

IN THE CIRCUIT COURT
FOR THE TWELTH JUDICIAL CIRCUIT
WILL COUNTY, JOLIET, ILLINOIS

ALYSSIA BENFORD, individually,)
DENNIS RAGA, individually, and)
JOHN KRAFT, in his capacity as)
Director of the EDGAR COUNTY)
WATCHDOGS, an Illinois Not-For-)
Profit Corporation,)

Plaintiffs,)

2020-MR-_____

vs.)

MARIPAT OLIVER and KEN BURGESS,)
in their official capacities as DuPage)
Township Trustees, FELIX GEORGE, in)
his capacity as Township Supervisor, and)
DUPAGE TOWNSHIP, an Illinois)
Township,)

Defendants.)

VERIFIED COMPLAINT AT LAW
(Open Meetings Act, 5 ILCS 120/1 *et seq.*)

NOW COME Plaintiffs, ALYSSIA BENFORD, individually, DENNIS RAGA, individually, and JOHN KRAFT, in his capacity as Director of the EDGAR COUNTY WATCHDOGS, an Illinois Not-For-Profit Corporation, and in support of their Verified Complaint at Law against MARIPAT OLIVER and KEN BURGESS, in their official capacities as DuPage Township Trustees, FELIX GEORGE, in his capacity as Township Supervisor, and DUPAGE TOWNSHIP, an Illinois Township, for multiple violations of the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.*, state as follows:

1. Plaintiff, ALYSSIA BENFORD is an individual residing in the City of Bollingbrook, Will County, Illinois. She is also a Trustee on the DuPage Township Board.

2. Plaintiff, DENNIS RAGA, is an individual residing in the City of Bollingbrook, Will County, Illinois. He is also a Trustee on the DuPage Township Board.

3. Plaintiff, JOHN KRAFT, is one of the founders and Directors of the EDGAR COUNTY WATCHDOGS, an Illinois Not-For-Profit Corporation situated in Edgar County, Illinois, engaged in the media and reporting industry.

4. Defendant, DUPAGE TOWNSHIP (the "Township"), is a government entity duly organized and existing under the provisions of the Illinois Township Code, 60 ILCS 1/1-1 *et seq.*, which is situated in Will County, Illinois.

5. Defendants, MARIPAT OLIVER and KEN BURGESS are Trustees serving on the Township Board for DUPAGE TOWNSHIP.

6. Defendant, FELIX GEORGE, is the Township Supervisor for DUPAGE TOWNSHIP, who also serves on the Township Board (the Township Trustees, MARIPAT OLIVER, KEN BURGESS, ALYSSIA BENFORD, and DENNIS RAGA, as well as the Township Supervisor, FELIX GEORGE, shall collectively be referred to as the "Township Board").

7. Townships, among other enumerated units of local government, exercise limited governmental powers with respect to limited governmental subjects, and "shall have only powers granted by law." Illinois Constitution, Art. VII, § 8.

8. The corporate powers of a township are clearly defined and limited per the Township Code, 60 ILCS 85-5 *et seq.*

9. The Township Code, 60 ILCS 1/, provides in § 35-5 that the Township Board may call a Special Township Meeting by filing with the Township Clerk a written statement that a special meeting is necessary for the interests of the Township.

10. The written statement must “set forth the objects of the meeting, which must be relevant to powers granted to electors” under the Township Code. *Id.*

11. The Special Township Meeting must be held no less than 14 nor more than 45 days after the written request is filed. *Id.*

12. The Township Code, 60 ILCS 1/80-10(e) mandates that all Township Meetings are subject to the provisions of the Open Meetings Act (“OMA”), 5 ILCS 120/1 *et seq.*

13. The OMA requires that all final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted. 5 ILCS 120/2(e).

14. The OMA requires that all meeting agendas shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting. 5 ILCS 120/2.02(c).

15. The Township Board had the ability under the OMA to conduct a meeting by audio or video conference so long as “members of the public can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible . . .” and in that event the Township Board was required to “make alternative arrangements and provide notice . . . of such alternative arrangements in a manner to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link.” 5 ILCS 120/7(e)(4).

16. On or about Tuesday, December 1, 2020, Defendants, MARIPAT OLIVER and KEN BURGESS filed a Special Meeting Agenda with the Township Clerk, setting a Special Meeting of the DuPage Township Board for Friday, December 4, 2020 at 6:00 p.m. at the Levy

Center in Bollingbrook, Illinois. A true and complete copy of the Special Meeting Agenda is attached as **Exhibit A**.

17. The Special Meeting Agenda specifies the following two discussion items as the only topic of the Special Meeting:

- a. Discussion of investigation matter number 2020-DT-01, any actions to be taken or solutions proposed, and possible roll call vote to enter Closed Session pursuant to Sections 2(c)(1) and 2(c)(11) of the Illinois Open Meetings Act, 5 ILCS 120/1, *et seq.*;
- b. Discussion regarding Township Attorney and possible roll call vote to enter Closed Session pursuant to Section 2(c)(1) of the Illinois Open Meetings Act, 5 ILCS 120/1, *et seq.*;

Exhibit A, p. 2.

18. Upon information and belief, the designation 2020-DT-01 in the Special Meeting Agenda (**Exhibit A**) refers to an internal investigation number Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX OLIVER assigned to their review of an investigation of Plaintiff, ALYSSIA BENFORD's conduct as Township Trustee.

19. Upon information and belief, Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX OLIVER failed to file with the Township Clerk a written statement that a special meeting is necessary for the interests of the Township, nor did they provide the public with at least fourteen (14) days' notice prior to scheduling the Special Township Meeting as required by the Township Code, 60 ILCS 1/35-5.

20. On Friday, December 4, 2020, at 6:00 p.m., Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE met with the Township Clerk for a Zoom conference meeting at the Levy Center.

21. Township Attorney, Ross Secler, Plaintiffs, ALYSSIA BENFORD and DENNIS RAGA, as well as various members of the public, including but not limited to Plaintiff, JOHN

KRAFT, attended the Zoom Conference meeting via the Zoom link in the Special Meeting Agenda (Exhibit A).

22. Plaintiff, JOHN KRAFT recorded the December 4, 2020 Zoom Conference meeting and uploaded the recording to Youtube. The Zoom Conference meeting recording can be found at <https://www.youtube.com/watch?v=Iz2UMPn-Gj0&feature=youtu.be&t=1142> (the "Youtube Video").

23. As is evidenced by the Youtube Video, Attorney Secler and Plaintiffs, ALYSSIA BENFORD, DENNIS RAGA, and JOHN KRAFT commented numerous times during the Zoom Conference Meeting that they could not hear what Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE were saying and that they did not understand what was happening at the Zoom Conference meeting due to their inability to hear the proceedings.

24. Due to his inability to hear, Plaintiff, DENNIS RAGA stated during the Zoom Conference meeting that the Zoom participants' inability to hear what business was being transacted at the purported Special Meeting violated the OMA and he moved to adjourn the illegal meeting. Youtube Video.

25. Plaintiff, ALYSSIA BENFORD seconded the motion, but the motion was defeated on a roll call vote by Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE. Youtube Video.

26. At some point during the Zoom Conference meeting Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE purported to move into Executive Session away from the members of the public present via Zoom.

27. During the Zoom Conference meeting, the Deputy Township Clerk, Lynne Woodard removed several members of the public from the Zoom meeting, placing the members

of the public in a lobby where they could not hear what was being discussed by Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE.

28. At the conclusion of the Executive Session portion of the Zoom Conference meeting, Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE purported to return to Open Session. Youtube Video, 1:08.

29. Upon returning to Open Session, Defendant, MARIPAT OLIVER made a motion to “censure” Plaintiff, ALYSSIA BENFORD for her behavior, which was seconded by Defendant, KEN BURGESS. Youtube Video, 1:14.

30. The December 4, 2020 Zoom Conference meeting violated the provisions of the OMA in the following ways:

- a. In violation of 5 ILCS 120/7(e)(4), members of the public, including Plaintiffs, ALYSSIA BENFORD, DENNIS RAGA, and JOHN KRAFT, who attended the Zoom Conference meeting via Zoom were deprived of any meaningful participation in, or even ability to hear and understand what was happening at the Zoom Conference meeting due to the audio difficulties that plagued the meeting.
- b. Defendants, MARIPAT OLIVER, KEN BURGESS, FELIX GEORGE violated § 2 of the OMA by entering into Executive Session during the purported Special Meeting. The OMA, 5 ILCS 120/2 requires that all meetings be open to the public unless the governing body recites certain enumerated exceptions into the record as a reason for entering into Executive Session. Both the Agenda and Defendants, MARIPAT OLIVER and KEN BURGESS cited during the Zoom Conference meeting §§ 2(c)(1) and (11) of

the OMA as the bases for entering into Executive Session, but there was no issue of employee performance or discipline raised, nor was there any pending or threatened litigation. Defendants failed to provide any valid reason for entering into Executive Session during the purported Special Township Meeting.

- c. In violations of 5 ILCS 120/2(e) and 2.02(e)(4), Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE voted to “censure” Plaintiff, ALYSSIA BENFORD when the final action was not identified anywhere on the Agenda for the purported Special Meeting, **Exhibit A**.

31. In violation of the Township Code and the Illinois Constitution, Art. VII, § 8, Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE exceeded their statutory authority by voting to “censure” Plaintiff, ALYSSIA BENFORD when neither the Township Code nor any other Illinois law grants the Township Board such a power. See Illinois Attorney General Public Access Opinion 91-001 (finding that absent an express statutory provision so providing, public bodies do not have the power to sanction their members).

32. Further, Defendants, MARIPAT OLIVER and KEN BURGESS violated the Special Township Meeting fourteen (14) days’ notice provision, 60 ILCS 1/35-5, by filing an Agenda on a Tuesday for a Special Township Meeting that Friday.

33. The failure of Defendants, MARIPAT OLIVER and KEN BURGESS to provide adequate notice to the public of the purported Special Township Meeting on December 4, 2020 renders the meeting void for lack of adequate notice.

34. Upon the information and belief, Defendants, MARIPAT OLIVER, KEN BURGESS, and/or FELIX GEORGE intend to approve the minutes generated at the Special Meeting at the next regularly scheduled Township Board Meeting set for December 15, 2020.

35. Upon information and belief, Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE made their illegal attempt to “censure” Plaintiff, ALYSSIA BENFORD, for vague, unspecified allegations concerning her “behavior” as Trustee for the purpose of impugning her integrity and causing damage *per se* to her reputation in the community, and such conduct should not be allowed to continue considering the Township Board’s lack of legal authority to take such action in the first place.

36. The OMA creates a private right to a civil cause of action where the provisions of the OMA are not complied with, or where there is probable cause to believe that the provisions of the OMA will not be complied with in the future. 5 ILCS 120/3.

37. The Court has broad discretion in granting relief for a violation of the OMA, including issuance of a Writ of Mandamus requiring that a meeting be open to the public, granting an injunction against future violations of the OMA, ordering the public body to make available to the public such portion of the minutes of a meeting as is not authorized to be kept confidential, declaring null and void any final action taken at a closed meeting, and awarding attorney fees and costs to the prevailing party. 5 ILCS 120/3.

38. Plaintiffs have incurred attorney fees and costs associated with prosecuting this cause of action.

WHEREFORE, Plaintiffs, ALYSSIA BENFORD, individually, DENNIS RAGA, individually, and JOHN KRAFT, in his capacity as Director of the EDGAR COUNTY

WATCHDOGS, an Illinois Not-For-Profit Corporation, pray that this Court enter a Judgment Order granting them the following relief:

- A. Finding that Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE, acting in their official capacities, as well as DUPAGE TOWNSHIP, violated 5 ILCS 120/7(e)(4) during the December 4, 2020 Zoom Conference meeting by failing to provide Plaintiffs and other members of the public attending via Zoom with the ability to meaningfully participate in and listen to the proceedings during the meeting due to the audio problems which plagued the meeting.**
- B. Finding that Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE, acting in their official capacities, as well as DUPAGE TOWNSHIP, violated 5 ILCS 120/2 by entering into an alleged Executive Session to discuss Township business during the December 4, 2020 Zoom Conference meeting without recitation of an applicable exception to the general requirement for openness.**
- C. Finding that Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE, acting in their official capacities, as well as DUPAGE TOWNSHIP, violated 5 ILCS 120/2(e) and 2.02(e)(4) at the December 4, 2020 Zoom Conference meeting by taking a purported final action to “censure” Plaintiff, ALYSSIA BENFORD, when the subject matter of the purported final action was not adequately disclosed on the Agenda Defendants, MARIPAT OLIVER and KEN BURGESS posted prior to the meeting.**
- D. Finding that Defendants, MARIPAT OLIVER, KEN BURGESS, and FELIX GEORGE, acting in their official capacities, as well as DUPAGE TOWNSHIP,**

lacked any authority under the Township Code, Illinois Constitution, Art. VII, § 8, or any other State law to censure one of its Trustees.

- E. Finding that Defendants, MARIPAT OLIVER and KEN BURGESS failed to provide members of the public adequate notice of a Special Township Meeting pursuant to 60 ILCS 1/35-5.
- F. Entering a temporary and permanent injunction enjoining the Township Board from taking any official action to approve the Minutes of the December 4, 2020 Zoom Conference meeting or otherwise ratifying any alleged final action that took place at the meeting at the next Regular Township Meeting on December 15, 2020 or at any subsequent meeting.
- G. Ordering that the purported final vote to “censure” Plaintiff, ALYSSIA BENFORD, violated Art. VII, § 8 of Illinois Constitution and is void *in abnatio*.
- H. Ordering that the Township Board immediately make any recording of the Executive Session portion of the December 4, 2020 Zoom Conference meeting available to the public.
- I. Issuing a Writ of Mandamus compelling the Township Board to comply with the provisions of the Open Meetings Act regarding the openness of its meetings.
- J. Awarding Plaintiffs reasonable costs and attorney fees associated with this lawsuit.
- K. And for any such further relief the Court deems equitable and just under the circumstances.

DATED this 9th Day of December 2020.

RESPECTFULLY SUBMITTED,

Plaintiffs, ALYSSIA BENFORD,
individually, DENNIS RAGA, individually,
and JOHN KRAFT, in his capacity as
Director of the EDGAR COUNTY
WATCHDOGS, an Illinois Not-For-Profit
Corporation.

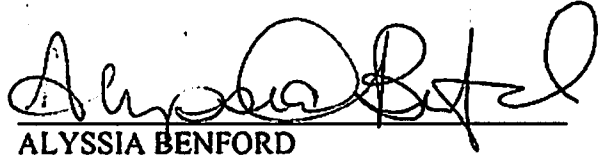
By: /s/ Jacob N. Smallhorn
Jacob N. Smallhorn, One of Plaintiffs'
Attorneys

Prepared by:

Jacob N. Smallhorn
Smallhorn Law LLC
600 Jackson Avenue
Charleston, IL 61920
T: 217-348-5253
E: jsmallhorn@smallhornlaw.com
ARDC: 6307031

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

Under penalties as provided by law pursuant to Section 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to the matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.


ALYSSIA BENFORD

Subscribed and sworn to before me this
9th day of December, 2020.

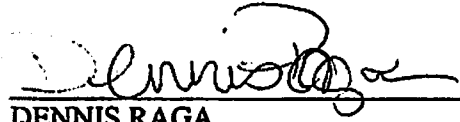

Notary Public.



STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

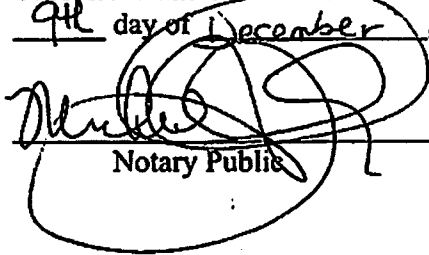
Under penalties as provided by law pursuant to Section 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to the matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.





DENNIS RAGA

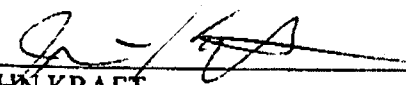
Subscribed and sworn to before me this
9th day of December, 2020.



Notary Public

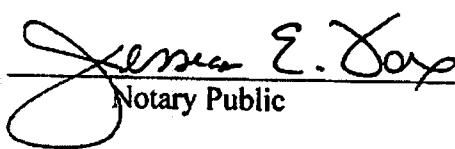
STATE OF ILLINOIS)
) SS.
COUNTY OF EDGAR)
 Shelby

Under penalties as provided by law pursuant to Section 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to the matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



JOHN KRAFT

Subscribed and sworn to before me this
9th day of Dec., 2020.



Notary Public

