

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

BUILDING OWNERS AND MANAGERS)
ASSOCIATION OF CHICAGO, THE)
CHICAGOLAND APARTMENT ASSOCIATION,)
NEIGHBORHOOD BUILDING OWNERS)
ALLIANCE, WOMEN CONSTRUCTION)
OWNERS & EXECUTIVES CHICAGO)
CHAPTER,)
HOME BUILDERS' ASSOCIATION)
OF GREATER CHICAGO d/b/a BUILDING)
INDUSTRY ASSOCIATION OF GREATER) No: _____
CHICAGO, SOUTHLAND BLACK CHAMBER)
OF COMMERCE FOUNDATION,)
CHICAGOLAND ASSOCIATION OF)
SHOPPING CENTER OWNERS, MATTHEW)
BAUMANN, CROSSTOWN)
REAL ESTATE ADVISORS, LLC, MATT)
KATSAROS, WILDWOOD CCI, LLC, THERESA)
KERN, MA REBAR, and TRACII RANDOLPH,)
AJH FOREVER, LLC)
Plaintiffs,)
v.)
BOARD OF ELECTION COMMISSIONERS)
of the CITY OF CHICAGO, MARISEL A.)
HERNANDEZ, Chair, WILLIAM J. KRESSE,)
Commissioner/Secretary, JUNE A. BROWN,)

Defendants.

**COMPLAINT FOR DECLARATORY
JUDGMENT & INJUNCTIVE RELIEF**

NOW COME the Plaintiffs, Building Owners & Managers Association of Chicago, by and through their attorneys Michael J. Kasper and Michael T. Del Galdo, and hereby complain against defendants as follows:

Introduction.

1. On November 7, 2023, the Chicago City Council passed Resolution Number R2023-4166 (attached as Exhibit A) directing the Defendant Chicago Board of Election Commissioners to place an advisory referendum on the March 19, 2024 ballot proposing to change the real estate transfer tax rate on every property sold in the City.
2. The City Council passed the Resolution because Section 8-13-19 of the Illinois Municipal Code permits a home rule municipality to impose or increase a real estate transfer tax only after voter approval. 65 ILCS 5/8-13-19.
3. Today, the Chicago real estate transfer tax is \$3.75 for every \$500 in the value of transferred property.
4. Resolution R2023-4166 proposes to change the transfer tax rate in three separate ways. First, the Resolution proposes to lower the transfer tax rate to \$3.00 for every \$500 in the value of the transferred property below \$1M (a 20% reduction). Second, the Resolution proposes to increase the transfer tax rate to \$10.00 for every \$500 in the value of the transferred property above \$1M but below \$1.5M (a 166.67% increase). Third, the Resolution proposes to increase the transfer tax rate to \$15 for every \$500 in the value of the transferred property above \$1.5M (a 300% increase).
5. This Complaint seeks a declaration that the proposed referendum violates both Section 8-13-19 of the Illinois Municipal Code and the Illinois Constitution, and also seeks an injunction prohibiting the Defendants from certifying and placing the proposed referendum on the March 19, 2024 Primary Election ballot.

Parties.

6. Plaintiff Building Owners & Managers Association of Chicago is the trade association for Chicago's commercial office building industry, representing the city's largest office buildings

and a segment of Chicago's commercial real estate heavily impacted by the proposed referendum.

7. Plaintiff the Chicagoland Apartment Association is the trade association for the owners and managers of over 275,000 market-rate and affordable rental units in apartments of all sizes throughout the Chicagoland region, the vast majority of which are valued at over \$1 million.

8. Plaintiff the Neighborhood Building Owners Alliance is the trade association for 11 Chicago-area community building owner affiliates, including small and mid-sized neighborhood housing providers. Almost all apartment buildings in the city are valued at over \$1 million.

9. Plaintiff the Women Construction Owners & Executives (WCOE) Chicago Chapter is the trade association for women-owned construction companies in the Chicagoland area.

10. Plaintiff the Home Builders Association of Greater Chicago, d/b/a Building Industry Association of Greater Chicago is the business association representing the residential construction and development industry in Chicago and the suburbs.

11. Plaintiff the Southland Black Chamber of Commerce Foundation represents businesses and professional men and women who have joined together for the purpose of promoting the civic and commercial progress in the Southland community.

12. Plaintiff the Chicagoland Association of Shopping Center Owners is a private, member-based association of local real estate investors and developers. CASCO's members are actively engaged in the ownership and operation of commercial real estate as their primary source of business.

13. Plaintiff Crosstown Real Estate Advisors, LLC is a private real estate investment firm based in Chicago.

14. Plaintiff Matthew Baumann is Managing Director of Crosstown Real Estate Advisors, LLC.
15. Plaintiff Wildwood CCI, LLC is a residential development company focused solely in the City of Chicago.
16. Plaintiff Matt Katsaros, Principal of Wildwood CCI, LLC, is a resident and registered voter in the City of Chicago.
17. Plaintiff MA Rebar is a road and building construction firm based in Chicago.
18. Plaintiff Theresa Kern, President of MA Rebar, is a resident and registered voter in the City of Chicago.
19. Plaintiff AJH Forever, LLC, is a real estate management company in Chicago.
20. Plaintiff Tracii Randolph, CEO of AJH Forever, LLC, is a resident and registered voter in the City of Chicago.
21. Defendant Board of Election Commissioners is the election authority statutorily charged with administering elections within the City of Chicago, including the March 19, 2024 Primary Election.
22. Defendant Marisel A. Hernandez is the Chair of the Board of Election Commissioners for the City of Chicago, and is sued solely in her official capacity.
23. Defendant William J. Kresse is the Commissioner/Secretary of the Board of Election Commissioners for the City of Chicago, and is sued solely in his official capacity.
24. Defendant June A. Brown is a Commissioner of the Board of Election Commissioners for the City of Chicago, and is sued solely in her official capacity.

Jurisdiction and Venue.

25. Plaintiffs bring this action pursuant to 735 ILCS 5/2-701, and 735 ILCS 5/11- 101.
26. Personal jurisdiction and venue is appropriate in the Circuit Court of Cook County because the City of Chicago is located in Cook County; plaintiffs and defendants are located and do business in Cook County, and the Defendant Board of Election Commissioners administers elections within Cook County.
27. Subject matter jurisdiction is appropriate as Illinois courts are courts of general jurisdiction and this matter concerns matters of Illinois law – specifically the Illinois Constitution and the Illinois Municipal Code.
28. Venue is appropriate in the County Division as this is a case dealing with the March 19, 2024 General Election.

Factual Allegations.

29. On July 21, 2021, Alderperson Maria Hadden, and several co-sponsors, introduced Resolution R2021-919 (attached as Exhibit B), which proposed the submission of a referendum question seeking to raise the real estate transfer tax from \$3.75 to \$13.25 for every \$500 in the value of the transferred property above \$1M (a 253% increase).
30. The question proposed by Resolution R2021-919 did not propose a decrease in any portion of the real estate transfer tax. Resolution R2021-919 did not pass the City Council and was officially declared lost on May 24, 2023 at the adjournment of the previous City Council term.
31. On December 14, 2022, Alderperson Maria Hadden, and several co-sponsors, introduced Resolution R2022-1409 (attached as Exhibit C), which also proposed the submission of a referendum question seeking to raise the real estate transfer tax from \$3.75 to \$13.25 for every \$500 in the value of the transferred property above \$1M (a 253% increase).

32. The question proposed by Resolution R2022-1409 did not propose a decrease in any portion of the real estate transfer tax. Resolution R2022-1409 did not pass the City Council and was officially declared lost on May 24, 2023 at the adjournment of the previous City Council term.

33. On September 13, 2023, four months after Resolution R2021-919 and Resolution R2022-1409 were declared lost, Mayor Johnson and three Alderpersons introduced Resolution R2023-4166 (the subject of this litigation), which proposed the submission of a referendum question seeking to (1) lower the real estate transfer tax rate to \$3.00 for every \$500 in the value of the transferred property below \$1M (a 20% reduction); (2) increase the real estate transfer tax rate to \$10.00 for every \$500 in the value of the transferred property above \$1M but below \$1.5M (a 166.67% increase); and (3) to increase the real estate transfer tax rate to \$15 for every \$500 in the value of the transferred property above \$1.5M (a 300% increase).

34. On November 7, 2023, by a vote of 32-17-1, the City Council passed Resolution R2023-4166, thereby directing Defendants to place the referendum question on the ballot at the March 19, 2024 Primary Election.

**Count I – The Proposed Referendum Violates
the Illinois Municipal Code**

35. Plaintiffs reallege the allegations in paragraphs 1-34.

36. Section 8-3-19 of the Illinois Municipal Code provides that “[a] home rule municipality may impose a new real estate transfer tax or may increase an existing real estate transfer tax with prior referendum approval.” 65 ILCS 5/8-13-19(d) .

37. Section 8-3-19 thus permits a home rule municipality, through referendum, to either (1) impose a new real estate transfer tax; or (2) increase an existing real estate transfer tax.

38. Section 8-3-19 also empowers a home rule municipality to amend an existing real estate transfer tax ordinance “without approval by referendum” so long as the amendment does not increase the transfer tax rate or add transactions covered by the tax. *Id.*

39. Section 8-3-19 specifically preempts home rule municipalities’ authority to enact a real estate transfer tax inconsistent with that section. 65 ILCS 5/8-3-19(g)(“A home rule municipality may not impose real estate transfer taxes other than as authorized by this Section. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.”).

40. Resolution R2023-4166 is inconsistent with Section 8-3-19 because it not only proposes to (greatly) increase the real estate transfer tax rate on some transfers but it also proposes to decrease the real estate transfer tax rate on other transfers (as not permitted by Section 8-3-19).

41. By requiring a home rule municipality to obtain voter approval to either (1) impose a new real estate transfer tax; or (2) increase an existing transfer tax, but permitting any other amendment (such as lowering the tax rate) “without approval by referendum”, Section 8-3-19 prevents the practice of legislative log-rolling. *See Wirtz v. Quinn*, 2011 IL 111903, ¶ 13 (“the disfavored practice known as ‘logrolling’ or ‘bundling unpopular legislation with more palatable bills, so that the well-received bills would carry the unpopular ones to passage.”).

42. Resolution R2023-4166 is a textbook example of logrolling. It combines a popular idea (lowering taxes) with an unpopular idea (raising taxes) in order to carry the unpopular idea to passage.

43. There can be no doubt that Resolution R2023-4166 is an example of logrolling. Just four months after two separate Resolutions (R2021-919 and R2022-1409) proposing to only increase

the transfer tax failed to pass, the proposed increase was combined with the proposed decrease in order to ensure sufficient support to pass the City Council.

44. Examples like R2023-4166 are precisely why Section 8-3-19 of the Municipal Code prohibits enactment of real estate transfer taxes that are “inconsistent” with that section.

45. R2023-4166 is inconsistent with Section 8-3-19 because it proposes to do more than impose a new transfer tax or increase an existing transfer tax. As a result, it is prohibited by law and cannot be put before the voters at the March 19, 2024 Primary Election.

**Count II – The Proposed Referendum Violates Article III,
Section 3 of the Illinois Constitution**

46. Plaintiffs reallege the allegations in paragraphs 1-45.

47. Article III, Section 3 of the Illinois Constitution provides that “[a]ll elections shall be free and equal.” ILL.CONST.1970, art. III, § 3.

48. For purposes of referenda, this provision is violated when a proposed referendum combines separate, unrelated questions into a single initiative. *Coalition for Political Honesty v. Illinois State Board of Elections*, 83 ILL.2d 236 (1980).

49. The purpose of this restriction is protect the voters’ right to vote on each question separately. *Id.*

50. Resolution R2023-4166 plainly calls for three separate questions: (1) shall the transfer tax rate be lowered from \$3.75 to \$3.00 for purchase value of less than \$1M?; (2) shall the transfer tax rate be raised from \$3.75 to \$10.00 for purchase value between \$1M and \$1.5M?; and (3) shall the transfer tax rate be raised from \$3.75 to \$15.00 for purchase value above \$1.5M?

51. Resolution R2023-4166 violates voters’ rights to vote on each of the three questions separately. For example, and most obviously, many voters likely support the first question

(lowering taxes), but oppose the second and third questions (raising taxes). However, they cannot express their support for the first proposition without also expressing support for the second and third propositions that they oppose.

52. Because Resolution R2023-4166 is a compound question combining three separate questions, it violates Plaintiffs' (and all voters) right to vote on the three propositions separately in violation of Article III, Section 3 of the Illinois Constitution, and cannot be placed on the ballot for voter consideration at the March 19, 2024 Primary Election.

Count III – The Proposed Referendum is Vague, Ambiguous and Not Self Executing

53. Plaintiffs reallege the allegations in paragraphs 1-52.

54. Illinois Supreme Court precedent has established that a municipal referendum must be self-executing; meaning that the question must “stand on its own” and that a question “leaving gaps to be filled by the legislature or municipal body, then just what was approved by the voters remains uncertain.” *Lipinski v. Chicago Board of Election Comm’rs*, 114 Ill.2d 95 (1986); *Leck v. Michaelson*, 111 Ill.2d 523 (1986).

55. Resolution R2023-4166 provides that the revenue generated will be used for “the purpose of addressing homelessness” without any further explanation to the voters as to what will, and will not, be done with the funds raised, and who will make those decisions.

56. The vague and ambiguous reference to “addressing homelessness” is insufficient to identify precisely what would be approved by the voters.

57. The vague and ambiguous reference to “addressing homelessness” will require additional action by the City legislature or municipal body to decide precisely how the additional revenue will be used.

58. The fact that Resolution R2023-4166 is not self-executing is borne out by the fact that Alderpersons Hadden, Martin and Ramirez-Rosa filed a draft Ordinance (attached as Exhibit D) with the City Clerk on September 29, 2023 calling for: (1) the creation of a “Bring Chicago Home Fund” within the City government to receive revenues from the increased real estate transfer tax, and setting forth the “eligible uses” for the funds deposited in the Bring Chicago Home Fund as “any support provided by the City or a delegate agency selected by the City to people experiencing or at risk of homelessness, including providing permanent affordable housing and the services necessary to obtain and maintain permanent housing...” None of this is included in the proposition to be put to the voters.

59. The proposed Ordinance also specifically provides that “law enforcement operations” is not an eligible use of the funds. This is also not included in the proposition to be put to the voters.

60. The proposed Ordinance further calls for the creation of a Bring Chicago Home Advisory Board consisting of fifteen (15) board members appointed by the Mayor (and several other non-voting members) to make recommendations regarding the percentage of funds to be expended annually on the eligible uses from the Bring Chicago Home Fund. This is not included in the proposition to be put to the voters.

61. The proposed Ordinance further empowers the City Budget Director, in conjunction with the Advisory Board and City departments, to determine what percentage of the Fund should be annually used for the eligible purposes. This too is not set forth in the proposition to be put to the voters.

62. Resolution R2023-4166 is thus not self-executing, and therefore cannot be placed on the ballot at the March 19, 2024 Primary Election.

Count IV – Injunction.

63. Plaintiffs reallege the allegations of paragraphs 1-62.

64. Because Resolution R2023-4166 violates the Illinois Municipal Code and the Illinois Constitution, as set forth in counts I, II and III of this Complaint, the Defendants should be enjoined from printing the proposed referendum question on the ballot at the March 19, 2024 Primary Election.

65. The Plaintiffs have a clear and ascertainable right in need of protection in ensuring that the Illinois Municipal Code and Illinois Constitution is upheld and not violated to their detriment.

66. The Plaintiffs have no valid remedy at law with respect to this unlawful and unconstitutional ordinance.

67. The Plaintiffs and any individual or entity the referenda encompasses would suffer irreparable injury if relief is not granted.

Conclusion.

WHEREFORE, for all of the above and foregoing reasons, the Plaintiffs respectfully request that this Honorable Court enter an Order declaring the Resolution unconstitutional and unlawful, enjoining Defendants from certifying the referendum question proposed by Resolution R2023-4166 on the March 19, 2024 Primary Election ballot, and from printing the question of ballots distributed to voters at the March 19, 2024 Primary Election; and granting such other relief as may be just and proper.

Respectfully Submitted,

Plaintiffs

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