

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

ROBERT SHORAGA)	
)	
Plaintiff.)	
)	23-MR-_____
TOWN OF NORMAL, ANGIE HUONKER,)	
)	
Defendants.)	

VERIFIED COMPLAINT FOR MANDAMUS

NOW COMES, Petitioner, Robert Shoraga, (hereinafter referred to as “Candidate”) by and through his attorneys Thomas G. DeVore, and the Silver Lake Group, Ltd., and for his Verified Complaint Mandamus and Injunctive Relief against Respondents, Town of Normal (hereinafter referred to as the “Town”) and Angie Huonker (hereinafter referred to as “Huonker”), (collectively both shall be hereinafter referred to as the “Defendants”) and hereby alleges as follows:

PARTY PLAINTIFFS

- 1. The Candidate is a resident of the Incorporated Town of Normal.

PARTY DEFENDANTS

- 2. The Town is a body politic and has only those powers as provided to them by the Illinois Constitution and the Illinois legislature.
- 3. Huonker is currently the appointed clerk of the Town.

RELEVANT LEGAL FRAMEWORK

- 4. Mandamus is a proper remedy to compel a board or officer to perform a ministerial act where he is under a clear legal duty to do so. *People v. Knopf*, 198 Ill. 340, 64 N. E. 842, 1127.

5. The Illinois Supreme Court explained that the responsibility for determining whether an election petition apparently conforms to the law rests with the town clerk. *People ex rel. Giese et al. v. Dillon, Town Clerk*, 266 Ill. 272, 107 N.E. 583.
6. Specifically, the clerk's duty is “to determine whether, upon the face of the petition, it is in compliance with the law. *Id.*”
7. If the petition on its face appears to comply with the statutory requisites, the clerk may not look outside the petition to determine whether in fact it does comply; he must submit the question to the voters. *Id.* (Emphasis Added)
8. The Election Code states that all nominating papers, “*being filed as required by this Code, and being in apparent conformity with the provisions of this Act,*” are deemed valid unless they are subject to a duly filed objection. (Emphasis added.) 10 ILCS 5/10–8 (West 1996).
9. Incorporated town officers. For the general municipal election to be held in the year 1985 ***in every incorporated town with a population of 25,000 or more*** by the last official census, and every 4 years thereafter, the municipal clerk ***shall certify*** the names of the candidates to the proper election authority ***as provided by the general election law***. (See 65 ILCS 5/3.1-25-95)
10. A president, a ***clerk***, an assessor, a ***collector***, and a ***supervisor*** shall be elected for a term of 4 years and until their successors are elected and have qualified. *Id.*
11. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office ***only as*** approved by referendum ***or*** as otherwise authorized by law. (See Ill. Const. 1970, art. VII, § 6(f))
12. Although they have been granted extensive powers with respect to their local government and affairs (Ill. Const. 1970, art. VII, 6(a)), home rule municipalities may change their

manner of selecting officers only: (1) as provided by statute; or (2) as approved by a referendum. (Emphasis Added) (2005 Ill. Atty. Gen. Op. 007 (Ill.A.G.))

13. The constitutional mandate requires that changes in the manner of selecting officers of a home rule municipality or their terms are reserved to the voters by article VII, section 6(f), and can be effected only by referendum unless otherwise authorized by legislative enactment. *Leck v. Michaelson*, 111 Ill.2d 523, 491 N.E.2d 414, 96 Ill.Dec. 368.
14. The primary objective of statutory construction is to ascertain and give effect to the legislature's intent. *Evans v. Cook County State's Attorney*, 2021 IL 125513, ¶ 27, 451 Ill.Dec. 353, 183 N.E.3d 810.
15. The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning. *People v. Casler*, 2020 IL 125117, ¶ 24, 450 Ill.Dec. 415, 181 N.E.3d 767.
16. When statutory language is plain and unambiguous, the statute must be applied as written without resort to aids of statutory construction. *People v. Howard*, 228 Ill. 2d 428, 438, 320 Ill.Dec. 868, 888 N.E.2d 85 (2008).
17. We may not depart from a statute's plain language by reading in exceptions, limitations, or conditions the legislature did not express. *People v. Lewis*, 223 Ill. 2d 393, 402, 307 Ill.Dec. 645, 860 N.E.2d 299 (2006).
18. Courts should not attempt to read a statute other than in the manner it was written. *Rosewood Care Center, Inc. v. Caterpillar, Inc.*, 226 Ill. 2d 559, 567, 315 Ill.Dec. 762, 877 N.E.2d 1091 (2007)

FACTUAL BASIS

19. The Candidate filed his nominating papers for the elected office of town supervisor. (See attached Exhibit A)
20. The nominating papers were filed timely on November 28, 2022.
21. On or about December 02, 2022, the Town, through their counsel, sent a letter to the Candidate proclaiming his nominating papers lacked apparent conformity with the legal requirements and as such refused to certify the Candidates nominating papers to the election authorities. (See attached Exhibit B)
22. In the Town's correspondence it stated that given the Town has chosen in its local municipal code to not provide for a town supervisor, that the nominating papers lacked apparent conformity with legal requirements. (See attached relevant provisions of the Town code as Exhibit C) ¹
23. Notwithstanding this letter from the Town on December 02, 2022, on December 05, 2022, two residents of the Town filed objections to the nominating papers of the Candidate. (See attached Exhibit D) ²
24. Notwithstanding the Town, and or Huonker, had deemed the nominating petition lacking apparent conformity, the Town's board of elections was convened on December 09, 2022 to consider the objections filed.
25. The Candidate filed his response to the objections with the election board. (See Exhibit E)
26. On or about December 27, 2022, counsel for the Town advised the Town would not be proceeding with the objections filed with the board of elections and was going to instead rely

¹ The election code states the clerk shall certify if the nominating papers conform to the Act. The Act being the election code. There is no facially deficient defect in the nominating papers as required by the Act. The nominating papers comply with all requirements of the Act. The clerk and the Town are arbitrarily disregarding compulsory state law by proclaiming they local election code supersedes the state law.

² The Court will see the objections filed by the two unrelated objectors are identical. Upon information and belief, these objections were drafted by counsel for the Town in an effort to create the appearance citizen objectors.

on the Towns December 02, 2022 letter that the nominating papers were not in apparent conformity with the legal requirements.

27. In essence, the Town is taking the position that the objections filed were moot given the Town had concluded the nominating papers were not in apparent conformity with the Town election code. (See Exhibit F)

28. Given the Town has refused to resolve this matter with the local election board, the Candidate was left with no choice but to seek relief directly from the Court.

29. The Town must certify the Candidates name to the county officials before January 26, 2023. (See correspondence from county clerk attached as Exhibit G)

COUNT I
MANDAMUS

30. Plaintiff incorporates paragraphs 1 through 29 as if each had been specifically plead herein.

31. The Candidate has a right to have his name placed on the ballot for the elected office of town supervisor.

32. Huonker has a mandatory duty to certify the nominating papers of the Candidate if the nominating papers comply with the Illinois Election Code.

33. The nominating papers of the Candidate on their face comply with the Election Code.

34. Nothing on the face of the nominating papers was facially deficient and the Town has failed to point to any facial deficiencies of the requirements of the Election Code.

35. While two objectors filed objections the Town concluded these objections were rendered moot given its earlier determination that certification of the nominating papers was unnecessary given their lack of conformity to the local municipal code. ³

³ The objections filed by the two citizens are identical legal arguments made by the Town in the letter sent to the Candidate on December 02. As previously stated, upon information and belief, the Town counsel drafted these

36. The Election Code is clear in that all nominating papers, “*being filed as required by this Code, and being in apparent conformity with the provisions of this Act.*” are deemed valid unless they are subject to a duly filed objection.
37. Furthermore, beginning in 1985, every incorporated town with a population of 25,000 or more by the last official census, and every 4 years thereafter, the municipal clerk shall certify the names of the candidates to the proper election authority as provided by the general election law.⁴
38. When this law was passed in Illinois, only two towns, being Cicero and Normal, had a population over 25,000.
39. The statute says every incorporated town which clearly meant both of them.
40. The statute is clear and unambiguous and can be construed no other way that to demand the Town comply and elect this office.
41. The town of Cicero is in full compliance with the state statute and elects this office.
42. There is no legal basis for which the Town, and/or Huonker, can blatantly disregard state law and arbitrarily and capriciously refuse to certify the nominating papers of the Candidate that are in compliance with the Illinois Election Code for an elected office which is mandated upon the Town by state law.
43. The Town, and/or Huonker have no discretion to refuse to certify the nominating papers of the Candidate.
44. The Candidate has a clear right to be named on the ballot as his nominating papers comply

written legal objections for the objectors as each is identical and states legal analysis which the Town is relying upon to assert the nominating papers lack apparent conformity.

⁴ The statute compels this office be elected in the Town. The Candidate complied with the election code and no objections have been raised stating anything to the contrary. The Town and/or Huonker cannot proclaim we have chosen not to provide for this office as an elected position in our municipal code and as such the Candidate has not met the legal requirements. The local municipal code is not the controlling law for which to measure the legal sufficiency of the nominating papers.

with the Illinois Election Code for an office that is mandated by state law upon the Town.

WHEREFORE, the Candidate herein request that this court enter an Order:

- A. Finding the Candidate presented nominating papers as required by the Illinois Election Code;
- B. Finding that the Town, and/or Huonker, has a non-discretionary duty to certify the nominating papers of the Candidate;
- C. Finding the local municipal code is superseded by state law;
- D. Enter a writ ordering the Town, and/or Huonker to certify the nominating papers of the Candidate to the county election authorities before January 26, 2023.
- E. That the Court grant such other and further relief as is just and proper.

Respectfully submitted,

/s/ Thomas G. DeVore
IL Bar No. 06305737

VERIFICATION

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief, if any, and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

Date: January 04, 2023

By: /s/ Robert Shoraga
ROBERT SHORAGA

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