclusion that Respondent urges. A provision that addresses multiple sets of petitions has no bearing on the instant matter where multiple questions are contained in one petition.

Respondent finds further support for his position in a provision of the Illinois Constitution. Specifically, Respondent contends that Section 11(a) of Article VII of the Illinois Constitution allows multiple questions to appear on one petition. Section 11(a) provides:

> Proposals for actions which are authorized by this Article or by law and which require approval by referendum may be initiated and submitted to the electors by resolution by the governing board of a unit of local government or by petition of electors in the manner provided by law. (Illinois Constitution, Art VII, Section 11(a)(1970)

According to Respondent's interpretation, the foregoing provision allows plural "proposals for action" to be submitted by one "petition of electors".

The difficulty with the interpretation advanced by Respondent is that it wholly ignores the remaining language in the last line, specifically, the words "in the manner provided by law". In order to give meaning to the entire provision, the terms of Section 28-3 of the Election Code must be consulted to determine "the manner provided by law". In other words, in order to read Section 11(a) in *pari materia* with Section 28-3, it must be concluded that Section 11(a) *authorizes* proposals for actions and Section 28-3 contains the requirements and restrictions on the *manner* in which they are to be submitted.

As the Objectors have previously pointed out, all of the references in the relevant portion of Section 28-3 are in the singular, "*the* question of public policy; in which *it* is to be submitted, and when *the* public question must be submitted at a particular election" (Objectors' Response to the Motion to Strike and Dismiss at page 10) and the best evidence of the General Assembly's intent is derived from the actual words used. Accordingly, it must be concluded that the General Assembly intended that only question could be submitted per petition. It is therefore my recommendation that the Respondent's Motion to Strike Objectors' objection to the Petition on the basis that it contains two questions be *denied*. It is my further recommendation that the Electoral Board *sustain* the

Objectors' objection and find that the Petition is invalid on the basis that it contains two questions and was not submitted in the manner provided by law.

Objectors also advance the argument that the Petition is invalid in its entirety because the inclusion of two separate questions violates Article III, Section 3 of the Illinois Constitution which requires that "[a]ll elections shall be free and qual." Ill. Const. 1970, art. III, Section 3. In support, Objectors cite *Clark v Illinois State Board of Elections*, 17 N.E.2d 771 (All App. 2014) herein the Appellate Court determined that the "free and equal clause is violated when separate and unrelated questions are combined in a single proposition on a ballot." Objectors allege that such as a result is applicable here because the two questions presented in the Petition are unrelated questions that could be answered separately.

The Respondent correctly points out that the *Clark* court addressed the issue of multiple unrelated questions combined in a single proposition on a ballot and the two questions set forth in the Petition here would be submitted to the electors as separate questions. However, the fact that the questions would be separate questions on the *ballot* is not the basis of the Objectors' position. Objectors are asking that Electoral Board extend the *Clark* decision to find that where unrelated questions on a *petition* are submitted, the petitions are in violation of Article III of the Constitution. In other words, the signers of the Petition here might be in favor of placing one question on the ballot and not in favor of placing another question on the ballot.

The Objectors' position is predicated on a finding that the referendum petition may contain more than one question. Having determined that the referendum petition at

issue here cannot contain more than one question, the *Clark* decision is of no relevance and provides no support to either party in advancing their positions.

Whether the Objectors' Petition was timely and properly filed

In his Motion to Strike and Dismiss, Respondent alleges that the Objectors' Petition should be stricken and dismissed because it was filed in the wrong office. Respondent offered no support for his position. As previously noted, two identical Objectors' Petitions were filed. One was filed in the office of the Chicago City Clerk which Respondent acknowledges was the right office in which the Objectors' Petition should be filed. No evidence was offered to the contrary. Additionally, during oral argument, Respondent contended that the Objectors' Petition was not timely filed. No evidence was presented to support such a finding. Accordingly, it is my recommendation that Respondent's Motion to Strike and Dismiss the Objectors' Petition on the basis that it was not properly or timely filed be denied.

Finally, to the extent that Respondent suggests that any of the statutes at issue in the instant case are unconstitutional or that their application would constitute a violation of constitutional rights, such questions cannot be considered in this forum. As the Supreme Court in *Goodman v Ward* has held "the electoral board has no authority to declare statutes unconstitutional or even to question their validity." 241 Ill. App. 2d 398 (2011).

CONCLUSION

In light of the foregoing, it is my recommendation that the Objections of Brett Allen Czaja and Karen Larson to the Petition for the Take Charge Chicago Referendums and Pat Quinn, as Principal Proponent be sustained and that the questions presented in the Petition be deemed ineligible for submission and that the questions presented in the Petition not appear on the ballot at the November 6, 2018 General Election.

Respectfully submitted,

Barbara Goodman

Barbara Goodman, Hearing Officer
9/7/18