2014 IL App (1st) 142998-U

SECOND DIVISION
October 17, 2014

No. 1-14-2998

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ANTHONY DAVIS, LISA EVANS, and VINCENT LOCKETT, Plaintiffs/Counter-Defendants-Appellees, v. DWIGHT WELCH, DEBORAH McILVAIN, LEORA H. BELL, JUANITA A. WILLIAMSON, and THE CITY OF COUNTRY CLUB HILLS, Defendants/Counter-Plaintiffs-Appellants. (David Orr, in his capacity as Cook County Clerk, Defendant.)	)	Appeal from the Circuit Court of Cook County No. 14 CH 13948 Honorable Mary L. Mikva, Judge Presiding.

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Lavin and Taylor concurred in the judgment.

O R D E R

¶ 1 *Held*: Summary judgment for plaintiffs finding proposed binding term limits referendum legally valid was proper where: the referendum presents sufficiently related questions related to the same objective of limiting terms of elected officials in the city and the referendum does not violate the free and equal clause of the Illinois Constitution of 1970; the referendum is clearly worded and is self-executing; and the referendum does not create an *ex post facto* problem because the term limits would be imposed prospectively.

¶ 2 On cross-motions for summary judgment, the circuit court considered whether a proposed binding term limits referendum was legally valid. The circuit court granted summary judgment to plaintiffs, and aldermen for the City of Country Club Hills, Anthony Davis, Lisa Evans, and Vincent Lockett and denied the cross-motion by defendants Dwight Welch, Deborah McIlvain, Leora H. Bell, Juanita A. Williamson, and the City of Country Club Hills, Illinois. On appeal, defendants argue that the proposed referendum question violates: the free and equal clause of Article III, Section 3 of the Illinois Constitution of 1970 because it combines separate and unrelated questions; Article VII, Section 6(f) of the Illinois Constitution of 1970 because it is not self-executing; and Article I, Section 16, and Article III, Section 1 of the Illinois Constitution of 1970 as an *ex post facto* negation of voters' fundamental rights. For the following reasons we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On August 11, 2004, plaintiffs cast the deciding three votes for the Country Club Hills city council in a 3 to 1 vote, with one abstention, for a binding referendum question on the November 4, 2014, general election ballot. The resolution was signed by defendant Mayor Dwight Welch and attested to by defendant City Clerk Deborah McIlvain. On August 15, 2014, McIlvain certified the resolution for submission to defendant Cook County Clerk for inclusion on the November 4, 2014, general election ballot. On August 18, 2014, defendants Bell and Williamson filed objections to the proposed referendum with the city clerk alleging that the referendum question was legally insufficient as a matter of law. On August 20 and 21, 2014, defendant Welch circulated a call for a meeting of the electoral board on the objections and then an amended call to correct the composition of the electoral board.

¶ 5 On August 27, 2014, plaintiffs filed the underlying verified complaint for injunctive relief seeking to bar further litigation of the objections before the electoral board because the board lacked jurisdiction over the matter. Plaintiffs also filed a motion for temporary restraining order barring the electoral board from hearing the objections. Following a response by defendants, the circuit court entered an order enjoining further proceedings before the electoral board and granting leave to defendants to file a counterclaim and for the parties to file answers and cross-motions for summary judgment.

¶ 6 The proposed referendum is as follows:

Shall the City of Country Club Hills, Cook County, Illinois adopt the following term limits for the following Offices to be effective for an applicable to all persons who are candidates for those Offices being elected at the Consolidated Election to be held April 7, 2015 and subsequent elections. A) Mayor – No person may hold the office of Mayor for more than five (5) consecutive four (4) year terms. B) Alderman – No person may hold the office of Alderman for more than five (5) consecutive four (4) year terms. C) City Clerk – No person may hold the office of City Clerk for more than five (5) consecutive four (4) year terms. D) City Treasurer – No person may hold the office of City Treasurer for more than five (5) consecutive four (4) year terms. with all prior consecutive terms of a current officeholder counted in determining term limits for that officeholder.	YES NO

Defendants asserted that the proposed referendum violated the free and equal clause of Article III, Section 3 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. III, § 3) because it contained separate and unrelated questions and could not be answered with a "Yes" or "No" vote

as presented. Defendants also asserted that the referendum question required further action by the city council and was not self-executing, that it was grammatically incoherent and confusing, and that it was unclear if it applied retroactively or prospectively and presented an *ex post facto* problem.

¶ 7 Following argument, the circuit court entered an order on October 1, 2014, granting plaintiffs' motion for summary judgment. The court first explained that because the ballot referendum was introduced by resolution of the city council, the election board did not have authority to review defendants' objections under the Election Code and the matter was properly before the circuit court. The court then concluded that the proposed referendum did not violate the free and equal clause of the Illinois Constitution of 1970 (Ill. Const. 1970, art. III, § 3) and that the proposed referendum applied prospectively and was not an *ex post facto* limitation. This expedited appeal followed.

¶ 8 II. ANALYSIS

¶ *9* Defendants argue on appeal that the circuit court erred in granting summary judgment to plaintiffs. Defendants contend that summary judgment was improper because the proposed referendum violates the Illinois Constitution of 1970 because: it violates the free and equal clause by combining separate and unrelated questions and is compound and structurally vague; it is not self-executing; and it is an *ex post facto* infringement on voter rights. The constitutionality of a proposed ballot initiative is a matter of law and our review is *de novo*. *Clark v. Illinois State Board of Elections*, 2014 IL App (1st) 141937, ¶ 15. Further, we review an order granting summary judgment *de novo*. *Chicago Hospital Risk Pooling Program v. Illinois State Medical Inter-Insurance Exchange*, 397 Ill. App. 3d 512, 523 (2010).

¶ 10 A. Free and Equal Clause

¶ 11 Our constitution requires that "[a]ll elections shall be free and equal." Ill. Const. 1970, art. III, § 3. This clause is violated when separate and unrelated questions are combined in a single proposition on a ballot such that the voter's right to vote upon each question separately is violated. *Coalition for Political Honesty v. State Board of Elections*, 83 Ill. 2d 236, 253-54 (1980) (*Coalition II*). In order to properly be combined into a single initiative, separate questions must be reasonably related to a common objective in a workable manner. *Id.* at 256; *Clark*, 2014 IL App (1st) 141937, ¶ 28. This does not require separate questions any time that questions could be posed separately as such a test would be "unworkable" because "[a]lmost any proposition can be broken into simpler questions." *Coalition II*, 83 Ill. 2d at 258. Ultimately, it must be determined "whether the questions are compatibly interrelated to provide a consistent and workable whole in the sense that reasonable voters can support the entire proposition." *Clark*, 2014 IL App (1st) 141937, ¶ 28, citing *Coalition II*, 83 Ill. 2d at 260.

¶ 12 Citing the dissent in *Coalition II*, defendants argue that the four parts of the instant proposed referendum question do not logically stand and fall as a whole because it cannot be said that the voter would reasonably be expected to support term limits for each office. *Coalition II*, 83 Ill. 2d at 271 (Ryan, J., dissenting). Defendants argue that the proposed referendum affects both legislative and executive branches and the officers of the different branches possess different statutory powers. Furthermore, the legislative officers are elected from distinct city wards while the executive officers are elected at-large. Defendants assert that separate questions could and should be presented to the voters to separate the offices and government entities. They claim this could occur over different elections as only three public questions may be presented in the same election (10 ILCS 5/28-1 (West 2012)) or two questions could be presented, one each for legislative and executive officers involved.

¶ 13 Defendants further contend that it is not clear from the wording whether the proposed limits apply to each office separately or collectively to all offices. Defendants contend that the "mystifying structure" of the proposed referendum compounds the problems because it is unclear if the "dangling phrase" at the end applies to only subpart (D) or all of the subparts. As such, they maintain that the voters are not given a clear opportunity to vote for or against the choices.

¶ 14 We agree with the trial court that the proposed referendum does not violate the free and equal clause in this case. The *Clark* court found a proposed amendment violated the free and equal clause as it contained six components that impacted the legislature and the executive in separate and unrelated ways. *Clark*, 2014 IL App (1st) 141937, ¶¶ 29-30. In the instant matter, the provisions impacting the different branches are related and identical, relating to the same narrow objective of limiting elected officials to five consecutive four-year terms.

¶ 15 According to the circuit court, defendants' finding confusion in the proposed referendum required "imagination" and we agree that defendants' reading may only be made by overanalyzing the proposed referendum. The questions are related to the common objective of term limits for the city's elected officials. As all the parties, and the circuit court agreed, the punctuation and formatting of the proposed referendum are not perfect, the fact remains that the question before the voters can only be read to apply the same limitations to all offices. Accordingly, the circuit court did not err in concluding that the proposed referendum related to a common objective in a workable manner and did not violate the free and equal clause.

¶ 16 B. Whether the Referendum is Self-Executing

¶ 17 Defendants contend that the circuit court erred in determining that the proposed referendum is self-executing. Under the Illinois constitution, home rule units are granted "the power to provide for its officers, their manner of selection and terms of office only as approved

by referendum or as otherwise authorized by law." Ill. Const. 1970, art. VII, § 6(f). Under this provision, a proposed referendum question must be able to stand on its own terms and present the voters a coherent scheme for electing officials. *Lipinski v. Chicago Board of Election Commissioners*, 114 Ill. 2d 95, 99-100 (1986). If the municipality must add legislative provisions not contemplated by the terms of the proposed referendum question, the question is invalid. *Id.* Defendants contend that the city would have to interpret whether the question applied to service in one office or any combination of offices or a particular office to apply the term limits under the proposed referendum question.

¶ 18 We disagree and, as addressed above, we do not find that the language or presentation of the proposed referendum question are unclear or require additional legislation to implement. Unlike the cases cited by defendants, *Lipinski* and *Leck v. Michaelson*, 111 Ill. 2d 523 (1986), there is not uncertainty as to when or how the term limits provisions would apply. Defendants merely argue again that the wording is confusing and that the city would have to interpret how serving prior terms or in different offices would apply. We agree with the circuit court that the wording is clear and no further legislation would be required to implement it fully.

¶ 19 C. *Ex Post Facto* Infringement of Voter Rights

¶ 20 Defendants also argue that the proposed referendum question is *ex post facto* legislation because the wording is not clear as to whether it applies retroactively or prospectively. Defendants cite *Tully v. Edgar*, 171 Ill. 2d 297 (1996), for authority on this issue. In *Tully*, legislation changing the board of trustees for the University of Illinois from an elective to an appointive office impinged the fundamental right to vote because it removed elected trustees before their terms were completed, thereby nullifying the votes cast in previous valid elections. *Id.* at 311-12. However, the proposed referendum in the instant matter would not remove any

elected official from office before serving a full elected term.

¶ 21 Defendants cite no authority for the proposition that the referendum would be an impermissible retroactive change of the legal consequence of facts as they existed at prior elections. In fact, the *Tully* court noted that the legislature could have achieved its goal without impinging on the right to vote if it provided that elected trustees would be succeeded by appointed trustees upon the expiration of their terms. *Id.* at 312. The proposed term limits would not impermissibly nullify votes cast and, similar to the proposed solution in *Tully*, would only affect possible future successive terms. Accordingly, we agree with the circuit court that there is no *ex post facto* issue in this case.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the judgment of the circuit court.

¶ 24 Affirmed.