

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DuPAGE COUNTY, ILLINOIS

JANET L. SHAW,)	
)	
Plaintiff,)	
)	
v.)	No.
)	
COMMUNITY UNIT SCHOOL)	
DISTRICT 200, a school district)	
located in DuPage County, Illinois,)	
)	
Defendant.)	

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT,
MANDAMUS, AND INJUNCTIVE RELIEF

NOW COMES the Plaintiff, JANET L. SHAW, and for her Verified Complaint against
COMMUNITY UNIT SCHOOL DISTRICT 200 (the “***District***”), states and alleges as follows:

INTRODUCTION

Plaintiff is a resident of the District. Plaintiff owns real property in the District for which she pays property taxes to various taxing bodies, including the District. She is also a registered voter who is legally qualified to vote in referenda submitted by the District.

The District wants to build a new school building. Illinois law requires that when a school district desires to build a new school building or to borrow money for that purpose, it must first obtain voter approval to do so, through the referendum process. The School Board of the District (the “***Board***”) acknowledged as much when it twice sought (but failed to receive) voter approval for authority to construct and fund a new early childhood school building. In April 2013, the Board sought voter approval to build a new early childhood school building; that referendum was defeated. Again in April 2017, the Board sought permission to build a new early childhood school building as part of a much larger spending package; that referendum was also defeated. Yet, after the voters twice rejected (by significant margins) the District’s proposals to construct

and fund a new school building, the Board did not withdraw its plans, nor submit the project for another referendum. The Board did not comply with the will of District voters expressed in the two referenda. Instead, the Board sought to do the exact same thing the voters twice rejected – borrow money and build a new building – by calling its construction and purchase of a new school building a “lease” and by calling its borrowing documents “lease certificates” instead of “bonds.” This is a transparent attempt to place form over substance to evade the plain meaning of the law.

The District’s actions violate the provisions of the Illinois School Code, as amended, 105 ILCS 5/1-1 *et seq.* (the “**School Code**”). Its actions are therefore *ultra vires* and void.

Plaintiff requests that this Court (1) declare that the provisions of 105 ILCS 5/19-3 and 5/10-22.36 apply to the building of the new school, (2) declare that the results of the April 9, 2013 and April 4, 2017 referenda are binding upon the District with respect to the construction of a new preschool building by any means; and (3) issue a *mandamus* directing the District to comply with the requirement of submitting to a referendum the question of whether a new school building should be constructed, and whether general obligation bonds should be issued for the purpose of financing the building of a new school, in the form required by the School Code for such ballot questions. Plaintiff further requests that this Court (4) enjoin the District from issuing lease certificates or any other indebtedness for the purpose of constructing, or financing the construction of, a new school building without referendum approval, (5) enjoin the District from proceeding with making any further payments with respect to, or entering into contracts to expend any further funds in furtherance of, the building of a new school until it receives voter approval, and (6) if the District issues any lease certificates or indebtedness for purposes including building or using a new school without voter approval, order that the proceeds thereof be held in escrow; in each case until and unless the matter has been submitted to and approved by the voters through a referendum.

THE PARTIES

1. Plaintiff Janet L. Shaw resides at 2265 Durham Drive in the City of Wheaton, Illinois, owns real estate located at 2265 Durham Drive within the boundaries of Community Unit School District 200 (the “***District***”) on which she is obligated to pay property taxes, is therefore a taxpayer of the District, pays taxes to the District, and is a registered voter eligible to vote in a referendum submitted by the District.

2. The Plaintiff voted in the April 2013 and April 2017 elections at which the voters of the District rejected the District’s request to build a new school building.

3. The Plaintiff is adversely impacted by the District’s current failure to follow the School Code provisions that require submitting the question of authority to construct a new school building, expend District funds thereon, and levy taxes to pay for such construction, to a referendum, and obtaining voter approval for such actions.

4. Currently approximately 67.26% ± of the taxes paid by Plaintiff on her 2017 property tax bill for Parcel No. 05-34-109-024 go to the Defendant.

5. The proposed actions by the District described herein will increase the tax burden on the Plaintiff and/or decrease educational opportunities for children in District 200, causing direct harm though a diminution of Plaintiff’s property value. The District has entered into an “Agreement providing for the lease of an Early Childhood Center building by Community Unit School District Number 200, DuPage County, Illinois and the establishment of an escrow account in connection therewith” dated as of April 13, 2018 (hereinafter the “***Lease***”), a copy of which is attached hereto as **Exhibit A**. The payments under the Lease are direct general obligations of the District (Lease, Section 3.03), and to pay them, a tax levy will be imposed on the taxpayers of the District, including Plaintiff. The District has conceded that increased taxes will be required and/or

that educational opportunities will be decreased, based on the Board's specific finding on March 14, 2018 that "there are insufficient funds on hand and available to pay the costs of the [proposed] Building" (Resolution authorizing and providing for a lease agreement for the purpose of building and equipping a new Early Childhood Center in and for Community Unit School District Number 200, DuPage County, Illinois, adopted March 14, 2018 by the Board (the "**2018 Resolution**"), a copy of which is attached hereto as **Exhibit B**). If the District has insufficient funds it must either raise taxes, cut services, or both. As stated in "Overview of Lease Certificate Funding Options for Jefferson ELC," presented by PMA Securities to the Board on January 17, 2018 (the "**January 2018 PMA Presentation**"), a copy of which is attached hereto as **Exhibit C**, the proposed "Lease" "could squeeze other operating expenditures over time."

6. Plaintiff objected to the proposed actions at various times including, *inter alia*, by email of March 14, 2018 directed to the Board, a copy of which is attached hereto as **Exhibit D**.

7. The Defendant is a school district in the State of Illinois operating under and pursuant to the School Code of the State of Illinois, as amended (105 ILCS 5/1-1 *et seq.*).

8. The County of DuPage, Illinois, is the only county within which the District is located.

9. The present officials of the District are as follows: Jim Vroman, President, Board of Education; Brad Paulsen, Vice President, Board of Education; Chris Crabtree, Secretary, Board of Education; Ginna Ericksen, Member, Board of Education; Jim Gambaiani, Member, Board of Education; Rob Hanlon, Member, Board of Education; and Jim Mathieson, Member, Board of Education.

FACTS COMMON TO ALL COUNTS

I. Illinois Law Requires a Referendum to Build a New School and to Borrow Money for That Purpose

10. Section 5/19-3 of the School Code explicitly requires the authorization of a majority of the voters when a school board seeks to borrow money to build school buildings. It provides in relevant part:

Any school district governed by a board of education ... may borrow money for the purpose of building, equipping, altering or repairing school buildings... *but no such bonds shall be issued unless the proposition to issue them is submitted to the voters of the district at a referendum held at a regularly scheduled election after the board has certified the proposition to the proper election authorities in accordance with the general election law, a majority of all the votes cast on the proposition is in favor of the proposition.* (emphasis supplied)

11. 105 ILCS 5/10-22.36, entitled “Buildings for School Purposes”, also explicitly requires approval of a majority of the voters at a referendum to build or purchase a building for school classroom or instructional purposes. It states in relevant part:

To build or purchase a building for school classroom or instructional purposes upon the approval of a majority of the voters upon the proposition at a referendum held for such purpose or in accordance with Section 17-2.11, 19-3.5, Or 19-3.10 [105 ILCS 5/17-2.11, 105 ILCS 5/19-3-3, or 105 ILCS 5/19-3.10]. The board may initiate such referendum by resolution. The board shall certify the resolution and proposition to the proper election authority for submission in accordance with the general election law.

The questions of building one or more new buildings for school purposes or office facilities, and issuing bonds for the purpose of borrowing money to purchase one or more buildings or sites for such buildings or office sites, to build one or more new buildings for school purposes or office facilities or to make additions and improvements to existing School buildings, may be combined into one or more propositions on the ballot. ...

Notwithstanding any of the foregoing, no referendum shall be required if the purchase, construction, or building of any such building (1) occurs while the building is being leased by the school district or (2) is paid with (A) funds derived from the sale or disposition of other buildings, land, or structures of the school district or (B) funds received (i) as a grant under the School Construction Law [105 ILCS 230/5-1 et seq.] or (ii) as gifts or donations, provided that no funds to purchase, construct, or build such building, other than lease payments, are derived

from the district's bonded indebtedness or the tax levy of the district.
[emphasis supplied]

12. Sections 5/19-3 and 5/10-22.36 of the School Code explicitly set forth the requirements for borrowing money and issuance of debt for the building of a new school as proposed by the Board.

13. The notwithstanding clause part (1) of 105 ICLS 5/10-22.36 (hereinafter the “*Lease Exception*”) (which provides that “*no referendum shall be required if the purchase, construction, or building of any such building (1) occurs while the building is being leased by the school district*”) does not apply for the reasons set forth hereinbelow.

II. The Voters of the District Have Twice Rejected the Board's Plan to Build a New School, and these Referenda Bind the District.

14. On January 9, 2013, the Board adopted its “RESOLUTION providing for and requiring the submission of the proposition of issuing School Building Bonds to the voters of Community Unit School District Number 200, DuPage County, Illinois, at the consolidated election to be held on the 9th day of April, 2013” (the “*2013 Resolution*”), a copy of which is attached hereto as Exhibit E, seeking voter approval for the construction of a new early childhood school building. At that time, according to the January 9, 2013 meeting minutes, the Board determined that “Since funds are not available for this purpose, it will be necessary to borrow money through the issuance of bonds.”

15. On April 9, 2013, the voters of the District rejected the referendum placed on the ballot by the 2013 Resolution, by a vote of 59.34% NO to 40.66% yes (the “*2013 Referendum*”).

16. On January 11, 2017, the Board adopted its “RESOLUTION providing for and requiring the submission of the proposition of issuing School Building Bonds to the voters of Community Unit School District Number 200, DuPage County, Illinois, at the consolidated

election to be held on April 4, 2017” (the “**2017 Resolution**”), a copy of which is attached hereto as **Exhibit F**, seeking voter approval for, *inter alia*, the construction of a new early childhood school building. At that time, according 2017 Resolution, the Board again determined that “Since funds are not available for this purpose, it will be necessary to borrow money through the issuance of bonds.” According to the meeting minutes of the January 11, 2017 Board meeting, a copy of which is attached hereto as **Exhibit G**, the Board discussions prior to adopting the 2017 Resolution included the statement that “This is all about giving the community their chance to vote” (**Exhibit G**, page 6).

17. On April 4, 2017, the voters of the District had their chance to vote, and they rejected the referendum placed on the ballot by the 2017 Resolution, by a vote of 54.41% NO to 45.59% yes (the “**2017 Referendum**”).

18. On April 12, 2017, the Board discussed “The need for the Board to determine the strategy going forward – another possible referendum or living and operating with the outcome of this election as a final decision and how we can make that work.” Meeting minutes of the April 12, 2017 Board meeting (page 8), a copy of which is attached hereto as **Exhibit H**.

19. Even if the “lease” structure proposed by the Board were otherwise permissible under Illinois law, where the voters of the District have spoken (twice) in a binding referendum regarding the construction of a specific school building, such referendum is and remains binding upon the District. According, the results of the 2013 and/or 2017 Referenda prohibit the District from constructing the new school building by any means, unless and until a subsequent referendum overturns the result.

III. The Lease Exception Does Not Apply Because the District's Proposed "Lease" Is a Disguised Bond Sale

20. After twice failing to obtain voter approval to borrow money and construct a new school building, the District is now proceeding to borrow money and construct a new school building (the "**Project**") without voter approval.

21. On or about March 14, 2018, the Board adopted the 2018 Resolution "authorizing and providing for a lease agreement for the purpose of building and equipping a new Early Childhood Center in and for Community Unit School District Number 200, DuPage County, Illinois". The 2018 Resolution was adopted by the Board by a vote of 7-0.

22. The findings of the 2018 Resolution, in the first through fourth Whereas clauses, are essentially identical to those made by the District on January 9, 2013, when it approved the 2013 Resolution for a referendum to issue bonds and build, and on January 11, 2017, when it approved the 2017 Resolution for a referendum to issue bonds and build: that a new building is needed and that "there are insufficient funds on hand and available to pay the costs of the Building".

23. The 2018 Resolution contemplates that the District will issue "Lease Certificates" – a form of debt – to pay its obligations under the Lease. A form of opinion of bond counsel approving such indebtedness was circulated as part of the February 14, 2018 Board meeting packet. A copy of such draft opinion (the "***Proposed Lease Certificate Opinion***") is attached hereto as **Exhibit I**.

24. The stated purpose of the 2018 Resolution was "for the purpose of building and equipping a new Early Childhood Center" – equivalent to the wording of the 2013 Resolution and to the wording of the 2017 Resolution, scheduling the 2013 Referendum and the 2017 Referendum, respectively.

25. On January 17, 2018, the Board was presented with the January 2018 Presentation, billed as an “Overview of Lease Certificate Funding Option for Jefferson ELC”. It described a scenario where “The District finances the new building” by entering into a “lease” (**Exhibit C**, Slide 3); the lease term of 10 to 20 years is to be determined not based on the useful life of the building, nor the educational requirements of the District, but “to minimize the annual payment against the total amount of debt service paid.” (**Exhibit C**, Slide 7)

26. The District has not obtained a legal opinion that the procedure it is following complies with Illinois law. In response to Plaintiff’s Freedom of Information Act request on March 20, 2018 for “a copy of the legal opinion regarding section (105 ILCS 5/10-22.36) of the school code substantiating Dr. Schuller’s claim that a referendum is not required if a new building is ‘leased’ for 20 years including an initial payment made in advance of the building being built, then purchased for \$1.00 at the end of the lease”, the District stated that “There are no documents responsive to your request.” Email of Robert Rammer to Janet L. Shaw dated March 27, 2018, 6:36 a.m. (the “***March 27 FOIA Response***”), a copy of which is attached hereto as **Exhibit J**. Because at the time of the March 27 FOIA Response the District already had the Proposed Lease Certificate Opinion (which was circulated as part of the February 14, 2018 Board meeting packet), the District thereby conceded, in the March 27 FOIA Response, that the Proposed Lease Certificate Opinion does not address or authorize the District to engage, without referendum approval, in a transaction where “a new building is ‘leased’ for 20 years including an initial payment made in advance of the building being built, then purchased for \$1.00 at the end of the lease”.

IV. The Lease Exception Does Not Apply Because the District is Not Leasing an Existing Building

27. The Lease Exception to the referendum requirement (“no referendum shall be required if the purchase, construction, or building of any such building (1) occurs *while the*

building is being leased by the school district”) does not apply because the District is not leasing an existing building.

28. The Lease, Section 2.02, states that the Lease Term commences April 13, 2018. As of that date, there was no building to lease, no building to purchase, and no building being constructed.

29. The Lease Exception was added to the School Code by Senate Bill 1035. The legislative history from its adoption, IL H.R. Tran. 2001 Reg. Sess. No. 50 (May 1, 2001) includes the following colloquy, in relevant part [*emphasis supplied*]:

Rep. Black: “But there’s a provision in this Bill that, quite frankly, I don’t understand. And I want to make sure that we’re not doing something that the voters, in fact, may not want us to do. Tell me if I’m right or wrong. If a school district ***is leasing or renting a building for instructional purposes and decide to go ahead and purchase or remodel or, in other words, take title of that building, they can do so without a referendum by the voters.*** Now, there’s something that doesn’t compute there. What am I missing?” ... I want to make sure, Representative, that we’re not circumventing the right of the voters to say, ‘I don’t think that you ought to buy that building.’”

Rep. Crotty: “That is not in the Bill. When we’re talking about leasing, many school districts ***lease a building maybe for a dollar an hour*** just to be sure that that is not something that needs to be done with referendum. So, we’re not changing that part. And if there are added dollars needed for a school district, they most definitely have to still go through referendum. ... That part isn’t being changed.”

Rep. Black: “All right. And it further then, from what staff tell me, it further tightens up so that ***you cannot use the proceeds from a bond issue*** that you... maybe you sold bonds and the high school came in cheaper than was expected. So, you can’t take your bond fund that’s got a \$180 thousand maybe left in it and say, hey, we’ll just use this to apply towards the purchase of this building that we’ve been using as a grade school and that’s a good deal, too. So, they can’t do that either.”

Crotty: “No, they cannot.”

...

Rep. Mitchell, J.: “Thank you, Mr. Speaker. I rise in support of the Lady’s Bill. This is a good Bill and it is exactly as the two colleagues discussed just now. One of the things that it will do is ***if a school district has decided to purchase a building, was leasing it, will then put it under the health life safety standards***, so that we won’t have children in a building that does not answer those health life safety items that have to be in any

educational facility. So, for that reason alone, I certainly think this is a Bill that should pass. Thank you, Mr. Speaker.”

30. The legislative history as well as a plain reading of the statute clearly indicates that the purpose of the exception is to allow a district that is *already leasing* an *existing* building either to buy the building (“purchase ... of any such building”) or to make life safety improvements to the building while it is being leased (“construction, or building of any such building”).

31. Neither the legislative history nor the plain reading of the statute supports the District’s position here: that the District can have a building constructed from scratch or “built to suit” without referendum, merely by calling its transaction a “lease”.

V. Even if the District’s Proposal Is Otherwise Permissible, the Lease Exception Requires that a True Lease Exist; the Proposed Lease is Not a True Lease

32. The Lease Exception to the referendum requirement (“no referendum shall be required if the purchase, construction, or building of any such building (1) occurs *while the building is being leased by the school district*”) does not apply because the District’s proposed financing arrangement is not in fact a lease under Illinois law.

33. A purported lease transaction is in fact a naked borrowing/financing arrangement, and not a lease within the meaning of Illinois law, where the purported tenant retains all incidents of ownership. In fact, the Lease is deliberately structured to maintain sufficient incidents of ownership such that the Project will remain exempt from taxation.

34. The purported Lease contains the following provisions (references are to sections of the Lease):

- a. The lease term commences prior to the date the leased premises are constructed (2.02);
- b. The lease can be cancelled if Lease Certificates are not issued (2.03);
- c. The lease cannot be cancelled even if the building is not completed or does not comply with the Plans and Specifications (2.03a), if the building is destroyed or

condemned (2.03b), if there is a title defect interfering with the use of the property (2.03c), if the Lessor fails to perform all or any of its obligations (2.03d), or if the Lessor lacks authority to enter into the lease (2.03e);

- d. The Lessee's obligations continue after the term of the lease until payment of the Lease Certificates (2.04);
- e. The building can be purchased for \$1 at lease end (2.05, 13.01);
- f. The District as tenant covenants that the lease payments are a general obligation of the District (3.03a), to appropriate funds to make such payments (3.03b), and to continue to make payments even if the Lessor defaults (3.03d);
- g. The District is obligated to borrow money to pay the cost of constructing the project, such that the purported landlord has no funds at risk (4.06);
- h. The building although purportedly "owned" by the Lessor, is intended to be treated as actually owned by the District (7.01a).
- i. The District as tenant can alter or improve the building without Lessor's consent (8.01);
- j. There is no rent abatement if the building is destroyed (9.01a);
- k. The District as tenant can without Lessor's consent grant easements and rights of way on the property (11.03a), or sell, abandon, or destroy the property (11.03b); and
- l. The District retains ownership of the underlying land, and title to the building "is vested in the Lessor solely for the purposes of effectuating the terms and provisions of this Lease" (13.02), *e.g.*, there is no intention to transfer beneficial ownership.

35. Indeed, as stated in an email from Bob Lewis to William Farley on February 15, 2018, "The District will own the land on which the Building is constructed through the term of the lease, and will have full and absolute right to use, control and possess the Building throughout the lease as if the District owned the Building." A copy of the email is attached as

Exhibit K.

36. If the "Lease Exception" wording in the School Code is to be given any meaning at all, it must refer to an arrangement that is actually a lease. The statute advisedly uses the word "leased" rather than "built to suit" or equivalent words. The purported Lease is simply a build to

suit purchase agreement with the title of “lease” but none of the substance. The purported Lessor bears no financial risk and has no real obligations. The only risk falls upon the purchasers of the “lease certificate” bonds – and upon the District taxpayers such as Plaintiffs who must pay for them. The taxpayers aren’t even guaranteed a building that is completed, or complies with life safety requirements (Lease, section 2.03).

VI. Current Status

37. On information and belief the Board has obtained architectural plans and taken other substantial steps toward the construction of a new school, pursuant to the 2018 Resolution, and has expended and/or committed to expend tax monies toward the cost thereof.

38. On information and belief the Board intends to issue Lease Certificates to finance all or a substantial portion of the cost of the building of a new school.

39. On information and belief the Board has not sold its Lease Certificates and has not commenced construction work on the building of a new school.

40. The financing of the Lease and the building of a new school are subject to the requirements set forth in 105 ILCS 5/19-3 and 5/10-22.36 of the School Code, and particularly the requirements for obtaining the consent of the voters of the District through a referendum.

41. Contrary to the requirements of Sections 5/19-3 and 5/10-22.36, the District has not submitted the question of whether the District should issue debt to fund the building of a new school to the voters of the District as required by law.

42. The proposed actions of the Board to issue the debt, enter into the Lease, and commence construction are *ultra vires*.

43. The failure of the Board to submit the question to a referendum violates the due process rights of the Plaintiff and of the voters of the District who have twice spoken on this matter through binding referenda.

44. On many occasions, including but not limited to March 14, 2018, Plaintiff advised the Board, orally and in writing at public meetings, that the actions the Board intended to take violated the School Code, Plaintiff's due process rights and that such acts are *ultra vires* and void. A copy of the email provided to each member of the Board is attached as **Exhibit D**.

45. Plaintiff has specifically requested the Board, orally and in writing, to submit the question of issuing debt and constructing a new school to a referendum.

46. The Board has refused to submit the question to the voters through a referendum. Instead, it has taken the steps outlined above to move forward with the purported Lease and Lease Certificate financing.

47. The Board has refused and will continue to refuse to comply with the aforesaid requirements of the Illinois School Code, Plaintiff has exhausted all remedies available to her and now brings this lawsuit to enjoin the Board from continuing to violate the Illinois School Code.

48. The Board's actions and contemplated actions represent an effort to place form over substance, as though by using the magic word "lease" its two failed referendum efforts and the will of the community are somehow erased, and it can proceed in an identical manner as if a referendum had been adopted by the community to build and finance a new school.

49. If the Board's actions are allowed to proceed, the requirements of 105 ILCS 5/19-3 will effectively be rendered a nullity, as any type of construction project can be dressed up as a "lease" to avoid such requirements. This is contrary to the principle that all statutory language is to be given its ordinary meaning and read *in pari materia*.

50. If the Board's actions are allowed to proceed, permanent and irreparable harm will be suffered by Plaintiff and all those in the community whose votes have been disregarded, and

who are not only denied the right to vote again upon the proposed building and borrowing, but saddled with the District's general obligation covenant to repay it.

COUNT I

(Declaratory Judgment Violation of the Illinois School Code)

51. 1-50. Plaintiff repeats and realleges Paragraphs 1-50 as though fully set forth herein.

52. The Board's refusal to submit the question of financing the Project and financing the building of a new school by issuing debt without submitting the proposition to the voters at a referendum, and in opposition to the expressed will of the voters in two prior referenda on the same topic, violates the School Code.

53. 105 ILCS 5/19-3, and 5/10-22.36 require, *inter alia*, that a condition precedent to a school district borrowing money for the purpose of building a new school is that the Board must submit the proposition to the voters of the district at a referendum held at a regularly scheduled general election.

54. To permit the District to sell such bonds to finance the Project and the building of a new school without submitting the question to a referendum, and in opposition to the expressed will of the voters in two prior referenda on the same topic violates the School Code and violates the due process rights of Plaintiff.

55. Plaintiff suffers real and substantial injury by virtue of these violations of the School Code.

56. The acts of the Defendant are *ultra vires*.

57. By virtue of the foregoing, a real and substantial controversy exists between the Plaintiff and Defendant, and pursuant to the provisions of 735 ILCS 5/2-701 of the Illinois Code

of Civil Procedure, it is just and proper that this Court enter a declaratory judgment setting forth the rights of the parties herein.

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Declare that Sections 5/19-3, and 5/10-22.36, and the results of the 2013 and 2017 Referenda, apply to the Board's proposal to finance the Project and to build a new school;
- B. Declare that the Board is required to submit the question of financing the Project and financing the building of a new school to a referendum at a general election; and
- C. Grant Plaintiff such other and further relief as the Court deems just and proper.

COUNT II

(Injunctive Relief)

58. 1-50. Plaintiff repeats and realleges Paragraphs 1-50 as though fully set forth herein.

59. Plaintiff has certain and clearly ascertainable rights that need protection by virtue of being a taxpayer in the District and by virtue of being registered to vote in the District.

60. The tax burden to Plaintiff from the proposed financing plan of the District is substantial. If Plaintiff fails to pay this tax, her property could be foreclosed.

61. Plaintiff falls within the group of people specifically protected by the state legislature when it adopted the requirements in Sections 5/19-3 and 5/10-22.36 of the School Code requiring that propositions like the one made by the District be submitted to the voters of the District.

62. By virtue of the School Code, and by virtue of being subject to the additional tax, Plaintiff has a protectable interest in insisting that the requirements of the School Code, and the expressed will of the voters in two prior referenda on the same topic, be followed.

63. Plaintiff is threatened with irreparable harm if injunctive relief is withheld. If the District is not enjoined from submitting the proposition of financing the Project and financing the building of a new school through the sale of debt to a referendum, a tax will be levied on Plaintiff in derogation of the specific requirements of state statute due to the general obligation covenant.

64. Plaintiff lacks an adequate remedy at law, since once the bonds are issued and the monies are disbursed, Plaintiff will be subject to this additional tax which cumulatively amounts to thousands of dollars of additional tax liability without the benefit of having had the question of incurring this additional tax obligation submitted to the voters through a referendum.

65. Plaintiff has established, by virtue of the expressed provisions in the School Code, a likelihood of success on the merits and it is likely that Plaintiff will succeed at trial on the merits.

66. The balancing of harm supports the entry of injunctive relief in Plaintiff's favor inasmuch as an order will maintain the *status quo*.

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Enjoin the Board preliminarily and permanently from financing the Project and financing the building of a new school by issuing lease certificates or any form of debt for the leasing, financing, construction, building, and/or purchase of any school building, until the question has been submitted to the voters in Community Unit School District No. 200 at a referendum;

B. Enjoin the Board from spending any more money on the Project and the building of a new school until the requirements of Sections 5/19-3 and 5/10-22.36 of the School Code have been complied with; and

C. If the District issues any lease certificates or indebtedness for purposes including building or using a new school, order that the proceeds thereof be held in escrow; in each case until the question has been submitted to the voters through a referendum; and

D. Grant Plaintiff such other and further relief as the Court deems just and proper.

COUNT III

(Writ of Mandamus (735 ILCS 5/14-101))

67. As and for Paragraph 67 of this Count III, Plaintiff adopts and incorporates Paragraphs 1-50 as if fully set forth herein.

68. Defendant is responsible for implementing the requirements of the School Code.

69. There exists a clear duty of the Defendant to comply with the requirement of Section 19-3 to obtain the authorization of a majority of the votes cast on the proposition to borrow money and issue bonds for the purpose of building a new school, where for the reasons aforesaid the Project is not in fact a lease and cannot be financed with Lease Certificates.

70. There exists clear authority to compel the Defendant to comply with the provisions of the School Code. Particularly, 105 ILCS 5/19-3 requires the Defendant to submit to the voters of the district the proposition to issue bonds for this purpose at a referendum held at a regularly scheduled election before issuing such bonds, as it did on two prior occasions.

71. The action of Defendant, in failing to submit the proposition to the voters of the district through a referendum, deprives Plaintiff of rights conferred by statute and the Constitution.

72. Plaintiff has a clear legal right to compel the Defendant responsible for implementing 105 ILCS 5/19-3, and 5/10-22.36, to do what the law requires: to hold a referendum.

73. Defendant has failed or refused to comply with requirements imposed by the School Code.

74. No exercise of discretion on the part of the Defendant is involved. The Defendant has previously requested referendum authority for such action, twice, and can do so again.

75. By virtue of the foregoing, the requirements for a writ of mandamus have been satisfied. The Plaintiff has a clear, affirmative right to relief.

76. There is clear duty of the Defendant to act.

77. There is clear authority in the Defendant to comply with the writ.

78. Accordingly, Plaintiff requests that this Court issue a writ of *mandamus* ordering the Defendant to comply with statutory requirements regarding submitting the proposition to the voters of the District by referendum.

WHEREFORE, for the foregoing reasons, the Plaintiff respectfully requests that this Court:

A. Issue a writ of mandamus directing Community Unit School District No. 200 to comply with statutory requirements regarding obtaining the authorization of a majority of the votes cast on the proposition to borrow money and issue bonds for the purpose of building or repairing schoolhouses before issuing any debt;

B. Award Plaintiff its costs; and

C. Grant such other and further relief as this Court deems just and equitable.

Respectfully submitted,

JANET L. SHAW, Plaintiff

By: Janet L Shaw 8/5/2018

Janet L. Shaw
2265 Durham Drive
Wheaton, IL 60189
630-690-6032
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VERIFICATION

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the above signed certifies that the statements set forth herein are true and correct to the best of her knowledge, information, and belief.

Janet L Shaw 8/5/2018
Janet L. Shaw

LIST OF EXHIBITS

- A. Agreement providing for the lease of an Early Childhood Center building by Community Unit School District Number 200, DuPage County, Illinois and the establishment of an escrow account in connection therewith” dated as of April 13, 2018
- B. Resolution authorizing and providing for a lease agreement for the purpose of building and equipping a new Early Childhood Center in and for Community Unit School District Number 200, DuPage County, Illinois, adopted March 14, 2018 by the Board
- C. Overview of Lease Certificate Funding Options for Jefferson ELC,” presented by PMA Securities to the Board on January 17, 2018
- D. Janet L. Shaw March 14, 2018 email
- E. Resolution providing for and requiring the submission of the proposition of issuing School Building Bonds to the voters of Community Unit School District Number 200, DuPage County, Illinois, at the consolidated election to be held on the 9th day of April, 2013
- F. Resolution providing for and requiring the submission of the proposition of issuing School Building Bonds to the voters of Community Unit School District Number 200, DuPage County, Illinois, at the consolidated election to be held on April 4, 2017
- G. Meeting minutes of the January 11, 2017 Board meeting
- H. Meeting minutes of the April 12, 2017 Board meeting
- I. Proposed form of opinion of bond counsel approving indebtedness, circulated as part of the February 14, 2018 Board meeting packet
- J. Email from Robert Rammer to Janet L. Shaw dated March 27, 2018
- K. Email from Bob Lewis to William Farley on February 15, 2018