

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

IN RE:)
)
PETITION OF THE COOK COUNTY)
CLERK FOR AN ORDER OF COURT) Case No. 2020-COEL-000021
ALLOWING FOR CHANGE OF)
BALLOTING PROCEDURES FOR)
RESIDENTS OF NURSING HOME)
AND LONG-TERM CARE)
FACILITIES IN COOK COUNTY)
ILLINOIS)
)
)

Amended Order for Declaratory Judgment and Injunctive Relief

This cause coming to be heard on the Emergency Motion for Temporary Restraining Order (“Motion”) and Verified Complaint for Emergency Declaratory and Injunctive Relief (“Verified Complaint”) filed by the Cook County Clerk (“Election Authority”), the Court being advised in the premises, *the Court finds and orders as follows:*

1. A plaintiff seeking injunctive relief needs to establish: (1) a certain and clearly ascertained right which needs protection; (2) irreparable injury which will be suffered without protection; (3) no adequate remedy at law; and (4) probable success on the merits. *Ill. Beta Chapter of Sigma Phi Epsilon Fraternity Alumni Bd. V Ill. Inst. Of Tech.*, 409 Ill. App. 3d 228, 231.
2. The state, county and local Republican Parties, the state and county Democratic Parties, the Illinois Attorney General’s Office, the Illinois State Board of Elections, the Cook County State’s Attorney’s Office and the Cook County Clerk’s Office have confirmed notice of this matter via email transmission.
3. The residents of the affected nursing homes and long-term care (“LTC”) facilities have a clearly ascertainable right to vote in a safe and efficient manner in the November 3, 2020, general election, the Election Authority has a clearly ascertainable right to provide election

procedures to those residents in a safe and secure manner, the Election Authority has a strong likelihood of success to preserve these rights to vote and the integrity of the election process, and they will suffer irreparable harm without injunctive relief as there is no legal remedy which will adequately provide voters their right to cast their ballot absent the following ordered procedures.

4. The Court finds that there is a “public health emergency under Section 4 of the Illinois Emergency Management Agency Act” as proclaimed by the Governor of the State of Illinois and as set forth in Exhibit B to the Verified Complaint.
5. The Court finds in-person voting is required at nursing homes and other LTC facilities under Section 19-12.2 of the Illinois Election Code (10 ILCS 5/19-12.2), but that 23 of 25 nursing homes/LTC in suburban Cook County have indicated that they would not allow anyone in their facilities to conduct in person absentee voting due to the health risks posed to their residents because of the ongoing Covid-19 pandemic (see the affidavit of Angie Verros, Supervisor of Nursing Home Services for the Cook County Clerk, Exhibit C to the Complaint).
6. In-person voting required by Section 19-12.2 is expressly required to be treated as mail-in voting and that “ballots shall be treated as vote by mail ballots and shall not be counted until the close of polls on the following day.” 10 ILCS 5/19-12.2.
7. The Illinois Department of Public Health (“IDPH”) has issued health and safety guidelines for nursing homes and other long-term care facilities (Exhibit B to the Verified Complaint), in which IDPH proclaimed that the coronavirus and COVID-19 presents “known health risks for older adults and people who have severe chronic medical conditions.”

8. IDPH has also issued health and safety guidelines for polling places for the November 3, 2020, general election as set forth in Exhibit 1 to the Board's Motion. Said IDPH polling place guidance expressly advises election authorities "to relocate polling places previously stationed in nursing homes, long-term care facilities and senior living residences, to minimize COVID-19 exposure among vulnerable individuals, including older individuals and those with chronic medical conditions."
9. On October 5, 2020, IDPH issued additional election-related guidance titled "2020 General Election Guidance Voting Information for Nursing Homes and Other Long-Term Care Facilities." This guidance expressly instructs election authorities "to make alternative arrangements for residents to vote that avoid the operation of on-site polling places and interaction between local election officials and LTC residents" as is normally required under Section 19-12.2 of the Election Code.
10. Recently enacted legislation that applies specifically to the November 2020 general election (10 ILCS 5/2B-1, *et seq.*) requires election authorities like the Cook County Clerk to comply with the election-related IDPH guidelines. 10 ILCS 5/2B-35(a) ("Election authorities shall comply with any early voting and election day safety and health practices established in written guidance provided to the election authorities by the Illinois Department of Public Health.").
11. The Cook County Clerk seeks to eliminate in-person voting under Section 19-12.2 of the Election Code and replace those voting procedures with standard Vote By Mail ("VBM") procedures set forth in Article 19 of the Election Code (10 ILCS 5/19-1, *et seq.*), consistent with the Section 19-12.2 requirement that the subject ballots be treated as VBM ballots.

12. The alternative arrangements for VBM voting at these facilities will not adversely affect the integrity, security, or accuracy of the election because, in lieu of having election judges present for the in-person voting under Section 19-12.2, all of the relevant VBM ballots will be subjected to certification and approval procedures conducted by panels of three election judges from the Democratic and Republican parties pursuant to 10 ILCS 5/2B-20(d).
13. The alternative arrangements are consistent with the Governor's disaster proclamations and the IDPH guidance cited herein, and that said alternative arrangements will act as reasonable safeguards for the health and safety of the residents of nursing homes and LTC facilities while also protecting the residents' clear and ascertainable right to cast a ballot in the 2020 general election in a safe and efficient manner.
14. Based upon: (a) the IDPH guidelines cited above advising election authorities to not conduct in-person voting at polling places inside nursing homes and other LTC facilities to minimize COVID-19 exposure among those vulnerable populations; (b) the separate IDPH guidance expressly calling for election authorities to find alternative arrangements in lieu of the in-person voting at nursing homes and LTC facilities required by Section 19-12.2 of the Election Code; and (c) the statutory requirement that election authorities comply with all election-related IDPH guidelines for the November 2020 general election pursuant to 10 ILCS 5/2B-35(a), the Cook County Clerk is unable to meet the in person voting requirements of Section 19-12.2 and alternative procedures are necessary.

Based upon the foregoing findings, IT IS HEREBY ORDERED THAT:

15. The Election Authority's Verified Complaint for Emergency Declaratory and Injunctive Relief ("Verified Complaint") is granted pursuant to 735 ILCS 5/11-107 and 5/11-102.
16. For the safety of residents of the affected facilities, the Election Authority will supply mail-in ballots to those residents who have requested ballots for the November 2020 general election in lieu of conducting in-person voting at these facilities.
17. The Election Authority shall deliver said VBM ballots through its authorized agents to the administrator of each facility on or before October 30, 2020, or as previously mailed through the U.S Postal Service under routine statutory vote-by-mail procedures.
18. The Election Authority shall provide a 72 hour advance public notice, to the Cook County Democratic Party, the Cook County Republican Party, and the Illinois Attorney General, of the date and time frame any authorized agents will be transmitting VBM ballots to each nursing home facility.
19. The Election Authority shall further provide the names of all electors who will be receiving a ballot for each facility, on or about the time of delivery to the Cook County Democratic Party, the Cook County Republican Party, and the Illinois Attorney General.
20. The pollwatcher provisions contained in section 19-12.2 shall be applicable to the procedure wherein the election authority delivers ballots to the administrator of the facility. Pollwatchers shall provide proper credentials including the name, address, and township or municipality in Cook County to the Cook County Clerk prior to the date of delivery to each facility.
21. The administrator of each facility shall be instructed to provide ballots to the voters who have requested and applied for a mail in ballot.

22. The voter shall be allowed to vote on the VBM ballot and will be provided a postage-paid VBM return envelope, which may be mailed or delivered to the Election Authority pursuant to 10 ILCS 5/19-6 or deposited in one of the Clerk's secure collection site vote by mail drop boxes.
23. The administrator of each facility shall be instructed to sign the certification, in the form attached to this order, certifying that each ballot was provided to the appropriate resident, that the resident was allowed to vote the ballot in private, and that upon completion of the voting all ballots were sealed in their return envelopes and either mailed to the Election Authority, postmarked on or before November 3, 2020 or deposited in one of the Clerk's secure collection site vote by mail drop boxes. The certification shall be delivered to the Election Authority by November 6, 2020.
24. In the event that any voter requested assistance, the normal certification of assistance to a voter would be completed by the person chosen by the voter to assist him or her, and this certification (which appears on the outside of the Election Authority's VBM return/certification envelopes) shall be returned to the Board along with the ballot and the return/certification envelope.
25. All ballots cast pursuant to this Order shall be held for tabulation until November 3, 2020, consistent with the provision that on-site ballots shall be treated as vote by mail ballots and shall not be counted until the close of the polls on the following day^{10 ILCS 5/19-12.2}.
26. A copy of the Election Authority's Emergency Motion for Temporary Restraining Order and a copy of this Order for Declaratory Judgment and Injunctive Relief shall be posted on the Board's website continuously through November 3, 2020.

27. The Court reserves ruling on any other requests for relief necessary to afford effective relief in this matter.

October 16, 2020



Entered:

ENTERED

October 16, 2020

Dorothy Brown
Clerk of the Circuit Court
of Cook County, IL

DEPUTY CLERK



CERTIFICATION OF
NURSING HOME/LONG TERM CARE FACILITY ADMINISTRATOR

1. My name is _____.

2. I am the Administrator
of _____ (Name of Facility)

located at _____ (Address of Facility)

3. On _____, The Cook County Clerk delivered vote by mail ballots to our Facility, for all eligible residents of our Facility who have requested ballots for the November 3, 2020 Presidential General Election.

4. The ballots have been provided to all eligible residents who requested a ballot, and each resident was allowed to vote the ballot in private, or in the event the voter requested assistance, the normal certification of assistance to a voter has been completed on the outside of the ballot return envelope and was thereby returned to the Clerk along with the ballot.

5. Each resident's ballot has been sealed in the Clerk's postage prepaid return/certification envelope and was mailed to the Clerk or was deposited into one of the Clerk's secure collection site vote by mail drop boxes.

VERIFICATION BY CERTIFICATION

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

Signature of Administrator

Dated: _____, 2020