Hearing Start: No hearing scheduled

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Iris Y. Martinez
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2024COEL000001

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

Building Owners and Managers Association, *et al.*,	
Plaintiffs/Petitioners,	Case No. 2024 COEL 001
v.	Calendar 8
Commission of the Board of Elections of the City of Chicago, *et al.*,	Hon. Kathleen Burke Circuit Court Judge
Defendants/Respondents; and	

CITY OF CHICAGO'S MOTION TO STAY THE ORDER DENYING THE PETITION TO INTERVENE AND ENFORCEMENT OF THE COURT'S JUDGMENT PENDING APPEAL

The City of Chicago, through its attorneys, move pursuant to Illinois Supreme Court Rule 305 to stay the order denying the City's Motion to Intervene and the Court's February 23, 2024 order granting Plaintiffs' motion for judgment on the pleadings and entering declaratory judgment in Plaintiffs' favor and granting injunctive relief suppressing the vote on the advisory referendum in the March 19, 2024 election.

1. On February 23, 2024, this Honorable Court granted Plaintiffs' Motion for Judgment on the Pleadings and entered an order directing the Board of Elections defendants to suppress the vote on an advisory referendum that is part of the City's legislative process to amend the tax on transfer of real property in Chicago to raise additional funds to help Chicagoans facing homelessness.

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2. On February 23, 2024, the court also denied the City's petition to intervene as of right pursuant to the code of civil procedure and as a necessary party.

3. Both of these orders are final and appealable, and the City is preparing a Notice of Appeal.[1] The City requests this court to stay both of these orders.

4. Illinois Supreme Court Rule 305(b) "Stays of Enforcements of Nonmoney Judgments and Other Appealable Orders" states, in relevant part:

> Except in cases provided for in paragraph (e) of this rule,[2] on notice and motion, and an opportunity for opposing parties to be heard, the court may also stay the enforcement of any judgment, other than a judgment, or portion of a judgment, for money, or the enforcement, force and effect of appealable interlocutory orders or any other appealable judicial or administrative order. The stay shall be conditioned upon such terms as are just. . . .

5. The Illinois Supreme Court in *Stacke v. Bates*, set forth the requirements for obtaining stay pending appeal:

> In all cases, the movant . . . must . . . present a substantial case on the merits and show that the balance of the equitable factors weighs in favor of granting the stay. If the balance of the equitable factors does not strongly favor the movant, there must be a more substantial showing of likelihood of success on the merits.

138 Ill. 2d 295, 309 (1990).

6. The stay should be granted because there is a substantial case on the merits. The Court's order denying the City's petition to intervene prevented the City

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[1] The City has standing to appeal. *See Marcheschi v. P.I. Corp.*, 84 Ill. App. 3d 873, 878 (1st 1980) ("A nonparty has standing to appeal if he has a direct, immediate and substantial interest in the subject matter, which would be prejudiced by the judgment or benefited by its reversal").

[2] Rule 305(e) applies to determinations of parental rights and is thus inapplicable here.

from opposing the Plaintiffs' Motion for Judgment on the Pleading. This was in clear contravention to applicable law and an abuse of the court's discretion.

7. The City's petition was timely, the City moved to intervene before the parties finished briefing on the Plaintiffs' motion for judgment on the pleadings. The Court cited no authority that supported its denial of a petition to intervene as untimely before judgment had been entered. First District authority contradicts the court's ruling. *Citicorp Sav. of Illinois v. First Chicago Tr. Co. of Illinois*, the court reversed the trial court's denial of the appellant's petition to intervene as untimely for abuse of discretion where appellant filed its petition 31 days after receiving notice and prior to final judgment. 269 Ill. App. 3d 293, 299 (1st Dist. 1995)(citing *Brandt v. John S. Tilley Ladders Co.* 145 Ill. App. 3d 304 (appellate court found petition to intervene filed one month after final judgment timely, reversing trial court's denial of petition to intervene as untimely for abuse of discretion); *People ex. rel. Baylor v. Bell Mutual Casualty Co.*, 2 Ill. App. 3d 17 (1st Dist. 1971)(reversing on same abuse of discretion grounds as *Brandt*, 2 Ill. App. 3d 17, except appellate court found two month delay between final judgment and petition to intervene timely). Here the City filed its petition to intervene 35 days after the complaint was filed, before any defendants had filed a responsive pleading, and before the Plaintiffs' improper motion for judgment on the pleadings was fully briefed.

8. The Board defendants could not and did not adequately represent the City's interests. The Board failed to raise any substantive arguments in response to the Plaintiffs' arguments that the referendum violated the Illinois Municipal Code

and the Illinois Constitution. This is because the Board Defendants were not authorized to raise such arguments. *See Kozenczak v. Du Page Cnty. Officers Electoral Bd.*, 299 Ill. App. 3d 205, 207 (2nd Dist. 1998)(holding local election officials acted "in an adjudicatory or quasi-judicial capacity" and thus Illinois election law did not authorize their advocacy on behalf of prospective candidate in opposition to a voter challenge to his qualifications.) One of the Board Defendants even averred that it was improper for the Board to weigh in on the referendum's constitutionality.

9. Because the City was not allowed to intervene, these arguments were not raised. If the City had been allowed to intervene, the Court would have considered these arguments, which were raised in the City's proposed Motion to Dismiss. Instead, the Court granted the Motion for Judgment on the Pleadings with no opposition to the substantive arguments.

10. The City not only has sufficient interest in the action but is a necessary party to the litigation. Chicago City Council has proposed amending its municipal ordinances on transfer tax and needs approval through referendum to do so. The Court's injunction (granted at Plaintiffs' request) interrupts and precludes the City's legislative process. The City not only has an interest in seeing its legislative process continue unimpeded but has an interest in protecting its citizens' right to vote as part of the process required by law. *See Lurkins v. Bond County Community Unit No. 2*, 2021 IL App (5th) 210292, ¶ 8 (defining necessary party as one that would be "materially affected" by a judgment entered in its absence)

(quoting *Certain Underwriters at Lloyd's London v. Burlington Ins. Co.*, 2015 IL App (1st) 141408, ¶ 15).

11. As the City is a necessary party to this action, the City has a substantial case on the merits in its challenge to the injunction and declaratory judgment. The Court's failure to join the City renders all of its orders in this matter void for lack of subject matter jurisdiction. *Certain Underwriters at Lloyd's London*, 2015 IL App (1st) 141408, ¶ 15. Joinder of necessary parties is jurisdictional and can be raised at any time and can be raised for the first time on appeal. *Zurich Insurance Co. v. Raymark Industries*, 144 Ill. App. 3d. 943, 946 (1st Dist. 1986).

12. Even if the Court had added the City as a necessary party, it still lacked subject matter jurisdiction to grant Plaintiffs' request to prevent an election on an advisory referendum. *See Sachen v. Ill. State Bd. of Elections*, 2022 IL App (4th) 220470, ¶19 (quoting *Fletcher v. City of Paris,* 377 Ill. 89, 92-93 (1941) (quoting *Payne v. Emmerson*, 290 Ill. 490, 495 (1919)).

13. The stay should also be granted for equitable considerations. Plaintiffs failed to allege any harm they would suffer should the vote on the referendum go forward as scheduled. Plaintiffs further failed to allege what harm they would suffer should the City Council ultimately enact the ordinance, but for our purposes here, there is no harm in letting an election on an advisory referendum go forward. Even if it were to pass, it would still require enactment by City Council and would still be subject to all of Plaintiffs' challenges raised in their complaint. On the other hand, early voting on the referendum has already begun. For the past week,

Chicagoans have been voting and today the Court decided their votes should be suppressed. The Illinois Supreme Court stated the harm in such an injunction:

> [A]n election is a political matter with which courts of equity have nothing to do, and that such an attempt to check the free expression of opinion, to forbid the peaceable assemblage of the people, to obstruct the freedom of elections, if successful, would result in the overthrow of all liberties regulated by law.

Fletcher, 377 Ill. at 93 (quoting *Payne v. Emmerson*, 290 Ill. 490, 495 (1919)).

For these reasons, the City respectfully requests this Honorable Court stay its February 23, 2024 Orders Denying the City's Petition to Intervene and Granting Declaratory Judgment and Injunctive Relief, while the City appeals the Court's rulings.

Dated: February 23, 2024

Respectfully submitted,

By:

/s/ Scott Crouch

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