Case No. 3-22-0457

IN THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

DEANNE MAZZOCHI Plaintiff-Respondent, v. JEAN KACZMAREK, in her official capacity as DuPage County Clerk and Election Authority for DuPage County Defendant-Petitioner.	) Interlocutory Appeal from the Circuit Court of the Eighteenth Judicial Circuit, Du Page County, Illinois)) Case No. 22 CH 220)) The Honorable James D. Orel, presiding) Date of Order 11/15/2022) Notice of Appeal: 11/17/2022)) Appeal pursuant to Rule 307(a)(1)

DEANNE MAZZOCHI'S MEMORANDUM OF LAW IN RESPONSE TO JEAN KACZMAREK'S RULE 307(d) PETITION FOR REVIEW OF TEMPORARY RESTRAINING ORDER

INTRODUCTION

The Clerk is not above the law. The Circuit Court was right to order the Clerk to process mail-in ballots as required by the Election Code and this Court should therefore affirm. Ruling otherwise would allow the Clerk to conduct elections while ignoring the Election Code, a luxury received by no other state or county agency, and a result this Court should not abide.

In support of its astonishing position that it should be permitted to violate the Election Code with impunity, the Clerk makes two primary arguments, neither of which have merit. First, the Clerk–ignoring the Illinois Constitution and mandatory authority interpreting it–argues that the Circuit Court lacked subject matter jurisdiction to hear the case even though it presents a justiciable controversy. Second, the Clerk argues that the Circuit Court abused its discretion to find that Mazzochi demonstrated a likelihood of success on the merits, irreparable harm, and no adequate remedy at law, even though Mazzochi submitted uncebutted evidence for all these issues.

BACKGROUND

A. The Election Code

The Election Code mandates taking critical precautions to verify the authenticity of each mail-in ballot, including verification of the voter's signature on each mail-in ballot by comparing "the voter's signature on the certification envelope of that vote by mail ballot with the signature of the voter on file in the office of the election authority." See 10 ILCS 5/19-8(g) (West 2022). "Signature of voter" is limited to the signature made by the "applicant, after the registration and in the presence of a deputy registrar or other officer of registration" who "shall be required to sign his or her name in ink or digitized form to the affidavit on the original and duplicate registration record card." *Id.* § 6-35. The "signature of voter" is generated only after the applicant presents two forms of identification to the registrar, demonstrates that the applicant understands the affidavit of registration, signs it, and the registrar "satsif[ies] himself that each applicant for

registration is qualified to register." *Id.* § 6-37. These identity verification safeguards disappear when applying for a mail-in ballot, *id.* § 19-3; or online, where if the "application is made electronically … a signature is not required," *id.* § 19-3(d).

Further, Article 17 of the Election Code requires that ballots be verified by comparing each "application for ballot against the list of voters registered in that precinct . . .". *Id.* § 17-9.[1]

So critical is the signature verification of mail-in ballots, that the Election Code expressly states pollwatchers "shall be permitted to observe the election judges making the signature comparison between that which is on the ballot envelope and ***that which is on the permanent voter registration record card taken from the master file.***" *Id.* §19-10 (emphasis added). The "master file" consists of the registration cards for each voter. *Id.* § 6-35.03.

To qualify mail-in ballots, if "the 2 signatures match" and the voter is otherwise qualified to vote by mail, then "the election authority shall cast and count the ballot." *Id.* § 19-8(g). If the signatures do not match, then the Election Code requires that the ballot be marked "Rejected" and the voter must be given an opportunity to present evidence showing why the ballot should be counted. *Id.* § 19-8(g), (g-5). After hearing the evidence, a reviewing panel of election judges determines whether the ballot is valid. *Id.* If valid, then it "shall be counted" and "added to the vote totals." *Id.* § 19-8(g-10).

Nowhere does the Election Code permit an election authority, like the Clerk, to validate mail-in ballots using a signature from a mail-in ballot application.

B. The Circuit Court Finds the Clerk's Process of Validating Mail-In Ballots Violates the Election Code

Multiple witnesses observed the Clerk validating mail-in ballots by comparing the ballot envelope's signature to the vote-by-mail application signature. C17-20. Specifically, after

[1] Article 17 specifically applies to mail-in ballot validation. 10 ILCS 5/19-8(g).

election judges determined that the registration signature and mail-in-ballot envelope signatures ***did not match***, rather than stamp the envelope "rejected" and proceed to the statutorily required voter verification process, they instead validated the mail-in ballots by comparing the signatures on the mail-in ballot envelope to the signatures on the mail-in ballot application. *Id*. The Clerk admits that it went beyond the voter's ***registration*** signatures to validate mail-in ballots using mail-in ballot ***application*** signatures. C28, ¶ 8; C35, ¶ 9.

Attorney Conor McCarthy, communicating on behalf of the Clerk, confirmed i) the important distinction between a signature on the voter's registration and the signature on the mail-in ballot application in an email in response to a pollwatcher's complaint concerning the Clerk's mail-in ballot validation process and ii) that the election judges ***were not*** using the signature from the application during the mail-in ballot validation process. C30-32. Despite that, three people observed that election judges ***were*** using application signatures. C21.

After the initial complaint went unheeded, Mazzochi lodged a written complaint with the Clerk's office on November 10, 2022. C41, ¶ 16; C44-48. After hearing nothing from the Clerk and observing the unlawful practice continue on November 14, 2022 (C41, ¶¶ 12, 17), Mazzochi filed this action to seeking equitable relief to stop the unlawful practice and ensure that mail-in votes are being cast by the actual voters (C5-12).[2] On November 15, 2022, less than an hour before the Circuit Court hearing was to begin, the Clerk filed a motion to dismiss for lack of subject matter jurisdiction. C56. After hearing, the Circuit Court denied the Clerk's motion to dismiss for lack of subject matter jurisdiction and granted Mazzochi's request for a temporary restraining order in

[2] Contrary to the Clerk's contention, Mazzochi's motion below was supported by affidavits, including an affidavit from Mazzochi (who was also present in Court) explaining the basis for the emergency–namely, that ballots were processed unlawfully on an ongoing basis. C36-42.

part, finding that the Election Code prohibits the use of a signature from a mail-in ballot application to validate any mail-in ballot signature. C61.

Rather than follow the law and the Circuit Court's order, the Clerk opposed it and filed a motion for supervisory order arguing, as it does here, that the Circuit Court lacks subject matter jurisdiction. The Supreme Court denied the Clerk's motion. *Mazzochi v. Kaczmarek*, No. 129105 (supervisory order denied) (Ill. Nov. 21, 2022).

ARGUMENT

I. The Circuit Court Has Subject Matter Jurisdiction.

Whether the Circuit Court has subject matter jurisdiction is reviewed *de novo*. *Langenstein v. Kassimali*, 2012 IL App (5th) 120343, ¶ 4. As explained in more detail below, the Circuit Court has subject matter jurisdiction because a justiciable controversy exists. The Clerk's contention to contrary ignores the Illinois Constitution and the case law interpreting it, and instead relies on inapposite authority that predates the 1970 Illinois Constitution, and/or involves cases invoking special statutory jurisdiction, which is not at issue in this case.

a. A justiciable controversy exists.

"Circuit courts derive their subject-matter jurisdiction exclusively from the Illinois Constitution." *McCormick v. Robertson*, 2014 IL App (4th) 140208, ¶ 27; (citing *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.,* 199 Ill. 2d 325, 334 (2002)). The Illinois Constitution provides that "Circuit Courts shall have original jurisdiction over all justiciable matters." Ill. Const. 1970 art. VI, § 9. Subject matter jurisdiction exists "as a matter of law" so long as the matter brought before the court is "justiciable." *In re M.W.,* 232 Ill. 2d 408, 424 (2009). A justiciable matter presents "a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relation of the parties

having adverse legal interests." *Id.* at 424. The legislature can statutorily "create new justiciable matters," but it cannot "impose limits on the circuit court's constitutionally derived subject-matter jurisdiction" even where the justiciable matter is created by statute. *McCormick,* 2014 IL App (4th) 140208, ¶ 27; see also *In re M.W.,* 323 Ill. 2d at 426 (Juvenile Court Act notice requirements could not impact subject matter jurisdiction); *Belleville Toyota,* 199 Ill. 2d at 340 (the statute of limitations contained in the statute that created the justiciable matter could not create a prerequisite to the circuit court's exercise of jurisdiction). To hold otherwise, as the Clerk requests, violates the Illinois Constitution and the long line of cases applying its subject matter jurisdiction mandates.

Mazzochi identified a specific, concrete problem: the Clerk's election judges used vote-by-mail applications to validate ballot signatures when the statute requires matching to a registration signature. The Clerk apparently wants this practice to continue. This creates a justiciable dispute, vesting the Circuit Court with subject matter jurisdiction. Contrary to the Clerk's contention, no express statutory authority is required (or even permitted) to vest the Circuit Court with subject matter jurisdiction, which flows entirely from the Illinois Constitution.

For example, Mazzochi alleges a claim for *mandamus* (C11), which courts have held present a justiciable matter–even in cases relating to elections. See *Quinn v. Board of Election Commissioners for City of Chicago Electoral Board,* 2018 IL App (1st) 182807, ¶ 28 (reversing dismissal of claim for *mandamus*; finding that plaintiff's claim "fell within the original subject matter jurisdiction of the circuit court"). There, the petitioner sought a writ of *mandamus* to compel the board to print certain referenda on the ballot. *Id.* ¶ 6. The respondents made the same argument that the Clerk makes here, citing to the same authorities: that the circuit court lacked subject matter jurisdiction because courts have no inherent power to hear election contests and may do so only when authorized by statute. *Id.* ¶¶ 18-20. While the circuit court agreed with the

respondent, the appellate court ***reversed,*** finding that the claim for *mandamus* presented a justiciable controversy over which the circuit court had subject matter jurisdiction. *Id.* ¶¶ 11, 26-28. The same applies here. Mazzochi's complaint ***is not*** an election contest nor for administrative review. Mazzochi seeks equitable relief, including *mandamus,* specifically requesting that the Circuit Court order the Clerk to comply with the Election Code. Just as the petitioner in *Quinn* sought an order compelling that two referenda appear "on the ballot for the November 6, 2018 election" through mandamus, *id.* ¶ 6, Mazzochi sought to have the Clerk comply with the Election Code. That presents a justiciable controversy "within the original subject matter jurisdiction of the circuit court." *Id.* ¶ 28.

And, contrary to the Clerk's attempt to differentiate *Quinn*, what matters is not ***where*** the parties are within the election cycle, but ***whether*** the Clerk had an official duty to perform, a non-discretionary process to follow, and legal authority to comply. See *Burris v. White*, 232 Ill. 2d 1, 9 (2009) (recognizing *mandamus* may be used as a matter of right, to ensure "the performance of official duties by a public officer where no exercise of discretion on his part is involved," but denying *mandamus* request that Secretary of State sign and seal the certificate of appointment issued by the Governor, because the "Secretary of State's sole duty was to register the appointment, which he has done"); *Madden v. Cronson*, 114 Ill. 2d 504, 514 (1986) (granting *mandamus* to order Illinois state auditor to act). Since the answer is "yes" to all three, the Circuit Court's order to secure the Clerk's compliance with the Election Code was proper.

b. The Election Code does not limit the Circuit Court's equitable jurisdiction; doing so would place the Clerk above the law.

The Election Code also does not deprive the Circuit Court of subject matter jurisdiction over Mazzochi's equitable claims seeking legal compliance by the Clerk for two reasons.

First, Mazzochi's claims are not "created" by the Election Code, but rather arise under the Declaratory Judgment Act, the Code of Civil Procedure, and the common law, and therefore do not invoke the doctrine of "special statutory jurisdiction." See *e.g., Quinn,* 2018 IL App (1st) 182807, ¶ 26 (noting that the writ of *mandamus* was long known at common law and has long been recognized to lie within the inherent power and jurisdiction of our circuit court). Put another way, while the Election Code may set the standard of behavior for the Clerk, Mazzochi's causes of action are not claims that the Election Code independently created.

Second, contrary to the Clerk's implication, not all cases that relate to elections qualify as "election cases" invoking the circuit court's special statutory jurisdiction. Such cases of constrained jurisdiction are limited to claims for administrative review specifically created by statute. Courts regularly grant equitable relief in connection with elections and how the responsible officials administer them. See *e.g., id.* ¶ 28 (concluding that claim for writ of *mandamus* "fell within the original subject matter jurisdiction of the circuit court"); see also *In re Petition of the Board of Election Commissioners for the City of Chicago,* No. 2020-COEL-000012 (Cir. Ct. Cook County, March 12, 2020) (granting temporary restraining order allowing special procedures for voters in nursing homes and long-term care facilities); *In re Petition of the Board of Election Commissions for the City of Chicago,* No. 2018-COEL-000032 (Cir. Ct. Cook County, November 6, 2018) (granting temporary restraining order keeping polling places open after hours, requiring that after-hours votes be counted, and finding that the circuit court had "subject matter jurisdiction over this cause").

Thus, *Bettis* and *Pullen* do not apply. *Bettis* appealed a school district's decision by filing a petition for judicial review pursuant to Section 10-10.1(a) of the Election Code, invoking the court's "special statutory jurisdiction." *Bettis v. Marsaglia,* 2014 IL 117050, ¶¶ 1, 12-15. The

"precise issue" *Bettis* resolved was whether the petitioner complied with section 10-10.1(a)'s mandate to serve a copy of the petition on the electoral board. *Id.* ¶ 24. In reversing dismissal, the Supreme Court noted that such compliance was jurisdictional for an administrative review claim derived from the circuit court's "special statutory jurisdiction." *Id.* ¶¶ 12, 14 30. Relying on *Fredman Brothers*, the Supreme Court noted that "[w]hen a court exercises special statutory jurisdiction, that jurisdiction is limited to the language of the act conferring it, and the court has no powers from any other source." *Id.* ¶ 14. As the Supreme Court later clarified, the framework under *Fredman Brothers* is limited to cases of administrative review in light of the 1970 Illinois Constitution. See *Belleville Toyota,* 199 Ill. 2d at 338-40 ("emphasiz[ing] that the rule set forth in *Fredman Brothers* . . . is not a rule of general applicability to all statutory causes of action" but is "limited by constitutional context in which it first arose").

Pullen similarly involved the circuit court's special statutory jurisdiction when appealing from an election contest pursuant to section 7-63 of the Election Code, and seeking to change an election outcome. *Pullen v. Mulligan*, 138 Ill. 2d 21, 30 (1990). The question was whether the petitioner's election contest claim complied with the statutory requirement of filing within 10 days after the completion of the canvass. *Id.* at 32-33. Relying on cases that predate the 1970 Illinois Constitution and the Supreme Court's decisions interpreting it, the Supreme Court noted that failure to timely file an election contest prohibits further court action, but held that the trial court properly denied the motion to dismiss the election contest petition as untimely. *Id.* at 33, 45. Thus, *Bettis* and *Pullen* stand for the uncontroversial position that the Circuit Court's subject matter jurisdiction is constrained in cases of special statutory jurisdiction.

This case does not involve claims for administrative review or an election contest and therefore does not invoke the circuit court's special statutory jurisdiction. See *Belleville Toyota,*

199 Ill. 2d at 340. Neither Mazzochi's claims, nor the Circuit Court's order that the Clerk appealed, require counting, or not counting, a particular ballot, nor do they invoke a cause of action created by the Election Code. Rather, Mazzochi sought–and the Circuit Court granted–equitable relief to enforce procedural compliance with the mail-in ballot validation process that the Election Code requires. *Bettis* and *Pullen*'s different claims and facts simply do not apply. See *Quinn*, 2018 IL App (1st) 182807, ¶ 26 (declining to apply *Bettis* to *mandamus* claim because "unlike in the case of administrative review, *mandamus* actions do not rely on any special statutory provisions to confer upon the circuit court subject matter jurisdiction over such a claim").

c. The Clerk's other cited authorities are inapplicable.

The Clerk's other cited authorities do not warrant reversal as they either predate the 1970 Illinois Constitution, or lack equitable claims. As to the former, the Supreme Court has explained that the precedential value of cases examining subject matter jurisdiction for the pre-1964 judicial system are "necessarily limited to the constitutional context in which those cases arose." *In re M.W.,* 232 Ill. 2d at 425 (citing *Belleville Toyota,* 199 Ill. 2d at 337). As to the latter, *Suria* did not address jurisdiction; it instead concerned judicial interference in a criminal case by accepting guilty pleas to offenses which the State's Attorney, in his discretion, had not charged despite having "exclusive discretion to choose which crimes to charge" and to seek disposition of those crimes. See *People ex rel. Daley v. Suria*, 112 Ill. 2d 26, 37-8 (1986). Here, the Clerk is not vested with "exclusive discretion" to validate mail-in ballots however she wishes. To the contrary, the statute proscribes an unambiguous procedure that the Clerk must follow. Thus, the Circuit Court did not usurp any discretion imbued to the Clerk as was the case in *Suria*; rather, it ordered that the Clerk follow the mandates of a statute. Where a statute directs a state official to take unambiguous action, courts have granted equitable relief compelling such action. See *e.g., Madden,* 114 Ill. 2d

at 514; *Read v. Sheahan,* 359 Ill. App. 3d 89, 98 (2005) (granting writ of *mandamus* requiring sheriff to appoint director of department of corrections where statute stated that "[t]he Sheriff shall appoint a Director"). Similarly, the Election Code requires that the election authority "shall" take certain action to validate mail-in ballots. 10 ILCS 5/19-8(g).

In sum, none of the claims at issue seek administrative review or involve an election contest and therefore do not invoke special statutory jurisdiction, but instead present justiciable controversies over which the Circuit Court has jurisdiction. See *Quinn,* 2018 IL App (1st) 182087, ¶ 26. The Circuit Court cannot lack jurisdiction to interpret and apply Illinois law–which is all that occurred in this case.

II. The Circuit Court Did Not Err In Entering the Temporary Restraining Order.

This Court reviews the Circuit Court's temporary restraining order for an abuse of discretion, which is the "most deferential" standard review, and is "next to no review at all." See *Glass v. Dep't of Corr.*, 2022 IL App (4th) 220270, ¶ 10.

As a preliminary matter, the Clerk waived any ability to challenge the propriety of the Circuit Court's order on any grounds other than subject matter jurisdiction–which was the only ground raised in the Clerk's motion to dismiss below. C056-60. It is axiomatic that issues not raised below are waived and cannot be raised on appeal. *People v. Bullis*, 85 Ill. App. 3d 693, 694 (1980) (finding the issue not raised below waived on appeal). Thus, the Clerk waived the ability to challenge the temporary restraining order for any non-jurisdictional reason on appeal.

Nor do the Clerk's claims, raised for the first time on appeal, that the temporary restraining order granted "ultimate relief" and "altered the status quo" warrant reversal. As to the former, the Clerk's position is without legal merit because it is not supported by any pertinent authority and without factual merit because the order at issue did not grant the ultimate relief sought by Mazzochi. The Clerk only cites *Passon* to support its position, which does not concern ultimate

relief, but instead holds that the trial court abused its discretion in granting a *preliminary injunction* without holding an evidentiary hearing, as is required, even after the defendant requested such a hearing. *Passon v. TCR, Inc.*, 242 Ill. App. 3d 259, 265 (1993). Such issues are not present here. As a factual matter, the order at issue does not grant the ultimate relief requested as it is forward-looking only and does not grant the all the relief requested by Mazzochi in her Complaint, including sequestration of all mail-in ballots, preservation of several categories of documents, and requiring the Clerk, retroactively, to verify mail-in ballots already improperly verified. Compare C10-12 with C61. Indeed, during the hearing, the Clerk's counsel agreed that "there are a lot of issues going on here" and suggested the parties return after the votes are counted and the results are certified. R37-38.

As to the latter issue, to be sure, a myriad of opinions from various Illinois courts recognize that, as a general matter, it is proper to issue preliminary equitable relief to preserve the status quo. However, preserving the status quo is not a required element to obtain preliminary relief and courts regularly issue such relief–even when it alters the status quo–to prevent the threatened harm. See *Kalbfleisch v. Columbia Community Unit School District Unit No. 4,* 396 Ill. App. 3d 1105, 1118 (2009). It is axiomatic that preliminary equitable relief is appropriate to prevent the threatened harm where the party seeking such relief demonstrates (1) a clearly ascertained right in need of protection, (2) an irreparable injury in the absence of an injunction, (3) an inadequate remedy at law, and (4) a likelihood of success on the merits.[3] *Kalbfleisch,* 396 Ill. App. 3d at 1113; see also *Kolstad v. Rankin,* 179 Ill. App. 3d 1022, 1034 (1989) (affirming preliminary injunction to prevent

[3] While balancing the hardships is not required to issues a temporary restraining order, *Bridgeview Bank Group v. Meyer*, 2016 IL App (1st) 160042, ¶ 12 (noting that court *may* balance the harms when deciding a request for temporary restraining order) (emphasis added), the Circuit Court clearly did so by imploring the Clerk to demonstrate what harm it would suffer if the temporary restraining order were granted and the Clerk identified none. R30. The Circuit Court specifically noted that the order would result in no harm and benefits both candidates. R30-31.

the threatened wrong); *Lakeshore Hills, Inc. v. Adcox,* 90 Ill. App. 3d 609, 611 (1980) (affirming preliminary injunction that altered the status quo).

As next discussed, the Circuit Court did not abuse its discretion in finding that Mazzochi demonstrated all four[4] elements necessary to obtain a temporary restraining order because its decision was not "arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *Glass*, 2022 IL App (4th) 220270, ¶ 10.

First, the Circuit Court did not abuse its discretion in finding that Mazzochi demonstrated irreparable injury in the absence of an injunction because Mazzochi demonstrated–through unrebutted evidence–that mail-in ballots were being unlawfully processed, and that the Clerk refused to segregate such ballots for counting, even though it had the ability to do so. R33-35. Mazzochi raised this issue more than once with the Clerk in advance of filing this action, to no avail. C41, ¶¶ 15-16. Given those facts and admissions, the Circuit Court's finding was hardly "fanciful" or "arbitrary." On appeal, the Clerk ignores the obvious harm articulated by Mazzochi and acknowledged by the Circuit Court, arguing–for the first time–that "significant public harm" would result if the Clerk were required to comply with the Election Code, decrying that this case would create a path for aggrieved parties to seek judicial redress for their grievances. One can only hope so, for ours is a "government of laws, and not of men" and therefore "it is essential to the safety and perpetuity of government that laws should be observed and enforced until repealed." *United States v. Hrasky*, 240 Ill. 560, 565 (1909). Put simply, if the Circuit Court cannot order the Clerk to follow the mandates of the Election Code, then we may as well not have a Circuit Court or an Election Code.

[4] On appeal, the Clerk does not dispute that Mazzochi demonstrated a clearly ascertained right in need of protection and therefore Mazzochi does not address that element here.

Second, the Circuit Court did not abuse its discretion in finding that Mazzochi demonstrated an inadequate remedy at law because the Clerk admitted that the ballots Mazzochi complained of were being validated, and counted, with no ability to retrieve any unlawfully-qualified ballots from the count. R27. There is simply no other remedy that is as complete and effective as requiring the Clerk to count ballots as the Election Code requires. Contrary to the Clerk's contention, an election contest is not an adequate remedy at law because because it comes only after the fact, does nothing to remedy the unlawful processing of ballots, is significantly delayed in time, and will consume significant, unnecessary resources. *See Fischer v. Brombolich,* 207 Ill. App. 3d 1053, 1065 (1991) (noting that for a remedy at law to be adequate it must be clear, complete, and as practical and efficient to the ends of justice as an equitable remedy). Nor does the Clerk cite any authority for its unorthodox position that an aggrieved party must knowingly permit the wrong to continue before bringing suit. Illinois law provides the opposite, allowing a litigant to obtain relief to *prevent* harm. See *supra* at pp. 11-12 and authorities cited therein.

Third, the Circuit Court did not abuse its discretion in finding that Mazzochi demonstrated that she is likely to succeed on the merits because she raised a fair question that the Election Code does not authorize the Clerk's conduct. See *Fischer*, 207 Ill. App. 3d at 1066 (holding that circuit court did not abuse its discretion in finding that plaintiff showed a likelihood of success by raising a "fair question" regarding whether the defendants' actions were authorized under the statute).

Regardless of whether the "fair question" or a heightened standard applies, Mazzochi unequivocally satisfied each: the affidavits filed below confirmed the Clerk was validating mail-in ballots using at least three signatures and even where the signature on the mail-in ballot envelope did not match the signature on the voter's registration file. Mazzochi's evidence–which went unrebutted by the Clerk, who admitted to such practices–demonstrates conduct that flies in the

face of the Election Code, which requires comparison of the signature on the mail-in ballot envelope with "***the*** signature" (not any signature(s)) on file with the election authority. 10 ILCS 5/19-8(g). Further, the Election Code permits the election authority to validate the mail-in ballot only if "***the 2*** signatures match." *Id.* The Clerk's practice of validating ballots by comparing more than two signatures, including that on the application, ignores this key statutory language and should be rejected. See *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990) ("A statute should be construed so that no word or phrase is rendered superfluous or meaningless.").

The Clerk's position that Election Code jettisoned the paradigm for voter identification used for decades in Illinois elections—registration card signatures—to validate mail-in ballots using *application* signatures lacks statutory authority. The Circuit Court did not abuse its discretion to reject it. The Election Code recites detailed processes for mail-in ballots, and does not expressly permit using application signatures to qualify them. Rather, the Election Code—*ad nauseum*—requires qualifying ballots by comparing the signature accompanying the ballot to the signature on the voter's registration file. See *supra* at pp. 1-2.

The sole basis for the Clerk's unprecedented position is section 6-35 of the Election Code, which notes that, in addition to the "Signature of voter," "the Board of Election Commissioners" –not just the Clerk–may include on the registration card "such other information" it deems "proper to require for the ***identification of the applicant for registration***." 10 ILCS 5/6-35. (Emphasis added.) Even assuming that the Clerk used other signed documents to identify an applicant before they create their registration signature,[5] it does not follow that such signatures can be used to modify, supplant or replace the registration signature during a separate later event—qualifying a

[5] The Clerk presented no evidence vote-by-mail applications they used to qualify ballots were used in registration.

vote-by-mail ballot. Ruling otherwise, as the Clerk requests, would ignore the specific language of the statute, which is not permitted. See *Kraft,* 138 Ill. 2d at 189.

Nor can the Clerk expansively construe the "signature of the voter on file" because under the Election Code it has a precise meaning: the signature made before the lawful registrar "in ink or digitized form to the affidavit on the original and duplicate registration record card." 10 ILCS 5/5-7. Further, the Election Code expressly states that "the original and duplicate cards shall respectively constitute the master file and precinct binder registration records of the voter" (*id.* § 4-8.03) and that the "master file" be used when qualifying mail-in ballots (*id.* § 19-10).

In sum, reading the Election Code and giving effect to all the language therein, as the Court must, allows for only one conclusion—that mail-in ballots must be validated by comparing a ballot envelope signature to the voter's registration card signature, especially because that is the only properly validated, witnessed, signature confirmed to have been made by the actual voter. The Circuit Court rightfully adopted this approach. At the very least, Mazzochi proved a fair question that the Clerk's conduct violated the statute, and therefore the Circuit Court did not abuse its discretion in granting the temporary restraining order. See *Fischer,* 207 Ill. App. 3d at 1066.

CONCLUSION

For the foregoing reasons, this Court should deny the Clerk's Petition and affirm the ruling of the Circuit Court.

Dated: November 23, 2022

Respectfully submitted,

/s/ Michael Kozlowski

Michael Kozlowski
Esbrook P.C.
321 N. Clark Street, Suite 1930
Chicago, Illinois 60654
(312) 319-7682
michael.kozlowski@esbrook.com

Attorneys for Plaintiff

PROOF OF SERVICE

I, the undersigned, certify under penalty of perjury set forth in section 1-109 of the Code of Civil Procedure, that on November 23, 2022, I served a copy of the foregoing documents and any attached thereto, by submitting the same to the Clerk of the Court for service via the e-filing service provider, Odyssey e-file, and additionally by causing a copy of the served to the individuals listed below via email from the address michael.kozlowski@esbrook.com:

Counsel for Du Page County Clerk

Mary E. Dickson
Sean Conway
Patrick K. Bond
Bond, Dickson & Conway
Special Counsel for the Du Page County Clerk's Election Division
400 S. Knoll Street Unit C
Wheaton, IL 60187
marydickson@bond-dickson.com
patrickbond@bond-dickson.com
seanconway@bond-dickson.com

Conor McCarthy
Assistant State's Attorney
Du Page County, Civil Bureau
503 N. County Farm Road
Wheaton, IL 60187
Conor.McCarthy@dupageco.org

Counsel for Jennifer Ladisch Douglass

Heath Wier Vaught, P.C.
82 S. LaGrange Road #205
LaGrange, Illinois 60525
heather@wiervaught.com

Under penalties 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 and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Michael Kozlowski
Michael Kozlowski