

2013 IL App (2d) 130189-U
No. 2-13-0189
Order filed April 3, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

PAUL E. SJORDAL,)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner-Appellant,)	
)	
v.)	No. 13-MR-191
)	
MUNICIPAL OFFICERS ELECTORAL)	
BOARD OF THE CITY OF NAPERVILLE)	
and its members, A. GEORGE PRADEL,)	
DOUG KRAUSE, and PAMELA LAFEBER;)	
CATHY TERRILL, in her capacity as Du Page)	
County Election Commission Chair; NANCY)	
SCHULTZ VOOTS, in her capacity as Will)	
County Clerk; and REBECCA BOYD-)	
OBARSKI,)	Honorable
)	Bonnie M. Wheaton,
Respondents-Appellees.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal from electoral board's denial of petitioner's objection to referendum question. Board did not err in finding that the referendum question is not confusing, and petitioner was not deprived of a fair and impartial hearing. Affirmed.

¶ 2 Petitioner, Paul E. Sjoldal, appeals from an order of the circuit court, affirming an order of respondent, the Municipal Officers Electoral Board of the City of Naperville (Board). The Board denied petitioner's objection to the following public question, proposed by respondent-proponent Rebecca Boyd-Obarski, to be printed on the April 9, 2013, consolidated election ballot: "Shall the City of Naperville elect the city council at large instead of part of the councilmen at large and part of the councilmen from districts?" For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2010, the following referendum appeared on the November 2, 2010, general election ballot for the city: "Shall the City of Naperville elect part of the councilmen at large and part of the councilmen from districts with staggered four year terms and biennial elections?" The referendum was brought pursuant to section 5-2-18.7 of the Illinois Municipal Code (65 ILCS 5/5-2-18.7 (West 2012) (change to election of council of part at large and part from districts with staggered four year terms and biennial elections)). The majority of voters who voted in the election approved the referendum. On April 13, 2011, pursuant to the city's request, the circuit court ordered that the 2010 referendum's full implementation would be delayed until the 2015 general municipal election. (The voters also approved a second referendum in 2010 that limits the number of consecutive terms a person may serve as councilman to three full consecutive terms.)

¶ 5 Subsequently, city attorney Margo Ely drafted an opinion addressing the referendum process for electing councilmen at large (which Sjoldal characterizes as a memo on how to "reverse" the 2010 referendum), a copy of which was provided (on September 20, 2011) to Brien Nagle, a law partner of Obarski.

¶ 6 On November 28, 2012, Obarski submitted petition papers to the city clerk, seeking to place on the April 9, 2013, consolidated election ballot the following question of public policy: “Shall the City of Naperville elect the city council at large instead of part of the councilmen at large and part of the councilmen from districts?” (along with boxes indicating “YES” or “NO” votes). She sought to have the referendum presented as a binding referendum, non-binding referendum, or both. The petitions were brought pursuant to section 5-2-18.1 of the Illinois Municipal Code (65 ILCS 5/5-2-18.1 (West 2012) (change to election of council at large)) and/or section 6(f) of Article VII of the Illinois Constitution (Ill. Const. 1970, art. VII, §6(f)) and section 28-6 of the Election Code (10 ILCS 5/28-6 (West 2012)). Specifically, the petition papers stated:

“We, the undersigned, being duly qualified and registered electors in the City of Naperville, Illinois, (i) equaling in number to not less than 10% of the total votes cast for all candidates for Mayor of the City of Naperville in the last preceding municipal mayoral election, and/or (ii) equaling in number to not less than 8% of the total votes cast in the City of Naperville, Illinois for all candidates for Governor of the State of Illinois in the last preceding gubernatorial election, who have affixed our signatures in our own proper persons to this Petition, hereby PETITION, pursuant to (I) Section 5-2-18.1 of the Illinois Municipal Code, 65 ILCS 5-2-18.1, and/or (II) Section 6(f) of Article VII of the Constitution of the State of Illinois and Section 28-6 of the Election Code, 10 ILCS 5/28-6, that the following question of public policy be placed on the ballot and submitted to the voters of the City of Naperville for approval by a majority of the electors within the City of Naperville voting on the question, in the manner provided by law, at the Consolidated Election to be held on April 9, 2013.”

¶7 On January 14, 2013, Sjoldal filed his objection to Obarski’s petition papers. 10 ILCS 5/10-8 (West 2012) (objections to nomination papers, public question petitions and constitutional amendment petitions). In addition to challenging the petition sheets, Sjoldal argued that the petition papers are insufficient in law and fact in that: (1) they are vague because: (a) it is impossible to determine whether Obarski sought a binding referendum (65 ILCS 6-2-18.1 (West 2012)) or a non-binding referendum (10 ILCS 5/28-6 (West 2012)) and to determine which legal signature requirement applied because the foregoing statutes contain different requirements; (b) the portion of the question that states “instead of the councilmen at large and part of the councilmen from districts” is subject to more than one interpretation and will confuse voters, in part, because Naperville voters have never elected part of the councilmen at large and part from districts (although they voted to do so in 2010); (2) the question is not substantially in the form required by section 5-2-18.1 of the Illinois Municipal Code or in any form specified in the Election Code or the Illinois Municipal Code; (3) the filing of the papers constitutes an “impermissible attempt to supplant the expressed will of the voters” and seeks to accomplish this “through a scheme intentionally designed to confuse the electorate, and that such scheme has involved the inappropriate use of City of Naperville personnel and resources, evidence of such inappropriate use the Objector will provide;” (4) the public question calls for changing a system (*i.e.*, pursuant to the 2010 referendum) not yet in place, but which the voters approved in 2010. (In his memo to the Board, Sjoldal also argued that the referendum was not self-contained and self-executing.) Sjoldal requested a hearing by the Board and a ruling that the petition papers were insufficient and that the question not appear and not be printed on the ballot for the April 9, 2013, consolidated election.

¶ 8 The Board held hearings on the matter on January 18, 23, 25, and 29, 2013. The Board is comprised of respondents, George Pradel (the city's mayor), Doug Krause (city council member), and Pam LaFeber (city clerk). 10 ILCS 5/10-9(3) (West 2012) (electoral board shall be composed of, as relevant here, the mayor, the city clerk, and the longest-serving city council member). Over Sjordal's objection, the Board appointed city attorney Ely to participate in the proceedings. Also over Sjordal's objection, the Board adopted rules of procedure. 10 ILCS 5/10-10 (West 2012). The Board also appointed, over Sjordal's objection,¹ staff to conduct a records examination of the Du Page County and Will County voter registration records and issued subpoenas for the records. It also ordered the parties to submit their legal arguments in writing by January 21, 2013.

¶ 9 After receiving briefs from the parties on that date, the Board reconvened on January 23, 2013. Sjordal's counsel attempted to file a motion for summary judgment on that day. After argument, the Board voted to disallow *additional* filings and did not accept the summary judgment motion. Also, the city attorney submitted a draft order that recommended sustaining the objection to the non-binding referendum and reserving ruling on the binding referendum contained in the petition papers. The Board sustained Sjordal's objection No. 9 that the petition papers did not contain the required number of signatures to place the referendum on the ballot in an *advisory*

¹Sjordal objected, on the basis of bias, to city legal staff participating in the proceedings and to conducting the records examination. He raised the same bias objection to the Board's composition. Sjordal objected to the rules of procedure on the basis of lack of specificity as to rulings on objections to signature validity and to the assignment of city staff to conduct the records examination.

capacity under section 28-6 of the Election Code (10 ILCS 5/28-6 (West 2012)). The Board delayed consideration and adoption of the draft order until January 25, 2013.

¶ 10 The Board reconvened on January 25, 2013, to receive the reports of the records examination. Sjordal moved to withdraw his objections relating to the validity of circulators and petition signatures. Obarski objected on the basis that time, money, and effort had already been expended (over three days) to verify signatures based on Sjordal's objections. The Board accepted Sjordal's motion to withdraw the objections. (Thus, no issues remain concerning signatures or circulators.)

¶ 11 On January 29, 2013, the Board convened to issue its decision. Sjordal presented a subpoena for additional records to support his argument that the Board was biased.² The Board did not consider his subpoena, as only legal arguments were left. After argument and public comment, the Board issued its findings.

¶ 12 The Board ruled that the filing of Obarski's petition papers was proper. In its written findings, it addressed Sjordal's primary objections, namely, voter confusion and Board bias. First, the Board noted that Sjordal's primary claim that the public question violates the law was that it is confusing. The Board noted that the Municipal Code governs the form of the referendum question (65 ILCS 5/5-2-18.1 (West 2012)) and that the law requires that the question substantially conform to the statutory language (see *Brooks v. Board of Election Commissioners of the City of Chicago*,

²Sjordal alleged that Mayor Pradel was a petition signer; that Obarski was co-chair of and a financial contributor to Pradel's 2011 campaign; that councilman Krause had made public comments in opposition to the 2010 referendum's provisions creating election districts; and that city attorney Ely forwarded a memo addressing how to reverse the 2010 referendum to Obarski's firm.

334 Ill. App. 3d 472, 476 (2002) (“ ‘When a special statute dictates the form of the ballot, there must be substantial compliance with the special statutory mandate or the election is void.’ ” (quoting *Krauss v. Board of Election Commissioners of the City of Chicago*, 287 Ill. App. 3d 981, 984 (1997))). The Board found that Obarski’s petition “is in substantial conformance” with the Municipal Code. The Board distinguished two cases upon which Sjordal relied, noting that they involved referendum questions authorized only by article VII, Section 6(f), of the Illinois Constitution, not section 5-2-18.1 of the Municipal Code, as here. See *Leck v. Michaelson*, 111 Ill. 2d 523, 528-30 (1986) (home rule municipalities may change their manner of electing officers only as provided by statute or as approved by a referendum; where a municipality sought to institute a run-off election by referendum pursuant to article VII, section 6(f), of the Illinois Constitution, the referendum was invalid because it did not stand on its own terms, was not self-executing, and was vague and ambiguous); see also *Lipinski v. Chicago Board of Election Commissioners*, 114 Ill. 2d 95 (1986). The Board determined that, here, the statute provides “answers to any questions,” including that an at-large government can be implemented and that no law restricts placing this question on the ballot at this time (despite Sjordal’s claim that it will confuse the voters due to the timing of the question so soon after the 2010 referendum). The Board noted that the 2010 referendum was placed on the ballot pursuant to section 5-2-18.7 of the Illinois Municipal Code (65 ILCS 5/5-2-18.7 (West 2012)), which specifically authorizes a council electoral process from both districts and at large. However, the statute is silent as to a specific mechanism by which to change the combination back to an election at large. It explained that, to return to the at-large system, only the portion of the process electing councilmen from districts needed to be changed to an election at

large. Thus, section 5-2-18.1 of the Illinois Municipal Code, which allows changes to an election of councils at large, is appropriate to change from districts to at large.

¶ 13 The Board noted that the section 18.1 requires the ballot question “be *substantially* in the following form: *** Shall the [City of Naperville] elect the city council at large instead of aldermen (or trustees) from wards (or districts)?” (Emphasis added.) 65 ILCS 5/5-2-18.1 (West 2012). It found that no confusion would result based on the proposed wording of the referendum and that the question was not vague or confusing and allowed the voters “a clear opportunity to express choice of either voting for an election of city council members at large, or keeping an election of council from districts and at large.”

¶ 14 Second, after overruling certain objections in Sjordal’s petition, the Board addressed Sjordal’s argument that two Board members and the Board attorney were biased; it found his argument “wholly unpersuasive.” The Board cited case law for the proposition that the Election Code does not provide for substitution (and that the presumption that an official is objective is not overcome) where an objector alleges political bias, including when a public official has taken a public position on an issue before an administrative agency. See *Waste Management of Illinois, Inc. v. Pollution Control Board*, 175 Ill. App. 3d 1023, 1040-41 (1988); *Ryan v. Landek*, 159 Ill. App. 3d 10, 13 (1987). It found that the city attorney’s distribution of her memo to several public entities, including the League of Women Voters, the Chicago Tribune, and a private attorney, was insufficient to show bias or partiality. It similarly found that evidence that a Board member signed a petition and that another member publicly commented about elections from districts were insufficient to prove bias necessitating their removal from the Board.³

³The Board also denied Obarski’s request for costs and fees, but found that Sjordal’s attorney

¶ 15 Sjordal appealed to the circuit court, which affirmed the Board’s ruling on February 22, 2013. Sjordal now appeals to this court.

¶ 16 II. ANALYSIS

¶ 17 We first address mootness. “A case on appeal becomes moot where the issues presented in the trial court no longer exist because events subsequent to the filing of the appeal render it impossible for the reviewing court to grant the complaining party effectual relief.” *Jackson v. Board of Election Commissioners of the City of Chicago*, 2012 IL 111928, ¶ 28. The mootness doctrine exists to prevent reviewing courts from issuing advisory opinions. *Kennedy Construction Co. v. City of Chicago*, 112 Ill. 2d 70, 76 (1986). Mootness is jurisdictional, and, if an issue is moot, the court lacks jurisdiction to resolve it. *Midwest Central Education Ass’n v. Illinois Educational Labor Relations Board*, 227 Ill. App. 3d 440, 448 (1995). Thus, generally, the appeal is dismissed. *Richardson v. Rock Island County Officers Electoral Board*, 179 Ill. 2d 252, 256 (1997). For the following reasons, we conclude that this appeal is not moot.

¶ 18 Where an election has already passed, for example, a cause is moot. *Id.* at 256; see also *Jackson*, 2012 IL 111928, ¶36 (“It is well established under Illinois law that the conclusion of an election cycle normally moots an election contest”). In this case, the only remedy Sjordal requested before the Board (or even before the trial court) is that the referendum not be placed on the ballot. Respondents argue that this court cannot grant Sjordal the relief he requests because: some ballots have been mailed to the armed services and to others overseas and early voting commenced on

should be “publicly sanctioned for unprofessional, disrespectful and disruptive conduct during these proceedings, despite repeated warnings from the Board.”

March 25, 2013. Sjordal responds that the appeal is not moot. First, the fact that early voting has commenced is not problematic, he argues, because all of the ballots will not be counted until April 9, 2013, and, thus, if we conclude before that date that the referendum should not have been placed on the ballot, we can order that the early votes on the referendum not be counted. He also argues that the appeal is not moot because effective relief can be granted by this court even *after* the April 9, 2013, election. Recently, in *Jackson*, the supreme court held that a party's request for certain relief (specifically, a new election outside the normally-scheduled runoff election) was forfeited for two reasons: (1) the party failed to include that request in her petition for leave to appeal (rather, her attorney raised it for the first time at oral argument before the supreme court); and (2) she provided no argument or authority to support her request for the requested relief of a special election. *Jackson*, 2012 IL 111928, ¶¶ 31-32. This case is unlike *Jackson* because Sjordal's first opportunity to address his mootness arguments was in his briefs to this court, which he did do. Further, we cannot conclude that Sjordal's ability to challenge the validity of the referendum should be extinguished by the election and that, if the referendum passes, he is foreclosed from bringing his claim. *See generally, League of Women Voters of Peoria v. County of Peoria*, 121 Ill. 2d 236, 244 (1987) ("not all 'successful' referenda will be given the effect of law"). Accordingly, we conclude that this cause is not moot.

¶ 19 Before turning to the merits, we also note that respondents argue that Sjordal's appellate brief fails to comply with Illinois Supreme Court Rule 341 (eff. Sept. 1, 2006). They request that we either strike the brief and deny the appeal or strike and not consider those portions that are not in conformance with the rule. Specifically, they note that Sjordal's brief is deficient where: (1) it circumvents the 50-page limit by not counting the table of contents and contains footnotes that

incorporate substantive argument; (2) it does not set forth the text of various statutes; (3) it contains in the statement of facts argument, comment, and irrelevant matters and is devoid of citations or contains improper citations to the record; (4) the term limits referendum mentioned therein is not contained in the record (and no 2010 referendums are at issue in this matter because there were ordinances passed; no ordinance is part of the record); and (5) the arguments do not correlate to the issues.

¶ 20 Our “rules of procedure are rules and not merely suggestions.” *Ryan v. Katz*, 234 Ill. App. 3d 536, 537 (1992). Consequently, Rule 341’s mandates detailing the format and content of appellate briefs are compulsory. See *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. This court has the discretion to strike an appellant’s brief and dismiss an appeal for failure to comply with Rule 341. See *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001); *Buckner v. Causey*, 311 Ill. App. 3d 139, 142 (1999). Despite the deficiencies in Sjordal’s brief, we conclude that the violations are not so egregious as to hinder our review, and we decline to strike it and deny the appeal. However, we will disregard any inappropriate or unsupported material and any substantive arguments contained only in the footnotes. *Gehrett v. Chrysler Corp.*, 379 Ill. App. 3d 162, 171 (2008); *Tekansky v. Pearson*, 263 Ill. App. 3d 759, 763 (1994). Further, we admonish Sjordal’s counsel to comply with the rules in the future.

¶ 21 Turning to the merits, judicial review of an electoral board’s decision is in the nature of administrative review. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 209-10 (2008); *Jakstas v. Koske*, 352 Ill. App. 3d 861, 863 (2004). When such proceedings reach a reviewing court, we review the election board’s decision, not the circuit court’s decision. *Id.* at 212.

¶ 22 The standard of review applied to an election board's decision depends on what is in dispute, the facts, the law, or a mixed question of fact and law. *Cinkus*, 228 Ill. 2d at 210. Where the historical facts are admitted or established, but there is a dispute as to whether the governing legal provisions were interpreted correctly by the administrative body, the case presents a purely legal question for which our review is *de novo*. *Hossfeld v. Illinois State Board of Elections*, 238 Ill. 2d 418, 423 (2010). This is such a case.

¶ 23 Sjoldal argues first that Board erred by refusing to rule on his argument that the petition papers are invalid because they sought to file two referendums—one binding and one non-binding. Sjoldal cites to case law that he asserts holds that a candidate filing multiple sets of petitions for the same office is illegal. See *Heabler v. Municipal Officers Electoral Board of Village of Lakemoor*, 338 Ill. App. 3d 1059 (2003); *Stephens v. Education Officers Electoral Board*, 236 Ill. App. 3d 159 (1992). He contends that, here, the petition papers were brought under two different and irreconcilable statutes seeking two entirely different referendums. In this respect, he urges, they violate the Election Code as being confusing, vague, and contradictory. As to voter confusion, he further contends that, if the referendum stays on the April 9, 2013, ballot, voters will be asked whether they want to change the manner in which council members are elected (to an all at-large system); further, due to the delay in implementing the 2010 referendum, they will be presented with a ballot where the candidates for city council are running at large. This, he urges, will confuse voters.

¶ 24 Respondents contend that the public question is in substantial compliance with the Illinois Municipal Code and is not confusing. They assert that only one question was presented in the petition papers and that, depending on the number of signatures obtained on the petitions, the

question could be presented as either a binding or non-binding referendum. (A non-binding referendum requires more signatures than a binding referendum.) They further argue that any reference in the petition paper's heading to a statute is irrelevant because there is no requirement that it be contained in the papers. 10 ILCS 5/28-3 (West 2012). They also note that the law requires that the public question not be confusing (see *Smith v. Calhoun Community Unit School District No. 40*, 16 Ill. 2d 328, 335-36 (1959)), but that this is not the standard for the petition papers. In any event, they contend that the use of "and/or" in the petition papers was proper, as neither the Election Code nor the Illinois Municipal Code requires the proponent to claim a statutory provision as its foundation. They also assert that it was surplusage since the statute's essential requirements were met.

¶ 25 Section 28-3 of the Election Code provides, in relevant part:

“Form of petition for public question. Petitions for the submission of public questions shall consist of sheets of uniform size and each sheet shall contain, above the space for signature, an appropriate heading, giving the information as to the question of public policy to be submitted, and specifying the state at large or the political subdivision or district or precinct or combination of precincts or other territory in which it is to be submitted and, where by law the public question must be submitted at a particular election, the election at which it is to be submitted. In the case of a petition for the submission of a public question described in subsection (b) of Section 28-6, the heading shall also specify the regular election at which the question is to be submitted and include the precincts included in the territory concerning which the public question is to be submitted, as well as a common description of such territory in plain and nonlegal language, such description to describe the territory by

reference to streets, natural or artificial landmarks, addresses or any other method which would enable a voter signing the petition to be informed of the territory concerning which the question is to be submitted.” 10 ILCS 5/28-3 (West 2012).

We agree with respondents that section 28-3 does not require that the statutory basis for a public question be stated in the heading of a petition paper.

¶ 26 We disagree with Sjordal’s argument that the Board failed to rule on his argument concerning the “and/or” language in the petition papers. In his objection petition, Sjordal raised this point in the context of arguing that the wording would confuse the voters because the petition papers were “vague” and “unspecific” and that it is “impossible” to determine whether Obarski sought a binding or non-binding referendum. The Board fully addressed Sjordal’s claims of voter confusion, finding that the public question was not confusing and that it substantially complied with section 5-2-18.1 of the Illinois Municipal Code. We find no error with its decision.

¶ 27 The use of “and/or” in the petition papers in reference to the fact that the public question would be binding, non-binding, or both is not confusing and, therefore, impermissible. We do not believe that petition signers/voters would fail to understand that, depending on certain circumstances (*i.e.*, the number of signatures obtained by Obarski), the referendum question could be, again, binding, non-binding, or both. We also reject Sjordal’s claim that Obarski’s petition papers contained two questions. The petition papers contained one question: “Shall the City of Naperville elect the city council at large instead of part of the councilmen at large and part of the councilmen from districts?” Other than arguing that it is confusing, Sjordal points to no statutory provision precluding language noting that a public question may be binding, non-binding, or both. Further, the case law upon which he relies is distinguishable.

¶ 28 In *Stephens*, a candidate for trustee of a community college filed two sets of nominating petitions for two identical positions. An opponent for the position objected to the second set of nomination papers, arguing that the second set was void as surplusage. That same day, the candidate withdrew his first set of papers. The electoral board dismissed the opponent's objection, and the trial court sustained the board's order. On appeal, the court reversed, holding that the board misconstrued the Election Code. *Stephens*, 236 Ill. App. 3d at 163-65. The court determined that the statute prohibits candidates from filing multiple sets of nomination papers for a single office; that, although the candidate filed his papers for two distinct offices, the two positions were identical (the statute implicitly permits the filing of two sets of papers for two incompatible offices); since the two offices are not incompatible, the filing of a second set of papers constituted an attempt to add to the nomination papers previously filed, which was in violation of the statute. *Id.* at 163-64. The court further held that the board should have disregarded the second set of nomination papers as surplusage. *Id.* at 164. The withdrawal of the first set of papers did not validate the second set. *Id.*

¶ 29 *Stephens* is distinguishable because it involves two sets of nomination papers. Here, Obarski filed only one set containing one public question. Further, in *Stephens*, the candidate's nomination failed because he withdrew his first set of papers; the second set was surplusage. The candidate's error was not in filing two sets of papers.

¶ 30 In *Heabler v. Municipal Officers Electoral Board of the Village of Lakemoor*, 338 Ill. App. 3d 1059, 1063-64 (2003), upon which Sjoldal also relies, the appellate court affirmed the Board's finding, sustaining objections to a petitioner's nominating papers, where the petitioner failed to specify in his papers which of the two village trustee positions (one was for a two-year term, and one was for a four-year term) he sought. This constituted a basis for confusion as to the office for which

the papers were filed, which is impermissible. *Id.* at 1062-63. We find *Heabler* distinguishable because the scenario in that case clearly could have confused voters. Here, the fact that the referendum could be binding, non-binding, or both was clearly presented to the petition signers.

¶ 31 We also reject Sjordal’s claim that voters will be confused when confronted with a ballot that asks them if they approve changing the electoral system to one at large on the same ballot where councilmen are running for positions at large. Each of the propositions is clear and their mere appearance on the same ballot does not, we believe, render the referendum impermissibly confusing.

¶ 32 We further uphold the Board’s determination that the form of the public question substantially conformed to the statutory form of ballot in section 5-2-18.1 of the Illinois Municipal Code. “ ‘When a special statute dictates the form of the ballot, there must be substantial compliance with the special statutory mandate or the election is void.’ ” *Brooks*, 334 Ill. App. 3d at 476 (quoting *Krauss*, 287 Ill. App. 3d at 984). Indeed, section 5-2-18.1 itself provides, in relevant part, “The proposition shall be in *substantially the following form*: Shall the city (or village) of elect the city council at large instead of aldermen (or trustees) from wards (or districts)?” (Emphasis added.) 10 ILCS 5/5-2-18.1 (West 2012). The referendum question is: “Shall the City of Naperville elect the city council at large instead of part of the councilmen at large and part of the councilmen from districts?” In determining whether the substantial-compliance standard is met, “the test is whether the voter is given as clear an alternative as if the statutory form had been identically followed.” *Brooks*, 334 Ill. App. 3d at 477. Unquestionably, that standard is met here.

¶ 33 Sjordal also raises claims that the Board erred in withdrawing one of the referendums contained in the petition papers (and placing only the binding referendum question on the ballot) because this had the effect of altering the petition papers subsequent to filing. He cites to section 28-

3 of the Election Code, which provides that “a petition, when presented or filed, shall not be withdrawn, altered, or added to.” 10 ILCS 5/28-3 (West 2012). We decline to address this claim because it is forfeited. Sjordal did not raise it before the Board. See *Samuelson v. Cook County Officers Electoral Board*, 2012 IL App (1st) 120581, ¶ 50.

¶ 34 Sjordal also argues that section 5-2-18.1 is not applicable here because that section applies to cities or villages that have elected to choose aldermen from wards or trustees from districts. He contends that, pursuant to the 2010 election, Naperville has chosen to elect part of the councilmen at large and part from districts. Thus, the statute is inapplicable because a foundational requirement therein is not satisfied. He also argues that the foregoing statutory violation triggers a violation of section 28-1 of the Election Code, which provides that public policy questions that have any legal effect be submitted to referendum only as authorized by a statute that so provides. According to Sjordal, because section 5-2-18.1 does not authorize what Obarski seeks, the proposed referendum violates section 28-1. This claim is also forfeited. As respondents note, Sjordal did not raise this argument in his objector’s petition and raised it only in his reply brief before the circuit court.

¶ 35 Next, Sjordal argues that section 5-2-18.1 of the Illinois Municipal Code and section 28-6 of the Election Code, upon which Obarski relied in her petition papers, are not self-executing and self-contained and, thus, do not satisfy article VII, section 6(f), of the Illinois Constitution and the referendum is, therefore, invalid. He provides the following examples of how the referendum fails to be self-executing and self-contained: (1) it fails to address how the city will conduct, pursuant to section 5-2-18.7, a municipal primary election (because section 5-2-18.1 does not provide for both primaries and general elections); (2) the proposed referendum fails to provide how it will reconcile with the court order requiring the 2010 referendum to be fully implemented by 2015; (3) the

referendum contradicts the statutes under which the candidates in the 2013 election will be elected (under the 2010 referendum, candidates are running for a two-year term pursuant to section 5-2-18.7, whereas, absent that referendum, they would be running for four-year terms); (4) the proposed referendum fails to explain how it will reconcile the issue of staggered terms and biennial elections passed as part of the 2010 resolution; (5) the referendum fails to provide how it will reconcile the 2010 term limit referendum.

¶ 36 Respondents contend that corresponding sections of the Illinois Municipal Code will implement the referendum, noting that the final sentence of section 5-2-18.1 explicitly provides that, if the referendum passes, the councilmen shall be elected at large at the next general municipal election and that section 5-2-12 applies. That section, according to respondents, addresses how to implement an at-large system, provides for staggered terms and biennial elections and defines a full term to be four years (not two years, as Sjordal claims). If the referendum passes, they assert, pursuant to section 5-2-12(d), at the 2015 election, all eight council positions will be up for election and the lowest four vote-getters will serve two-year terms. Thus, the provision is self-executing. Respondents distinguish *Leck* and *Lipinski*, arguing that they addressed referenda concerning run-off elections, which are not covered by the Illinois Municipal Code. They argue that, here, in contrast, the statute does provide implementing details. We agree.

¶ 37 Section 5-2-12 of the Illinois Municipal Code does address, as respondents contend, many implementing details raised by Sjordal. It addresses the composition of a city council, terms of office for a mayor and councilmen, timing of elections, forms of ballots, and the filling of vacancies. Thus, section 5-2-18.1 is self-executing and self-contained.

¶ 38 In his final argument, Sjordal raises a due process challenge, arguing that the Board unreasonably deprived him of a fair hearing. First, he argues that the Board was not impartial, where city attorney Ely “played a direct role in assisting” Obarski in preparing the 2013 referendum (and Sjordal was denied a separate hearing to determine whether certain Board members and the city attorney should be disqualified). Second, he asserts that the Board violated its own rules and procedures, where it refused to consider his summary judgment motion and stated it would not be part of the record of proceedings and ignored his subpoena request for Ely’s memo and “cleansed it” from the record. Third, Sjordal argues that the Board proceedings were tainted by dishonesty and conflicted decisionmakers, where Ely “misconstrued the law” and provided “unsound advice.”

¶ 39 Respondents respond that the taking of a public position or expressing strong views on an issue does not overcome the presumption that an official is objective and capable of judging a particular controversy. Further, as to city attorney Ely, they note that the only evidence Sjordal offered were three emails that showed that Ely forwarded a public memo responding to a councilman’s inquiry (one year before any signatures were obtained for the referendum at issue) about the referendum process. The emails were provided to an attorney associated with Obarski, as well as a media outlet and the League of Women Voters. It explained, according to respondents, the legal issues implicated by the process to change the city’s electoral process from districts back to at large. They finally note that the City is subject to the Freedom of Information Act and must make certain documents, such as the memo, available to the public. Ely was under a statutory duty to provide the document to any requesting party.

¶ 40 Administrative hearings are governed by the fundamental principles and requirements of due process of law. *Krocka v. Police Board of the City of Chicago*, 327 Ill. App. 3d 36, 49 (2001). A

fair hearing before an administrative entity must include the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 95 (1992). Not all accepted requirements of due process in the trial of a case are necessary at an administrative hearing. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 175 Ill. App. 3d 1023, 1036 (1988). Due process requirements are determined by balancing the weight of the individual's interest against society's interest in effective and efficient governmental operation. *Id.* at 1037.

¶ 41 The members of an administrative board “are presumed to have made their decisions in a fair and objective manner.” *Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017, ¶ 60. This presumption is not overcome merely because a decision-maker has previously taken a public position or expressed strong views on the issue. *Concerned Adjoining Owners v. Pollution Control Board*, 288 Ill. App. 3d 565, 573 (1997). To show bias or prejudice in an administrative proceeding, the petitioner must show that a disinterested observer might conclude that the administrative board, or its members, had prejudged the facts or law of the case. *Id.*

¶ 42 We reject Sjoldal's argument that he was deprived of a fair hearing before an unbiased Board. As to city attorney Ely, Sjoldal does not refute respondents' assertion that the memo was drafted one year before the petition papers were filed by Obarski, that the memo is a public document, and that the city or Ely was under a duty to provide the document to a requesting party (and did provide it to not only Obarski's colleague, but also to a media outlet and the League of Women Voters). As to Sjoldal's complaint that mayor Pradel signed the petition papers, he points to no statute or other law precluding Pradel from signing the petition in this case, nor does Sjoldal cite to a case holding that the signing of a petition paper by a decisionmaker, in itself, renders the

person biased and ineligible to serve on the tribunal. Next, as to Sjordal's claim that councilman Krause made public comments opposing the 2010 referendum and, thus, that he is biased and had prejudged the current matter, we reject it outright as it reflects only that Krause took a public position on the matter, which is not impermissible.

¶ 43 Finally, we also reject Sjordal's argument that the Board violated its own rules in failing to consider his summary judgment motion and in "ignoring" his subpoena. The record reflects that Sjordal's counsel attempted to present the summary judgment motion after the parties had agreed, due to the expedited nature of the proceedings, to submit (and had submitted) their briefs on the issues. We cannot conclude that the Board's actions reflected bias or denied Sjordal a fair hearing. Similarly, as to his subpoena request, Sjordal's counsel brought up his request *after* the parties had agreed to present no further evidence at the hearing. Thus, again, we cannot conclude that the Board's action denied Sjordal due process.

¶ 44

III. CONCLUSION

¶ 45 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 46 Affirmed.