IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

ROBERT SHORAGA, et al.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 23 MR 000002
	)	Case No. 23 MR 000003
TOWN OF NORMAL, ANGIE HUONKER,	)	Case No. 23 MR 000004
	)	
Defendants.	)	

TOWN OF NORMAL'S COMBINED MOTION TO DISMISS COMPLAINTS FOR MANDAMUS AND RESPONSE OPPOSING MOTIONS FOR SUMMARY JUDGMENT

Defendants, Town of Normal and Angie Huonker (jointly "Defendants"), by and through their attorneys, Klein, Thorpe and Jenkins, Ltd., and Michael J. Kasper, move to dismiss, with prejudice, pursuant to 735 ILCS 5/2-619(a)(9), Plaintiffs' verified complaints for *mandamus* ("Complaints") and respond in opposition to Plaintiffs' motions for summary judgment, stating as follows:

Introduction

The *mandamus* brought by Plaintiffs Amy Conklin, Robert Shoraga and Charles Sila (collectively "Plaintiffs") should be dismissed because no unequivocal right exists to be placed on the ballot for an unelected office and the Town of Normal ("Normal") clerk did not have an unequivocal duty to certify an unelected office for the ballot. Plaintiffs look to the wrong statutes to claim the offices they seek should be elected.

Plaintiffs ask this Court to issue writs of *mandamus* ordering Defendants to certify their nominating papers for the elected offices of town clerk, town supervisor and town collector, respectively, to the McLean County election authorities before January 26, 2023. *Verified Complaint for Mandamus*, attached and referred to as Exhibit A at ¶¶ 7, 21; Exhibit B at ¶¶7, 17; Exhibit C at ¶¶ 7, 19. Normal, on December 2, 2022, sent each Plaintiff a letter indicating his or her nominating papers lacked

conformity with the legal requirements and, on this basis, refused to certify the petitions. *Id.* at ¶ 23; at ¶ 21; at ¶ 21. The letter to Conklin explained that the office of town clerk is an appointed, rather than an elected, position; therefore, her nominating papers were deficient. Exhibit A at ¶ 24. The letters to Shoraga and Sila both explained that the positions of collector and supervisor did not exist in Normal; consequently, their petitions also were deficient. Exhibit B at ¶ 22; Exhibit C at ¶ 22.

Plaintiffs' complaints should be dismissed, with prejudice, pursuant to 735 ILCS 5/2-619(a)(9) because affirmative matter, including historical records indicating Normal's incorporation and corporate actions regarding its form of government, as well as Illinois Municipal Code provisions, defeat Plaintiffs' *mandamus* claims. Plaintiffs base their claims on the premise that the elective offices for which they filed nominating papers – town clerk, town supervisor and town collector – exist and are part of the governing system in Normal. This presumption is false and, therefore, Plaintiffs' *mandamus* actions should be dismissed.

I. Legal Standard For A § 2-619(a)(9) Motion to Dismiss And For Summary Judgment

A § 2-619(a)(9) motion to dismiss allows for an involuntary dismissal when the "claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9). Affirmative matter "is something in the nature of a defense which negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *Illinois Graphics Company v. Nickum*, 159 Ill.2d 469, 486 (1994). The affirmative matter asserted by the defendant must be apparent on the face of the complaint or supported by affidavits or certain other evidentiary materials. *Epstein v. Chicago Board of Education*, 178 Ill.2d 370, 383 (1997).

Summary judgment only should be granted where all facts, including "pleadings, depositions, admissions and affidavits," if taken in the light most favorable to the non-movant, show that the movant is entitled to relief as a matter of law, and that "no genuine issue of material fact exists." *Siegel v. Village of Wilmette* 324 Ill. App. 3d 903, 907 (1st Dist. 2001) (citing *First of America Trust Co. v. First Illini Bancorp, Inc.,* 289 Ill. App. 3d 276, 283 (3rd Dist. 1997). Summary judgment should be granted

where no reasonable person could conclude differently from the facts presented. *Smith v. Armor Plus Co.,* 248 Ill. App. 3d 831, 839 (2nd Dist. 1993).

II. Plaintiffs' Complaints Fail To Allege Sufficient *Mandamus* Claims

A. The Requirements Of A *Mandamus* Claim

Mandamus "is an extraordinary remedy appropriate to enforce as a matter of public right the performance of official duties by a public officer where no exercise of discretion on his part is involved." *People ex rel. Birkett v. Jorgensen*, 216 Ill. 2d 358, 362 (2005). M*andamus* "is employed to compel a public official to perform a ministerial duty." 208 Ill.2d 457, 464 (2004). *Mandamus* cannot be used to direct a public official or public body to reach a particular decision or to exercise its discretion in a particular matter, even if the judgment or discretion has been erroneously exercised. *Pate v. Wiseman*, 2019 IL App (1st) 190449, ¶25 (citing *Crump v. Illinois Prisoner Review Board*, 181 Ill. App.3d 58, 60 (1st Dist. 1989).

For a *mandamus* to issue, a plaintiff must demonstrate: (1) an unequivocal right to the requested relief, (2) an unequivocal duty of the defendant to act, and (3) defendant's unequivocal authority to comply with an order granting *mandamus* relief. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433-34 (2007). *Mandamus* is inappropriate in this case because Plaintiffs cannot satisfy either of the first two of these elements.

B. The Alleged Grounds For Plaintiffs' *Mandamus* Claims

Plaintiffs' claims to having a clear right to the certification of their nominating papers assert the following legal and factual allegations. Section 10-8 requires Huonker, as town clerk, to certify all nominating papers that are in apparent conformity with the Election Code. Exhibit A, at ¶¶ 5, 8; Exhibit B at ¶¶ 5, 8; Exhibit C at ¶¶ 5, 8. Because Plaintiffs' nominating papers facially conform with Election Code requirements, they have a right to have their names placed on the ballot for the positions they seek. *Id.* at ¶¶ 33-38; ¶¶ 31-36; ¶¶ 31-36. The Municipal Code, at 65 ILCS 5/3.1-25-95, requires, *inter alia*, that the offices of clerk, collector and supervisor be elected for a four-year term and that the municipal clerk shall certify the names of candidates for these offices to the proper election

authority. *Id.* at ¶¶ 9, 10, 39; ¶¶ 9, 10, 37; ¶¶ 9, 10, 37. Defendants allegedly have no legal basis to disregard state law and deprive Plaintiffs of their clear right to appear on the ballot as candidates for election to the positions they seek. *Id.* at ¶ 44; ¶ 42; ¶ 42.

Plaintiffs, by focusing exclusively on § 10-8 of the Election Code and §§ 3.1-25-90 and 3.1-25-95 of the Municipal Code, neglect the important fact that Normal has adopted a managerial form of government and, therefore, Article 5 of the Municipal Code, rather than the statutory provisions Plaintiffs set forth in their pleadings, provides the legal basis for Huonker's actions regarding Plaintiffs' nominating papers. Under Article 5, Huonker properly refused to certify Plaintiffs' nominating papers to the election authorities.

C. Plaintiffs Do Not Have An Unequivocal Right To Have The Normal Town Clerk Certify Their Petitions For Offices That Are Not Part Of Normal's Managerial Form Of Government

Affirmative matter shows that Plaintiffs lack unequivocal rights to have Huonker certify their nominating petitions for positions of town clerk, town supervisor and town collector because these offices are not elected or do not even exist within Normal's managerial form of government. Therefore, Plaintiffs fail the first requirement for *mandamus*.

1. Normal's history as an incorporated "Special Charter" municipality

The applicable affirmative matter includes the history of Normal's incorporation, the creation of the appointed position of town clerk, and the establishment of its current managerial form of government, adopted by referendum in 1970. An "incorporated town" is a unit of local government organized under special charters granted by the Illinois legislature prior to the adoption of the State Constitution of 1870. *Committee of Local Improvements of Town of Algonquin v. Objectors to Assessment*, 39 Ill.2d 255, 259 (1968). Normal was incorporated on February 25, 1867 by a special charter from the State. See *An Act to Incorporate the Town of Normal, Private Laws of the State of Illinois Passed by the Twenty-Fifth General Assembly, 1867, Volume III, pp. 321-36* ("Town Charter"), attached and referred to as Exhibit D. The Special Charter enumerated the legislative powers of the town council, including the authority to appoint a clerk. Exhibit D at Article V, § 2.

In 1949, the General Assembly added § 3-8-2 to the Municipal Code which provides that:

> The corporate authorities of villages incorporated and existing under special acts which now provide for or require the election of one or more of the following municipal officers, a treasurer, a clerk, a marshal, or a collector, may adopt this section by resolution and may, in lieu of such provisions or requirements, provide by ordinance for the appointment of such officers by corporate authorities, prescribe their terms, duties, compensation and the amount of any bond.

I.R.SA. (1967) Ch. 24, § 3-8-2. On January 21, 1952, the Normal Town Council, authorized by § 3-8-2, adopted a resolution (the "1952 Resolution") declaring town clerk as an appointive office. The Town Council subsequently adopted Ordinance No. 248, *An Ordinance Providing for the Appointment of a Town Clerk for the Incorporated Town of Normal and Further Prescribing the Duties and Compensation and Bond Required for Said Position* ("Ordinance No. 248"). The 1952 Resolution and Ordinance No. 248 are attached and referred to as Group Exhibit E. As a result of the authorizing statutory provision, § 3-8-2 of the Municipal Code, the 1952 Resolution and Ordinance No. 248, the office of town clerk became appointive, rather than elective, and so it has remained consistently for 70 years since 1952.

In 1969, petitions were filed with the McLean County Circuit Court to allow Normal to adopt a managerial form of government pursuant to the Municipal Code,[1] and in March, 1970, the voters, by referendum, supported the adoption which was implemented by the passage of Ordinance No. 820. See *An Ordinance Creating the Office of Municipal Manager for the Town of Normal and Providing for His Powers and Duties*, attached and referred to as Exhibit G.[2] Municipalities that adopt the managerial form of

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[1]See *In re: Petitions to Submit the Proposition of Adoption of Managerial Form of Municipal Government, Case No. 69 MC 865 (Circuit Court of McLean County), Opinion and Order dated January 30, 1970*, attached and referred to as Exhibit F. The January 30, 1970 Opinion and Order concluded incorporated towns such as the Town of Normal were included within the class of municipalities authorized to adopt the managerial form of government. *Id.* The Court directed that a referendum concerning the adoption of the managerial form of government by the Town of Normal be placed on the ballot for the March 2, 1970 general election. *Id.*

[2] Plaintiffs allege an analogy between the Town of Cicero and the Town of Normal to show that Normal must elect the office of clerk. This attempted analogy fails because the Town of Cicero has not adopted a managerial form of government under Article 5 of the Municipal Code while Normal has done so. See *Illinois Counties and Incorporated Municipalities July 2012*, attached and referred to as Exhibit H at p. 27, which lists Illinois municipalities with the managerial form of government. Normal appears on the list and, thus, is recognized as having a managerial form of government by the Illinois Secretary of State. The Town of Cicero is not on the list. As Article 5 controls the election, appointment, functions and duties of officers in a managerial government, Normal is obligated to follow its provisions while the Town of Cicero is not. The distinction between the two municipalities goes further. Cicero is an incorporated town that has succeeded a civil township. Its municipal government performs the duties and functions of its coextensive township. Its offices and the duties of the offices, including town supervisor and town collector are provided under Article 70 of the Township

government are then subject to Article 5 of the Municipal Code which provides for the election, appointment, functions and duties of municipal officers. 65 ILCS 5/5-1-1, *et seq.*

The Normal Town Council, by Ordinance No. 1001, *An Ordinance Amending Section 2.3-38 and Section 2.3-39 of Chapter 2, "Officers," of the Municipal Code of the Town of Normal, approved on April 3, 1972* ("Ordinance No. 1001"), attached and referred to as Exhibit I, addressed the continued appointment of the clerk position. Ordinance No. 1001 indicated that, "[t]he office of Town Clerk, heretofore established by Ordinance as an appointive office, is hereby retained." Ordinance No. 1001 reiterated and affirmed the clerk was an appointed office as statutorily authorized by § 3-8-2 of the Municipal Code.

2. Plaintiffs Shoraga and Sila do not have unequivocal rights to have Huonker certify their nominating papers for supervisor and collector

Both Shoraga and Sila allege an unequivocal right to have their nominating papers for the elected positions of town supervisor and town collector certified by Huonker, basing their argument on the fact that the Municipal Code, § 3.1-25-95, provides for the election of both a town collector and a town supervisor. As noted previously, within the Municipal Code, municipalities that have adopted the Article 5 managerial form of municipal government via referendum are thereafter subject to the provisions of Article 5 which provides, among other things, for the election, appointment, functions and duties of officers of the municipality. 65 ILCS 5/5-1-1, *et seq.* Significantly, § 3.1-5-5 of the Municipal Code (65 ILCS 5/3.1-5-5), indicates that, "[i]f there is a conflict between any provision in this Article 3.1 and any provision in Article 4 or Article 5, the provision in Article 4 or 5, as the case may be, shall control."

Here, a conflict between Article 3.1 and Article 5 does exist. A thorough search of Article 5 reveals no provisions concerning the offices of supervisor or collector. In statutory interpretation, the primary goal is to ascertain the intent of the legislature. *Land v. Board of Education of the City of Chicago*, 202 Ill.2d

Code. In Cicero, the municipal officers are elected to perform their statutory functions. Normal is different. It did not succeed a civil township and it has no coextensive township. There are two townships in Normal, neither of which is located entirely within the town's boundaries. Normal has no legal authority or ability to perform the operation of these townships. Those townships elect their own officers. Normal operates its form of government under Article 5 of the Municipal Code and that article provides for the election of its officers.

414, 421 (2002); *Paris v. Feder*, 179 Ill.2d 173, 177 (1997). The best evidence of legislative intent is the language used in the statute itself which must be given its plain and ordinary meaning. *Id.* When the plain language of the statute is clear and unambiguous, the legislative intent discerned from the language must prevail. *Murray v. Chicago Youth Center*, 224 Ill.2d 213, 235 (2007). Article 5's plain language demonstrates the legislature did not intend that Article 5 managerial governments like Normal would include the offices of supervisor and collector. If the legislature intended for these offices to be part of a managerial government, legislators certainly had the capacity to at least mention these positions in Article 5. *People v. Clark*, 2019 IL 122891 at ¶ 23; *People v. Goldman*, 318 Ill. 77, 100 (1925) ("[I]f the Legislature intended to include receivers, it would have said so[.]"). Courts must not depart from a statute's plain language and read into it exceptions, limitations or conditions the legislature did not express. *Clark*, 2019 IL 122891 at ¶ 23. It would be absurd for the Legislature to include redundant offices in the same Article.

Article 5's omission of supervisor and collector as officers in a managerial form of government conflicts with § 3.1-25-95. Pursuant to § 3.1-5-5, Article 5 prevails. Shoraga and Sila did not have a clear right that required Huonker to certify their nominating papers for town supervisor and town collector because Normal, as a municipality that has adopted a managerial form of government by referendum, is thereafter subject to the provisions of Article 5. The offices of supervisor and collector have not existed in recent memory in Normal, do not exist currently, and are not offices contemplated by a managerial form of government. Huonker did not have a statutory duty to certify nominating papers for offices that do not exist in Normal. Any other result leads to absurdity.

3. Conklin does not have an unequivocal right to have Huonker certify her nominating papers for an elected town clerk position

a. Article 5 demonstrates that the Normal clerk position can be appointed

Section 5-1-2 (65 ILCS 5/5-1-2) provides that when a municipality adopts the managerial form of municipal government under Article 5, "that city or village and its officers shall be vested with all the rights, privileges, powers and immunities conferred by Article 3 or 4, as the case may be, in force at the time such city or village adopted this Article 5, including the procedures for elections therein

described, the officers therein named and the duties and liabilities set forth, excepted as modified by this Article 5." Division 2 of Article 5 concerns the election of officers. The single provision in Division 2 that mentions the office of clerk, § 5-2-19, authorizes the appointment of a clerk in a city not exceeding 100,000 residents that elects its trustees at large and has adopted an ordinance providing for the appointment of a clerk. The Normal town council passed Ordinance No. 248 in April 1952 making town clerk an appointed office. Exhibit H. On April 3, 1972, the Normal Town Council adopted Ordinance No. 1001 that stated, *inter alia*, "[t]he office of Town Clerk, heretofore established by Ordinance as an appointive office, is hereby retained." Exhibit I. Pursuant to § 5-2-19, the town clerk in Normal is an appointed office and Huonker properly declined to certify the nominating papers for an elective position of town clerk.

Conklin may contend the plain language of § 5-2-19 refers only to cities not exceeding 100,000 residents and, therefore, the Legislature intended to limit an appointed clerk position to cities under a managerial form of government, and since Normal is an incorporated town, rather than a city, the option of having an appointed clerk does not exist. This interpretation of § 5-2-19 fails on constitutional grounds as impermissible special legislation. *Big Sky Excavating, Inc. v. Illinois Bell Telephone*, 217 Ill.2d 221, 240 (2005) ("A statute will be held unconstitutional as special legislation only if it was enacted for reasons totally unrelated to the pursuit of a legitimate state goal.") The Illinois Supreme Court, in *People ex rel Hoeinghaus v. Campbell* considered the constitutionality of a provision under which a city or village having a special charter could adopt the commission form of government after organizing under the general Cities and Villages Act, while a city or village having a population under 200,000 may adopt the commission form of government, but no other city or village could do so. 285 Ill. 557, 560 (1918). The Supreme Court determined the statute's different treatment based on population or organization as a village or city was unconstitutional, stating that, "[a]ll cities and villages have the right to adopt the commission form of government, and the Constitution requires that the conditions for its adoption should be the same for all." *Id.* at 562. The Supreme Court further explained a municipality's status as a city cannot alone justify conferring upon it benefits or privileges different from those enjoyed by villages of like population. *Id.* at 563 ("[T]he difference between city

and village organization has no relation to the commission form of government."); *People ex rel City of Danville v. Fox*, 247 Ill.402, 406 (1910) ("The fact that a municipality has adopted the form of government provided for cities affords no reasonable basis for conferring upon it benefits and privileges withheld from villages of equal population, and differing from cities only in that they have not thought proper or desirable to incorporate as cities.")

Statutory construction requires that when a reasonable interpretation of a law exists that avoids constitutional infirmity, a court must adopt such a construal. *Millineum Maintenance Management, Inc. v. County of Lake*, 384 Ill.App.3d 638, 648 (2nd Dist. 2008). Interpreting § 5-2-19 to allow only cities meeting the conditions for appointing the office of clerk to be able to do so renders the statute unconstitutional special legislation. To avoid constitutional infirmity, § 5-2-19 must be interpreted to allow Normal to appoint its town clerk.

b. <u>Article 3.1 allows the Normal town clerk to be an appointed office</u>

Conklin may contend the town clerk in Normal is an elected position based on references to an elected office of clerk in Article 3.1 of the Municipal Code. However, statutory authority allows Normal, as a town created by a special charter in 1867, to select its town clerk by appointment. Section 3-8-2 of the Municipal Code that was created by the General Assembly in 1949 and later became 65 ILCS 5/3-8-2 provided that:

> The corporate authorities of villages incorporated and existing under special acts which now provide for or require the election of one or more of the following municipal officers, a treasurer, a clerk, a marshal, or a collector, may adopt this section by resolution and may, in lieu of such provisions or requirements, provide by ordinance for the appointment of such officers by the corporate authorities, prescribe their terms, duties, compensation and the amount of any bond.

Article 3 of the Municipal Code subsequently was repealed and replaced by Article 3.1 pursuant to Public Act 87-1119, effective May 13, 1993. Section 3.1-30-25 states that:

> The corporate authorities of municipalities incorporated and existing under special acts that now provide for or require the election of one or more of the appointed officers referred to in this Division 30 may adopt this Division 30 by resolution and may, instead of the provisions or requirements of the special Acts, provide by

> ordinance for the appointment of those officers by the corporate authorities and prescribe their terms, duties, compensation, and the amount of any bond required.

Section 3.1-30-25 and its precursor, § 3-8-2, both provide that municipalities, like Normal, having been incorporated and existing under a special act, may decide by ordinance to select offices such as town clerk by appointment. Section 3.1-25-90 specifies that a clerk shall be elected except in the case of a village "that was incorporated under a special Act and that adopts Section 3.1-30-25." 65 ILCS 5/3.1-25-90. Normal was incorporated under a special act and it adopted § 3-8-2 that later became § 3.1-30-25.[3] Therefore, Normal is entitled to continue to appoint its clerk as a matter of law and Huonker property declined to certify nominating papers for an elective position of town clerk.

c. Normal's Town Charter provides the town clerk is an appointed office

The Municipal Code, at 65 ILCS 5/1-1-3, provides that, "[a]ll municipalities incorporated under any special act in effect prior to July 1, 1872, which at the date of the passage of this Code are still functioning under the special act which created them, shall remain as properly incorporated under that special act." Additionally, 65 ILCS 5/1-1-4, indicates in the event of a conflict between the Municipal Code and special charter provisions, the latter shall govern. The Legislature, by an Act approved February 25, 1867, incorporated the Town of Normal. See Exhibit D. Article V, § 2 of the Act states that, "The town council shall have the power to appoint a clerk, treasurer, assessor . . . and all other officers that may be necessary, and prescribe their duties . . . ." Pursuant to §§ 1-1-3 and 1-1-4, Normal retains the legal authority first granted to it by the Legislature in 1867 to appoint the position of town clerk. This authority granted by its Special Charter shall prevail in any conflict with the Municipal Code provisions set forth in Article 3.1. As a matter of law, the town clerk office in Normal remains an appointed position; therefore, Conklin does not have an unequivocal right to have Huonker certify her nominating papers for a position that does not exist in Normal's managerial form of government.

[3] No conflict exists between Article 3.1 and Article 5 with regard to Normal's clerk being an appointed office because its incorporation pursuant to a special act in 1867 provides a statutory basis under Article 3.1.

D. Huonker Does Not Have An Unequivocal Duty To Certify Plaintiffs' Nominating Papers For Elected Positions That Do Not Exist In Normal

Plaintiffs' claims for the issuance of a writ of *mandamus* should be dismissed because Huonker does not have an unequivocal duty to certify their nominating papers for the elective positions of town clerk, town supervisor and town collector that do not exist in Normal. It is, of course, well established that *mandamus* may not be used compel an act that requires an exercise of an official's discretion. *McFatridge v. Madigan*, 2013 IL 113676, ¶ 17 ("A writ of mandamus is appropriate when used to compel compliance with mandatory legal standards but not when the act in question involves the exercise of a public officer's discretion."). Mandamus is not appropriate here because the challenged act (determining the validity of nominating petitions) requires the Clerk's discretion.

1. Huonker must use her discretion to determine whether Plaintiffs' nominating papers are in "apparent conformity" with Election Code provisions

Section 10-8 of the Election Code provides: "nomination papers … being filed as required by this Code, and being in apparent conformity with the provisions of this Act, shall be deemed to be valid unless objection thereto is made in writing …" 10 ILCS 5/10-8. Thus, there are two preconditions to nomination papers being deemed "valid." The second is that no objection to their validity has been made. The first, however, is that the petitions are required to be duly filed and in "apparent conformity" with the provisions of the Election Code.

The purpose of the apparent conformity rule is itself apparent: to further the State's interest in efficient and orderly elections. *Storer v. Brown,* 415 U.S. 724, 730 (1974)("there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process."). This provision also begs the question: "apparent" to whom? The answer is the town clerk because she is the election authority responsible for accepting nomination papers for municipal elections. 10 ILCS 5/1-3 (10); 5/10-6; *Pate*, 2019 Ill App (1st) 190449 at ¶33 ("the village clerk had the authority to make a determination and refuse to certify plaintiffs' names, even if no objection to the purported nomination papers was filed").

The legislature's use of the term "apparent" also demonstrates that election authorities must use their discretion in making that determination. What might be "apparent" to one election official might

not be to another. Making an apparent conformity determination is not like affixing a stamp, recording a deed, or some other ministerial function that every clerk does exactly the same way. Here, the General Assembly expressly designated local election officials as gatekeepers to ensure the facial sufficiency of nomination papers. That role requires local officials to make that determination on a case-by-case basis. This is not a ministerial function. As a result, *mandamus* is inappropriate.

In their Complaints, Plaintiffs also quote Section 10-8 and emphasize the words "this Act", somehow suggesting that this makes a difference. It does not. Section 10-3 of the Election Code provides:

> Nominations of independent candidates *for public office within any district or political subdivision* less than the State, may be made by nomination papers signed in the aggregate for each candidate by qualified voters…

10 ILCS 5/10-3 (emphasis added). This Section simply provides that nomination papers must relate to: (1) a public office; that is (2) within the political subdivision. Obviously, someone has to determine if the nomination papers meet these two requirements. If not the clerk, then who?

Section 2A-32 of the Election Code, regarding the timing of elections, further supports the clerk's conclusion. Section 2A-32 provides:

> Incorporated Towns with Population of 50,000 or More - President - Clerk – Collector – Assessor – Supervisor – Trustee – Time of Election. In each incorporated town with a population of 50,000 or more, a president, a clerk, a collector, a supervisor and an assessor, *when required*, shall be elected in every incorporated town at the consolidated election in 1985 and at the consolidated election every 4 years thereafter.

10 ILCS 5/2A-32 (emphasis added). This "when-required" qualification recognizes that there can be towns with a population of 50,000 or more where those officers are not required to be elected. Moreover, it also recognizes that a determination must be made as to whether those offices are required. Again, it is the clerk's duty to make that determination.

2. Plaintiffs absurdly contend Huonker must certify their nominating papers because <u>they correctly completed their election petitions</u>

Plaintiffs appear to take the position that the clerk *must* certify to the county clerk for printing on the ballot the name of any person who submits nomination papers for *any* office so long as the person

files the paperwork that other candidates file (Statement of Candidacy, petition sheets, etc.). What if a person files nomination papers running for Dogcatcher? Or Prom King? Must the clerk certify those names for printing on the ballot? One is hard pressed to think of a more common sense and logical application of the "apparent conformity" power than simply determining that the nomination papers actually relate to a real public office.

If then, the clerk has the authority to determine that nomination papers relate to a real office, then she must also have the authority to determine whether the nomination papers relate to a real public office "within" the "political subdivision." *Id.* What if Donald Trump showed up at the clerk's office and filed the paperwork to run for President of the United States? Does the clerk have to certify his name for printing on the ballot in 2023 Municipal Election? Or J.B. Pritzker for Governor? Each of those is obviously a "public office." Nonetheless, the clerk has the authority to turn those nomination papers away because, although they are public offices, they are not public offices within the political subdivision of Normal.

Plaintiffs cite a 1914 case about whether the Town of LaSalle should become an "anti-saloon" territory, to support their argument for mandamus. *People ex rel. Giese et al. v. Dillon, Town Clerk*, 266 Ill. 272 (1914). But that case supports the conclusion that mandamus is not appropriate here. In *Giese*, the Town Clerk refused to certify the anti-saloon referendum question for the ballot because, although the petition contained, on its face, enough signatures, he decided that a number of them were invalid (including because some "signers of said petition were women"). *Id.* at 275.

The Supreme Court explained the clerk's powers as follows:

> The statute imposes the absolute duty on the clerk to submit the question to be voted upon when a petition is filed in compliance with the statute. He is given no discretionary power when a petition proper on its face is filed. His only function is to determine whether, upon the face of the petition, it is in compliance with the law.

Id. at 276. The clerk, the Court concluded, "cannot institute an investigation to determine whether the parties signing it were legal voters…" *Id.*

In this case, the clerk did not, and need not, look beyond the face of the petitions to determine their facial compliance with the Election Code. The offices Plaintiffs seek appear on each and every page. She did not "institute an investigation" as the clerk did in *Giese*. She simply read the petitions and determined that they did not, any more than a petition for Dogcatcher or Prom King, relate to a "public office" within the "political subdivision" of the Town of Normal.[4]

Here, Plaintiffs have filed nomination papers seeking election to the offices of town supervisor, town collector, and town clerk. While these offices may be public offices in other places, they are not public offices within the political subdivision of Normal. The clerk properly determined that Plaintiffs' nomination papers were not in "apparent conformity" because they did not relate to a "public office" within the "political subdivision" of Normal.

Interpreting § 10-8 of the Election Code to *require* the clerk to certify the names of candidates seeking non-existent offices for printing on the ballot is, of course, absurd.

The Illinois Supreme Court, in *People v. Hanna*, found that the Appellate Court's interpretation of a section of the Administrative Code related to the testing of breath analysis instruments in Illinois could not stand due to its absurdity, observing that, "[W]here a plain or literal reading of a statute produces absurd results, the literal reading should yield[.]"207 Ill.2d 486, 497-498 (2003). The court presumes the Legislature, in enacting a statute, did not intend absurdity, inconvenience, or injustice. *Land*, 202 Ill.2d at 422. Section 10-8 seeks to prevent election officials from arbitrarily and capriciously depriving an individual the right to appear on a general election ballot. Requiring Huonker to certify nominating papers for positions that do not exist does not further the statutory purpose. The absurdity of Plaintiffs' claims means their *mandamus* actions must be dismissed, with prejudice.

E. The Requests For *Mandamus* Should Be Denied Because Granting The Claims Would Cause Disorder And Confusion And Fail To Promote Substantial Justice

Mandamus also should be denied where it would create disorder and confusion and would not promote substantial justice. *Lenit v. Powers*, 120 Ill.App.2d 411, 419 (1st Dist. 1969); *People ex rel. Harty*

[4]It Also should be noted that the procedures for referenda under Article 28 of the Election Code differ than those for nominating petitions under Article 10. See *McHenry Township v. County of McHenry*, 2022 IL 127258 at ¶ 72.

v. Gulley, 2 Ill.App.2d 321, 329 (4th Dist. 1954). Normal's ordinances do not provide for an elected clerk, nor do they provide for the offices of collector and supervisor. Plaintiffs seek to nullify Normal's ordinances through nominating petitions. By doing so, they attempt to rig an election in their favor. It is now too late to file nomination papers to seek election in the February 28, 2023 election. 10 ILCS 5/10-6. As a result, granting a writ of *mandamus* would deprive any other potential candidates to run for these newly recognized offices, and would effectively elect Plaintiffs to these positions.

F. Granting Plaintiffs' *Mandamus* Actions Would Be Fruitless

Finally, *mandamus* should be denied where it would be fruitless. *Thornton v. Ramsey*, 24 Ill.App.2d 452, 459 (1st Dist. 1959). Here, ordering the clerk to certify Plaintiffs' names to go on the ballot would be fruitless for two reasons. First, the clerk's certification of Plaintiffs' names does not ensure the county clerk, who is actually responsible for preparing ballots, would comply. If the clerk certified a candidate for the office of Dogcatcher, would the county clerk add a ballot space? And even if the county clerk did comply, *mandamus* still would be fruitless because, as explained above, Plaintiff cannot be seated to these non-elected offices.

WHEREFORE, the Town of Normal and Angie Huonker respectfully request that this Honorable Court dismiss Plaintiffs' complaints for *mandamus*, with prejudice, and grant any further relief it deems just and fair.

Respectfully submitted,
Town of Normal and Angie Huonker

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