

**IN THE CIRCUIT COURT FOR THE TWENTY-FIRST JUDICIAL CIRCUIT
KANKAKEE COUNTY, ILLINOIS**

JACOB M. LEE, KANKAKEE
COUNTY AUDITOR,
Plaintiff,

vs.

COUNTY OF KANKAKEE,
ILLINOIS, an Illinois municipal
corporation, KANKAKEE COUNTY
BOARD, an Illinois local government
body, ANDREW H. WHEELER, in his
official capacity as Chairman of the
Kankakee County Board,
Defendants.

Gen. No. 2020MR302

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT & MANDAMUS

NOW COMES Plaintiff, JACOB M. LEE, KANKAKEE COUNTY AUDITOR (hereinafter “Auditor” or “Plaintiff”), by and through his appointed Special Prosecutors, DeKalb County State’s Attorney Rick Amato and Assistant State’s Attorney David Berault of the DeKalb County State’s Attorney’s Office, and for Plaintiff’s Complaint for Declaratory Judgment and Mandamus against the Defendants COUNTY OF KANKAKEE, ILLINOIS, an Illinois municipal corporation, KANKAKEE COUNTY BOARD, an Illinois local government body and ANDREW H. WHEELER, in his official capacity as Chairman of the Kankakee County Board (collectively referred to as “Defendants”), states as follows:

I. INTRODUCTION

1. Plaintiff Jacob “Jake” Lee was elected to the office of Kankakee County Auditor on November 8, 2016 in an election estimated to have 73.71% voter turnout by

the Kankakee County Clerk¹. In that election he was opposed by Deborah E. Woodruff for the position, and prevailed at the ballot box. However, since that time Plaintiff has been continuously prevented from fully staffing the office of County Auditor and performing his statutory duties without interference by the Kankakee County Board, and other Kankakee County Officials. Because of the ongoing dispute between the Kankakee County Board and Plaintiff Jake Lee, the Court appointed Special Prosecutors to represent the parties. Since that time, counsel have attempted to come to a resolution that restores the office and powers of the Auditor, but such attempts have not succeeded, necessitating the filing of this action seeking assistance of the Circuit Court.

2. There is no constitutional, statutory or common law legal authority that would allow for the Kankakee County Board, or its officers, employees and agents, to alter the statutory duties of elected officials such as the Auditor. In fact, 55 ILCS 5/5-1087 expressly states that, “[n]o county board may alter the duties, powers and functions of county officers that are specifically imposed by law.”
3. It is also well settled law that county boards within the State of Illinois, cannot exercises powers unless expressly granted to them by the legislature or unless they arise therefrom by necessary implication. *Redmond v. Novak*, 86 Ill. 2d 374, 382 (1981).
4. However, even with these direct, and controlling, laws governing the behavior of Defendants towards their elected officials, the Defendants have balked at

¹ See <https://results.enr.clarityelections.com/IL/Kankakee/64640/184155/Web01/en/summary.html>.

vesting Plaintiff with the duties, and the means to execute them, as the law demands. Instead, they have engaged in a relentless course of conduct to not only remove the powers of the County Auditor, but to then transfer such powers to other officials, including a Finance Director who is acting as the internal auditor and accountant in place of Plaintiff. This is usurpation and is an infringement on the law.

5. Because of this ongoing dispute, it is necessary for the Kankakee County Auditor to seek this Court's intervention to declare the present financial policies of the County to be in contravention of the law, to establish that the office of Auditor is being improperly interfered with and effectively occupied by other county officials, and otherwise cease the interference with Plaintiff executing the lawful duties and obligations of the Kankakee County Auditor.

II. THE PARTIES AND VENUE

6. Plaintiff Jacob "Jake" Lee is the duly elected Kankakee County Auditor, whose government office is located at 189 E. Court Street, 4th Floor, Kankakee, Illinois.
7. Defendant Kankakee County Board is an Illinois local government body located at 189 E. Court Street, Kankakee, Illinois.
8. Defendant County of Kankakee is and an Illinois municipal corporation located at 189 E. Court Street, Kankakee, Illinois.
9. Defendant Andrew H. Wheeler is the present, and at all relevant times, Chairman of the Kankakee County Board, at 189 E. Court Street, Kankakee, Illinois and is being named in his official capacity.

10. This Court has personal jurisdiction over Defendants pursuant to 735 ILCS 5/2-211.

11. Venue is proper under 735 ILCS 5/2-103, because the principal office of the Defendant municipal corporation, remaining Defendants and the Plaintiff are within the County of Kankakee, Illinois. Further, under 735 ILCS 5/2-101 venue is proper because the acts from which the cause of action arise are in the County of Kankakee, Illinois.

III. FACTS GIVING RISE TO CAUSE OF ACTION

A. The Office of County Auditor

12. This legal dispute is rooted in questions of law, and in particular, questions as to the Constitutional and statutory mandates placed upon the parties at issue. Because of this, Exhibit 1 is comprised of the statutory and Constitutional references made in this Complaint.

13. The U.S. Census Bureau has provided a 2019 estimated population of 109,862 for Kankakee County². With that understood, pursuant to 55 ILCS 5/3-1001, the creation of the Office of County Auditor is outlined by the Illinois Legislature as follows:

“In all counties containing less than 3,000,000 and over 75,000 inhabitants by the last federal census, there is created the office of county auditor, whose term of office shall be 4 years and until his successor is elected and qualified. The nomination and election shall be subject to the general election laws of the State. Each county auditor shall take office the first day of the month following the month of his election on which the office of the

² See <https://www.census.gov/quickfacts/fact/table/kankakeecountyillinois/PST045219>. Pursuant to cases such as *In re Marriage of Aud*, 142 Ill. App. 3d 320, 325 (5th Dist. 1986), the Court may take judicial notice of census materials.

county auditor is required, by statute or by action of the county board, to be open. The qualifications and oath of office shall be the same as apply to other county officers. Each county auditor shall, before entering upon the duties of the office, give bond (or, if the county is self-insured, the county through its self-insurance program may provide bonding) in such penalty and with such security as the county board deems sufficient, which bond shall be substantially in the form required by law to be given by the county clerk. Such bond shall be filed with the county clerk on or before the day the county auditor takes office. In case of a vacancy in the office of county auditor caused by death, resignation, or removal from office, the vacancy shall be filled as provided for filling vacancies of other county offices. If the auditor is temporarily unable to perform his or her duties for any reason, the deputy auditor, if there is one, shall assume the duties of the auditor until the auditor is able to resume his or her duties or until a replacement for the auditor is chosen.” *55 ILCS 5/3-1001*

14. There is no known dispute, or basis for dispute, as to the application of 55 ILCS 5/3-1001 and/or the proper election and holding of said office by Plaintiff Jake Lee.

15. The duties of the County Auditor, in Kankakee and elsewhere are provided in part as follows:

“The duties of the county auditor **shall** be to:

- (a) Audit all claims against the county, and recommend to the county board the payment or rejection of all claims presented.
- (b) Collect, analyze and preserve statistical and financial information with respect to the cost of operation of the various institutions and facilities maintained, operated or owned by the county.
- (c) Approve all orders for supplies issued by the various county officers, before the orders are to be placed with the parties to whom the same are to be given.
- (d) Maintain a file of all contracts entered into by the county board and all authorized county officers, for or on behalf of the county.

- (e) Report quarterly to the county board the entire financial operations of the county including revenues anticipated and received, expenditures estimated and paid, obligations unpaid, the condition of all funds and appropriations and other pertinent information. The county auditor shall cause to be published in at least one newspaper of general circulation in the county, a notice of the availability of the quarterly report for public inspection in the office of the county auditor. Such notice shall be published within 30 days of the date of the scheduled release of the report.
- (f) Audit the receipts of all county officers and departments presented for deposit with the county treasurer.
- (g) Maintain a continuous internal audit of the operations and financial records of the officers, agents or divisions of the county. The county auditor shall have access to all records, documents, and resources necessary for the discharge of this responsibility.
- (h) Audit the inventory of all real and personal property owned by the county under the control and management of the various officers and departments of the county.
- (i) Audit the documentation, records, and bases for the amounts billed to the county, as maintained by county vendors, under agreements between the county and its vendors, when those agreements provide that the amounts billed to the county are based upon actual costs incurred by the vendor, or when those agreements include the requirement that the county provide a reimbursement for out-of-pocket costs incurred by the vendors. The county auditor shall audit the documentation, records, and bases for the amounts required to be paid to the county under agreements with outside parties, when those amounts are based upon records and documentation generated, compiled, and maintained by the outside party. The vendors and outside parties affected by this Section shall provide to the county auditor, on a timely basis, all records and documents required by the county auditor relative to the county auditor's duties under this subsection." *55 ILCS 5/3-1005*. (Emphasis added).

16. Because of the population of Kankakee County, the Illinois Legislature has mandated further duties for the Auditor to perform:

“In counties of 275,000 population or less, as determined by the last federal decennial census, the county auditor, in addition to the duties prescribed in Section 3-1005 [55 ILCS 5/3-1005], **shall**:

- (a) **Be the general accountant of the county and keep its general accounts.**
- (b) Devise and install a system of financial records in the offices and divisions of the county, to be followed in such offices and divisions. Such a system shall be suitable to the needs of the office and in accordance with generally accepted principles of accounting for governmental bodies.” *55 ILCS 5/3-1006.* (Emphasis added).

17. For the purpose of avoiding confusion, the language of 55 ILCS 5/5-1005 must also be addressed. Defendants have previously asserted that this statute acts as a restriction on the Auditor and an empowerment of their offices. 55 ILCS 5/5-1005 states that:

“Each County shall have the power to ... install an adequate system of accounts and financial records in the offices and divisions of the county, suitable to the needs of the office and in accordance with generally accepted principles of accounting for governmental bodies, which system may include such reports as the county board may determine.” *55 ILCS 5/5-1005(16).*

18. The cited language does provide the County Board with the power to install such financial systems in general, but that power must necessarily give way to the almost identical language of 55 ILCS 5/3-1006, which is specific to when a County has an elected Auditor, which not all counties have.

19. Defendants cannot rely on a general grant of power to deny the Plaintiff's specific statutory duties. To that end, Plaintiff argues that case law establishes, "A maxim of statutory construction provides that when more than

one statute [...] is relevant to a given action, the court may compare the specifics of the statutes to determine what statute more specifically applies...Whether a statute is deemed specific or general depends on the statute it is being compared to...The more specific statute will prevail over the general statute. *Tosado v. Miller*, 293 Ill. App. 3d 544, 550 (1st Dist. 1997). (Internal citations omitted). (Appellate court judgment affirmed in *Tosado v. Miller*, 188 Ill. 2d 186 (1999)).

20. The Defendants have an elected auditor, and they cannot utilize the default general laws in place for those counties within Illinois who do not.

21. As such, pursuant to this law, the Auditor is not only empowered to perform the activities listed under 55 ILCS 5/3-1005, but is also mandated to perform those duties described under 55 ILCS 5/3-1006. Defendants are themselves mandated to provide him the resources and ability to act as the general accountant for the County. To date, Defendants have refused to do so.

22. Additionally, 55 ILCS 5/6-1006³ further states as follows:

“Accounts for each fund. The county treasurer shall keep a separate account with each fund to show at all times the cash balance thereof, the amount received for the credit of such fund, and the amount of the payments made therefrom. Except as otherwise provided, the county auditor in each county under township organization containing over 75,000 inhabitants and the county clerk in each other county shall keep a similar account with each fund, and in addition shall maintain an account with each appropriation of each fund to show: (a) the amount appropriated, (b) the date and amount of each transfer from or to such appropriation and the appropriations to which or from which transfers were made, (c) the amount paid out under the appropriation, (d) the amount of outstanding obligations incurred

³ Take note that the citations are nearly the same and are easily confused, For instance 55 ILCS 5/3-1006 and 55 ILCS 5/6-1006.

under the appropriation, (e) the amount of the encumbered balance of the appropriations, and (f) the amount of the free balance of the appropriation. With respect to a County Bridge Fund, a Matching Tax Fund, and a Motor Fuel Tax Fund, the county auditor in a county under township organization containing over 75,000 inhabitants and the county clerk in each other county may, but is not required to, keep an account with each appropriation of each fund as referenced above.” *55 ILCS 5/6-1006* (Emphasis added).

23. Thus, 55 ILCS 5/6-1006 provides further lawful duties of the Auditor and his accounting functions, which are not currently designated to him by the Kankakee County Board and instead are handled by other officials.

24. The Defendants have interfered with the ability of Plaintiff to operate as the “general accountant” and “keeper of accounts” without providing (or having) any expressed legal basis, and are openly refusing to allow him to perform his statutory duties.

25. Such is being done even though the Illinois Attorney General has previously opined:

“[G]eneral accounting duties for the county cannot be delegated to an officer other than the auditor.” ... “[T]he function of accounting for the county has been specifically imposed upon the auditor by law.”

Further,

“[I]t is my opinion that the county board may not use its budgetary powers to circumvent the auditor's internal control of his office, or refuse to appropriate sufficient funds for equipment and staff. Moreover, it is also my opinion that the county administrator cannot properly delegate accounting functions to the county treasurer, since those functions have been delegated by law to the auditor.” Roland W. Burris, Illinois Attorney General. *1991 Op. Atty Gen. Ill. 21*, (91-011).

26. In addition to the Attorney General’s legal opinion on the role of Auditor as accountant, the law has long established that undefined statutory terms must

be given their "ordinary and popularly understood meaning" *Canteen Corp. v. Department of Revenue*, 123 Ill. 2d 95, 105 (1988). Such ordinary and popularly understood meaning of a word may be established by utilizing dictionary definitions. *People v. Hill*, 409 Ill. App. 3d 451, 454 (4th Dist. 2011).

27. The meaning of the word "accountant" is not elusive. The common definition of "accountant" is widely understood by the public as follows:

accountant - noun

1. one that gives an account or is accountable.
2. one who is skilled in the practice of accounting or who is in charge of public or private accounts.

See <https://www.merriam-webster.com/dictionary/accountant>.

accountant - noun

1. someone who keeps or examines the records of money received, paid, and owed by a company or person.
2. a person or company whose job is preparing the financial records of people, companies, or organizations.

See <https://dictionary.cambridge.org/us/dictionary/english/accountant>.

28. There is no room for confusion as to the role that 55 ILCS 5/3-1006 provides the Plaintiff to perform, and there is no basis for the Defendants to refuse to accept and support the Auditor's role as accountant.

29. The Auditor is an elected official, and as an elected official, there are some important distinctions to make versus being an appointed employee acting on behalf of the County Board. In particular, 55 ILCS 5/3-1007 states:

"The county auditor shall appoint deputies and employees. The deputies shall take and subscribe the same oath of office as is required of other county officers. Any such oath shall be filed with the county clerk and entered of record by such clerk. Compensation of deputies and employees not otherwise provided for by law shall be fixed by the county auditor subject to

budgetary limitations established by the county board.” 55 ILCS 5/3-1007. (Emphasis added).

And 55 ILCS 5/3-1004 states:

“The county auditor shall control the internal operations of the office and procure equipment, materials and services necessary to perform the duties of the office, subject to the budgetary limitations established by the county board.” *55 ILCS 5/3-1004.* (Emphasis Added).

30. Yet, the Defendants have engaged in a thorough and constant course of actions to not appropriate sufficient funds to staff the office of the Auditor or provide the materials and supplies necessitated by him to handle the statutory duties of both an auditor and accountant. Such activity is inconsistent with the law and must be reigned in.

B. Kankakee County’s Interference with the Office of County Auditor

31. The Kankakee County Board created a Finance Department on October 14, 2003, which has been memorialized in Resolution #2003-10-14-897. Though at initiation the newly created department was vague, the resolution explains that the County is "separating the two departments" of Auditor and Finance and acts to "segregate" their duties. (The Resolutions and associated documents are attached as Exhibit 2). It is not lawful to separate the duties of an elected official and transfer them to a newly created appointed office, in this case the Finance Department. As such, this Resolution must be declared void.

32. Further County Board action over the years acted to empower the Finance Department to act in place of the Auditor, in new ways and in contravention of the law. Such resolutions include Resolution #2009-03-10-35, which

specifically removes some of the Auditor's duties at issue currently. (See Exhibit 2). The Kankakee County Fiscal Policy also acts to accomplish this.

a. The Kankakee County Fiscal Policy

33. Kankakee County presently utilizes a “Fiscal Policy and Procedures Manual of Kankakee County” (Hereinafter “Financial Policy”), which is attached as Exhibit 3. (It may also be found at: http://www.co.kankakee.il.us/files/fiscal_policy_manual_eff_12012019.pdf).

34. The current Financial Policy was made effective on December 1, 2019 and assigns duties and procedures to various officials.

35. Defendant Kankakee County Board has placed much of its financial duties with appointed official Steve McCarty, who is titled as the Finance Director and has himself previously held the elected office of Kankakee County Auditor.

36. Through the policies of Defendants, Finance Director Steve McCarty is currently operating as a *de facto* County Auditor and accountant despite Plaintiff holding the elected office and being entrusted with such statutory duties by the electorate.

37. There are numerous unlawful elements within the Financial Policy that necessitate the Court declare it void, including, but not restricted to, the following:

- a. On page 4, ¶ 4 of Ex. 3, it allows administration to have access and control of the Abila MIP Fund Accounting software (Hereinafter “MIP”). It specifically placed the Finance Director in control of the software in

direct contravention of the law. Pursuant to 55 ILCS 5/3-1006, the County Auditor is the lawful system administrator and is to control which employees have access to the various modules within the MIP system based on the employees' job duties;

- b. On Page 4, ¶ 6 of Ex. 3, it describes the MIP system as being with the Finance Office, when this should again be under the control of the County Auditor pursuant to 55 ILCS 5/3-1005(h), 55 ILCS 5/6-1006 and 55 ILCS 5/3-1006;
- c. Under the Financial Policy, the County Auditor who is to be in lawful control of the system has been denied a password to access it properly and exercise control as the cited law requires. *See* 55 ILCS 5/3-1006 & 55 ILCS 5/6-1006;
- d. Page 5, ¶ 6 of Ex. 3 specifies that a County Official may determine when a new fund or code is required, when this is a function of the County Auditor to perform pursuant to 55 ILCS 5/3-1006 & 55 ILCS 5/6-1006. If county officials desired new funds to be established, they must seek this to be analyzed and appropriately established by the County Auditor;
- e. When the Financial Policy addresses "Charts of Accounts"⁴ it acts to hinder the County Auditor from performing his duties in regard to accounts, it places an unelected official in control over him, and goes as

⁴ Chart of Accounts is a classified listing of all accounts in use, accompanied by a detailed description of the purpose and content of each. The Chart of Accounts make up the General Ledger and from the General Ledger you derive a Trial Balance which in turn is used to create the financial statements which are audited by the external independent auditor.

far as to empower County Board committee such control, while then allowing the “County Board Chairman” to make a final decision, which is an expansion of such officials’ duties without statutory authority;

- f. The “Accounts Payable Processing & Check Authorization” section of the Financial Policy improperly empowers the Finance Director duties over processes that are to be handled by the County Auditor/Accountant. It largely usurps the County Auditor and places the Finance Director in a supervising role over an elected official. It also establishes an unlawful process for handling of disputes, which involves the expansion of officials’ authorities without proper legal basis.
- g. Page 7, ¶ 3 of Ex. 3 unlawfully allows the County Board Chairman to direct any person to enter data in the accounting software. While the County Board can direct payment of a claim, they cannot direct a person to manipulate accounting data itself. This is a dangerous overstep allowing for the manipulation of data, which is to be protected and utilized by the County Auditor pursuant to statute. *See* 55 ILCS 5/3-1005(a) & 55 ILCS 5/3-1006;
- h. Page 7 of Ex. 3 discusses the “Regular A/P process” and improperly placed authority with the Finance Director and a Committee Chair instead of the County Auditor in contravention of the law.
- i. Page 7 of Ex. 3 also directs to use a “Deputy Auditor”, when the delegation of duties within that office are to be controlled by the elected

County Auditor. (“The county auditor shall appoint deputies and employees...”*55 ILCS 5/3-1007*. “The county auditor shall control the internal operations of the office and procure equipment, materials and services necessary to perform the duties of the office, subject to the budgetary limitations established by the county board.” *55 ILCS 5/3-1004*);

- j. Page 8, ¶ 3 of Ex. 3 entitled “Adjusting Journal Entries” unlawfully provides the Finance Department and County Administrator roles that are in contravention of *55 ILCS 5/3-1006* & *55 ILCS 5/6-1006*. Entry of all adjusted journal entries into the MIP Accounting System is the responsibility of the County Auditor, who is also to retain the original Journal Entries and all original source documents;
- k. Page 8, ¶ 4 of Ex. 3 also improperly vests with the Finance Department the handling of void checks and alteration of entries in the MIP system, which is in derogation of previously listed statutory authority;
- l. Page 8, ¶ 5 of Ex. 3 places the County Administrative Department in an oversight role of credit cards that are issued and this results in confusing the roles of the Auditor and appointed officials. It is further imposing on the duties of the Auditor by improperly assigning entry and manipulation of data in the MIP system to someone unauthorized by the County Auditor;

- m. Page 8, ¶ 6 of Ex. 3 improperly places credit card responsibility and oversight with the Finance Department, though these accounts should be delegated to the County Auditor pursuant to 55 ILCS 5/3-1006 & 55 ILCS 5/6-1006;
- n. Page 9 of Ex. 3 contains an “Account Receivable” section that improperly vests duties of the County Auditor with the Finance Director. As previously described, only the County Auditor may “review the session before posting the session to the general ledger” as described;
- o. Page 14, ¶ 8 of Ex. 3 improperly bestows duties on the Finance Director that are within the County Auditor’s statutory role (*See* 55 ILCS 5/3-1005(b); 1006 & 55 ILCS 5/6-1006). The Financial Statements and the Required Supplementary Information portions of the Comprehensive Annual Financial Report (“CAFR”) should be compiled and preserved by the County Auditor and not the Financial Director;
- p. Page 15 of Ex. 3 uses “Grant Management” language that improperly assigns data entry and manipulation to those other than the Accountant/County Auditor, which is improper as previously described. Such roles may only be vested with the County Auditor in a county of this size;
- q. Page 17 of Ex. 3 contains a “Workforce Investment Opportunity Act” section that improperly empowers the Finance Department as the “fiscal agent” and provides unlawful authority to manipulate and control the

MIP accounting software. This is further exacerbated by the enactment of codes, and rules for said codes, which act to appropriate the County Auditor's control over such software;

- r. The Kankakee County Finance Policy is in further violation of the law for numerous other reasons that are not currently articulated herein and which further establish that it is void and unenforceable as a matter of law.

38. The MIP software used by the County also inhibits the Auditor's duties as it does not allow for him to properly "maintain an account with each appropriation of each fund to show "... (e) the amount of the encumbered balance of the appropriations..." as is mandated under 55 ILCS 5/6-1006.

39. This Financial Policy was prepared without consultation with the currently elected Auditor and continues to further restrict the execution of his statutory duties. Because of the fact that it is altering the statutory duties of the elected auditor, and is authorizing an unelected official to act in place of the auditor, it is in direct conflict with state law and void in its entirety.

c. Budget Apportionment Between Statutory Office of Auditor and The Finance Department

40. It is evident that the Kankakee County Defendants have placed an over reliance on the Finance Department and have stripped away duties of the County Auditor. One means to demonstrate this is by looking at the budgets that have been provided to the two offices over the years.

41. The following are the budgets for these offices as found online at the Kankakee County Finance Department's website. (See <http://www.co.kankakee.il.us/financedepartment.html>).

| Year | Auditor's Office's Original Budget | Finance Department's Original Budget |
|-------------|---|---|
| 2008 | \$146,325.00 | \$274,102.00 |
| 2009 | \$146,325.00 | \$274,102.00 |
| 2010 | \$140,000.00 | \$245,000.00 |
| 2011 | \$117,600.00 | \$140,795.00 |
| 2012 | \$120,000.00 | \$143,000.00 |
| 2013 | \$121,400.00 | \$143,000.00 |
| 2014 | \$115,139.00 | \$136,302.00 |
| 2015 | \$105,000.00 | \$90,996.00 |
| 2016 | \$105,000.00 | \$106,000.00 |
| 2017 | \$105,000.00 | \$112,000.00 |
| 2018 | \$106,300.00 | \$112,000.00 |
| 2019 | \$110,300.00 | \$112,000.00 |

42. The numbers of the last few years appear to show the elected and appointed departments as having a budget nearly in line with each other, even though one is statutorily tasked with far more duties. However, setting aside that point for the moment, it is important to note that the Finance Department actually has a higher budget than this budget would convey. Workforce Innovation and Opportunity Act ("WIOA") funds and additional moneys from the ETSB's Kankakee County Combined Communication Center ("KANCOMM") are also utilized to reimburse expenditures, the primary expenditure being salaries and wages in the Finance Department.

43. Presently, the Auditor's office, with numerous statutory duties to perform, is not being funded appropriately. Instead, the funding that should be provided

to the Auditor is being syphoned into an unelected and County Board appointed office.

44. The Kankakee Finance Department is made up of four (4) employees, including a staff accountant, Finance Director and Assistant Finance Director. (See Exhibit 4). However, the Auditor, who is to handle all of the duties outlined above has been provided only one employee in addition to himself.

45. The Finance Department employing, and being budgeted for, such an employee as an “accountant” when such is a mandated function of the Plaintiff is manifestly outside the scope of such appointed office’s authority.

46. Such an employee must be in the employ of the Auditor pursuant to statute, and yet this unlawful division of staff is used as a predicate for controlling the budget and powers of the Auditor. By doing this, the County is again acting to prevent the Auditor from exercising his duties, and basic powers under 55 ILCS 5/3-1007 to appoint deputies and employees and fix their compensation.

d. Kankakee County’s Refusal to Allow Auditor Access to Information

47. In order to properly act as an accountant and auditor for Kankakee County, it is necessary that Plaintiff has access to information essential to perform his statutory duties. This necessity is implicit in the duties as laid out in each of the statutes described. In some circumstances, it is explicitly provided for.

48. The County Auditor is elected to monitor finances and perform accounting duties. To enable this, 55 ILCS 5/3-1005(g) specifically states that “[t]he county

auditor shall have access to all records, documents, and resources necessary for the discharge of this responsibility.”

49. Additionally, 55 ILCS 5/3-1005(i) specifies that Plaintiff is to audit the County’s vender information.

50. Notwithstanding this, the County, by way of its agents, officers and employees has continually refused to recognize such legal authority to access information or to enable the Auditor to perform his duties without interruption.

51. The current Freedom of Information Act (“FOIA”) Officer for the Kankakee County offices of Administration, Finance, Treasurer, IT, Planning, GIS, Recorder, Assessor, County Clerk, Maintenance, Highway, Animal Control, Sheriff, Corrections and Coroner is Ken McCabe⁵.

52. On November 6, 2019, Plaintiff issued a FOIA request to the Ken McCabe seeking information necessary to perform his duties. In particular, he asked:

“Pursuant to 5 ILCS 140/; 55 ILCS 5/ 3-1005(a), (g), (i); and 55 ILCS 5/ 3-1006, I am requesting the supporting documentation associated with the attached claim. The documentation I am requesting includes: the underlying contract or fee schedule agreement, the email from the County Board Chairman (referenced on the claim) directing the Finance Director to post a transaction to the General Ledger (i.e. perform general accounting duties) and have a check drawn from the County Treasury without supplying any of the requested information from the County Auditor.” (See Documentation surrounding November 6, 2019 FOIA request attached as Exhibit 5).

53. As of December 3, 2019, Plaintiff still did not obtain a response to his FOIA request and had to seek help from the Illinois Attorney General’s Public Access Counselor (“PAC”). The PAC then sent a letter to the County, and thereafter

⁵ See <http://www.co.kankakee.il.us/foia.html>

on December 12, 2019 Plaintiff was simply told there were no documents. There should be such documents for proper accounting purposes and payment processes.

54. This situation repeated when on December 9, 2010 a separate FOIA was sent to McCabe, which stated:

“Pursuant to 5 ILCS 140/; 55 ILCS 5/ 3-1005(a), (g), (i); and 55 1LCS 5/ 3- 1006, I am requesting the supporting documentation associated with the attached claim.

I was not provided with the information I requested on the claim from the Finance Department. The claim was paid on or about 10/30/19 without any requested information provided to the County Auditor. Please provide the following information to our office under the Freedom of Information Act.

- 1) Detailed report and methodology of "grant monitoring" & all documentation associated therewith both electronic and " hard copy".
 - a. The above information should reflect the activity associated with the attached claim and all monitoring activities of FY19.
- 2) All FY19 WIOA grant agreements.
- 3) All 2 CFR 200 calculations and underlying documents that substantiate those calculations. This includes all spreadsheets, workbooks or other appropriate materials.
- 4) All GATA reports (filed and unfiled) and calculations that create the reports. This includes all spreadsheets, workbooks and other appropriate materials.
- 5) All receipts for payment presented to the County Treasurer and allocation thereof.
- 6) All salaries that are reported as allocated to the WIOA grants, their percentages and authorization for payment from the Federal Government.” (See Documentation surrounding December 9, 2010 FOIA request attached as Exhibit 6).

55. Again, Plaintiff received no response and reached out to the County’s FOIA Officer again on January 10, 2020 for the information. (See Exhibit 6). After no

response subsequent to the follow-up, Plaintiff sent the PAC another request for review in order to obtain compliance. (See Exhibit 6). The requested materials were never received.

56. The present Kankakee County Administrator Anita Speckman is employed by Defendant Kankakee County Board.

57. Administrator Speckman serves the Kankakee County Board and has consistently acted to effectuate the further displacement of Auditor duties in Kankakee County.

58. In June of 2020, the Auditor's Office was informed by a confidential source of possibly fraudulent activities by Kankakee County officials, employees, agents and/or others. In compliance with Plaintiff's duties as County Auditor, he began the process of investigating claims of vendor fraud and "payroll schemes".

59. On June 4, 2020, Plaintiff issued an email and formal request to the County Administrator to provide information for him to investigate and address such claims. (See e-mail attached as Exhibit 7).

60. Due to prior interactions with County Administration and Officers, Plaintiff was proactive and provided the statutory authorities for his requests. Such should not have been necessary, as he is not subject to administrative oversight in his duties. (See Exhibits 5, 6 & 7).

61. In response to his request, he received correspondence from the Defendants that demonstrates the active roll taken to block audits and investigations from being properly conducted. (See Exhibit 8).

62. This manner of dealing with the Plaintiff in Kankakee is illustrative of the contemptuous view the Defendants have encouraged towards the Plaintiff and his office. This methodology of ignoring a requestor is not simply the wrong way to comply with the FOIA, it is an obvious method to withhold necessary materials from the Auditor when engaged in his duties.

63. Plaintiff is the elected Auditor for Kankakee County, and is entitled to the information necessary for the auditing of Kankakee County and its vendors as necessary. FOIA Exemptions and/or The Identity Protection Act, 5 ILCS 179/1, *et seq.* (“IPA”) do not provide a lawful basis for refusing to provide such information to his office.

64. The IPA specifically allows for information to be provided to those lawfully entitled to it. To that effect, the IPA provides the following in specific:

(c) The prohibitions [on information sharing] in subsection (b) do not apply in the following circumstances:

(1) The disclosure of social security numbers to agents, employees, contractors, or subcontractors of a governmental entity or disclosure by a governmental entity to another governmental entity or its agents, employees, contractors, or subcontractors if disclosure is necessary in order for the entity to perform its duties and responsibilities; and, if disclosing to a contractor or subcontractor, prior to such disclosure, the governmental entity must first receive from the contractor or subcontractor a copy of the contractor’s or subcontractor’s policy that sets forth how the requirements imposed under this Act on

a governmental entity to protect an individual's social security number will be achieved.

(2) The disclosure of social security numbers pursuant to a court order, warrant, or subpoena.

(3) The collection, use, or disclosure of social security numbers in order to ensure the safety of: State and local government employees; persons committed to correctional facilities, local jails, and other law-enforcement facilities or retention centers; wards of the State; youth in care as defined in Section 4d of the Children and Family Services Act [20 ILCS 505/4d], and all persons working in or visiting a State or local government agency facility.

(4) The collection, use, or disclosure of social security numbers for internal verification or administrative purposes.

(5) The disclosure of social security numbers by a State agency to any entity for the collection of delinquent child support or of any State debt or to a governmental agency to assist with an investigation or the prevention of fraud.

(6) The collection or use of social security numbers to investigate or prevent fraud, to conduct background checks, to collect a debt, to obtain a credit report from a consumer reporting agency under the federal Fair Credit Reporting Act, to undertake any permissible purpose that is enumerated under the federal Gramm-Leach-Bliley Act, or to locate a missing person, a lost relative, or a person who is due a benefit, such as a pension benefit or an unclaimed property benefit."5 ILCS 179/10(c).

65. As this language demonstrates, in addition to the other statutes previously discussed, the IPA is being misapplied by the Defendants pursuant to 5 ILCS 179/10(C)(1),(4),(5) and (6), which all apply to the Office of Auditor for a government body.

66. As such, the Defendants are utilizing an improper basis to refuse employee and vendor information from being audited. In turn, the County is taking an active role in interfering with the investigation of claims of fraud by the public.

67. This is one example of the many times that the Auditor's Office has been forced to seek information through the Freedom of Information Act to perform its statutory functions and received pushback.

68. This behavior on the part of Defendants and their officers, agents and employees is a clear and direct effort to frustrate the efforts of the Auditor from acting on behalf of the citizens of Kankakee County.

69. The Defendants cannot continue to force elected Kankakee County officials to utilize FOIA, and then in turn refuse to provide such FOIA'd information, and/or utilize exemptions so as to further conceal facts from elected officials and audits.

70. Elected officials must be provided lawful access to information as their statutory office dictates and the County of Kankakee must cease to force the use of FOIA by its elected officials, including, but not limited to Plaintiff and his staff.

e. Events Leading to Litigation Being Necessary

71. As has been described above, there have been many attempts to restrict the abilities of the County Auditor to perform his statutory duties. There have also been multiple public attacks on his office by County officials.

72. There have also been attempts by the Plaintiff to work with the Defendants to resolve the longstanding problems.
73. To date, any attempts to work out a viable solution with the Defendants have been to no avail.
74. On, or about, July 5, 2017, after ongoing discussions of the disagreement, the Kankakee State's Attorney's Office informed Defendant Wheeler and Plaintiff that the office will not act as a mediator to their differences any longer and urged the parties to meet and discuss their differences.
75. At that time, the Plaintiff sent an e-mail in good faith to Defendant Wheeler, asking to meet and was told by Defendant that he had work to do before they met.
76. Then, on July 20, 2017, Defendant Wheeler attended the County Board's Committee of the Whole meeting and made personal attacks on Plaintiff. At that meeting, Defendant Wheeler attempted to hold discussions about the Auditor in closed session under the Open Meetings Act. However, such minutes have since been released as closed session was not appropriate.
77. The Committee of the Whole meeting minutes clearly demonstrate the hostile tone of Defendant Wheeler towards the Plaintiff. (Minutes attached as Exhibit 9)
78. In that meeting, it is embodied in the official minutes that,
- a. [Defendant Wheeler represented that] "...from December 24, to date, the Auditor has become increasingly aggressive toward employees, himself [the Chairman], and elected Department Heads.." (Ex 9, Page 2).

- b. [Defendant Wheeler represented that] “...the Auditor is unwilling to be specific, and demands to have duties that are in conflict with separation powers/duties (fox in the henhouse)...”(Ex 9, Page 6)
- c. “Chairman Wheeler reiterated the fact that the same person cannot enter a claim, process to payment of that claim, have the check issued, and then audit the entire process. This is what Mr. Lee is demanding and this is absolutely not acceptable according to accounting standards, and is a fox in the henhouse scenario.” (Ex 9, Page 8).
- d. “Chairman Wheeler feels that the Auditor is not fulfilling the duties of his office, and we need to take action. The public good is not being served:
 - 1. No publications, admittedly, in the newspaper, ignoring the statutes
 - 2. No audits of departments
 - 3. No audits of property through three office moves”

Mr. Olthoff asked who can remove an elected official.

Chairman Wheeler stated that the public can vote to do that, or they can be removed by the Attorney General’s office or a judge based on illegal activity.” (Ex 9, Page 8).

- e. “Chairman Wheeler stated that it is our intent to file a lawsuit, so another meeting will require authorization for outside legal representation approval, both to prosecute and defend.” (Ex 9, Page 9).
- f. [Defendant Wheeler represented that] “Back before Mr. Bossert left office, he purchased six UCCI books, which is the County’s code. That’s what we have from our association. They cost \$180. The three new Board members got a book. Mr. Wheeler took one because he wanted the latest version. That left two, and then one disappeared. Some months later, Diane and I talked about where that book went. Mr. Lee told Diane that he had taken one of the books off of the shelf. That is the reason why he doesn’t like that door being open between the offices and why he has a lock on his door now, because people can just walk in, mainly out of the auditor’s office and do whatever they want. This right here is a legal situation, potentially, for theft.” (Ex 9, Page 11).

79. Additionally, within the minutes of that Committee of the Whole meeting, “Chairman Wheeler read portions of his June 1, 2017, email where he stated:

- “But it is Steve [McCarty] that manages that for the board, and that will not change regardless of any opinion. Those are our rights by the Illinois Counties.”
- “But I have no obligation to ask for and get approval for the paying of the bills that have been processed through the system. Steve is the agent of the board, and as such he is tasked with the A/P functions. I have to be clear on this..... that will continue with whatever the AG opinion of what “Keeps the general accounts” is defined as.”
- “There will never be a time that your [Auditor’s] office can approve, audit, and pay the bills.” (See Ex 9, Pages 7-8)

80. In those July 20, 2017 meeting minutes, there was also a claim that the Auditor destroyed public property after Defendant Wheeler had placed a laminated piece of paper (“sign”) on the inside door of the Auditor’s Office.

81. The “sign” stated "Fire Exit Only, to access administrative offices use main lobby door". Apparently, Defendants assert this piece of paper equated to public property.

82. The purpose of the “sign” was to restrict the Plaintiff’s access to the administrative suite and was thus properly removed by the Auditor.

83. This allegation would be laughable if it were not for the fact that it is part of the long established, and consistently endeavored upon, interference with the Auditor performing his duties.

84. The tenor of the July 20, 2017 discussion, and the expressed leanings of Defendant Wheeler are demonstrative of the position taken against the Plaintiff’s role in Kankakee County and the extreme representations and accusations (i.e. theft for using a book in the offices and ethics violation for

taking down a paper sign) that have been levied to undermine his statutory authority.

85. These statements and actions demonstrate the clear, improper and unlawful commitment of Defendant Wheeler to continue the usurpation and isolation of the Auditor's Office despite what the law demands. This course of conduct has continued. It must be rectified.

86. On April 6, 2018, the first meeting to resolve differences occurred with Plaintiff, the State's Attorney, Chairman Wheeler and the County Administrator. No agreement was realized.

87. On August 29, 2018, Chairman Wheeler moved the Auditor's Office from its location on the 5th floor of the building to the 4th floor, separating it from the administrative offices and providing less functional space than before.

88. A second meeting was then held on October 11, 2018. Again, no agreement was realized.

89. On December 20, 2018, the Chairman placed on the Finance Committee agenda, "Cash Bonus mandated by the Auditor to be paid out to the Auditor's Office Employee" as a topic of discussion. (*See* agenda attached as Ex 10)⁶.

90. Within said meeting, the Finance Committee discussed and ridiculed the Auditor even though the law states, "Compensation of deputies and employees

⁶ At this point it becomes tempting to litigate the issue of this bonus claim and the improper games that were played with finances to then cut the Auditor's budget, impugn him for sport and create an issue where there was none. However, for the sake of not straying from the legal declarations sought, such a debate can be left for another time.

not otherwise provided for by law shall be fixed by the county auditor subject to budgetary limitations established by the county board.” *55 ILCS 5/3-1007*.

91. Interestingly, during the discussion, “[Defendant] Wheeler stated that he does not have the authority to question this directive [bonuses] from Mr. Lee” (*See Minutes attached as Exhibit 11*).

92. On or about February 15, 2019, after petitioning by Kankakee County, Representative Thomas M. Bennett of the 106th District filed a bill with the Illinois Legislature, within which he proposed a method to no longer mandate the use of the Auditor as the County’s accountant. (*See Correspondence from Rep. Thomas Bennett attached as Exhibit 12*). The change was simple, and read as follows:

(55 ILCS 5/3-1006) (from Ch. 34, par. 3-1006)

Additional duties in counties of 275,000 or less. In counties of 275,000 population or less, as determined by the last federal decennial census, the county auditor, in addition to the duties prescribed in Section 3-1005, may shall:

- (a) Be the general accountant of the county and keep its general accounts.
- (b) Devise and install a system of financial records in the offices and divisions of the county, to be followed in such offices and divisions. Such a system shall be suitable to the needs of the office and in accordance with generally accepted principles of accounting for governmental bodies. (*See Illinois HB3680, contained within Exhibit 12*).

93. The entire premise of this change was to change **shall** to **may**, so as to allow a County to itself choose to divest an elected Auditor of the accounting duties that are mandated by 55 ILCS 5/3-1006. This in and of itself represents an

acknowledgement of the mandate established by 55 ILCS 5/3-1006, and Defendants current inability to divest such roll at its own choosing.

94. On or about April 12, 2019, Illinois HB3680 was re-referred to the Rules Committee and has seen no further movement. Over a year later it has not been acted upon. It has not been passed. It is not the law. The Plaintiff remains the legally mandated accountant for the Defendants, and the Defendants remain obstinate as to the mandate they have recognized as existing.

95. Thereafter, on January 7, 2020, the Kankakee County State's Attorney first petitioned the Court in regard to this matter.

96. On February 20, 2020, the Court appointed Special State's Attorneys for the handling of this matter due to representations by Kankakee State's Attorney Jim Rowe that conflicts precluded him and his staff from handling this matter.

97. On June 16, 2020, after present counsel was appointed to represent the Auditor in this case, correspondence was issued to the Defendants' appointed counsel in an attempt to reach resolution and clarify the law without the need for further disruption and litigation.

98. A response was received on August 7, 2020 and laid out Defendants' continuing resolve to not follow the law as Illinois has laid it out, but rather to follow the law as the Defendants desire it to be.

99. Defendants continue to assert that financial oversight of the County Board by the County Board itself, through an official that they appoint, is justified by twisting language and concepts from the Federal Government's Government

Accounting Office’s Generally Accepted Government Auditing Standards (a.k.a. “the Yellow Book” or the “GAGAS”)⁷.

100. Such assertions are dubious, as Illinois’ law establishes that an independent auditor is elected by the citizens of the county to act as Defendants’ oversight – as opposed to an appointed official who is reliant on that very audited party for his/her employment.

101. Yet, it is unnecessary to step into the Yellow Book and be swallowed by interpreting the unending ‘rabbit’s hole’ that Defendants rely upon, because Illinois law is what controls the duties and role of the elected auditor.

102. Illinois law also provides for the answer to Defendants’ continued assertions that the elected auditor cannot audit himself. Plaintiff agrees. The external auditor is the oversight over the Plaintiff, and this is provided by law under the “County Auditing Law”. (See 55 ILCS 5/6-31001, *et seq.*). Within this law, it defines an auditor as follows:

““Auditor” means a licensed certified public accountant, as that term is defined in Section 0.03 of the Illinois Public Accounting Act [225 ILCS 450/0.03], or the substantial equivalent of a licensed CPA, as provided under Section 5.2 of the Illinois Public Accounting Act, who performs an audit of county financial statements and records and expresses an assurance or disclaims an opinion on the audited financial statements; “auditor” does not include a county auditor elected or appointed under Division 3-1 of the Counties Code [55 ILCS 5/3-1001 et seq.].”
55 ILCS 5/6-31002(6). (Emphasis added).

⁷ The Yellow Book is available online, and the 2018 version can be found at <https://www.gao.gov/assets/700/693136.pdf>.

103. Further, when explaining what the funds and accounts are to be audited, the statute calls for an audit “...including the receipts and expenditures of the fee earnings of each county fee officer.” *55 ILCS 5/6-31002(3)*.
104. As such, under the laws that mandate the duty of the County Board to cause an audit of all funds to be performed annually (*See 55 ILCS 5/6-31003*), the elected auditor cannot be the auditor to perform *that* task. That is because the Plaintiff is then being audited as well.
105. In summation, plaintiff is the elected oversight of the Defendants, and the Defendants’ oversight of him is accomplished by an external auditor mandated by law to audit all officials each year. Defendants actions demonstrate a belief that the Plaintiff is seeking to be above reproach by allowing for this or that an appointed official is a better safeguard than an elected auditor, independent of their control and influence; the law and common sense both fail to support their theory.

IV. COUNT 1 – DECLARATORY JUDGMENT

106. Plaintiff restates and repleads paragraphs one (1) through one hundred and five (105) as if fully restated herein.
107. The Illinois Code of Civil Procedure provides for Declaratory Judgment Actions under 735 ILCS 5/2-701, which states in pertinent part:
- “(a) No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby. The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested

in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested. The foregoing enumeration does not exclude other cases of actual controversy. ... [8];

- (b) Declarations of rights, as herein provided for, may be obtained by means of a pleading seeking that relief alone, or as incident to or part of a complaint, counterclaim or other pleading seeking other relief as well, and if a declaration of rights is the only relief asked, the case may be set for early hearing as in the case of a motion.

...”735 ILCS 5/2-701. (*Emphasis Added*).

108. In the interests of judicial economy, and for the reason that the legal questions at issue are controlling for ultimate resolution of this matter, the Plaintiff has modeled this complaint as a Declaratory Judgment action. This will allow for the Court to make a Judgment as a matter of law without the need for material factual dispute and the Court may set the matter for hearing upon this Complaint.

109. The Defendants in this matter, through their actions, and the actions of their officers, agents and employees, have unlawfully acted to impede the will of their citizens by disrupting the elected Plaintiff’s duties to monitor and protect the finances of Kankakee County as established by law. Such actions have gone as far as to alter county policies and job duties so as to all but eliminate the

⁸ The remaining language is not necessary for recitation, yet Plaintiff wants to discourage wasteful arguments and assert that this matter does not involve a “political question”. The Court’s resolution in this matter does not intrude on the powers of the legislative branch, but rather declares plaintiff’s rights under the Constitution and Illinois statutes in accordance with the judiciary’s function. *Kluk v. Lang*, 125 Ill. 2d 306, 323 (1988).

office of County Auditor outside of the Constitutionally guaranteed referendum process.

110. Defendants have done so utilizing a strategy of questioning statutes and constitutional mandates and feigning a lack of understanding as to what the law commands and specifically states in many circumstances.

111. Therefore, it is necessary for the Court to issue a Declaratory Judgment in favor of the Plaintiff and definitely instruct the Defendants as to the law, and establish the legal rights, duties and obligations of all parties to this litigation.

Wherefore, Plaintiff seeks this Honorable Court to Declare that:

- a. The elected Auditor of Kankakee County is statutorily charged with the duties and powers articulated within 5 ILCS 5/3-1006, 55 ILCS 5/6-1006 and 55 ILCS 5/3-1005 and such duties and powers may not be divested;
- b. The Defendants may not alter or usurp the duties of County Auditor and may only eliminate the office by approval of a referendum pursuant to Illinois Const., Art. VII, § 4(c);
- c. Resolutions #2003-10-14-897 and #2009-03-10-35, which transfer duties of the Auditor to the created Finance Department are void and unenforceable under Illinois law;
- d. The Fiscal Policy and Procedures Manual of Kankakee County is in violation of the law and as such is void and unenforceable pursuant to 55 ILCS 5/5-1087, Illinois Const., Art. VII, § 4 and numerous other laws;
- e. The assignment of Auditor's duties and authority to an appointed official, when such duties are statutorily assigned to the Auditor, render any such enabling ordinance or resolution void and unenforceable pursuant to 55 ILCS 5/5-1087;
- f. Pursuant to 55 ILCS 5/3-1004 the Defendants must cease any and all policies and actions that interfere with the Auditor's control of the internal operations of his office, including, but not limited to, the procurement of equipment, materials and services necessary to perform the duties of the office;
- g. Any financial policy enacted must vest the Auditor with his statutory duties and not act to alter any of those duties, powers or functions that are set out in 55 ILCS 5/3-1006, 55 ILCS 5/6-1006 and 55 ILCS 5/3-1005;
- h. Kankakee County general accounting duties cannot be delegated to an officer other than the auditor and the function of accounting for the

- county has been specifically imposed upon the auditor by law. Therefore, Plaintiff, and any future elected Auditor for Kankakee County is the general accountant for said County pursuant to law, and is to be vested with such duties and controls over accounting functions as necessary;
- i. Kankakee County having an elected Auditor mandates that the general county power articulated in 55 ILCS 5/5-1005(16) to be inapplicable as the specific duties of 55 ILCS 5/6-1006 prevail in such counties;
 - j. Plaintiff, and any future elected Auditor for Kankakee County is to be given access and control over the County's general ledger and the Abila MIP Fund Accounting software. Additionally, any access or alteration to the same must be approved by the Auditor;
 - k. 55 ILCS 5/3-1006 dictates that the Plaintiff is the General Accountant and keeper of accounts for the County of Kankakee, Illinois and such role may not be divested by ordinance or resolution;
 - l. The term "Accountant" under 55 ILCS 5/3-1006 is defined by its normal and customary definition as articulated in standard dictionaries;
 - m. Plaintiff, and any future elected Auditor for Kankakee County is lawfully tasked to make any budget adjustments in the MIP system as approved by the Finance Committee and/or County Board;
 - n. The current Finance Office of Kankakee County is acting in contravention of law and performing duties statutorily designated to the County Auditor. Such activities must cease immediately;
 - o. The current staffing of the Finance Office performing functions statutorily designated to the County Auditor must be transferred to the Auditor's department pursuant to law;
 - p. Pursuant to State law, the staffing reassigned to the County Auditor from the Finance Office is to be compensated, and budgeted for, pursuant to 55 ILCS 5/3-1007, which provides for the Plaintiff's authority to appoint deputies and employees and fix their compensation;
 - q. Pursuant to 55 ILCS 5/3-1007, the Plaintiff's has explicit and lawful authority to appoint deputies and employees and fix their compensation as the Plaintiff requires;
 - r. Pursuant to 55 ILCS 5/3-1005(g), Plaintiff, and any future elected Auditor for Kankakee County shall be given access to all records, documents, and resources necessary for the discharge of responsibilities, including any vender information as necessitated under 55 ILCS 5/3-1005(i);
 - s. Plaintiff, and any future elected Auditor for Kankakee County are to be provided all necessary information to perform duties without the necessity of filing Freedom of Information (FOIA) requests;
 - t. The Identity Protection Act, 5 ILCS 179/1, *et seq.* is not a lawful basis to deny access to records necessary to perform the statutory duties of Auditor as established under Illinois Statute;

- u. Kankakee County may not refuse to provide information to Plaintiff, and any future elected Auditor for Kankakee County based upon FOIA exemptions;
- v. It is unlawful for the Defendants to endeavor upon a course of conduct to frustrate, marginalize, and render ineffective the office of Kankakee County Auditor;
- w. The Defendants must cease activities that interfere with the auditing and accounting functions of the Kankakee County Auditor as dictated by the aforementioned statutes;
- x. Along with such other declarations and further relief as this court deems equitable and just.

V. Count 2 – Mandamus

112. Plaintiff restates and repleads paragraphs one (1) through one hundred and eleven (111) as if fully restated herein.

113. Illinois State statutes providing for duties and powers of the Auditor have been enacted to protect against fraud and the improper spending of Kankakee County funds. The frustration of this purpose as described in the preceding paragraphs necessitates further intervention by the Courts.

114. Mandamus is a means to address public officials, such as Defendants, who have failed, or refused, to comply with requirements imposed by statute. Courts may compel such officials to comply with their statutory requirements by means of issuing a Writ of Mandamus.

115. Issuance of a Writ of Mandamus is also a proper remedy when it is necessary to restrict government officials, such as Defendants and their employees, officers and agents, to act within their authorized powers.

116. Mandamus is necessary in this situation because the Kankakee County Board, its Chairman and their employees, agents and appointed officials have

overstepped their legally authorized roles and have infringed upon the statutory duties of the Auditor as has been articulated in the preceding pages.

117. The Defendants have no discretionary power to divest or alter the duties of the County Auditor, or to take the actions they have to place his statutory duties with an appointed official, who is beholden to them, or any other agent, official or employee.

118. The Defendants have the nondiscretionary duty to enable, and allow for, the Plaintiff to perform his statutory duties and not act to alter any of those duties, powers or functions as are set out in 55 ILCS 5/3-1006, 55 ILCS 5/6-1006 and 55 ILCS 5/3-1005 respectively.

119. As such, by seeking a Writ of Mandamus, the Plaintiff is not seeking to substitute the court's judgment or discretion for that of the Defendants. Instead, Plaintiff seeks the Court to compel the Defendants to comply with the statutory requirements of the Office of Auditor and cease the hinderance of the Auditor's duties.

120. As has been alleged herein, the Plaintiff can, and has, demonstrated a clear, affirmative right to relief; a clear duty of the Defendants to act, and; clear authority pursuant to law for the Defendants to comply with the writ.

121. Plaintiff has a clear right to the requested relief and the restoration of his statutory duties as well as the means by which he can accomplish those duties.

122. The Defendants have a clear duty to act as Illinois law directs local governments through the Illinois Constitution, the Counties Code, Common Law, and other statutory mandates.

123. The Defendants have the authority to alter their prior course of action and restore the County Auditor's duties as the Illinois Constitution, the Counties Code and Common Law mandate, as well as the authority to modify their financial policies, resolutions and ordinances so as to comply with the law.

WHEREFORE, Plaintiff Jake Lee, respectfully prays that this Court enter a judgment in Plaintiff's favor and against Defendants and issue a Writ of Mandamus instructing the Defendants, and their agents, officers and employees to comply with all declarations made by this Court pursuant to Count I; amend their financial policies and actions so as to re-vest the County Auditor with all of the statutory duties that the law has provided; to provide the necessary information and data to Plaintiff to perform such duties as the law requires, and; that Plaintiff be further provided the tools, staff, and budget necessary to act as the County Auditor and County's accountant without further interruption and/or interference, together with such further relief as this court deems equitable and just.

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Respectfully submitted,

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