

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL DISTRICT  
SHELBY COUNTY ILLINOIS

JESSICA FOX, NOT INDIVIDUALLY )  
BUT IN HER OFFICIAL CAPACITY AS )  
SHELBY COUNTY CLERK )

PLAINTIFF )

v. )

SHELBY COUNTY BOARD OF REVIEW )  
CHRIS JOHNSTON, GREGG BROWN, )  
AND KENNY SCHWENGEL )

DEFENDANTS )

CASE # 2023-MR-14

F I L E D  
AUG 29 2023

*Chris Johnston*  
Clerk of the Circuit Court, Fourth Judicial Circuit  
Shelby County, IL

**COMPLAINT FOR DECLARATORY RELIEF**

Now Comes Jessica Fox, not individually, but in her official capacity as Shelby County Clerk, by and through the Shelby County State's Attorney, Robert T. Hanlon, seeking declaratory relief, and names as Defendant the Shelby County Board of Review CHRIS JOHNSTON, GREGG BROWN, AND KENNY SCHWENGEL and in support of this Complaint and states as follows:

**JURISDICTION PARTIES AND VENUE**

- 1) The Plaintiff in this cause of action is Jessica Fox, Shelby County Clerk acting solely in her official capacity.
- 2) Shelby County Board of Review is a unit of Local Government named as a defendant because it is a necessary party.
- 3) Defendant Chris Johnston claims the right of office on the Board of Review by way of election.
- 4) Gregg Brown claims the right of office on the Board of Review by appointment from the Shelby County Board.

5) Kenny Schwengel claims the right of office on the Board of Review by appointment from the Shelby County Board.

6) This Court has jurisdiction over this case because an actual controversy exists.

7) This Court is the proper venue to obtain relief because the events giving rise to the actual controversy occurred in Shelby County Illinois and the controversy as defined herein relates to the proper manner of appointment or election of members to the County Board.

#### RELEVANT FACTS

8) Jessica Fox by virtue of holding the office of County Clerk is charged with the legal duty to properly prepare ballots and conduct elections in and for public offices in Shelby County and is uncertain how to proceed in preparing future ballots with either the inclusion or exclusion of the position of Member of the Board of Review.

9) The uncertainty arises because of a conflict between the statutory provisions of the Property Tax Code which provides for the appointment of members to the Board of Review by the County Board; and a prior referendum allowing for election of members of the Board of Review.

10) Nothing in the Property Tax Code provides for taking the appointment process out of the County Board and placing it on a referendum to elect Board of Review members.

11) In 1981 or thereabouts a referendum was placed on the ballot to determine whether or not members of the Board of Review would be elected rather than appointed.

12) The question on the November 3, 1981 ballot read: "*Shall the Office of Member of the Board of Review of the County of Shelby be elective rather than appointive*" passed by a vote of 1968 yes to 1129 no.

13) However, the documentary trail fails to include exactly how the question appeared on the ballot in 1981.

14) The Property Tax Code provides in pertinent part the following:

Sec. 6-5. Appointed boards of review. In counties under township organization with less than 3,000,000 inhabitants in which no board of review is elected under Section 6-35, there shall be an appointed board of review to review the assessments made by the supervisor of assessments. When there is no existing appointed board of review, the chairman of the county board shall appoint, with approval of the county board, 3 citizens of the county to comprise the board of review for that county, 2 to serve for a one year term commencing on the following June 1, and one to serve for a 2 year term commencing on the same date. When an appointed board of review already exists, successors shall be appointed and qualified to serve for terms of 2 years commencing on June 1 of the year of appointment and until their successors are appointed and qualified. Vacancies shall be filled in like manner as original appointments, for the balance of the unexpired term. Members of the county board may be appointed to the board of review. A member of the board of review may be reappointed. No person may serve on the board of review who is not qualified by experience and training in property appraisal and property tax administration.  
See 35 ILCS 200/6-5.

15) The State's Attorney having reviewed the Property Tax Code and the Counties Code cannot locate any authority to support that the County Board had any power to place for referendum the positions of Members of the Board of Review on the Ballot for consideration.

16) Likewise, a review of the Election Code did not reveal an appropriate section of the Election Code that would support a petition to place on the ballot offices of Member of The Board of Review.

17) Rather, the Election Code provides as follows for election of Board of Review Members:

(10 ILCS 5/2A-12) (from Ch. 46, par. 2A-12)

Sec. 2A-12. Board of Review - Time of Election. A member of the Board of Review in any county which elects members of a Board of Review shall be elected, at each general election which immediately precedes the expiration of the term of any incumbent member, to succeed each member whose term ends before the following

general election, except that members of the Cook County Board of Review shall be elected as provided in subsection (c) of Section 5-5 of the Property Tax Code. (Source: P.A. 93-574, eff. 8-21-03.)

18) The election code provisions clearly reference the Property tax code and its provisions predicated on county population.

19) The application of Dillons' Rule does not provide the authority of the County Board to Place the positions of Members of the Board of Review on the Ballot. Likewise, the application of statutory construction does not provide for individuals placing the question of electing Board of Review members on the ballot.

20) Accordingly, the Shelby County Clerk is faced with the provisions of the Tax Code commanding appointment of the Members of the Board of Review and the Prior Referendum commanding her to place the question to the voters who should be Members of the Board of Review.

21) The Shelby County Clerk's uncertainty on how to proceed with the possible placement of Members on the Board of Review on future ballots is only resolved by a declaration by this Court.

22) The Shelby County Clerk is not an attorney and cannot act in preparing a proper ballot without a declaration by this Court settling the rights of the parties and directing her as to whether or not to place names on ballot for positions on the Board of Review.

23) The State's Attorney having considered the competing interests of the members of the Board of Review and the County Clerk believes that a declaration of rights mandating the appointment of Board of Review Members is a proper disposition of the actual controversy set forth herein.

24) Shelby County is not a home rule unit.

25) As a non-home-rule unit, Shelby County is governed by “Dillon’s Rule.” See *Jemis v. Graham*, 408 Ill. App. 3d 898, 902 (2011).

26) Under “Dillon’s Rule,” a non-home-rule unit possesses only those powers specifically granted by the Illinois Constitution or by statute. *Id.* However, when exercising authority to regulate in a particular field, a non-home-rule unit may not adopt an ordinance that infringes upon the spirit of the state law or is repugnant to the general policy of this state. *Id.*

27) The 1981 referendum infringes upon the provisions of state law commanding appointment of Members of the Board of Review. The 1981 referendum is repugnant to the provisions of state law.

#### PRAYER FOR RELIEF

Wherefore, Plaintiff prays that this court grant the following relief:

- A) Declare the rights of the parties in the actual controversy.
- B) Issue an order commanding Jessica Fox to either place on the ballot in the upcoming election a contest for Members of the Board of Review or enter an order commanding her not to place the positions of Board of Review Members on the Ballot.
- C) For such other and further relief as this court deems just and equitable.

Respectfully submitted,

/s/Robert T. Hanlon  
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Shelby County State’s Attorney

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