

CASE NO. \_\_\_\_\_

IN THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT

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DEANNE MAZZOCHI,	) Interlocutory Appeal from the
	) Circuit Court of the Eighteenth
	) Judicial Circuit, DuPage County,
Plaintiff-Appellee	) Illinois
	)
v.	) No. 2022 CH 220
	)
JEAN KACZMAREK, in her	)
Official capacity as DuPage County	)
Clerk and Election Authority	) The Honorable James Orel,
For DuPage County	) Judge Presiding
	)
Defendant-Appellant	)

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JEAN KACZMAREK'S RULE 307(d) PETITION FOR REVIEW  
OF TEMPORARY RESTRAINING ORDER

Pursuant to Illinois Supreme Court Rule 307(d), Defendant-Petitioner Jean Kaczmarek, in her official capacity as DuPage County Clerk and Election Authority for DuPage County, requests that this Court grant the Petition for Review of Temporary Restraining Order ("TRO") entered by the Circuit Court on November 15, 2022.<sup>1</sup>

1. This matter involves an unverified Complaint for Equitable Relief ("Complaint") filed on November 14, 2022 by Plaintiff-Respondent Deanne Mazzochi ("Mazzochi"), a Candidate for political Office, which raises grievances directed at the Defendant-Appellant Jean Kaczmarek, in her official capacity as DuPage County Clerk and Election Authority for DuPage County ("County Clerk"), concerning the conduct and administration of the November 8, 2022

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<sup>1</sup> To further protect the rights of the County Clerk, on November 16, 2022, the County Clerk filed a motion with the Illinois Supreme Court, pursuant to Illinois Supreme Court Rule 383, for supervisory order concerning the Circuit Court's November 15, 2022 Order.

General Election (“Election”) - specifically, involving the County Clerk’s ongoing counting of Vote by Mail Ballots. Supporting Record (“SR”). 001- 009.

2. On the same date, Mazzochi filed an Emergency Motion to Enforce Election Law by Temporary Restraining Order and Preliminary Injunction (“Motion”). SR. 010 to 045. The Motion was set for presentment on November 15, 2022.

3. In response to the Complaint and the Motion, the County Clerk filed a Combined 2-619(a)(1) Motion to Dismiss the Complaint and as a Response to the Motion, arguing that the Circuit Court is without express statutory authority and jurisdiction to intervene and interfere with the County Clerk’s conduct and administration of the Election under well-settled precedent of this Court and the Election Code. SR. 046 to 050.

4. On November 15, 2022, the Circuit Court denied, without reading, the County Clerk’s Combined 2-619(a)(1) Motion to Dismiss and Response to Plaintiff’s Motion for TRO. SR 51-52, 073-074.

5. The Circuit Court found it had subject matter jurisdiction, and, specifically, “the Election Code does not permit the use of a signature from a mail in ballot application to validate any mail-in ballot certification signature in accordance with Article 19 of the Election Code...”. *Id.* It also found that use of the Vote by Mail ballot application signature to qualify signatures on the Vote by Mail ballot itself would be an obvious way to commit ballot fraud.” *Id.* On these findings, the Circuit Court granted, in part, the request for TRO, prohibiting the County Clerk from using any signature on a Vote by Mail application in connection with validating signatures on the Vote by Mail ballot certifications, and ordered the County Clerk to segregate and mark “Rejected” any mail in ballot where the signature on the ballot certification

envelope does not match the signature on the voter's registration on file with the County Clerk's office. SR 051-052.

6. On November 17, 2022, the County Clerk filed a timely notice of interlocutory appeal from that Order. SR 091-092.

7. This Court should reverse and vacate the Circuit Court's order of November 15, 2022, because the Circuit Court lacked express statutory authority and jurisdiction as to this cause.

8. Alternatively, assuming the Circuit Court had jurisdiction, it erred in issuing the TRO, where it not only did not maintain the status quo, but, additionally, granted the ultimate relief sought by Mazzochi in her Complaint.

9. Entry of the TRO was also in error where Mazzochi failed to show (a) a probability of success on the merits, (b) that she would suffer irreparable harm if the TRO was not granted, (c) where she has an adequate remedy at law and (d) where she did not establish that her alleged injury outweighs the harm to the County Clerk.

10. In support of this Petition, the County Clerk submits and incorporates herein her Memorandum of Law filed concurrently with this Petition

## CONCLUSION

WHEREFORE, Defendant-Appellant Jean Kaczmarek, in her official capacity as DuPage County Clerk and Election Authority for DuPage County, asks that this Court grant the petition, and reverse and vacate the TRO entered by the Circuit Court on November 15, 2022, and remand the case to the Circuit Court with instructions to dismiss the cause as it lacks jurisdiction to hear it.

Respectfully Submitted,

**Jean Kaczmarek, in her official capacity as  
DuPage County Clerk and Election Authority  
for DuPage County**

By: *Mary Dickson (electronic signature)*

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Mary Dickson, Special Counsel to  
the DuPage County Clerk, Election  
Division

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DEANNE MAZZOCHI	)	Interlocutory Appeal from the
	)	Circuit Court of the Eighteenth
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v.	)	No. 2022 CH 220
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JEAN KACZMAREK, in her	)	
Official capacity as DuPage County	)	
Clerk and Election Authority	)	The Honorable James Orel,
For DuPage County	)	Judge Presiding
	)	
Defendant-Appellant	)	

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JEAN KACZMAREK'S MEMORANDUM OF LAW IN SUPPORT OF HER  
RULE 307(d) PETITION FOR REVIEW  
OF TEMPORARY RESTRAINING ORDER

The County Clerk, as the designated election authority for DuPage County, is vested, pursuant to the Illinois Election Code ("Code"), 10 ILCS 5/1-3(8), with the authority to administer the conduct of elections in DuPage County. In such capacity, the County Clerk is currently overseeing the conduct of counting ballots cast in the November 8, 2022 General Election ("Election"), a process that concludes with a declaration of Official Results on or before November 29, 2022. 10 ILCS 5/18A-15(a), 22-1. Among the ballots still being counted are those cast pursuant to the vote by mail provisions of the Election Code.

At issue is a temporary restraining order ("TRO") entered on November 15, 2022 by the Circuit Court which usurps the authority of the County Clerk relative to the conduct of the Election by specifically prohibiting the County Clerk from using any signature on a Vote by Mail application in connection with validating signatures on the Vote by Mail ballot and ordering

that certain ballots must be marked “Rejected.” This order is flawed in that it specifically directs the County Clerk in her conduct and administration of the Election, an unlawful intrusion into the province of the County Clerk in the conduct and administration of elections. The Circuit Court’s order sets a dangerous precedent for all those allegedly aggrieved by real or imagined irregularities concerning the conduct of elections by encouraging them to bring their complaints to the courts for resolution – an arena not intended for such purposes by the Election Code, nor case law emanating therefrom. As the County Clerk asserted in her Motion to Dismiss this cause, the courts lack jurisdiction over cases such as this, thus the Circuit Court erred in assuming jurisdiction over this cause.

The Circuit Court committed additional error when it entered an injunction which alters the status quo, and grants Mazzochi the ultimate relief requested in her Complaint. The Circuit Court’s TRO is particularly egregious where it is based on the Circuit Court’s own interpretation of one section of the Election Code, which it held allows the County Clerk to use only one signature for comparison purposes, and rejected the County Clerk’s argument that “a signature” for comparison purposes could be the signature of the voter on the application for a Vote by Mail ballot.

Last, the Circuit Court erred in issuing the TRO, where Plaintiff Deanne Mazzochi (“Mazzochi”) failed to set forth facts requisite to a grant of injunctive relief, and the Circuit Court failed to address any of the requisite facts in issuance of its TRO – which, again, resulted in granting ultimate relief to Mazzochi.

For all of these reasons, the TRO should be vacated, and the Court should remand this case to the Circuit Court with instructions to dismiss the case as being premature.

## **FACTUAL BACKGROUND**

Mazzochi is a candidate in the November 8, 2022 General Election (“Election”) for the Office of Illinois State Representative for the 45<sup>th</sup> District. SR 001. The County Clerk is the DuPage County Clerk and the Election Authority for DuPage County. *Id.* at 001-002. As the Election Authority for DuPage County, the County Clerk is responsible for the conduct and administration of the Election.

Late on November 14, 2022, Mazzochi filed a Complaint for Equitable Relief (“Complaint”) in the Circuit Court for the Eighteenth Judicial Circuit. SR 001-009, complaining of the conduct of the Election relative to the processing of Vote by Mail ballots. The Complaint is not verified.<sup>1</sup> On the same date, Mazzochi filed an Emergency Motion to Enforce Election Law by Temporary Restraining Order and Preliminary Injunction (“Motion”). SR.010-045. While styled as an “emergency” Mazzochi did not attach the affidavit in support of the emergency as required by the Eighteenth Judicial Circuit Court’s Local Rule 6.08, which requires an affidavit stating the reason the requested relief is necessary on an emergency basis. The hearing was ultimately scheduled to occur at 1:30 p.m. after the County Clerk alerted the Court that she was preparing to file a Motion to Dismiss the Complaint.

In response to the Complaint and the Motion, the County Clerk on November 15, 2022 filed a Combined 2-619(a)(1) Motion to Dismiss the Complaint and as a Response to the Motion, arguing that the Circuit Court is without express statutory authority and jurisdiction to intervene and interfere with the County Clerk’s conduct and administration of the Election under well-settled precedent of this Court and the Election Code. SR. 046-050.

On November 15, 2022, the Circuit Court denied, without reading, the County Clerk’s Combined 2-619(a)(1) Motion to Dismiss and Response to Plaintiff’s Motion for TRO. SR 056,

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<sup>1</sup> The Circuit Court assumed the Complaint was verified. SR 059.

074. The Circuit Court found it had subject matter jurisdiction, and, specifically, “the Election Code does not permit the use of a signature from a mail in ballot application to validate any mail-in ballot signature in accordance with Article 19 of the Election Code...”. SR 051. It also found that “[u]se of the Vote by Mail ballot application to qualify signatures on the Vote by Mail ballot itself would be an obvious way to commit ballot fraud.” *Id.* On these findings, the Circuit Court granted, in part, the request for TRO, prohibiting the County Clerk from using any signature on a Vote by Mail application in connection with validating signatures on the Vote by Mail ballot, and ordered the County Clerk to segregate and mark “Rejected” any mail in ballot where the signature on the ballot does not match the signature on the voter’s registration on file with the County Clerk’s office. *Id.*

### ARGUMENT

“A temporary restraining order is an emergency remedy issued to maintain the status quo while the court is hearing evidence to determine whether a preliminary injunction should issue.” *Delgado v. Bd. Of Election Comm’rs*, 224 Ill. 2d 481 (2007). In seeking such relief, or any injunction, the petitioner must establish facts demonstrating that she (1) has a protected right, (2) will suffer irreparable harm if the injunctive relief is not granted, (3) has no adequate remedy at law, and (4) there is a likelihood of success on the merits. *McHenry Cnty. Sheriff v. McHenry Cnty. Dep’t of Health*, 2020 IL App (2d) 200339, ¶ 27, 162 N.E.3d 310, 318–19, *appeal denied*, 159 N.E.3d 969 (2020). The balance of the hardships as between the burden placed on the competing parties must weigh in favor of an injunction. *So. Ill. Med. Bus. Assocs. v. Camillo*, 190 Ill. App. 3d 664, 546 N.E.2d 1059 (5<sup>th</sup> Dist. 1989).

The purpose of such a motion is to persuade the trial court to preserve the status quo until the case can be decided on the merits. *Id.* “Status quo” has been defined as the “last, actual,



peaceable, uncontested status which preceded the pending controversy.” *Postma v. Jack Brown Builck, Inc.*, 157 Ill.2d 391, 626 N.E.2d 199 (1993). The problem here, is that Mazzochi sought a TRO which altered the status quo, and in which she sought and was awarded the ultimate relief prayed for in the Complaint relative to the comparison for signatures on Vote by Mail ballots. Thus it was an abuse of discretion for the Circuit Court to entertain the Motion and to grant the TRO.

In general, whether a grant of TRO is proper is determined on appeal under the abuse of discretion standard. *AFSCME v. Ryan*, 332 Ill. App. 3d 965, 773 N.E.2d 1196 (1<sup>st</sup> Dist. 2002). “However, where the propriety of a TRO rests on a purely legal issue, that issue should be reviewed *de novo*.” *Fox Fire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623, ¶ 11, 161 N.E.3d 1190, 1194, *appeal denied*, 169 N.E.3d 346 (Ill. 2021), citing *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 63, 866 N.E.2d 85 (2006).

**I. The TRO Must be Vacated as the Circuit Court Lacked Jurisdiction to Enter Any Order in this Cause**

As the County Clerk argued in her Motion to Dismiss, the Circuit Court exceeded its authority and jurisdiction and has impermissibly usurped the statutory authority of the County Clerk in conducting and administering the Election – specifically, in the counting of voted ballots, which process is ongoing. This dispute involves a matter immediately important to the administration of justice because it is vital to our system of democratic elections that Illinois Courts refrain from intervening and interfering in election matters and usurping the role of Illinois election officials in their administration and conduct of elections, without express statutory authority.

Specifically, in her Complaint and Motion for TRO, Mazzochi takes issue with the County Clerk’s counting of Vote by Mail Ballots, alleging that the County Clerk in improperly

certifying ballots to be cast by comparing the signature on the vote by mail ballot with the signature on the application for the ballot. The relief requested prays that the Circuit Court direct the County Clerk in her conduct and administration of the Election by enjoining the County Clerk from allowing the signature on the Vote by Mail ballot to be compared to the signature on the application for the Vote by Mail ballot.

The Circuit Court erred in denying the County Clerk's Motion to Dismiss, where such action was taken without review of the bases for the Motion to Dismiss, where it ignored long established precedent, and where the Circuit Court rejected, out of hand, arguments made in support of the County Clerk's conduct of the Election, based on interpretation of the Election Code.

It is well-established that "[c]ircuit courts may exercise jurisdiction over election cases only as provided by statute" and that "when 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." *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 14, 23 N.E.3d 351, 357 *citing* Ill. Const. art. VI, § 9; *see also*, *Pullen v. Mulligan*, 138 Ill. 2d 21, 561 N.E.2d 585 (1990) ("Courts have no inherent power to hear election contests, but may do so only when authorized by statute and in the manner dictated by statute."). "In the exercise of special statutory jurisdiction, if the mode of procedure prescribed by statute is not strictly pursued, no jurisdiction is conferred on the circuit court." *Bettis*, 2014 IL 117050, ¶ 14, 23 N.E.3d at 357.

There is no express authority in the Election Code for the Court to intervene and resolve Mazzochi's grievances directed at the County Clerk's conduct of the Election filed in the midst of the County Clerk's ongoing counting of voted ballots and prior to the County Clerk's declaration of Official results.

The only statutory authority for challenging the conduct of the Election for the reasons at issue is Section 5/23-20 of the Election Code which expressly authorizes election contests related to the conduct of the elections and the counting or return of votes as follows:

The person desiring to contest such election shall, ***within thirty (30) days after the person whose election is contested is declared elected***, file with the clerk of the proper court a petition, in writing, setting forth the points on which he will contest the election, which petition shall be verified by affidavit in the same manner as complaints in other civil cases may be verified. Copies of such petition shall be delivered by mail to each proper clerk or board of election commissioners who is a custodian of any ballots involved in the contest. ***The petition shall allege that the petitioner voted at the election, and that he believes that a mistake or fraud has been committed in specified precincts in the counting or return of the votes for the office or proposition involved or that there was some other specified irregularity in the conduct of the election in such precincts,*** and the prayer of the petition shall specify the precincts in which the recount is desired.

10 ILCS 5/23-20 (emphasis added).

There is no dispute that the County Clerk has not officially declared the results of the Election by Official Canvass of Results and the tabulation of voted ballots is ongoing and is being conducted within the timeframe authorized under the Election Code. Accordingly, Mazzochi's Complaint directed at the County Clerk's conduct of the Election, which is ongoing, is premature under section 5/23-20 of the Election Code and the Circuit Court was without express statutory authority and subject matter jurisdiction to enter its November 15, 2022 TRO, in which it directs the County Clerk in her conduct and administration of the counting of votes in the Election.

Likewise, the Circuit Court is without subject matter jurisdiction to continue presiding over Mazzochi's premature and unauthorized Complaint. Significantly, it is long established by this Court, "that an injunction will not issue out of a court of equity *for the purpose of restraining the holding of an election or in any manner directing or controlling the mode in which the same shall be conducted.*" *Payne v. Emmerson*, 290 Ill. 490, 495, 125 N.E. 329, 331

(1919) (emphasis added) (a court of equity has no jurisdiction to enjoin the Secretary of State from certifying questions of public policy to the electors); *see also, Elder v. Mall*, 350 Ill. 538, 183 N.E. 578 (1932) (a court of equity without jurisdiction over request by candidate to restrain election officials from proclaiming number of votes cast for opponent at primary and from issuing certificate of nomination). “The reason is that an 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.” *Payne*, 290 Ill. at 495, 125 N.E. at 331.

As this Court ruled in *Suria*, the Circuit Court’s Order in this matter impermissibly usurps the lawful authority of the County Clerk by assuming the role of a superior Illinois election official through judicial fiat. *See generally, Suria*, 112 Ill. 2d 26, 490 N.E.2d 1288.

In this regard, the instant case is vastly different from *Quinn v. Bd. of Election Commissioners for City of Chicago Electoral Bd.*, 2019 IL App (1st) 190189, 132 N.E.3d 815, which was cited at hearing by Mazzochi. ¶¶ 32-33, 132 N.E.3d 815. At issue in *Quinn*, is the court’s authority to enter a writ of mandamus in a case brought before it on judicial review of a decision of an electoral board. It is not a case where a plaintiff seeks to interrupt the conduct of an Election.

## **II. THE TRO IS PREDICATED ON THE CIRCUIT COURT’S INTERPRETATION OF THE ELECTION CODE, WHICH IS IN ERROR**

The purpose of a preliminary injunction is not to “determine any controverted rights or to decide the merits of the case.” *In re Marriage of Jawad*, 326 Ill. App. 3d 141, 759 N.E.2d 1003 (2d Dist 2001). Yet, this is exactly what happened here where the TRO was entered on a finding that the County Clerk was certifying signatures on Vote by Mail ballots in a manner not in

keeping with the Election Code – at least in the opinion of the Circuit Court. In entering the TRO, the Circuit Court clearly decided the merits of the Complaint.

The basis for the Circuit Court’s entry of the TRO was its repeated stated belief that the TRO was only requiring the County Clerk to do that which is required by statute, an order which could not harm the County Clerk. SR 061-062. More properly stated, however, the TRO requires the County Clerk to do that which the Circuit Court has determined is required by statute. Viewing the TRO under this lens shows the harm to the County Clerk.

Mazzochi argues in her Complaint, and at the hearing, that the County Clerk was committing error in the verification of signatures on Vote by Mail ballots, when the County Clerk relied on, for verification purposes, the signature set forth on the application for Vote by Mail ballot. In support of her argument, Mazzochi cited the requirements of section 5/19-8(g) of the Election Code, which provides in pertinent part:

(g) . . . in all cases before the close of the period for counting provisional ballots, the election judge or official ***shall compare 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.*** If the election judge or official determines that the 2 signatures match, and that the vote by mail voter is otherwise qualified to cast a vote by mail ballot, the election authority shall cast and count the ballot on election day or the day the ballot is determined to be valid, whichever is later, adding the results to the precinct in which the voter is registered. If the election judge or official determines that the signatures do not match, or that the vote by mail voter is not qualified to cast a vote by mail ballot, then without opening the certification envelope, the judge or official shall mark across the face of the certification envelope the word “Rejected” and shall not cast or count the ballot.

10 ILCS 5/59-8(g)(emphasis added).

At Mazzochi’s urging, the Circuit Court concluded that the phrase “signature of the voter on file in the office of the election authority” could *only* require the comparison of two signatures, and that the signature being used for comparison with that on the vote by mail ballot could not be that signature which was set forth on the application for a Vote by Mail ballot. *See*

SR 067 where the Court asks: “Where under G do they allow the use of the mail-in ballot application to be used as a signature verification?”, and see SR 068 where the Court asks: “... how can they go deeper into the file and pull out a mail-in ballot application that – where in G does it say they can do that?”

In response, counsel for the County Clerk argued that “the signature of the voter on file in the office of the election authority” includes the application of the voter for a vote by mail ballot – which application is verified. SR 067-068. In support, counsel cited Section 5/6-35 of the Election Code which defines “registration record cards” to be maintained by the County Clerk. This section sets forth specific information to be part of the registration record card, but includes the phrase “and such other information as the Board of Election Commissioners may think it proper to require for the identification of the applicant for registration.” Thus, pursuant to this section, the application of a voter for a Vote by Mail ballot *can* be a part of the registration record card.

Support for this argument is set forth in section 5/19-10 of the Election Code, which specifically applies to a poll watcher’s challenge to Vote by Mail ballots. This section provides, in pertinent part:

Where certain vote by mail voters' ballots are counted on the day of the election in the office of the election authority as provided in Section 19-8 of this Act, each political party, candidate and qualified civic organization shall be entitled to have present one pollwatcher for each panel of election judges therein assigned. Such 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.***

10 ILCS 5/19-10 (emphasis added).

Reading these sections of the Election Code *in pari materia*, allows for comparison of signatures with the “voter registration card,” and the “voter registration card” includes the

application of a voter for a Vote by Mail ballot. The Circuit Court rejected this argument, confining its decision solely to 5/19-8(g), and the Court’s own interpretation of the phrase “signature of the voter on file in the office of the election authority” concluding “[t]here’s one signature on file.” SR 068.

As argued at hearing, the Circuit Court erred in determining that the County Clerk was not following the statute when such comparisons were being made. First, the Circuit Court erred in concluding there just one signature in the file in the election authority for comparison purposes, and second, in making the determination that the signature on the application for Vote by Mail ballot cannot serve as a “signature” for comparison purposes.

For this reason, when the Circuit Court cloaks its TRO with the cautionary phrase that the order *only* requires the County Clerk to “follow the statute,” the Circuit Court is assuming it has correctly interpreted the statute. But, simply stated, the TRO was issued in error, if the Circuit Court’s statutory interpretation was wrong.

### **III. ENTRY OF THE TRO WAS IN ERROR WHERE THE CIRCUIT COURT DID NOT EVALUATE WHETHER MAZZOCHI HAD STATED FACTS REQUIRED TO SUPPORT ISSUANCE OF INJUNCTIVE RELIEF**

Assuming for the sake of argument that the Circuit Court had jurisdiction to enter any ruling in this case, it committed error in entering injunctive relief without reference to whether Mazzochi properly set forth facts in support of her request for TRO.

#### **a. Mazzochi Failed to Show a Probability of Success on the Merits**

The Circuit Court erred in granting the TRO because Mazzochi did not establish that she would “suffer greater harm without the injunction” than the County Clerk would suffer if issued. *Gannett Outdoor of Chi v. Baise*, 163 Ill. App. 3d 717, 516 N.E.2d 915 (1st Dist. 1987). This failure is critical to this matter as the purpose of a TRO is to “prevent a threatened wrong or

continuing injury and preserve the status quo with the least injury to the parties concerned.” *In re Marriage of Jawad*, 326 Ill. App. 3d 141, 759 N.E.2d at 1113.

As set forth herein, the County Clerk suffered grievous injury where the Circuit Court concluded, based on its own interpretation of the Election Code, that the conduct of the elections was flawed where the County Clerk allowed a signature verification process it deemed was not allowed by statute.

**b. Mazzochi Failed to Show She Would Suffer Irreparable Harm if the TRO was not Granted, Where She has an Adequate Remedy at Law**

As set forth, *infra*, Mazzochi cannot establish she would suffer irreparable harm if the TRO was not granted, where she has a remedy at law. The Circuit Court deemed entry of the TRO to be required on a finding that the County Clerk’s certification of a voter signature through comparison to the signature used on the application for a Vote by Mail ballot was in violation of statute. The Court concluded that such comparison “would be a way of committing fraud.” SR 080 Even if the Circuit Court’s unsubstantiated conclusion relative to fraud is correct, section 5/23-20 of the Election Code expressly authorizes election contests related to the conduct of the elections and the counting or return of votes where a candidate believes that a mistake or fraud has been committed. 10 ILCS 5/23-20. Thus, the very harm Mazzochi seeks to prevent, and the harm the Circuit Court believes could occur, is statutorily protected against.

**c. Mazzochi Did Not Establish that her Alleged Injury Outweighs the Harm to the County Clerk**

As set forth *infra*, Mazzochi failed to establish that she would suffer irreparable harm if the Circuit Court did not issue the TRO. Notwithstanding, any injury Mazzochi alleges she will suffer is minimal when compared to the significant public harm wrought by the TRO to the County Clerk’s authority to administer and conduct the Election. Entry of a TRO on the premise



that the County Clerk has failed to properly follow the Election Code only serves to inflame those who already question the validity of elections.

Even more serious than just this one order in just this one case, as a practical matter, allowing the Circuit Court's order to stand does not limit its effect to just this one plaintiff, or just this one case. Rather, this case could create a path to be taken by all parties aggrieved by what they believe to be errors in the administration and conduct of elections – a path which would place the conduct of elections squarely in the courts, rather than in the hands of the local election authorities, as provided for in the Election Code. Such a diversion could unduly disrupt all future elections, and lead to disparate rulings where different facts and different judicial philosophies could create confusion relative to the administration and conduct of elections.

Moreover, this dispute involves a matter important to the administration of justice because it is vital to our system of democratic elections that Illinois Courts exercise proper restraint in intervening in election cases and usurping the role of Illinois election officials in their administration and conduct of elections, without express statutory authority. The Circuit Court's entry of a TRO in an ongoing Election proceeding invites political agents of any political association to file unauthorized lawsuits in the midst of counting votes in ongoing elections hoping that an Illinois Court will assume the role of an election official and will order the counting of votes in the manner they deem fit. *Payne*, 290 Ill. at 495, 125 N.E. at 331. The clear danger in allowing the Circuit Court's Order to stand is that elections will ultimately be conducted by the Courts, as opposed to duly elected or appointed election officials, which is contrary to the design and intent of the established electoral and political process in Illinois manifest in the Illinois Constitution and Election Code.

## CONCLUSION

WHEREFORE, Defendant-Appellant Jean Kaczmarek, in her official capacity as DuPage County Clerk and Election Authority for DuPage County, asks that this Court grant the petition, and reverse and vacate the TRO entered by the Circuit Court on November 15, 2022, and remand the case to the Circuit Court with instructions to dismiss the cause as it lacks jurisdiction to hear it.

Respectfully Submitted,

**Jean Kaczmarek, in her official capacity as  
DuPage County Clerk and Election Authority  
for DuPage County**

By: *Mary Dickson (electronic signature)*

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Mary Dickson, Special Counsel to  
the DuPage County Clerk, Election Division

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JEAN KACZMAREK, in her	)
Official capacity as DuPage County	)
Clerk and Election Authority	) The Honorable James d. Orel,
For DuPage County	) Judge Presiding
	)
Defendant-Appellant	)

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TO: SEE SERVICE LIST

**NOTICE OF FILING**

PLEASE TAKE NOTICE that on the 17th day of November 2022, we filed electronically with the Clerk of the Appellate Court, Third Judicial District, 1004 Columbus Street, Ottawa, IL 61350, the Defendant Jean Kaczmarek's Rule 307(d) Petition for Review of Temporary Restraining Order. A copy of the aforesaid document is attached hereto and herewith served upon you.

BY: /s/ Mary E. Dickson (electronic signature)  
Mary E. Dickson, Special Counsel  
for the DuPage County Clerk's Office,  
Election Division

Mary E. Dickson (ARDC #6206817)  
Sean Conway (ARDC #6292594)  
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### **CERTIFICATE OF SERVICE**

The undersigned non-attorney served the individuals set forth herein via electronic mail on November 17, 2022, to the address provided therefore. Under penalties as provided by law pursuant to Section 1-109 of the Civil Code of Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Anna Oliveira (electronic signature)

Anna Oliveira

## **Service List**

### **Deanne Mazzochi**

Christopher Esbrook  
Michael Kozlowski  
Esbrook P.C.  
321 N. Clark Street Suite 1930  
Chicago, IL 60654  
[christopher.esbrook@esbrook.com](mailto:christopher.esbrook@esbrook.com)  
[michael.kozlowski@esbrook.com](mailto:michael.kozlowski@esbrook.com)

### **DuPage County Clerk**

Conor McCarthy  
Assistant State's Attorney  
DuPage County  
Civil Bureau  
503 N. County Farm Road  
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### **Jean Ladisch Douglass**

Heather Wier Vaught, P.C.  
82 S. LaGrange Road #205  
LaGrange, Illinois 60525  
[heather@wiervaught.com](mailto:heather@wiervaught.com)

CASE NO. \_\_\_\_\_

IN THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT

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DEANNE MAZZOCHI,	) Interlocutory Appeal from the
	) Circuit Court of the Eighteenth
	) Judicial Circuit, DuPage County,
Plaintiff-Appellee	) Illinois
	)
v.	) No. 2022 CH 220
	)
JEAN KACZMAREK, in her	)
Official capacity as DuPage County	)
Clerk and Election Authority	) The Honorable James d. Orel,
For DuPage County	) Judge Presiding
	)
Defendant-Appellant	)

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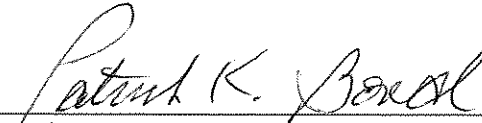
AFFIDAVIT AUTHENTICATING THE RECORD  
PURSUANT TO IL.S.CT. RULE 328

I, Patrick K. Bond, being duly sworn on oath deposes and states as follows:

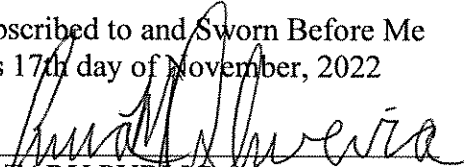
1. I am the below signed Affiant.
2. I have personal knowledge of the information contained in this Affidavit.
3. If called to testify in this matter, I would competently testify consistent with this Affidavit.
4. I am an attorney, licensed to practice law in the State of Illinois since 1986.
5. I am an appointed Special Assistant DuPage County State's Attorney, assigned to represent the DuPage County Clerk's Election Division.
6. In this capacity, I represent the DuPage County Clerk Jean Kaczmarek in the instant case.

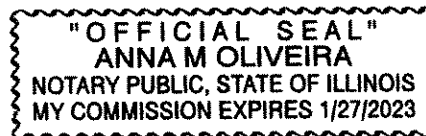
7. As such, I am familiar with and can attest that the documents set forth in the Supporting Record in this Emergency Rule 383 Motion for Supervisory Order are the pleadings and order relevant to the Supreme Court's review of this emergency request.

Further Affiant Sayeth Not.

  
Patrick K. Bond

Subscribed to and Sworn Before Me  
this 17<sup>th</sup> day of November, 2022

  
NOTARY PUBLIC



Mary Dickson (ARDC 6206817)  
Patrick K. Bond (ARDC 6193855)  
Sean Conway (ARDC 6292594)  
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CASE NO. \_\_\_\_\_

IN THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT

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DEANNE MAZZOCHI,	) Interlocutory Appeal from the
	) Circuit Court of the Eighteenth
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v.	) No. 2022 CH 220
	)
JEAN KACZMAREK, in her	)
Official capacity as DuPage County	)
Clerk and Election Authority	) The Honorable James d. Orel,
For DuPage County	) Judge Presiding
	)
Defendant-Appellant	)

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**SUPPORTING RECORD**

Complaint for Equitable Relief.....	001-009
Emergency Motion to Enforce Election Law by Temporary Restraining Order and Preliminary Injunction.....	010-045
DuPage County Clerk's Combined 2-619 (a)(1) Motion to Dismiss Plaintiff's Complaint for Equitable Relief and Response to Plaintiff's Emergency Motion for Temporary Restraining Order. ....	046-050
Order entered November 15, 2022.....	051-052
Report of Proceedings of November 15, 2022.....	053-090
Notice of Interlocutory Appeal and Notice of Filing.....	091-095



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**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY ILLINOIS**

Deanne Mazzochi.,	)	Case No.
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Jean Kaczmarek, in her official capacity as	)	2022CH000220
DuPage County Clerk and Election Authority	)	
for DuPage County, and Jenn Ladisch	)	
Douglass,	)	
	)	
Defendants.	)	

Candice Adams  
e-filed in the 18th Judicial Circuit Court  
DuPage County  
ENVELOPE: 20288716  
2022CH000220  
FILEDATE: 11/14/2022 1:09 PM  
Date Submitted: 11/14/2022 1:09 PM  
Date Accepted: 11/14/2022 3:16 PM  
DP

**COMPLAINT FOR EQUITABLE RELIEF**

Plaintiff Deanne Mazzochi ("Mazzochi"), by and through her undersigned attorneys, for her Complaint for Equitable Relief, states as follows.

**Nature of the Case**

1. Plaintiff brings this action to stop ongoing violations of the Election Code by Defendant and to uphold the integrity of the election process within DuPage County generally, and for Illinois House of Representatives District 45 in particular. Granting the relief requested herein will ensure that the Election Code will be followed and only lawful votes will be counted. Denying the relief requested herein ensures that the DuPage County Clerk's unlawful practices will go unchecked and the election results will be tabulated in violation of the law.

**Parties, Jurisdiction, and Venue**

2. Plaintiff Mazzochi is a resident of DuPage County and candidate for the office of Illinois State Representative for the 45<sup>th</sup> District.

3. Defendant Jean Kaczmarek, named here in her official capacity, is the duly elected DuPage County Clerk. As the DuPage County Clerk, Ms. Kaczmarek is the designated election authority for DuPage County pursuant to Section 1-3(8) of the election Code. *See* 10 ILCS 5/1-

3(8). As the election authority for DuPage County, Ms. Kaczmarek is responsible for administering the 2022 general election. The office of the DuPage County Clerk is located at 421 N. County Farm Road in Wheaton, Illinois.

4. Defendant Jenn Ladisch Douglass is a DuPage County resident, and candidate for the office of Illinois State Representative for the 45<sup>th</sup> District. Douglass and Mazzochi are the only candidates for such office. Ladisch Douglass is named solely to ensure that she has the ability to participate in this suit, as she also is also adversely impacted by the DuPage County Clerk's improper signature validation process. The DuPage County Clerk's illegal process as described in more detail below applies to all ballots, irrespective of the partisan lean, if any, of the underlying voter.

5. This Court has jurisdiction over this action, which presents a justiciable controversy between the parties, and further has jurisdiction over Defendant as the office of the DuPage County Clerk is located in this county.

6. Venue is proper because Defendants are located in this county and the facts and circumstances giving rise to this action occurred in this county.

### **Factual Background**

7. Illinois voters are permitted to vote by mail and historic numbers of Illinoisians are doing so in the 2022 general election.

8. Although mail-in ballots are still being received, the DuPage County Clerk is reporting that more than 20% of all votes cast in the 2022 general election (and more than 20% of votes cast for the election of State Representative for the 45<sup>th</sup> District) were cast by mail-in ballot.

9. Mail-in ballots present higher risks of voter fraud as compared to traditional in-person voting.

10. Given that, the Election Code mandates specific verification procedures for mail-in ballots.

11. Section 19 of the Election Code governs mail-in ballots and requires that the voter's signature on the certification envelope of the mail-in ballot be compared with the signature of the voter on file in the office of the election authority. *See* 10 ILCS 5/19-8(g). If the determination is made "***that 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.* (emphasis added).

12. Article 19 of the Election Code also provides that 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.***" 10 ILCS 5/19-10 (emphasis added).

13. If the 2 signatures do not match, or other indicia of fraud exist—*e.g.*, if the ballot envelope is open or has been resealed—then the responsible parties "shall mark across the face of the certification envelope the word 'Rejected' and shall not cast or count the ballot." 10 ILCS 5-19-8(g).

14. If the ballot is rejected, the DuPage County Clerk must notify the voter of the rejection and provide the voter an opportunity to present evidence demonstrating why the ballot should be counted. 10 ILCS 5/19-8(g-5).

15. After reviewing the evidence from the voter, a panel of election judges determines whether the ballot is valid. 10 ILCS 5/19-8 (g-10).

16. Article 19 of the Election Code also incorporates Article 17 and in turn, Article 5, setting out voter verification procedures. *See* 10 ILCS 5/19-8(g) ("The procedures set forth in Articles 17 and 18 of this Code shall apply to all ballots counted under this Section [19—governing

mail-in ballots].”)

17. Article 17 requires that ballots be verified by comparing each application for ballot against the list of voters registered in that precinct. 10 ILCS 5/17-9.

18. Likewise, Article 5 requires that the signature on the in-person ballot application be compared with the signature on the registration record card as a means of identifying the voter. 10 ILCS 5/5-29.

19. Counsel speaking on behalf of the election authority confirmed that the proper process for mail-in ballot signature verification is to compare the signature on the ballot itself with the signature on the voter’s most recent voter registration.

20. Despite that, the DuPage County Clerk is not properly verifying mail-in ballots, as explained in more detail below.

21. Only electronically-scanned portions of the mail-in-ballots are being reviewed, also electronically, by the election judges for signature verification. In some cases, the mail-in ballot signatures are not being substantively verified at all. In other cases, the DuPage County Clerk is using the signature on the mail-in ballot application—*not the voter registration*—as an exemplar to verify signatures.

22. At least three individuals, including Mazzochi herself, have witnessed the verification of mail-in ballots that have signatures that do not match the voter’s registration record, where election officials subsequently “verify” the signature by comparing it to the signature that appears on the mail-in ballot application.

23. Mazzochi also personally witnessed instances where election judges determined that the signature on the mail-in ballot envelope did not match the signature that the voter used to register to vote. Rather than move immediately to the step of marking across the face of the

certification envelope the word “Rejected,” and the process set forth in subsection (g-5) of the Election Code, election judges, with the assistance of the Clerk’s staff, would look at additional electronic information, such as the vote by mail application, to “verify” the signature.

24. As a result, mail-in ballots are being verified in violation of the Election Code and counted as votes in the 2022 general election—including for the election of Illinois State House of Representatives District 45.

### **Count I – Declaratory Judgment**

25. Plaintiff incorporates the allegations of paragraphs 1 - 24 as if fully set forth herein.

26. Mazzochi brings this count pursuant to 735 ILCS 5/2-701 *et seq.*

27. An actual controversy exists between the parties concerning how mail-in ballots must be verified under Article 19 of the Election Code.

28. Declaratory judgment regarding the required process for verification of mail-in ballots will resolve the controversy.

29. Mazzochi seeks a declaration by this Court that the Election Code requires that mail-ballots be verified by comparing the signature on the mail-in ballot with the voter’s registration signature and if the 2 signatures do not match, to reject the ballot and provide the voter notice and opportunity to demonstrate why the ballot should be counted, in accordance with Article 19 of the Election Code.

WHEREFORE, Plaintiff Deanne Mazzochi respectfully requests that the Court enter a declaration as set forth above, enter an award of attorneys’ fees and costs, and grant all other appropriate relief.

**Count II – Injunctive Relief to Prevent and Redress Violations of the Election Code**

30. Plaintiff incorporates the allegations of paragraphs 1 - 29 as if fully set forth herein.

31. Mazzochi has a clear right to a full and fair election process in accordance with the Election Code.

32. Mazzochi will suffer irreparable injury if the equitable relief requested herein is not granted as unlawfully verified mail-in ballots will be counted in violation of the Election Code.

33. Mazzochi lacks an adequate remedy at law as the DuPage County Clerk is responsible for administering the 2022 general election in accordance with the Election Code, yet is refusing to comply with its mandates.

34. Mazzochi has a likelihood of success on the merits as the Election Code requires that signatures on mail-in ballots be verified using the voter's registration signature, not the signature on the mail-in ballot, and that if there is a dispute regarding the match of those 2 signatures, the process set forth in subsection (g) and (g-5) of Article 19 of the Election Code must be followed.

WHEREFORE, for the foregoing reasons, Plaintiff Deanne Mazzochi respectfully requests that the Court grant a temporary restraining order granting the following relief:

a) enjoining the DuPage County Clerk from verifying or certifying any vote by mail ballots, or at the very least vote by mail ballots processed between November 2-November 10 until such time as they can be properly verified as required by law;

b) enjoining the DuPage County Clerk from verifying any additional mail-in ballots until such time as they can be properly verified as required by law;

c) enjoining the DuPage County Clerk from presenting to any election judge reviewing vote-by-mail ballots any signature sample beyond those signatures that the voter used

to register to vote; or reaffirm the voter's registration status, which in turn were properly vetted using identification procedures set forth by law;

d) enjoining the DuPage County Clerk from destroying, discarding, or otherwise failing to preserve the following data: list of individuals who voted in-person on Election Day, all vote-by-mail ballots, including covering envelopes, all software and related logs (including metadata and time stamps), all documents, including notes, created or used by election judges in screening ballots, all documents that were in each mail-in voter's file in the Clerk's office, all documents concerning policies and procedures regarding mail-in ballot verification, documents and data related to any mail-in ballot rejection, and non-validated registration signatures disabled during the review process;

e) sequestering and preserving all mail-in ballots, so that they can be verified by lawful process in accordance with the Election Code;

f) directing the DuPage County Clerk to instruct election judges to verify mail-in ballots by comparing the signature on the mail-in ballot with the signature on the voter's registration file, as is required under the Election Code, and ensure that such procedure is being followed;

g) setting this matter for an evidentiary hearing for preliminary injunction at the earliest possible time; and

h) granting all other appropriate relief.

### **Count III – Writ of Mandamus to Enforce the Election Code**

35. Plaintiff incorporates the allegations of paragraphs 1 - 34 as if fully set forth herein.

36. Mazzochi has a clear right to a full and fair election administered in accordance with the Election Code.



37. The DuPage County Clerk is the election authority, responsible for administering the 2022 general election in accordance with the Election Code.

38. The Election Code requires that mail-in ballots be verified by comparing signatures on the mail-in ballot to signatures on the voter's registration—not the mail-in ballot application.

39. The Election Code further requires that if those 2 signatures do not match, that the ballot must be rejected and the voter given an opportunity to demonstrate that the ballot should be counted.

WHEREFORE, Plaintiffs respectfully requests that the Court issue a writ of mandamus requiring that Defendant:

a. Require election judges to verify mail-in ballots by comparing the signature on the mail-in ballot with the voter's registration signature and that if such signatures do not match, to reject the ballot and provide the voter notice and opportunity to demonstrate why the ballot should be counted, in accordance with Article 19 of the Election Code;

b. Place all mail-in ballots (including those already counted) through the aforementioned verification process, as is required by the Election Code, and tabulate the results of the 2022 general election accordingly.

Dated: November 14, 2022

Respectfully submitted,

Deanne Mazzochi

By: Michael Kozlowski

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*Attorneys for Plaintiff*

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

Deanne Mazzochi.,	)	Case No. 22 CH 220
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Jean Kaczmarek, in her official capacity and	)	
DuPage County Clerk and Election Authority	)	
for DuPage County, and Jenn Ladisch	)	
Douglass,	)	
	)	
Defendants.	)	

**EMERGENCY MOTION TO ENFORCE ELECTION LAW  
BY TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff Deanne Mazzochi (“Mazzochi”), by and through her undersigned attorneys, respectfully requests that the Court enter a temporary restraining order enjoining the DuPage County Clerk from continuing to violate the Election Code by counting improperly verified mail-in ballots in connection with the 2022 general election, and in support thereof state as follows:

**INTRODUCTION**

Plaintiff brings this suit to uphold the integrity of the election counting process within DuPage County, including for Illinois House of Representatives District 45. The DuPage County Clerk is violating the Election Code by improperly verifying mail-in ballots, resulting in improperly verified ballots being counted in the 2022 general election. Mazzochi brings this motion to stop such unlawful practices immediately, and to preserve all mail-in ballots and related documentation, so that they can be lawfully verified and counted, as required by law.

Granting this motion ensures that the Election Code will be followed and that only lawful votes will be counted. On the other hand, denying this motion ensures that Defendant’s unlawful practices will go unchecked, election results will be tabulated unlawfully, and the integrity of our election will be placed in jeopardy.

## **BACKGROUND**

### **A. Illinois Law Requires Specific Verification of Mail-In Ballots**

Illinois voters are permitted to cast a ballot by mail. In 2022, historic numbers of Illinois voters did so.<sup>1</sup> Mail-in ballots present higher risks of voter fraud compared to traditional in-person voting. Given that, the Election Code mandates taking certain precautions to verify the authenticity of each mail-in ballot. *See* 10 ILCS 5/19 *et seq.* The Election Code requires that the voter's signature on each mail-in ballot be verified 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). So critical is the signature verification of mail-in ballots, that the Election Code expressly permits that 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.*" 10 ILCS 5/19-10 (emphasis supplied). 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." 10 ILCS 5/19-8(g). If the signatures do not match, or other indicia of fraud exist (*e.g.*, the ballot envelope is open or has been resealed, or the voter is not duly registered), then the Election Code requires that the ballot be marked "Rejected." 10 ILCS 5/19-8(g). If a mail-in ballot is rejected, the DuPage County Clerk must notify the voter of rejection, state the reasons therefor, and provide an opportunity for the voter to present evidence showing why the ballot should be counted. 10 ILCS 5/19-8(g-5). After a reviewing panel of election judges hears the evidence, the panel determines whether the ballot is valid. *Id.* If valid, then it "shall be counted" and "added to the vote totals." 10 ILCS 5/19-8(g-5), (g-10).

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<sup>1</sup> More than 20% of the votes counted in the District 45 election have been vote-by-mail (more than 8,000 votes), according to the DuPage County Clerk.

Article 17 of the Election Code, governing in-person voting, also applies to mail-in ballots. 10 ILCS 5/19-8(g) (“The procedures set forth in Articles 17 and 18 of this Code shall apply to all ballots counted under this Section [19–governing mail-in ballots].”) Article 17 requires that in-person ballots be verified by comparing each “application for ballot against the list of voters registered in that precinct . . .”. 10 ILCS 5/17-9. In verifying an in-person ballot, Article 17 of the Election Code specifically incorporates Article 5, requiring that all be provisions thereof “shall be complied with.” *Id.* In turn, Article 5 requires that the signature on the ballot application be compared “with the signature on the registration record card as a means of identifying the voter.” 10 ILCS 5/5-29.

In short, the Election Code requires that mail-in ballots be verified by comparing 1) the signature on the ballot envelope with 2) the signature on the voter’s registration record—not an alternative, *e.g.*, the signature on the mail-in ballot application. This process is not only the legally required process, but also the sensible one, because the registration signature is (in theory) verified through the presentation of sufficient identification and proof of identity, whereas the signature on the mail-in ballot application is not.

Assistant State’s attorney Conor P. McCarthy, communicating on behalf of the election authorities, confirmed the distinction between the voter’s registration signature and the one on a vote by mail application in an e-mail response to a pollwatcher’s complaints about the mail-in ballot signature verification process. To assuage the pollwatcher’s concerns, Mr. McCarthy stated that he was informed that the Clerk’s Office uses the voter’s most recent voter registration as the signature exemplar for comparison, and *not* the signature from the application to vote by mail. A true and correct copy of the email from Mr. McCarthy to pollwatcher Perkins is attached hereto as Exhibit A.1. As explained in more detail below, pollwatchers have observed the opposite: that

judges are verifying mail-in ballots by comparing the signature on the mail-in ballot to the signature on the mail-in ballot application—in violation of the Election Code. This unlawful practice has been confirmed by DuPage County Clerk staff-person, Leslie Salyers, who is the key staff-person for mail-in ballots designated by the Clerk’s office.

**B. Defendant Is Violating Illinois Election Law by Improperly Verifying Mail-In Ballots**

As detailed below and in the declarations attached hereto, multiple pollwatchers have observed the DuPage County Clerk’s office, by and through election judges, verifying mail-in ballots by comparing the signature on the ballot envelope with the signature on the application, *not the signature on the voter registration record*.

Pollwatcher and long-time attorney, Jefferson Perkins, observed the signature verification process for mail-in ballots in DuPage County on November 2 and 4, 2022. *See* Declaration of Jefferson Perkins, attached hereto as Exhibit A, ¶¶ 1-4. During that time, he observed election judges comparing the signatures on the mail-in ballot envelopes with the signatures shown on the vote-by-mail application, not the signatures on the voter registration record, to verify the ballots. *Id.* at ¶¶ 5-6. Mr. Perkins lodged a written complaint to the State’s attorney’s office, who informed him that election judges *were not* using mail-in ballot application signatures to verify mail-in ballots. *Id.* at ¶ 7 and Ex. 1 attached thereto. However, Mr. Perkins spoke with Stephanie Groenewald at the site where mail-in ballots were being processed, who informed him that election judges *were* using signatures from the mail-in ballot application to verify mail-in ballot signatures. *Id.* at ¶ 8. Indeed, Mr. Perkins observed Ms. Groenewald provide such signatures for the election judges to consider. *Id.* On November 4, 2022, Mr. Perkins observed the processing of approximately 1,000 mail-in ballots, and more than fifty (50) mail-in ballots were verified using alternative signatures, even though the election judges determined that the signature on the mail-

in ballot envelopes did not match the signature on the voter's registration. *Id.* at ¶ 6.

Another pollwatcher, Rebecca Rudolph, observed nearly identical conduct on November 7, 2022. *See* Declaration of Rebecca Rudolph, attached hereto as Exhibit B. While serving as a pollwatcher, Ms. Rudolph observed the DuPage County Clerk's signature verification process for mail-in ballots. *Id.* at ¶ 4. She observed a process by which two election judges would process a batch of ballots by comparing the signature on the mail-in ballot envelope to the voter's registration signature and flag those signatures that did not match. *Id.* The Election Code requires that if the signatures do not match "the judge or official shall mark across the face of the certification envelope the word "Rejected" and shall not cast or count the ballot." 10 ILCS 5/19-8(g).

Despite that clear directive, the DuPage County Clerk's office did not reject the ballot nor employ the voter notice process for rejected ballots, as required by the Election Code. Instead, Leslie Salyers, from the DuPage County Clerk's office, would take control over the computer workstation. Ex. B at ¶ 5. For each mail-in ballot that the election judges flagged as non-matching, election officials from the DuPage County Clerk's office would provide additional signatures for comparison, including signatures from the mail-in ballot application. *Id.* at ¶¶ 5-6. Ms. Rudolph observed at least seven (7) mail-in ballots verified as matching in that way, even though the signature on the mail-in ballot envelope did not match the signature on the voter's registration. *Id.* at ¶ 8. Leslie Salyers, who the DuPage County Clerk identified as the key staff-person for mail-in ballots, informed Ms. Rudolph that she was using signatures from the mail-in ballot application to verify mail-in ballot signatures. *Id.* at ¶ 9.

Additionally, Mazzochi observed the processing of mail-in ballots on November 9, 10, and 14, 2022. *See* Declaration of Deanne Mazzochi, attached hereto as Exhibit C, at ¶ 5. On all three days, Mazzochi observed the signature verification process where she observed—on several

occasions—the approval of mail-in ballots by comparing the signature on the mail-in ballot envelope to signatures other than those on the voter’s registration. *Id.* at ¶ 6. On November 9, 10, and 14, 2022, Mazzochi observed a process by which the election judges would electronically compare the signatures on the mail-in ballot envelopes to the signature in each voter’s registration file. *Id.* at 5(f). The election judges would notate which signatures did not match, but did not reject any ballots at that time. *Id.* Instead, staff from the DuPage County Clerk’s office would then take control over the review process and for each ballot flagged as non-matching, would bring up additional documentation (including vote-by-mail applications) for the election judges to use to verify mail-in ballot signatures. *Id.* at ¶ 5(g). On November 9, 2022, Mazzochi observed the election judge approve at least fourteen (14) mail-in ballots by comparing the signature on the mail-in ballot envelope to the signature on the vote-by-mail application, *even though the signature on the mail-in ballot envelope was flagged by the election judge as not matching the signature on the voter’s registration.* *Id.* at ¶ 7. On November 10, 2022, Mazzochi observed that at least ten (10) mail-in ballots were verified in the same way. *Id.* at ¶ 8. Mazzochi raised these issues with the DuPage County Clerk, including its special assistant State’s attorney for the election division, Pat Bond. *Id.* at ¶ 15. Mr. Bond informed Mazzochi that the process of verifying mail-in ballots using signatures other than the voter’s registration complies with the Election Code. *Id.* Mazzochi submitted her objections, in writing, to the DuPage County Clerk on November 10, 2022, but has not received any response. *Id.* at ¶ 16.

On November 14, 2022, Mazzochi observed that at least five (5) mail-in ballots were verified using the signature from vote-by-mail application, even though the signature did not match the voter’s registration record. *Id.* at ¶ 10. At no time did Mazzochi observe any election judge mark any mail-in ballot as rejected on the mail-in ballot or envelope. *Id.* at ¶ 14. Indeed, such an



option did not appear available to the election judges as the software used to validate mail-in ballots included only a drop down menu where “signature issue” could be checked. *Id.* On November 14, 2022, Mazzochi also observed the initial sorting process of mail-in ballots. *Id.* at ¶ 11. During that time, Mazzochi observed election judges discarding mail-in ballots because they lacked a postmark even though they included a United States Post Office tracking bar code. *Id.* DuPage County Clerk official Leslie Salyers informed Mazzochi that such ballots, with a barcode but no postmark, would be “discarded.” *Id.* Mazzochi also observed a mail-in ballot envelope that was torn open, sealed with blue tape, and showing a return address of 1108 N. Mayfield in Chicago, Illinois be approved through the initial sorting process, despite such clear indicia of fraud. *Id.* at ¶ 12.

### **ARGUMENT**

The Court should grant immediate injunctive relief to prevent and redress the unlawful practices of the DuPage County Clerk by improperly verifying mail-in ballots in violation of the Election Code. This Court may order injunctive relief to ensure that elections are lawfully held. *See Orr v. Edgar*, 283 Ill. App. 3d 1088, 1104 (1996) (citing *Political Honesty v. Illinois State Board of Elections*, 65 Ill. 2d 453, 461 (1976)). Doing so ensures that Illinois election law will be followed and all lawful votes will be counted, while denying relief ensures that the results of the general election of 2022 in DuPage County will include unlawfully tabulated votes.

To obtain a preliminary injunction, Mazzochi must show four elements: that she has a clearly ascertained right in need of protection, will suffer irreparable injury in the absence of an injunction, that she has no adequate remedy at law, and that she has a likelihood of success on the merits. *See Somer v. Bloom Twp. Democratic Org.*, 2020 IL App (1st) 201182, ¶ 16. As explained below, Mazzochi demonstrates each of these elements entitling her to a preliminary injunction

and—at the very least—raises a fair question about the existence of her right, which is all that is necessary to sustain a temporary restraining order. *See Stocker Hinge Mfg. Co. v. Darnel Indus., Inc.*, 94 Ill. 2d 535, 41-42 (1983).

First, Mazzochi, especially as the candidate, has a clear right to a full and fair election in accordance with the Election Code. *See Jones v. McGuffage*, 921 F.Supp. 2d 888, 895 (N.D. Ill. 2013) (noting the importance of the interests of voters to cast their votes effectively, to preserve the fairness and integrity of the electoral process, and to avoid deception). In other words, Mazzochi has a clear right to have mail-in ballots verified as required by the Election Code, to ensure that the lawful electoral process is followed.

Second, Mazzochi will suffer irreparable injury in the absence of injunctive relief. As explained above and in the declarations attached hereto, the DuPage County Clerk, and election judges acting at the Clerk's direction, are violating the Election Code by unlawfully verifying mail-in ballots by comparing the signature on the ballot envelope to the signature on the mail-in ballot application. *Supra* at pp. 4-6. Additionally, the election authority is uniformly rejecting mail-in ballots that lack a postmark, even though they contain mail barcode from the United States Post Office, in violation of Section 19-8(c) of the Election Code. 10 ILCS 5/19-8(c). The result is that improperly "verified" ballots are being counted in violation of Section 19-8 of the Election Code and other ballots received the election authority are being discarded. If the DuPage County Clerk's unlawful conduct goes unchecked, more improperly mail-in ballots will be counted in violation of the Election Code, needlessly calling into question the results of the election.

Third, Mazzochi lacks an adequate remedy at law as the DuPage County Clerk is responsible for conducting the electoral process in accordance with the Election Code, but is refusing to do so. Simply put, a remedy in equity is necessitated by the lack of other legal remedy

to require the election authority to comply with the Election Code. *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).

Fourth, Mazzochi demonstrates a likelihood of success on the merits. As demonstrated above, the Election Code requires that mail-in ballots be verified by matching the signature on mail-in ballot envelope with the signature on the voter's registration. *Supra* at pp. 2-4. No fewer than three individuals observed the DuPage County Clerk, and election judges associated therewith, verifying mail-in ballot signatures by comparing them to signatures on the mail-in ballot application, *not the voter registration information in direction contradiction of the directives of the Election Code*. *See* Ex. A (Declaration of pollwatcher J. Perkins); Ex. B (Declaration of pollwatcher R. Rudolph); and Ex. C (Declaration of D. Mazzochi). Leslie Salyers from the DuPage County Clerk's Election Division admitted to such a practice (Ex. B at ¶ 9), yet counsel for the DuPage County Clerk's office states that such a practice is not occurring (Ex. A.1) – further demonstrating that the Clerk is not certain as to its own validation procedures. In similar circumstances where a statute directs a state official to take unambiguous action, courts have entered equitable relief compelling such action. *See e.g., 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”). The statute at issue in this case is similarly clear and unambiguous. 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.” 10 ILCS 5/19-8(g). If the signatures do not match, then the “judge or official shall” reject the ballot and the “election authority shall . . . notify” the voter and provide an opportunity to show cause as to why the ballot should not be rejected. *Id.*

In sum, the DuPage County Clerk is required to comply with the mandates of the Election Code to validate mail-in ballots to ensure that mail-in votes are being cast by the actual voters. In this election, that is not happening and the DuPage County Clerk is violating the Election Code. Rather than verifying mail-in ballots lawfully, by comparing the signature on the ballot envelope to the signature on the voter's registration, the DuPage County Clerk is "verifying" mail-in ballots by comparing the signature on the ballot envelope to the signature on the mail-in ballot application. The result is that improperly "verified" ballots are being counted in violation of Section 19-8 of the Election Code. If the DuPage County Clerk's unlawful conduct goes unchecked, more improperly verified mail-in ballots will be counted in violation of the Election Code, calling into question the results of the election.

The Court should not permit such an outcome. Instead, the Court should grant this motion and require that the DuPage County Clerk follow the Election Code by properly verifying all mail-in ballots in accordance with Section 19; further order the DuPage County Clerk to follow the procedures (both prospectively and retroactively) for signature verification for *all* signatures that the election judges initially determined did not match the signature on file before they initiated a secondary review process not contemplated by statute; and further sequester all ballots and ballot envelopes and related data associated with the vote by mail process to ensure the Election Code is being followed. *See Pearson v. Kemp*, No. 1:20-CV-4809-TCB, 2020 WL 7040582, ¶ 2 (N.D. Ga. Nov. 29, 2020) (granting temporary restraining order to preserve election data).<sup>2</sup>

### **CONCLUSION**

WHEREFORE, for the foregoing reasons, Plaintiff Deanne Mazzochi respectfully requests that the Court grant a temporary restraining order granting the following relief:

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<sup>2</sup> Because the Court may not have access to Westlaw, a copy of the *Pearson v. Kemp* case is attached hereto as Exhibit D.

a) enjoining the DuPage County Clerk from verifying or certifying any vote by mail ballots, or at the very least vote by mail ballots processed since November 2 until such time as they can be properly verified as required by law;

b) enjoining the DuPage County Clerk from verifying any additional mail-in ballots until such time as they can be properly verified as required by law;

c) enjoining the DuPage County Clerk from presenting to any election judge reviewing vote-by-mail ballots any signature sample beyond those signatures that the voter used to register to vote; or reaffirm the voter's registration status, which in turn were properly vetted using identification procedures set forth by law;

d) enjoining the DuPage County Clerk from destroying, discarding, or otherwise failing to preserve the following data: list of individuals who voted in-person on Election Day, all vote-by-mail ballots, including covering envelopes, all software and related logs (including metadata and time stamps), all documents, including notes, created or used by election judges in screening ballots, all documents that were in each mail-in voter's file in the Clerk's office, all documents concerning policies and procedures regarding mail-in ballot verification, documents and data related to any mail-in ballot rejection, and non-validated registration signatures disabled during the review process;

e) sequestering and preserving all mail-in ballots, so that they can be verified by lawful process in accordance with the Election Code;

f) directing the DuPage County Clerk to instruct election judges to verify mail-in ballots by comparing the signature on the mail-in ballot envelope with the signature on the voter's registration file, as is required under the Election Code, and ensure that such procedure is being followed;

g) setting this matter for an evidentiary hearing for preliminary injunction at the earliest possible time and granting Plaintiff leave to serve limited, expedited discovery in support thereof to be answered within seven (7) days; and

h) granting all other appropriate relief.

Dated: November 14, 2022

Respectfully submitted,

Deanne Mazzochi

By: Michael Kozlowski

Christopher Esbrook  
Michael Kozlowski  
Esbrook P.C.  
321 N. Clark Street Suite 1930  
Chicago, IL 60654  
(312) 319-7682  
christopher.esbrook@esbrook.com  
michael.kozlowski@esbrook.com  
Attorney No. 338220

*Attorneys for Plaintiff*

## **Exhibit A**

### ***Declaration of Jefferson Perkins***

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY ILLINOIS**

Deanne Mazzochi.,	)	Case No. 22 CH 220
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Jean Kaczmarek, in her official capacity as	)	
DuPage County Clerk and Election	)	
Authority for DuPage County, and Jenn	)	
Ladisch Douglass,	)	
Defendants.	)	

**DECLARATION OF JEFFERSON PERKINS**

I, Jefferson Perkins, certify and state as follows:

1. I make the statements herein of my own personal knowledge and if called to testify as a witness in this action, I would testify as set forth herein.
2. I am over the age of twenty-one and an attorney registered to practice law in the state of Illinois.
3. I am a registered patent attorney and have been actively practicing law for more than thirty years.
4. During the 2022 general election, I served as a pollwatcher at 421 N. County Farm Road, Wheaton, Illinois on November 2 and 4, 2022.
5. While serving as a pollwatcher, I observed the signature verification process for mail-in ballots where election officials would compare the signature on the mail-in ballot to the signature in the voter's registration file. For the signatures that did not match, staff from the DuPage County Clerk's office would bring up a third signature, which was on many occasions the signature from a mail-in ballot application, to verify the mail-in ballot signature.
6. More often than not, mail-in ballots that were originally found to be mismatched, were verified using the signature from a mail-in ballot application. On November 4, 2022, alone,



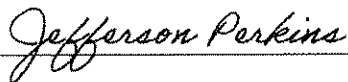
I observed approximately 1,000 mail-in ballots be processed and more than more than fifty mail-in ballots were verified even though the election judges determined that the signature on the mail-in ballot did not match the signature on the voter's registration record.

7. I lodged a written complaint with Conor P. McCarthy, an assistant state's attorney from the DuPage County Civil Bureau. Attached to this declaration as Exhibit 1 is a true and correct copy of Mr. Perkins' email to me dated November 7, 2022.

8. On November 2, 2022, I spoke with Stephanie Groenewald from the office of the DuPage County Clerk, who informed me that election judges were using signatures from the mail-in ballot application to verify mail-in ballot signatures. I observed Ms. Groenewald bring up, on the screen, such signatures for the election judges to consider.

9. 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.

Executed on: November 13, 2022

  
Jefferson Perkins

## **Exhibit A.1**

**From:** [jperkins@perkinsip.com](mailto:jperkins@perkinsip.com)  
**Date:** November 7, 2022 at 6:44:00 PM  
CST  
**To:** "McCarthy, Conor P."  
<[Conor.McCarthy@dupageco.org](mailto:Conor.McCarthy@dupageco.org)>, Becky  
Rudolph <[beckyrudolph5@gmail.com](mailto:beckyrudolph5@gmail.com)>  
**Subject:** RE: Pollwatcher Complaint(s)

Dear Mr. McCarthy,

The facts concerning Teresa Manzke seem plausible. But I do not agree with your description of what is going on at the DuPage County Election Authority concerning the use of other captured signatures for a voter.

Those signatures DEFINITELY include signatures scanned from VBM application forms. Including VBM applications sent in to the DuPage County Clerk's office in Fall of 2022. Stephanie Groenewald admitted this to me. Leslie Halyer admitted as much to Becky Rudolph.

We saw, with our own eyes, the use of signatures scanned from VBM application forms. You are not being told the truth. And it is a serious problem, as it allows widespread voter impersonation by people who know as little as the birth date of the legitimate voter. They sign the voter's name on the VBM application form; they sign it again on the VBM ballot envelope. And: what you do you know, they match.

The use of such unverified scanned signatures by the DuPage EA should be stopped immediately. Any such database containing such signatures should not be used in ballot signature verification.

Very truly yours

Jefferson Perkins

**From:** McCarthy, Conor P.  
<[Conor.McCarthy@dupageco.org](mailto:Conor.McCarthy@dupageco.org)>

**Sent:** Monday, November 7, 2022 5:23 PM  
**To:** [jperkins@perkinsip.com](mailto:jperkins@perkinsip.com)  
**Subject:** Pollwatcher Complaint(s)

Mr. Perkins,

I wanted to follow up with you with regards to your two complaints from last week.

Initially, you had concerns about a deceased voter receiving a vote by mail ballot. I have followed up with registrations staff and can report as follows: (1) the voter signed up to receive a vote by mail ballot via permanent VBM, (2) on 10/17/2022 the DuPage County Clerk received notification of the voters death, (3) the voters ballot was cancelled on 10/17, and (4) the voter was removed from the list as deceased. Staff confirms that no ballot was ever received from the voter.

Second, you had concerns about what specific signature exemplars are contained in the Clerk's system when matching vote by mail ballot signatures to signatures on file. In your complaint you advised that you had heard the Clerk was using signatures from the vote by mail application. I have investigated this with elections staff and the Special Assistant State's Attorney for the Clerk's elections division. I have been informed that the Clerk's Office uses a voters most recent voter registration as the signature exemplar for first comparison. In some circumstances, those signatures may be completed electronically, and therefore they may look different than a signature from a pen (due to the difference in how the stylus is picked up by the reader for example). In those circumstances, where a voter has other signatures on file as part of their previous registrations, the Clerk may have election judges review those signatures against those on the envelope. As these signature comparisons come from the voter's original registration and any subsequent updated registration, those signatures have been verified as belonging to the voter, unlike a signature

from the application to vote by mail. I believe that should resolve your concerns about the signature exemplars. If you have any questions, please feel free to contact me.

Sincerely,

*Conor P. McCarthy*

Assistant State's Attorney  
DuPage County  
Civil Bureau

CONFIDENTIALITY NOTICE: This e-mail (and attachments) contains information that belongs to the sender and may be confidential and/or protected by attorney-client or attorney work product privilege. The information is only for the intended recipient. If you are not the named or intended recipient, please do not disclose, copy, distribute, or use this information. If you have received this transmission in error, please promptly notify the sender of receipt of the e-mail and then destroy all copies of it. Receipt by unintended recipient does not waive attorney-client privilege or attorney work product privilege or any other exemption from disclosure. Thank you.

## **Exhibit B**

### ***Declaration of Rebecca Rudolph***

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY ILLINOIS**

Deanne Mazzochi.,	)	Case No. 22 CH 220
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Jean Kaczmarek, in her official capacity as	)	
DuPage County Clerk and Election	)	
Authority for DuPage County, and Jenn	)	
Ladisch Douglass,	)	
Defendants.	)	

**DECLARATION OF REBECCA RUDOLPH**

I, Rebecca Rudolph, certify and state as follows:

1. I make the statements herein of my own personal knowledge and if called to testify as a witness in this action, I would testify as set forth herein.
2. I am over the age of twenty-one.
3. During the 2022 general election, I served as a pollwatcher on November 7, 2022, between 9:00 and 10:00 a.m. at the DuPage County facility located at 421 N. County Farm Road in Wheaton, Illinois.
4. While serving as a pollwatcher, I observed the DuPage County Clerk's signature verification process for mail-in ballots. Two election judges would process a batch of ballots by comparing the signature on the mail-ballot to the voter's registration signature and flag those signatures that did not match.
5. Once the election judges completed their review of a batch of ballot signatures, an employee of the Election Division of DuPage County Clerk's office, including Leslie Salyers, would then take control over the computer.
6. For each ballot signature flagged by the election judges as non-matching, the election official would provide different signatures for purposes of verifying the identity of voter,

including signatures from the mail-in ballot applications on many occasions.

7. I observed the aforementioned practice with all 3 sets of election judges at the Facility.

8. I observed mail-in ballots being approved even though the signature on the ballot did not match the voter's registration signature on at least seven occasions, with respect to the following voters:

- a. Vincent Brent Page;
- b. Angel Figueroa;
- c. Edward Widram Gawron;
- d. Anthony Naumoff;
- e. John Drozd;
- f. Sheela Zachariah; and
- g. Ahmadreza Alidousti.

9. On November 7, 2022, I spoke with Leslie Salyers, from the office of the DuPage County Clerk, who informed me that she was using signatures from the mail-in ballot application to verify mail-in ballot signatures.

10. 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 she verily believes the same to be true.

Executed on: November 13, 2022

  
\_\_\_\_\_

Rebecca Rudolph



## **Exhibit C**

### ***Declaration of Deanne Mazzochi***

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY ILLINOIS**

Deanne Mazzochi.,	)	Case No. 22 CH 220
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Jean Kaczmarek, in her official capacity as	)	
DuPage County Clerk and Election	)	
Authority for DuPage County, and Jenn	)	
Ladisch Douglass,	)	
	)	
Defendants.	)	

**DECLARATION OF DEANNE MAZZOCHI**

I, Deanne Mazzochi, certify and state as follows:

1. I make the statements herein of my own personal knowledge and if called to testify as a witness in this action, I would testify as set forth herein.

2. I am over the age of twenty-one and currently serve as the state representative for the Illinois 47<sup>th</sup> House District. Additionally, I have been an attorney licensed to practice law in the state of Illinois for more than twenty years.

3. I am a candidate for the office of state representative of Illinois House District 45. My opponent is Jenn Ladisch Douglass. No other candidates were in the race.

4. I voted in the 2022 general election in DuPage County, Illinois.

5. On November 9, 10 and 14, 2022, I observed the signature comparison process of the vote by mail ballots received in connection with the 2022 general election. During that time, I observed the following:

- a. The election judges were performing the signature review process electronically.
- b. On a screen, the election judges typically see four quadrants, each with various

pieces of information in them. The screen, as a whole, typically displayed at least eight signature images.

- c. Each of the four quadrants can have two images associated with them. Each quadrant will correspond to information involving a vote-by-mail ballot. The top image in the quadrant is a display titled “Signature Image on File,” which is the electronic image of the voter registration signature on file. The lower image is titled, “Envelope image,” and an image represented to have been taken from a section of the vote-by-mail envelope delivered for the 2022 general election. Enlargements of the lower image can also be presented.
- d. Each quadrant also contains a ballot image ID number (e.g., 037-2337-0020-1), a voter registration number (e.g., 1306442), the voter’s name, along with other voter and ballot information.
- e. When information is displayed in each quadrant, the election judges have the option to accept the signature or challenge it. There is a button in the software to “Mark all as verified,” “move back,” and “move forward,” but we were informed that there was no ability to go backwards despite the apparent presence of the “move back” button.
- f. Using the election software, election judges would compare the signature on the mail-in ballot envelopes with what appeared to be signatures from the voter’s registration file and would make notations on paper for those ballots where the signatures did not match. Although the election judges were lenient on what qualified as a match, they nevertheless identified between approximately three (3) and fifteen (15) ballots per batch of 300 ballots that did not match. None of the

non-matching mail-in ballots were marked rejected at that time.

- g. After the initial review by the election judges, staff from the DuPage County Clerk's office would then take control over the review process and for each ballot flagged as non-matching, would begin calling up additional documentation—including vote-by-mail applications, for the election judges to use to verify mail-in ballot signatures. Not until after this additional review would the ballot signature be designated as contested or not.
- h. The election judges were moving extremely quickly through the mail-in ballots, usually spending only seconds per ballot. Given that speed, it was difficult for me to note all discrepancies, but I recorded information as quickly and accurately as possible.

6. While observing the signature verification process on November 9, 10, and 14, 2022, I observed election judges—on several occasions—approving mail-in ballots by comparing the signature on the mail-in ballot envelope to signatures other than those on the voter's registration, as set forth in more detail below.

7. On November 9, 2022, I observed the election judges flag at least the following mail-in ballots as non-matching with the voter's registration signature, but then approve such mail-in ballots after comparing the signature on the mail in ballot envelope to other signatures, including signatures on the vote-by-mail application:

- a. Ballot Image No. 037-0126-0043-1;
- b. Ballot Image No. 037-0121-0003-1;
- c. Ballot Image No. 037-0132-0031-1;
- d. Ballot Image No. 037-1268-0019-1;

- e. Ballot Image No. 037-1430-0012-1;
- f. Ballot Image No. 037-1792-0029-1;
- g. Ballot Image No. 037-2184-0006-1; and
- h. Ballot Image No. 037-0723-0023-1.

8. In addition to the eight ballots described above, on November 9, 2022, I observed the election judges approve at least six additional mail-in ballots even though they had flagged that such mail-in ballot signatures did not match the signatures on the voter's registration.

9. On November 10, 2022, I observed the election judges flag at least the following mail-in ballots as non-matching with the voter's registration signature, but then approve such mail-in ballots after comparing the signature on the mail-in ballot envelope with other signatures not in the voter's registration file, including signatures on the vote-by-mail application:

- a. Ballot Nos. 9, 92, 132, 151, and 179 from return group AV-2482;
- b. Ballot Nos. 120 and 195 from return group AV-2484; and
- c. Ballot Nos. 63, 64, and 108 from return group AV-2488.

10. On November 14, 2022, I observed the election judges flag at least the following mail-in ballots as non-matching with the voter's registration signature, but then approve such mail-in ballots after comparing the signature on the mail-in ballot envelope with other signatures not in the voter's registration file, including signatures on the vote-by-mail application:

- a. Ballot Nos. 31, 84, and 157 from return group AV-2502
- b. Ballot Nos. 14 and 24 from return group AV-2506

11. Additionally, on November 14, 2022, I observed the election judges' initial sorting of mail-in ballots. During the initial sorting process, mail-in ballots that lacked a postmark, even if they included a United States Post Office tracking bar code, were being

uniformly rejected and placed in a large blue bin. DuPage County Clerk staff, Leslie Salyers, informed me that the ballots in the large blue bin would be discarded.

12. Additionally, on November 14, 2022, I observed a mail-in ballot envelope that was torn open and the envelope seal was covered with blue tape, showing a return address of 1108 N. Mayfield in Chicago, Illinois. Despite this obvious indicia that the ballot could have been tampered with, this ballot was approved during the initial sorting process and to my knowledge has been passed through to the signature verification process. At the time of making this affidavit, the taped mail-in ballot was still in the signature verification process.

13. Each return group of ballots consists of approximately 300 ballots or fewer.

14. At no time did I observe any election judge mark any mail-in ballot as rejected on the mail-in ballot, or envelope. In the box titled "Challenge Status," the drop down menu would merely state "signature issue."


15. I objected to the process of verifying mail-in ballots by using signatures other than those contained in the voter's registration file by raising the issue with Pat Bond, who is special counsel to the DuPage County Clerk for election matters. Mr. Bond responded by informing me that the Clerk's position is that its signature verification process (as described above) is compliant with the Election Code.

16. On November 10, 2022, I submitted my objections, in writing, to the DuPage County Clerk by delivering a copy of the letter attached hereto as Exhibit 1 to Pat Bond, personally. Mr. Bond indicated at that time that he was accepting the letter on behalf of the DuPage County Clerk.

17. I have not received any response to the written objection attached hereto as Exhibit 1.

18. 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 she verily believes the same to be true.

Executed on: November 14, 2022

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Deanne Mazzochi

# **Exhibit C.1**





November 10, 2022

The Honorable Jean Kaczmarek  
DuPage County Clerk  
421 N. County Farm Rd.  
Wheaton, IL 60187  
*Via hand delivery and copy via e-mail*

**Re: Daily preservation of voter files and associated records; website representations**

Dear Clerk Kaczmarek:

I am writing to you regarding the following:

**I. Records, preservation and production.**

I write to formally request the preservation of the voter file and any associated poll books and signature documentation for the 45th Representative District in the State of Illinois each day, including how the file existed as of November 8, 2022, and beginning November 9, 2022 and every day thereafter, both at the start of the day and as it existed at the end of each day, and for at least the next fourteen days or until no further votes are added or modifications are made to the 2022 General Election vote totals. Every modification to the voter file or poll book that may modify an existing file or signature image should be considered to be a new and distinct file that is requested.

I further request a copy of each day's voter file, in both its original form, as well as in CSV format, and which further is in a format that is text-searchable in a manner reasonably consistent with how the records are prepared and preserved in the ordinary course of business, including how the file existed as of November 8, 2022, and beginning November 9, 2022 and every day thereafter, both at the start of the day and as it existed at the end of each day, and for at least the next fourteen days or until no further votes are added or modifications are made to the 2022 General Election vote totals.

I further request the tabulated results for each ABS update of scanned vote by mail ballots, including those created within three weeks prior to the commencement of early voting; throughout each election day period; and for at least the next fourteen days, or until no further votes are added or modifications are made to the 2022 General Election vote totals.

I further request copies of notes by election judges prepared in connection with signature review and challenges. We witnessed these being prepared by election judges yesterday. All such notes should be preserved.

If not included in the above, I further request a copy of (a) a list of all ballots requested via Vote by Mail (whether temporary or permanent); (b) a corresponding identification of the date on which the vote by mail was requested/applied for, and whether the application for vote by mail was done online, by mail, or in person; and (c) a list of all Mail ballots received by the Clerk's office for each day, including those created within three weeks prior to the commencement of early voting; throughout each election day period; and for at least the next fourteen days, or until no further votes are added or

**156 S. SUNNYSIDE AVENUE, ELMHURST, IL 60126**

*Printed on Recycled Paper*

2022 CH 220 040

Page 2

modifications are made to the 2022 General Election vote totals.

I further request that for each day, your office both preserve and provide lists, preferably in CSV format, of each voter registration that was created within three weeks prior to the commencement of early voting; throughout each election day period; and for at least the next fourteen days, or until no further votes are added or modifications are made to the 2022 General Election vote totals.

I further request a list from each day of the voter registrations, if any, that were switched from active to inactive; as well as voter registrations that were switched from inactive to active, and for the time period that consists of three weeks prior to the commencement of early voting; throughout each election day period; and for at least the next fourteen days, or until no further votes are added or modifications are made to the 2022 General Election vote totals.

I further request a list of all correspondence provided to the Clerk's office where mail involving a voter or proposed registered voter or ballot request or associated correspondence was presented or otherwise identified as undeliverable, or returned to sender, from the time period that consists of at least one week before any notice of Vote by Mail ballot availability; throughout each election day period; and for at least the next fourteen days, or until no further votes are added or modifications are made to the 2022 General Election vote totals.

I further request copies of any internal assessment that was done by or on behalf of the Clerk's office to ensure that the number of ballots cast match to the number of voters casting a vote. To the extent your office is unclear as to whether, e.g., a request includes or excludes information, it should be construed to be inclusive of all voting types, documents, and broadly. If it is being construed exclusively and/or narrowly, for whatever reason, please provide immediate notice of same.

I further request copies of any internal assessment that was done by or on behalf of the Clerk's office to ensure that an individual who had requested a vote by mail had not moved from the address provided on the vote by mail application at the time that the ballot was sent.

I further request copies of any internal assessment that was done by or on behalf of the Clerk's office to ensure that an individual who had requested a vote by mail was not deceased at the time that the ballot was sent.

I further request a list of each individual who requested a ballot by mail, where the ballot was sent to an address that is not in the state of Illinois, for the time period that consists of three weeks before the commencement of early voting; throughout each election day period; and for at least the next fourteen days, or until no further votes are added or modifications are made to the 2022 General Election vote totals.

If this cannot be done for the 45<sup>th</sup> Representative District individually, then I request that the entire DuPage County vote file, lists, and registration switches noted above be preserved for each day.

Under 52 U.S.C. § 20701, the 2022 General Election files I am requesting include candidates for the office of Member of the Senate and Member of the House of Representatives. You have an independent duty to retain and preserve, for a period of twenty-two months from the date of November

We further request copies of all vote by mail envelopes accepted by the clerk's office as legal votes and processed or counted in the forty fifth Illinois House legislative district; copies of any and all evidence used by election judges to verify signatures on vote by mail ballots processed or counted in the forty fifth Illinois House legislative district (*i.e.*, voter registration documentation, VBM ballot requests, ballot envelop images, etc.).

I understand that to comply with the above requests, there may be a reasonable cost involved. I am willing to accept electronic files to minimize costs, including via e-mail, Dropbox, or a secure file transfer exchange medium. If the cost for production will exceed \$250, please advise me immediately. I can be reached at [dmazzochi@rmmslegal.com](mailto:dmazzochi@rmmslegal.com), and at 312-925-3360. If you need to be provided with a storage medium in order to transfer the files, please specify the nature and type of storage medium. To the extent the cost of providing the requisite files above will exceed the amount provided above, please advise as to the Clerk's position as to why the cost is not one that the Clerk's office would not ordinarily incur as part of its regular and customary business to comply with the federal requirements noted above.

The current DuPage County Clerk's website and associated election results reporting has been misleading to some members of the public. I have had several individuals contact me because they believed the election results were "final," given the notations of 100% of precincts reporting, and they experienced confusion upon being told that the election results were still not final. They were not aware that there are still many outstanding vote by mail ballots for the district, and that the Clerk's office has yet to count ballots that were, *e.g.*, put into drop boxes on election day, or which may continue to arrive in the mail. In the interests of transparency, the public should be informed of how many ballots in each district race are still missing and/or received but have yet to be counted for each district.

I further wish to reiterate that our poll watchers want to be present for each and every step involved with the incoming ballots that were dropped off at polling places, as well as Vote by Mail ballots that are coming in via U.S. mail, including the initial step of confirming postmarks (or being present if machine reviewed by bar code), and every step thereafter; notified of the procedure that will be followed; the number of mail deliveries per day; and all expected dates/times for review.

It is disappointing that this request has to be made in writing, but it is necessary based on events that occurred yesterday. For example:

I arrived at the start of the work day on November 9, 2022. Because of the clear closeness of the count and likelihood of outstanding ballots, I attempted to find you so that I could get a clear understanding of how your office would be handling poll watching/review issues going forward. You were not there. I asked that your staff inform you that I would like to speak to you to ensure that we were clear on the process of what would be done for the day, and gave them my cell phone number, and business cards. You were not present and never responded.

At the outset of the day, poll watchers were placed behind a barrier of tables and ropes that precluded meaningful observation of the opening of various yellow envelopes that contained vote by mail ballots. Your staff refused to state what was contained within the yellow envelopes. Your staff seemed to deliberately position themselves in such a way so that when they spoke to the election judges, poll watchers could not hear the instructions being given to the election judges by your staff. When asked what activities were taking place, your staff refused to respond with anything other than a demand that we contact Pat Bond (your attorney). Efforts to reach Mr. Bond at that time were unsuccessful.

There were reasons why the poll watchers wanted to witness the process for pulling ballots out of the yellow envelopes. *First*, without knowing the provenance of the envelopes, it was unclear what chain of custody or oversight review might be required for the yellow envelopes and/or their contents. *Second*, individual election judges, as opposed to a pair of judges from each party, were opening the yellow envelopes, writing on them, and then pulling what appeared to be vote by mail ballot envelopes from the envelopes, writing on such ballot envelopes, then putting such ballot envelopes into various blue boxes. *Third*, it was not clear if there was a protocol in place to ensure that election judges had actually signed the yellow envelopes at/across the envelopes' seal. *Fourth*, poll watchers believed that they heard questions from election judges when opening the envelopes, your staff would respond, but the instructions could not be heard because of the distance away your staff imposed on the poll watchers. *Fifth*, for example, at around 11 am, it appeared that one of the judges pulled from the set what was referred to as a "not contested" ballot, which had some kind of receipt with it, that was combined with the other ballots in the set and then placed into the box. If the local polling places had, for whatever reason, segregated or independently characterized a ballot, that segregation was seemingly lost once the ballot was placed in a box. These are just a few examples of what was witnessed.

We trust that you can understand that without either independent or bipartisan witnesses to what was being written, it was unclear that a proper chain of custody was being preserved. Indeed, after I was later able to speak with Mr. Bond about this issue (after most of this process was completed), he agreed that it was proper to have poll watchers sufficiently close to ensure that numbers were being tabulated correctly, and that the only markings being placed on the ballot envelope was an internal precinct

number. Yet that process was only followed later in the day for a mere 20 minutes, whereupon the work was completed without incident. However, because poll watchers were not permitted proper oversight access, please ensure that all of the yellow envelopes are preserved for further review.

Similarly, during the signature verification process that occurred shortly after 11:15 in the morning on November 9, 2011, there were multiple signatures that failed to match. The election judges had both agreed that multiple signatures looked suspicious. After the first pass through the ballots, your staff (*e.g.*, Stephanie Groenewold) would facilitate the election judges clearing the signature problems not based on a comparison of the vote by mail ballot signature to the actual voter signature on file from the voter registration, but by calling up a signature “match” from, *e.g.*, the underlying vote by mail application. Obviously, if a ballot was fraudulently requested by mail, this process will not catch a mismatch between the signature on the vote-by-mail ballot versus the original signature in the registration file. One example of a ballot signature mismatch was a person whose voter file had a different middle initial as compared to the signature on the vote by mail envelope. The mistaken middle initial was on the vote by mail application, but not on the original voter registration file. Yet it was cleared. Poll watchers witnessed multiple instances of this comparison to the vote by mail application to “clear” signatures, even though the election judges did not change their mind that the underlying signature in the voter registration file was visibly different. We object to all of these and request that these ballots be segregated for further challenge. You will be able to identify the ballot numbers that the election judges originally objected to from the notes made during the signature review. To illustrate why this is problematic, in one set of 300 ballots, there were over 20 instances where the election judges initially agreed that the signature on the mail-in ballot did not appear to match the one contained within the voter registration file. Further, your staff appeared to cross the line by encouraging the election judges to use the vote by mail application for comparison instead of the original voting files, or for ballots that were missing a proper signature in the signature box, having them accept the ballot because a different area of the ballot was signed. Concerns about the legality of this process are set forth in more detail in the letter from John Fogarty sent yesterday. Yet, this process is continuing again today, and was witnessed by multiple poll watchers.

Separately, during today’s review of provisional ballots, many ballots were passed through even though they were lacking an election judge’s signature, etc.

The above is just the start of how and why there have been serious concerns with how vote by mail ballots have been treated here in DuPage County. Please ensure that all materials are properly preserved and that your office initiates proper litigation hold procedures for all documentation relating to ballot handling and the 2022 General Election.

Sincerely,



Deanne Marie Mazzochi

Respectfully submitted,

Michael Kozlowski

Christopher J. Esbrook

Michael Kozlowski

ESBROOK P.C.

77 W. Wacker Dr. Suite 4500

Chicago, IL 60601

(312) 318-7682

[christopher.esbrook@esbrook.com](mailto:christopher.esbrook@esbrook.com)

[michael.kozlowski@esbrook.com](mailto:michael.kozlowski@esbrook.com)

Attorney No.: 338220

*Attorneys for Plaintiff*

**IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

Deanne Mazzochi,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 2022CH000220
	)	
Jean Kaczmarek, in her official capacity as	)	
DuPage County Clerk and Election Authority	)	
for DuPage County, and Jean Ladisch	)	
Douglass,	)	
	)	
Defendants.	)	

**DUPAGE COUNTY CLERK’S COMBINED 2-619(a)(1) MOTION TO DISMISS  
PLAINTIFF’S COMPLAINT FOR EQUITABLE RELIEF AND RESPONSE TO  
PLAINTIFF’S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

NOW COMES, Defendant, Jean Kaczmarek in her official capacity as the DuPage County Clerk (the “County Clerk”), by her Special Counsel, Sean Conway and Patrick K. Bond, of BOND DICKSON & CONWAY, and submits the County Clerk’s Combined Section 2-619(a)(1) Motion to Dismiss Plaintiff’s Complaint for Equitable Relief (“Complaint”) and Response to Plaintiff’s Emergency Motion for Temporary Restraining Order (“TRO”).

**INTRODUCTION**

This matter involves Plaintiffs’ various grievances directed at the County Clerk’s conduct and administration of the November 8, 2022 General Election (the “Election”). Without providing the Court statutory authority or Court precedent, Plaintiff has prematurely filed this action in the midst of the ongoing tabulation of vote by mail, provisional and military overseas ballots for the Election. In her Complaint and TRO, Plaintiff requests that this Court halt the County Clerk’s ongoing processing of vote by mail ballots by the bi-partisan teams of sworn Election Judges assembled and direct the County Clerk to tabulate voted ballots in a

manner she apparently has determined best suits her which is not consistent with the Election Code.

Simply put, Plaintiff's election suit directed at the County's Clerk's conduct of the Election is without statutory authority, unprecedented and premature. Accordingly, this Court is without jurisdiction over this matter and Plaintiff's Complaint must be dismissed and her Motion for a TRO must be denied.

### **ARGUMENT**

#### **PETITIONER'S COMPLAINT FOR EQUITABLE RELIEF DIRECTED AT THE COUNTY CLERK'S CONDUCT OF THE ELECTION IS NOT AUTHORIZED BY STATUTE OR COURT PRECEDENT AND THIS COURT IS WITHOUT JURISDICTION OVER THIS MATTER.**

It is well-established by the Illinois Supreme Court that "[c]ircuit courts may exercise jurisdiction over election cases only as provided by statute" and that "when 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." *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 14, 23 N.E.3d 351, 357 *citing* Ill. Const. art. VI, § 9; *see also, Pullen v. Mulligan*, 138 Ill. 2d 21, 561 N.E.2d 585 (1990) ("Courts have no inherent power to hear election contests, but may do so only when authorized by statute and in the manner dictated by statute.").

"In the exercise of special statutory jurisdiction, if the mode of procedure prescribed by statute is not strictly pursued, no jurisdiction is conferred on the circuit court." *Bettis*, 2014 IL 117050, ¶ 14, 23 N.E.3d at 357.

Here, there is no express authority in the Election Code for the Court to resolve Plaintiff's grievances directed at the County Clerk's conduct of the Election filed in the midst of the County Clerk's ongoing tabulation of voted ballots. This would be the first Court in the



history of Illinois elections jurisprudence to find otherwise. Significantly, section 23-20 of the Election Code authorizes actions related to the conduct of the elections as follows:

The person desiring to contest such election shall, *within thirty (30) days after the person whose election is contested is declared elected*, file with the clerk of the proper court a petition, in writing, setting forth the points on which he will contest the election, which petition shall be verified by affidavit in the same manner as complaints in other civil cases may be verified.

10 ILCS 5/23-20 (emphasis added). There is no dispute that the County Clerk has not officially declared the results of the Election by Official Canvass of Results and the tabulation of voted ballots is ongoing and is within the timeframes authorized under the Election Code.

Accordingly, Plaintiff's Complaint directed at the County Clerk's conduct of the Election, which is ongoing, is premature under section 23-20 and this Court is without statutory authority and subject matter jurisdiction to resolve Plaintiff's grievances at this time.

Significantly, it is long established by the Illinois Supreme Court, "that an injunction will not issue out of a court of equity *for the purpose of restraining the holding of an election or in any manner directing or controlling the mode in which the same shall be conducted.*" *Payne v. Emmerson*, 290 Ill. 490, 495, 125 N.E. 329, 331 (1919) (emphasis added) (holding that a court of equity has no jurisdiction to enjoin the Secretary of State from certifying questions of public policy to the electors); *see also, Elder v. Mall*, 350 Ill. 538, 183 N.E. 578 (1932) (holding that court of equity without jurisdiction over request by candidate to restrain election officials from proclaiming number of votes cast for opponent at primary and from issuing certificate of nomination.). "The reason is that an 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." *Payne*, 290 Ill. at 495, 125 N.E.

at 331. Plaintiff has provided the Court no precedent holding that a court in equity has the authority or jurisdiction to restrain or direct an election official in the conduct of an election in Illinois. Accordingly, this would be the first Court in the history of Illinois election jurisprudence to do so. This Court must decline Plaintiff's unprecedented and unauthorized invitation in this regard. If Plaintiff maintains her grievances after the county Clerk's declares the official results of the Election, Plaintiff may pursue the election related remedies expressly authorized under the Election Code. Significantly, delaying the processing of the vote by mail ballots may result in harm and disenfranchisement to vote by mail voters whose ballots cannot be processed within the statutory timeframe under the Election Code.

### **CONCLUSION**

For these reasons, Jean Kaczmarek, DuPage County Clerk, respectfully requests that the Court enter Orders:

- A. Dismissing Plaintiff's Complaint for Equitable relief, with prejudice, for lack of jurisdiction; and
- B. Denying Plaintiff's Motion for a Temporary Restraining Order for lack of jurisdiction; and
- C. For any other relief this Court determines equitable and just.

Respectfully Submitted,

**JEAN KACZMAREK, DUPAGE  
COUNTY CLERK**

By: /s/ Sean Conway (electronic signature)  
Sean Conway, Special Counsel

Sean Conway  
Patrick K. Bond  
BOND, DICKSON & CONWAY  
400 S. Knoll Street Unit C  
Wheaton, IL 60187  
Atty. No.: 004  
630-681-1000  
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## UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DU PAGE

## IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

DEANNE MAZZOCHI

Plaintiff

-VS-

KACZMAREK JEAN IN HER OFFICIAL  
CAPACITY AS DUPAGE COUNTY CLERK  
AND ELECTION AUTHORITY FOR DUPAGE  
COUNTY ET AL.

Defendant

2022CH000220  
CASE NUMBER**FILED**

22 Nov 15 PM 02: 38

*Candice Adams*CLERK OF THE  
18TH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS

## ORDER

The cause coming before the Court, the Court being fully advised in the premises, and after hearing argument from the parties, the Court finds as follows, as more fully detailed in the record:

- 1) It has subject matter jurisdiction over this controversy;
- 2) Notice was given by Plaintiff;
- 3) the Election Code does not permit the use of a signature from a mail in ballot application to validate any mail-in ballot signature in accordance with Article 19 of the Election Code; and
- 4) Use of the Vote by Mail ballot application to qualify signatures on the Vote by Mail ballot itself would be an obvious way to commit ballot fraud.
- 5) Consequently, the ruling set forth below benefits both candidates, as well as the DuPage County Clerk's Office, who is obligated to follow the statute.

Based on the foregoing and for the reasons stated on the record, Plaintiff's Motion to Enforce Election Law by Temporary Restraining Order and Preliminary Injunction is granted to the extent set forth in this order.

The DuPage County Clerk, during the Vote by Mail process, is hereby prohibited from using any signature on a Vote by Mail application in connection with validating signatures on the Vote by Mail ballot from the date and time of entry of this order in connection with the 2022 general election.

If a voter's signature on the mail-in ballot does not match the signature on the voter's registration on file with the DuPage County Clerk's office, that ballot must be segregated and marked "Rejected" as required by Article 19 of the Election Code and the Clerk shall follow the voter notification procedures set forth therein.

The DuPage County Clerk shall immediately provide a copy of this order and directive to all election judges for the 2022 general election and ensure that it is complied with.

Defendant's Motion to Dismiss is denied. This matter is set for status on November 23, 2022 at 1:30 p.m.

Submitted by: MICHAEL KOZLOWSKI

Attorney Firm: ESBROOK P.C.

DuPage Attorney Number: 338220


Attorney for: PLAINTIFF

Address: 321 N CLARK STREET, SUITE 1930

City/State/Zip: CHICAGO, IL, 60654

Phone number: 312-319-7682

Email : michael.kozlowski@esbrooklaw.com

Entered:  Date: 11/15/2022

JUDGE JAMES D OREL

Validation ID : DP-11152022-0238-04627

Date: 11/15/2022

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT  
DU PAGE COUNTY, ILLINOIS

DEANNE MAZZOCHI,

Plaintiff,

- V S -

JEAN KACZMAREK, ET AL.,

Defendants.

2022 CH 220  
MOTION

PROCEEDINGS had at the HEARING of the above-entitled cause, before the HONORABLE JAMES D. OREL, Judge of said court, recorded on the DuPage County Computer Based Digital Recording System, DuPage County, Illinois, and transcribed by MARY FAILLO, Certified Shorthand Official Court Reporter, commencing on the 15TH day of NOVEMBER, 2022.

1       PRESENT:

2  
3               ESBROOK, P.C., by  
4               MR. MICHAEL KOZLOWSKI,  
5               appeared on behalf of DEANNE MAZZOCHI,  
6               Plaintiff;

7               BOND, DICKSON & CONWAY, by  
8               MR. PATRICK BOND,  
9               appeared on behalf of the Defendants;

10              MR. ROBERT B. BERLIN, DuPage County State's  
11              Attorney, by  
12              MR. CONOR MCCARTHY,  
13              appeared on behalf of the Defendants.

14       ALSO PRESENT:

15               MS. DEANNE MAZZOCHI, Plaintiff  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 THE CLERK: 2022 CH 220, Mazzochi vs. Jean  
2 Kaczmarek.

3 MR. BOND: Good morning, Your Honor.

4 Patrick Bond, B-O-N-D, special counsel on  
5 behalf of Jean Kaczmarek, in her official capacity as  
6 the election authority for DuPage County.

7 MR. MCCARTHY: Conor McCarthy, State's Attorney's  
8 Office.

9 MR. KOZLOWSKI: Good afternoon, Your Honor.

10 Mike Kozlowski, K-O-Z-L-O-W-S-K-I, on behalf  
11 of the plaintiff.

12 MS. MAZZOCHI: Good morning, Your Honor.

13 Deanne Mazzochi, M-A-Z-Z-O-C-H-I. I'm an  
14 attorney and also the plaintiff.

15 THE COURT: All right. Good afternoon to all.

16 Mr. Bond.

17 MR. BOND: Yes.

18 THE COURT: Great timing. As I walked in here at  
19 1:30, I was handed a package of something.

20 MR. BOND: Yes, Judge. And we filed that,  
21 submitted a copy to opposing counsel. We tried to  
22 e-mail it to your office, and it didn't -- it wasn't  
23 accepted, so we dropped off -- what I provided to you  
24 was a notice of filing of the motion, 216 motion to



1 dismiss, along with the motion, the cases that were  
2 relied on, and the statutes at issue in the underlying  
3 dispute.

4 THE COURT: Everyone can have a seat, please.

5 Well, I obviously have not read it. So,  
6 Mr. Kozlowski, do you wish to say anything?

7 Have you seen this?

8 MR. KOZLOWSKI: I have seen it, Your Honor.

9 THE COURT: Well, you're ahead of me on that.

10 MR. KOZLOWSKI: I have seen it. I would like an  
11 opportunity to respond to it. But I also understand  
12 that me talking while Your Honor is reading probably  
13 isn't good for either of those two things.

14 THE COURT: Thank you.

15 MR. KOZLOWSKI: So if Your Honor would like a few  
16 minutes, I'm happy to oblige.

17 THE COURT: Thank you.

18 I used to tell my kids the same thing.  
19 Please don't ask me questions when I'm reading what you  
20 want me to answer.

21 All right. To take the title of Mr. Bond's  
22 motion is there's no equitable relief that's available  
23 under the Act.

24 Am I summing that up, Mr. Bond?

1 MR. BOND: You are, Judge.

2 The basis is 216(a)(1) for -- there's no  
3 relief available -- equitable relief available.  
4 There's certainly relief available to the plaintiff,  
5 and the Court is without jurisdiction to intercede in  
6 the midst of the administration of an election, which  
7 is what's going on currently.

8 There is a -- so there's -- and I cited the  
9 cases. The Court's equitable powers have to be  
10 specifically provided for, and there's no provision for  
11 the type of relief. They're asking to simply halt the  
12 processing of the vote-by-mail ballots, and to halt the  
13 tabulation of it.

14 There is recourse for the plaintiff, and  
15 there's ample caselaw to do so. And we had one here in  
16 recent past, in the 2020 election, for an election  
17 contest under Section 23-20 of the Illinois Election  
18 Code, and our position is, and we cited the caselaw  
19 authority relative to the Supreme Court finding, that  
20 the Circuit Courts can exercise only jurisdiction over  
21 cases provided by statute, and if it is equitable  
22 power, it's conferred upon it, it is limited, and the  
23 Courts have no power to hear election contests. They  
24 do so only when authorized by statute and in a manner

1       dictated by statute.

2               I think Your Honor had an opportunity to read  
3       the motion -- emergency motion. There was no authority  
4       cited for the Court to simply interject and intercede  
5       at this juncture at that -- in the motion that they  
6       filed. The plaintiff's complaint is simply premature.

7               They have the right to file an election  
8       contest. They have the right to do that within 30 days  
9       after the certification. There's timelines, as I've  
10      made reference to earlier. Timelines in the Election  
11      Code that provide for the processing of provisional  
12      ballots and vote-by-mail ballots within 14 days.  
13      That's already -- we're already seven days into it.  
14      There's two weekend days coming up. So that has to be  
15      done by a week from today, and then the certification  
16      has to occur thereafter. Seven days thereafter.

17              So the concern of even putting a halt to it  
18      to have the Court to have the opportunity to determine  
19      whether or not it's got jurisdiction would be  
20      potentially to disenfranchise those voters who the  
21      election judges are now standing down, not processing  
22      the ballots and the signature verification.

23              So now you run the risk of if Judge Orel gets  
24      a notification that your ballot was challenged by a

1       bipartisan team of election judges, and it gets mailed  
2       to you, and then it takes the time, whatever time the  
3       post office gets the mail, you have to have that back  
4       and processed by a week from today.

5               THE COURT: Let me ask you a question.

6               If what is alleged is that the statute's not  
7       being followed -- and I believe it's a verified  
8       petition; correct?

9               Is it not verified?

10              MR. KOZLOWSKI: It is supported by -- it is  
11       supported by affidavit. All the material facts are  
12       there, Your Honor.

13              THE COURT: All right. Have those ballots that  
14       were identified in the petition, have they been  
15       segregated?

16              MR. KOZLOWSKI: We don't believe that they have  
17       been.

18              On November 10th, we requested segregation,  
19       but have not heard back from the clerk's office.

20              THE COURT: All right. Here's my next question  
21       then.

22              If this is proceeding, whether or not the  
23       statute's not being followed, what remedy would this  
24       petitioner have after the votes have been counted if

1       they're not following the statute?

2           MR. BOND: Well, the premise is -- we think is  
3       faulty. That's the reason for an election contest.  
4       Election contest determines whether --

5           THE COURT: Well, how do we segregate those that  
6       are contested?

7           MR. BOND: Well, we --

8           THE COURT: If we wait until after the votes are  
9       allegedly counted, how do we know -- how do we know  
10      which ones were not used pursuant to the statute, not  
11      followed pursuant to the statute?

12           You're saying they should allow the count to  
13      go based on what they've seen where the statute's not  
14      being followed -- and I know that's at issue -- but  
15      wait until after these are not being segregated. So  
16      what relief would they have then?

17           MR. BOND: Well, Judge --

18           THE COURT: Isn't this in the -- are you saying a  
19      writ of mandamus is not allowed under these  
20      circumstances?

21           MR. BOND: I'm absolutely saying a writ of  
22      mandamus is not allowed. The -- what the writ of  
23      mandamus is compelling them, you've got judges that are  
24      making a judgment call under the statute. That's what

1       they are required to do.

2               The judgment that they're making, the  
3       plaintiff takes issue with the calls they're making,  
4       that they're saying it matches and doesn't match.

5               THE COURT: No. They're not making -- as I'm  
6       reading this, they're not arguing with the calls.  
7       They're arguing with what's being followed. They're  
8       arguing that the statute is not being followed. And if  
9       I allow this to continue on, the petitioner potentially  
10      would have no relief, because we don't know what  
11      particular ballots were not being found. And I'm  
12      certain the clerk of this county would want the statute  
13      followed, wouldn't she?

14              MR. BOND: Oh, absolutely, Judge. And it's our  
15      position it is.

16              THE COURT: So how is she harmed by an order  
17      saying that they must follow the statute?

18                      How is anyone harmed by saying you must  
19      follow the statute and only look as the statute  
20      requires these ballots be looked at, when it's alleged  
21      that they're using the application for mail-in ballots  
22      to compare with the signature on the actual ballot?

23                      How is anyone harmed? This protects both  
24      candidates.

1 MR. BOND: Right. But there's no --

2 THE COURT: This is a win-win for everyone in  
3 DuPage County, in the State of Illinois.

4 We're following the statute that the  
5 legislature wants.

6 MR. BOND: Well, the problem with that, Judge, is  
7 there's no provision --

8 THE COURT: How can there be a problem with  
9 following the statute? Please tell me.

10 MR. BOND: No. There's no problem.

11 THE COURT: For the record -- I want to make the  
12 record real clear.

13 MR. BOND: Sure.

14 THE COURT: Following the statute would be  
15 problematic how?

16 MR. BOND: No. No. No. I'm not saying following  
17 the statute --

18 THE COURT: That's all I'm going to order. They  
19 must follow the statute.

20 MR. BOND: No. What I'm -- what I'm saying,  
21 Judge, is to intervene at this stage, there is no legal  
22 authority that confers jurisdiction upon the Court to  
23 do so.

24 The Election Code statute for a contest says,

1 if a mistake or fraud has been committed in this  
2 county, or return of the votes, or any office, or some  
3 other specified irregularity in the conduct of the  
4 election --

5 THE COURT: Well, they are specifying  
6 irregularity. They're not following the statute and  
7 how to verify the signatures.

8 MR. BOND: I understand. And that's why we've  
9 already got an Election Code provision for that.

10 What they're asking for to do at this  
11 juncture is there's no -- there's no authority.  
12 There's no legal authority for the Court to impose the  
13 relief that they're requesting.

14 And, in fact, there's authority to the  
15 contrary to says a Court does not have jurisdiction in  
16 an election -- in a matter on the processing and  
17 administration of the election until after the  
18 certification.

19 THE COURT: Mr. Bond, I don't understand --

20 MR. BOND: Okay.

21 THE COURT: -- how the clerk does not want -- it's  
22 alleged they're not following the statute, and I don't  
23 understand how either side would not want the statute  
24 followed.



1           MR. BOND: We absolutely do, Judge. And maybe if  
2 I could --

3           THE COURT: And those ballots that are properly  
4 marked are then available at the end of a counting to  
5 have this litigation, if so necessary.

6           MR. BOND: Well, it's two -- a couple things.  
7 First, judge, if I -- I'll address, there's already  
8 been processed and have been tabulated, and there's  
9 been uploads that have gone on.

10                   We got notification of a preservation on, I  
11 believe it was, Friday, November 10th, to preserve --  
12 or Thursday, rather. It was the holiday on Friday --  
13 to preserve, which we've done. We've preserved every  
14 single item.

15                   We got this yesterday at 5 o'clock where they  
16 have an allegation that it's not being processed  
17 correctly. So everything up until that point and up  
18 until the point in time if the Court were to exercise  
19 jurisdiction, which we contend it doesn't have, those  
20 have already been processed, tabulated, the results are  
21 there.

22                   The premise of their allegation though,  
23 Judge, is simply a matter of what is clear and  
24 unambiguous language in the statute. And the statute

1 provides for the -- for what they're using as a  
2 signature comparison. The statute specifically  
3 provides how they are to do it.

4 It says under Section 10 ILCS 5/19-8, the  
5 election judge or official -- so it allows -- we have  
6 bipartisan election judges. It only -- this is  
7 Subparagraph G. We're not required to be bipartisan  
8 judges. We do to make sure that there's transparency  
9 and that there's -- you know, there's both parties. No  
10 one can say that there's favoritism on one side or the  
11 other or an official. And we can just have a staff  
12 member who's an official could make those  
13 determinations. We don't. We have a bipartisan of  
14 sworn election judges.

15 And if you look at Subparagraph G --

16 THE COURT: I'm staring at it.

17 MR. BOND: -- shall compare the voter's signature  
18 on the certification envelope of that vote-by-mail  
19 ballot with the signature on the voter file and the  
20 office of the election authority.

21 They're not saying that's not being done.  
22 They're saying --

23 THE COURT: Yes, they are. That's exactly what  
24 they're saying, Mr. Bond.

1 MR. BOND: Well, with all due respect, Judge, no.  
2 They're saying it's not being compared to the  
3 registration record card. That's what their allegation  
4 is. And they're making the -- the quantum leap that  
5 the registration record card -- which there's a section  
6 of the code. I provided a copy of that for Your Honor  
7 as well. And the registration record card, 10 ILCS  
8 5/6-35, if you look at the second paragraph, it says,  
9 shall contain the following information: Name, sex,  
10 residence, date, time of residence, nativity,  
11 citizenship, date of application, and such other  
12 information as a board of election commissioners may  
13 think it proper to require for the registry -- for the  
14 identification of the applicant for registration.  
15 That's what the registration card includes.

16 The -- even the documents that they are  
17 saying shouldn't even be looked at, that's in that same  
18 -- which is provided for in the statute section -- that  
19 is part of the voter record on file in the election  
20 authority. It's the same thing.

21 They don't -- maybe don't like the sequencing  
22 of the way it's --

23 THE COURT: That's not what they're alleging.  
24 They're alleging that the application for mail-in

1 ballots being used to confirm signatures.

2 MR. BOND: Okay.

3 THE COURT: That's how I read it.

4 Am I wrong?

5 MR. KOZLOWSKI: No, Your Honor. You're correct.

6 MR. BOND: Okay. Judge, and that application,  
7 first of all, is not the first source that the judges  
8 are looking at.

9 THE COURT: Well, is it any source? Where under G  
10 do they allow the use of the mail-in ballot application  
11 to be used as a signature verification?

12 MR. BOND: The mail-in ballot application, first  
13 of all, is verified.

14 THE COURT: It's not that. I don't care if it's  
15 verified.

16 MR. BOND: Okay. No. But, I mean, it's already  
17 -- they already checked.

18 THE COURT: Where does it say in this statute that  
19 they can use that to compare the signature and verify  
20 the signature?

21 MR. BOND: Okay. Judge, well, I just suggest if  
22 you read *pari materia* Section 6/35, and such other  
23 information as a board of commissioners think required,  
24 that is in the voter record file. That's one of many.

1                   Any time a voter changes their address, any  
2 time a voter says -- submits anything.

3           THE COURT: I -- no. It's -- the statute in G is  
4 very clear how you verify signatures.

5           MR. BOND: I agree with you, Judge, but what it  
6 says is --

7           THE COURT: So how can they go deeper into the  
8 file and pull out a mail-in ballot application that --  
9 where in G does it say they can do that?

10          MR. BOND: Well, it says, any -- with the  
11 signature of the voter on file in the office of the  
12 election authority.

13                   That is one of the many signatures on file in  
14 the office of the election authority.

15          THE COURT: No. The statute reads, and I'll  
16 quote, under G, the election judge or official shall --  
17 shall, that's the word they use -- compare the voter's  
18 signature on the certification envelope of the  
19 vote-by-the-mail ballot with the signature of the voter  
20 on file in the office of the election authority.

21          MR. BOND: That signature --

22          THE COURT: There's one signature on file.

23          MR. BOND: There isn't, Judge.

24          THE COURT: So you're saying they can -- they can

1 take any -- if they don't match the signature on file,  
2 they can take the next step in this statute and look  
3 for something else which shows a signature. Is that  
4 what you're saying?

5 MR. BOND: There are multiple signatures on file,  
6 and the answer to that is yes.

7 I have mine. Mine has six signatures on file  
8 with the election authority. It has a date I  
9 registered when I was 18 years old, which was a few  
10 years ago. It has a date that I moved back from my  
11 college address. It has a date that I filed for a  
12 permanent vote-by-mail application. It has every time  
13 I moved from Elmhurst to Wheaton.

14 THE COURT: And do you have caselaw that says you  
15 can use any of the six signatures you have?

16 MR. BOND: Well, I think there's no ambiguity. I  
17 think it says that is a signature on file with the  
18 election authority.

19 My signature today doesn't look anything like  
20 my signature when I was 18 years old. I've updated it  
21 every time -- every time the voter changes their  
22 address, they are updating their voter registration.  
23 That goes on to the voter registration card, which is  
24 referenced in 5-635, and that is the other information,

1       they think it's proper for the identification of the  
2       applicant.

3               THE COURT: All right. Let me hear from counsel.

4               MR. KOZLOWSKI: Thank you, Your Honor.

5               I'll just address the point we're talking  
6       about right now. I'm happy later on, for the record,  
7       to demonstrate -- well, I suppose I'll just do it now.

8               That Your Honor does have subject matter  
9       jurisdiction. This is a judicial controversy. Under  
10      the Illinois Constitution, this Circuit Court's vested  
11      with jurisdiction. I'd cite the Quinn v. Board of  
12      Elections case, which is 2018 Ill. App. 182087, where  
13      this exact argument was raised by the government  
14      authority. It was adopted by the Circuit Court and  
15      then reversed on appeal, and the Court held that the  
16      Circuit Court does have subject matter jurisdiction  
17      over a writ of mandamus action to compel an election  
18      authority to -- in the case of Quinn was to put certain  
19      referenda on the ballot. So I just wanted to get that  
20      out for the record.

21              To answer the question about signatures in  
22      this case, Your Honor, the conduct that we are  
23      complaining of is the comparison of signatures on the  
24      mail-in ballot envelope to signatures on the mail-in

1 ballot application. That's the second step that the  
2 clerk's office is engaged in and the election judges  
3 are engaged in. That's the step that's not  
4 contemplated by the statute and that we contend is  
5 unlawful.

6 The reason we know it's unlawful is because  
7 both 19-8(g) notes that -- this is the language we've  
8 all been looking at -- that the, quote, two signatures  
9 -- if the two signatures match, and that language is  
10 directly from the statute, then the ballot should be  
11 verified. If they don't match, then there's a  
12 rejection procedure under (g)(5). And --

13 THE COURT: Well, Mr. Bond just said that if you  
14 have six signatures in there, it can match.

15 MR. KOZLOWSKI: Well, I agree that --

16 THE COURT: What doesn't make sense to me is the  
17 two signatures would be the mail-in -- the most recent  
18 mail-in ballot application with the most recent ballot.

19 MR. KOZLOWSKI: I agree, Your Honor.

20 And there's statutory language in the  
21 Election Code from Article 19 directly on point here,  
22 and that's Section 19-10, which states that poll  
23 watchers shall be permitted -- I'm quoting now -- shall  
24 be permitted to observe the election judges making the



1 signature comparison between that which is on the  
2 mail-in ballot envelope and that which is on the  
3 permanent voter registration record card taken from the  
4 master file.

5 So that's all we're looking for here is that  
6 mail-in ballots be verified using the signature on the  
7 envelope compared to the signature on the registration.  
8 Nothing more, nothing less.

9 MR. BOND: Judge --

10 THE COURT: How do you overcome the two  
11 signatures, Mr. Bond?

12 MR. BOND: I'm sorry?

13 THE COURT: How do you overcome the two  
14 signatures?

15 MR. BOND: Well, as I --

16 THE COURT: You said they can have six, eight  
17 signatures, but if it's -- if there's fraud, wouldn't  
18 the fraud occur on the mail-in ballot application with  
19 the actual ballot?

20 Wouldn't that be the most possible area of  
21 fraud?

22 MR. BOND: It would be the area to look at,  
23 certainly, Judge. But if you look at the selection for  
24 qualifying a vote-by-mail ballot application, the

1     applicant's signature by comparison with the signature  
2     on the official registration record card.

3             So before they even get a ballot, somebody  
4     submits an application. That application is verified  
5     against the signature on the voter registration card,  
6     which is what we've been referring.

7             What the plaintiff refuses to accept is that  
8     the voter registration card is every time you update  
9     your voter registration, that signature is captured.

10            THE COURT: But they're contending that it's the  
11     mail-in ballot application that is being used, and  
12     that's what your -- I keep telling you. That's what  
13     they're alleging, okay. So that would be to the  
14     benefit of both candidates here.

15            MR. BOND: I understand, Judge. The problem  
16     with --

17            THE COURT: So go ahead and make your argument.  
18     Make your record.

19            MR. BOND: Okay.

20            THE COURT: I have not -- and I want the record to  
21     be very clear. I walked in this courtroom at 1:30. I  
22     did not have any time to read your -- your motion, nor  
23     your cases, okay, even though I was told they would be  
24     there by noon. So I -- you know, when I walk in at

1 1:30 to hear argument, I'm hearing argument.

2 MR. BOND: All right.

3 THE COURT: So I did not even consider those  
4 cases, because I hadn't read them. But it seems to me  
5 that the statute's pretty clear of what's required  
6 here.

7 MR. BOND: Okay.

8 THE COURT: Go ahead and make your record.

9 MR. BOND: And with respect to that, Judge, we  
10 left here at 10:00. I went back. We filed it by noon.  
11 They tried to e-mail it. They weren't able. I headed  
12 over to --

13 THE COURT: Well, I'm just telling you.

14 MR. BOND: No. I understand.

15 THE COURT: I want the record real clear.

16 MR. BOND: Absolutely.

17 THE COURT: I like to read the cases that are  
18 being argued in front of me to see in fact is that what  
19 they say --

20 MR. BOND: Certainly.

21 THE COURT: -- for myself.

22 MR. BOND: Okay. Well, I'll make my argument with  
23 respect to the 2-619 motion to dismiss. And, again, I  
24 think it's very clear with the relief that they're

1 asking for.

2 They're asking for equitable relief. The  
3 Court -- the Supreme Court has said in the Bettis,  
4 which I provided -- I know the Court hasn't had a  
5 chance to read that, which was citing the Pullen case,  
6 which is extremely lengthy, but that the --

7 THE COURT: Tell me what page it says.

8 MR. BOND: That is on page 14, I believe it is, in  
9 Bettis.

10 THE COURT: I only have 12 pages in mine.

11 MR. BOND: I'm sorry. Paragraph 14.

12 THE COURT: Okay. If we can catch up with you  
13 here.

14 MR. BOND: It's in the -- page 357.

15 THE COURT: Well, I don't have those same numbers  
16 you do.

17 MR. BOND: It's 23 NE 2d.

18 THE COURT: I'll find 14 though.

19 Okay. You mean when construing the statute,  
20 the Court's primary objective is to ascertain and give  
21 effective the intent of the legislature? Is that what  
22 you want me to hear?

23 MR. BOND: Let me get the section, Judge.

24 THE COURT: That's what I want to do today. I

1 want to give the intent of the legislature for both  
2 candidates.

3 Or where statutory language is clear and  
4 unambiguous, it should be given the effect without  
5 resort to the other age of construction.

6 MR. BOND: That is part of the argument as well,  
7 Judge, and it really comes down to the -- what's  
8 defined in the voter registration records. And the  
9 statute at issue is abundantly clear, because it does  
10 reference -- it doesn't reference anything of the  
11 specifics that are included in that record.

12 It says, the records on file with the office  
13 of the -- of the clerk, and the records on file with  
14 the office of the clerk include all of those various  
15 registration updates, all those various signatures of  
16 the -- of the votes.

17 THE COURT: But that's not a registration update,  
18 Mr. Bond. It's an application for a mail-in ballot,  
19 and then they're matching it with this -- with the  
20 ballot. That's not an application in terms of what  
21 they're asking here.

22 I mean, if there's going to be fraud, it's  
23 going to be the person that's going to apply for a  
24 mail-in ballot, and that signature would match with the

1 ballot, most likely. And what I'm being told here in  
2 the pleadings is that those signatures from the  
3 exemplar card from the file is not matching the ballot.

4 MR. BOND: Well, that's a --

5 THE COURT: That creates an issue that can't be  
6 fixed after -- if these -- if these questionable  
7 ballots are not set aside. How is there any remedy at  
8 the end of this if that's not set aside for the parties  
9 to bring the litigation, to argue what's been saved or  
10 not saved?

11 I've just been told -- I asked the question.  
12 It's not under oath, but I asked the question of  
13 Ms. Mazzochi's counsel, were the ballots she claimed  
14 were not being -- that she observed were not being  
15 compared properly, were those segregated, and the  
16 answer was, no, they weren't segregated. So that's  
17 three votes right there, allegedly.

18 So what relief or what remedy would this  
19 candidate have -- would either candidate have, for that  
20 matter, if these questionable ballots are not  
21 segregated so that the voters can come in as required  
22 and say, yes, that's in fact who voted?

23 MR. BOND: Well, two things. One, there's already  
24 a statutory provision for that, including mistake, or

1 fraud, or some irregularity in the conduct of the  
2 election. That's provided for, and they have -- what  
3 we have are every single certification envelope. Every  
4 one of them has been scanned in. Those have been  
5 retained.

6 If someone wants to take that and compare it  
7 or bring in a voter and say that's not my signature,  
8 and that's been done --

9 THE COURT: But are these being segregated?  
10 That's my question.

11 MR. BOND: The ballots are not.

12 THE COURT: So how can they do that?

13 MR. BOND: Well, Judge, then in their prayer for  
14 relief --

15 THE COURT: Tell me why the Court doesn't want to  
16 follow the statute as it's written.

17 MR. BOND: Well, that's -- well, Judge --

18 THE COURT: I don't understand. It protects both  
19 candidates.

20 MR. BOND: Right. With all due respect --

21 THE COURT: Who is prejudiced by this?

22 MR. BOND: Well, the people who are prejudiced by  
23 delaying this, Judge, is that the --

24 THE COURT: Why is it being delayed?

1 MR. BOND: Well, if you impose an injunction  
2 enjoining us from --

3 THE COURT: All it would have said on the writ is  
4 that you have to follow the statute.

5 There's two signatures that have to be  
6 compared. Not six. Not eight. Not the mail-in ballot  
7 application.

8 MR. BOND: Well, with all due respect, Judge,  
9 there is nothing in there that says two signatures. It  
10 says, compare it -- compared to the signatures on file  
11 -- the signature on file with the election authority.

12 THE COURT: It says, two signatures match, right  
13 in G.

14 MR. BOND: Right. The signature --

15 THE COURT: So do they pick any of the six or  
16 eight signatures that are there?

17 They just -- who -- how do they decide which  
18 signature they're going to follow?

19 MR. BOND: Okay. If I could just explain the  
20 process to Your Honor.

21 So what they do is they look at the original  
22 voter registration. If that original voter  
23 registration, the judges are in agreement, it's a  
24 complete mismatch, doesn't match, that's a challenged



1 voter. A notification to challenge voter and affidavit  
2 is sent to that voter.

3 If the two judges say, well, it's -- I don't  
4 know. I can't tell. It looks like the P in Patrick  
5 looks the same, the B in Bond, but the other letters  
6 don't look as well, then they can advance to the next  
7 voter registration record when that was updated, and  
8 they can look at that, and say, okay, I don't know,  
9 it's some of the letters now in the interior look fine.  
10 By the time they would get down, one of the -- one of  
11 the signatures that's in the voter record on file with  
12 the clerk is a voter -- the vote-by-mail application.

13 They would rarely, if -- on occasions they  
14 have, but they would rarely get to that, unless the two  
15 judges simply could not reach a consensus.

16 THE COURT: That's not what they've pled,  
17 Mr. Bond.

18 They said that they're using the mail-in  
19 application as a verification.

20 MR. BOND: Well --

21 THE COURT: And to me -- to this Court, that would  
22 be a way of committing fraud.

23 You file for a mail-in application. You're  
24 not the person, and you're using that signature to

1 vote, and it's contrary to the signature that's on  
2 file.

3 Again, this protects both candidates. I'm at  
4 a loss to see why the clerk is arguing that it  
5 shouldn't be followed.

6 How does it harm anyone?

7 MR. BOND: Well, Judge, there's no harm in  
8 following the law.

9 THE COURT: I've heard enough argument. I'm not  
10 convinced. I'm not convinced.

11 I'm protecting both candidates that this  
12 statute be followed as it says in your case right here,  
13 and it talks about two signatures. It doesn't say you  
14 can use the ballot -- mail-in ballot application to  
15 confirm a signature. There's nowhere that says that.

16 MR. BOND: Right. And, Judge, I just wanted the  
17 record --

18 THE COURT: I'm granting a TRO. They're to follow  
19 the statute, period.

20 MR. BOND: And I want --

21 THE COURT: It's in the signatures. They cannot  
22 use the ballot application.

23 MR. BOND: Okay.

24 THE COURT: And there's no harm there. It's to

1 the benefit of both candidates.

2 MR. BOND: No objection to that, Judge. I -- what  
3 I don't --

4 THE COURT: Well, that's what I'm ruling.

5 MR. BOND: Okay. Well, I'm -- the -- but with  
6 respect to the -- the ruling that you provided, one,  
7 it's a position of the clerk. A, she has been  
8 following the law in the processing --

9 THE COURT: Well, they're alleging she hasn't. So  
10 I'm confirming --

11 MR. BOND: Right. I understand.

12 THE COURT: -- that they -- obviously should  
13 follow, and not the ballot application for a mail-in  
14 ballot, but the signature that exists in the permanent  
15 record of this voter.

16 MR. BOND: So the question then, Judge, is which  
17 of those --

18 THE COURT: Those should be set aside per statute,  
19 marked accordingly, and then there's relief for either  
20 candidate if there is fraud on either side.

21 MR. BOND: Well, I understand your ruling.  
22 They've already got relief under the election contest.

23 So the question is, according to your  
24 ruling --

1 THE COURT: How did they have relief?

2 How's there relief to anyone?

3 MR. BOND: An election contest.

4 THE COURT: I've been told that there's at least  
5 three or four votes that was observed, it's alleged,  
6 that weren't set aside.

7 MR. BOND: Well, then --

8 THE COURT: So how do they ever litigate that?

9 MR. BOND: What they do is they make an allegation  
10 that these were improperly filed. If it's fraud, they  
11 bring it to the State's Attorney's office --

12 THE COURT: But they said it wasn't segregated.  
13 How -- what do they just --

14 MR. BOND: The ballot -- the envelope of the  
15 ballot has the voter's signature on it. If somebody  
16 wants to take that -- and we've done that. We've had  
17 the State's Attorney who's prosecuted people for that.

18 THE COURT: Well, it's alleged they were not -- I  
19 shouldn't say it was alleged.

20 It was stated to this Court by an officer of  
21 the court that these three or four incidents were not  
22 segregated. They cannot -- how do they ever reidentify  
23 them?

24 MR. BOND: Well, the ballots haven't and never --

1 THE COURT: Why are we arguing? I've ruled on  
2 this.

3 MR. BOND: Well, the question I have though,  
4 Judge, is which signature -- are you saying the  
5 original voter registration signature from a voter when  
6 they've registered at 18 --

7 THE COURT: Well, anything but the mail-in ballot  
8 application --

9 MR. BOND: Okay.

10 THE COURT: -- which would seem to this Court to  
11 be the one area of fraud that would be of concern.

12 That's what they're alleging was being used.

13 MR. KOZLOWSKI: Your Honor, would you like us to  
14 draft the order here now?

15 THE COURT: I would love you to draft the order.  
16 Otherwise, you're going to be here hearing the same  
17 argument, a circular argument, all afternoon.

18 MR. KOZLOWSKI: Thank you.

19 MR. BOND: And, Judge --

20 THE COURT: And, again, this benefits both  
21 candidates, period.

22 Thank you.

23 MR. BOND: Well, Judge, if I could, before you --  
24 those ballots have not been segregated. The envelopes

1 have been retained. The ballots have not been  
2 segregated. They have been tabulated.

3 THE COURT: From this minute forward, this is --  
4 they're not to use the mail-in ballot application,  
5 period, from this point forward. And they can mark  
6 those, and those voters can come in pursuant to the  
7 statute when they're notified and confirm whether they  
8 are the voter or not.

9 MR. KOZLOWSKI: Understood.

10 MS. MAZZOCHI: Thank you, Your Honor.

11 MR. BOND: But any other registration other than  
12 the -- the -- I just want to make sure that the  
13 election judges are getting clear --

14 THE COURT: Let me say it one more time as clear  
15 as I can.

16 The mail-in voter ballot application cannot  
17 be used as a form to confirm signature, period --

18 MR. BOND: Understood.

19 THE COURT: -- for the reasons I've already stated  
20 on the record maybe three times, maybe four. I'm not  
21 sure. I'm losing count. We're going in a circle here.

22 They cannot be used.

23 MR. BOND: Very well.

24 THE COURT: Thank you.

1 MR. KOZLOWSKI: Thank you, Your Honor.

2 THE COURT: Do we need to have any additional  
3 hearings set?

4 MR. BOND: We do, Judge, on the --

5 THE COURT: Now that we have a baseline, if they  
6 are being used, then we'll know what ballots will be  
7 back -- or what individuals will be back here.

8 I mean, if you can segregate them based on  
9 what's been used so far, if you can segregate those  
10 applications that were used to vote, then you can come  
11 back in.

12 MR. BOND: Those can be segregated, Judge, the  
13 ones that they've got challenges. What cannot be  
14 segregated is the ballots that have already been  
15 tabulated.

16 THE COURT: Well, right. Exactly.

17 MR. BOND: From this day forward, we will  
18 segregate those. But we will need to have -- well,  
19 we'll segregate those. We'll send out the  
20 notification.

21 If the judges make a determination that it  
22 doesn't match, and the judges make that determination,  
23 not the poll watchers, and it's a discretionary act if  
24 they think it does or doesn't, but if they --

1 THE COURT: See. Now we're going back in a circle  
2 here.

3 MR. BOND: No. I'm just saying -- I just want --

4 THE COURT: I've already ruled, okay.

5 MR. BOND: I want clear direction for the election  
6 judges, Judge.

7 THE COURT: No. You're confusing the issue, quite  
8 frankly, okay. I think I was pretty clear on what I  
9 said several times now of what cannot be used to  
10 confirm signature, to follow the statute.

11 MR. KOZLOWSKI: Understood.

12 THE COURT: There's nowhere in this statute that  
13 says the application can be used to confirm the vote  
14 for mail-in ballot. And, again, to me it's quite  
15 obvious that if there is to be fraud, that would be how  
16 the fraud would be used. Anyone could come in and take  
17 a person's name and file an application, and then if  
18 it's fraudulent, and use that to compare in the ballot  
19 that they sign, that would be the area of fraud.

20 MR. BOND: Okay.

21 MR. KOZLOWSKI: Understood, Your Honor.

22 THE COURT: Now, what do we need to do for the  
23 future here?

24 MS. MAZZOCHI: Well, Your Honor, how -- this is



1 Ms. Mazzochi.

2 I would recommend that perhaps, once we have  
3 Your Honor's order entered, we can confer with Mr. Bond  
4 to see if we can reach an agreement in terms of  
5 protocol going forward, at the very least, in terms of  
6 instructing the election judges and the clerk's staff  
7 to make sure that they're not accessing the  
8 vote-by-mail applications.

9 THE COURT: Well, yeah. It's real clear.

10 MS. MAZZOCHI: Then we can go from there.

11 THE COURT: If any -- whoever is poll watching for  
12 either side, if they see the use of the mail-in  
13 application for mail-in ballot, then that would be  
14 against the Court order.

15 Other than that, do we need a future date?

16 MR. KOZLOWSKI: I do think a future date is wise,  
17 Your Honor. There are obviously -- there are a lot of  
18 other issues going on here. I would suggest that we  
19 come back for a status in seven days.

20 MR. BOND: Judge, we --

21 THE COURT: Why don't we come back after the votes  
22 are counted?

23 MR. BOND: Right. I think it would be after  
24 the -- if we come back after the close of the deadline

1 for --

2 THE COURT: Right. 14 --

3 MR. BOND: -- processing the certification, and  
4 that's the next -- next Tuesday. And the clerk would  
5 like an opportunity to file it's answer to the  
6 underlying injunctive complaint.

7 THE COURT: Sure.

8 MR. KOZLOWSKI: No objection to that either, Your  
9 Honor.

10 THE COURT: All right. All right. So we'll come  
11 back on Wednesday, or any day after that.

12 MR. KOZLOWSKI: And given the time sensitive  
13 nature of this, would Your Honor prefer that we draft  
14 the order in the room right now for entry --

15 THE COURT: Yes.

16 MR. KOZLOWSKI: -- or is this something --

17 THE COURT: Yes. So that we can --

18 MR. KOZLOWSKI: Very good.

19 THE COURT: Absolutely. And the clerk will call  
20 me when it's ready.

21 MR. KOZLOWSKI: Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Which were all of the proceedings had  
24 in the above-entitled matter.)

I, MARY FAILLO, certify the foregoing to be a true and accurate transcript of the computer based digitally recorded proceedings of the above-entitled cause to the best of my ability to hear and understand, based upon the quality of the audio recording, pursuant to Local Rule 1.03(c).

Mary Lailo

Official Court Reporter  
Eighteenth Judicial Circuit of Illinois  
DuPage County  
CSR License No. 084-004565

CASE NO. \_\_\_\_\_

**APPEAL TO THE THIRD DISTRICT APPELLATE COURT  
FROM THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

<b>Deanne Mazzochi,</b>	)	
	)	
<b>Petitioner-Candidate,</b>	)	
<b>v.</b>	)	<b>Case No. 2022 CH 000220</b>
	)	
<b>Jean Kaczmarek, in her official capacity as</b>	)	
<b>DuPage County Clerk and Election Authority</b>	)	
<b>for DuPage County, and Jean Ladisch</b>	)	
<b>Douglass,</b>	)	
	)	
<b>Defendants.</b>	)	

**DEFENDANT-APPELLANT'S NOTICE OF APPEAL  
PURSUANT TO IL S.CT. RULE 307(d)**

Defendant-Appellant, Jean Kaczmarek, in her official capacity as DuPage County Clerk and Election Authority for DuPage County, by and through her attorneys, Special Counsel, Bond, Dickson & Conway, and pursuant to Illinois Supreme Court Rule 307(d), hereby appeals from the interlocutory order of the Circuit Court, dated November 15, 2022, which Order denied the Defendant-Appellant's Motion to Dismiss brought on jurisdictional grounds, and granted, in part, Plaintiff-Appellee's Emergency Motion to Enforce Election Law by Temporary Restraining Order and Preliminary Injunction.

Defendant-Appellant is requesting that the Appellate Court reverse and vacate the interlocutory order entered on November 15, 2021, and remand the case to the Circuit Court with instructions that the case be dismissed.

**Jean Kaczmarek, in her official capacity as  
DuPage County Clerk and Election Authority  
for DuPage County**

By: *Mary E. Dickson (electronic signature)*

---

Mary E. Dickson, Special Counsel  
For the DuPage County Clerk's  
Election Division

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## 2022 CH 220 093

### **CERTIFICATE OF SERVICE**

The undersigned non-attorney served the individuals set forth herein via electronic mail on November 17, 2022, to the address provided therefore. Under penalties as provided by law pursuant to Section 1-109 of the Civil Code of Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Anna Oliveira (electronic signature)

Anna Oliveira

### Service List

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