

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

WILLIAM MORGAN, <i>et al.</i>	)	
	)	
Plaintiffs,	)	20-cv-2189
	)	
v.	)	Judge Rebecca R. Pallmeyer
	)	Emergency Judge
JESSE WHITE, in his official capacity as	)	
Illinois Secretary of State, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DEFENDANT COOK COUNTY CLERK’S  
12(b)(1) AND 12(b)(6) MOTION TO DISMISS THE COMPLAINT**

Defendant Karen A. Yarbrough, Cook County Clerk, in her official capacity, by and through her counsel, Kimberly M. Foxx, State’s Attorney of Cook County, through her assistant, Jessica M. Scheller, pursuant to Rule 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure, respectfully moves this Honorable Court to dismiss Plaintiff’s Verified Complaint for Emergency Declaratory and Injunctive Relief (“Complaint”) and in support of her Motion to Dismiss, states:

**INTRODUCTION**

Plaintiffs’ claims against the County Clerk concerning the mechanics of certifying Article VII referenda must and should fail, as the Plaintiffs’ concede the County Clerk’s sole role in the Article VII referendum process is to place any Article VII initiative referendum questions on the ballot after certification. (Dkt. 1, ¶ 12). As Plaintiffs acknowledge in their Complaint, certification is completed by the clerks of the county municipalities. *Id.* Plaintiffs do not allege that the County Clerk has failed or refused to place a certified (or uncertified) Article VII initiative referendum on the ballot. *Id.* Their active grievances or claims relate exclusively to the certification process;

(Dkt. 1, *generally*), a process in which the County Clerk has no part. *Id.* For the foregoing reasons, as well as those set forth in the concurrently filed Memorandum of Law filed in support of this Motion, the County Clerk asks this Court to find that she has neither a role in the certification process or in this lawsuit and grant relief pursuant to Fed. R. Civ P. 12.

### **BACKGROUND FACTS & PROCEDURAL HISTORY**

Plaintiffs, a group of Illinois registered voters, seek to circulate an initiative petition for a constitutional amendment to the Illinois Democracy Amendment pursuant to Article XIV, Section 3 of the Illinois Constitution. On April 7, 2020, Plaintiffs filed their Complaint [Docket No. 1] against Cook County Clerk Karen A. Yarbrough (“County Clerk”), Secretary of State Jesse White, Evanston City Clerk Devon Reid, as well as the individual Board Members of the Illinois State Board of Elections. In response to the COVID-19 pandemic and the Governor’s shelter-in-place orders, Plaintiffs seek to enjoin or modify the Illinois petition collection requirements for initiative referendums to be placed on the November 3, 2020 general election ballot. However, the County Clerk plays no role in the referendum process and Plaintiffs concede that the County Clerk’s sole role in this process is merely to place any Article VII initiative referendum questions certified by the clerks of suburban Cook County municipalities on the ballot. (Dkt. 1, ¶ 12).

Plaintiffs seek an order, among other things, requiring Defendants to allow for petitions to be submitted electronically via an online form, that the May 3 deadline be extended to August 3, 2020, and that the signature requirement be reduced by 50%. (Dkt. 1 at ¶ B, Prayer for Relief). Plaintiffs also seek costs and attorneys’ fees against Defendants. (*Id.* at ¶E).

Nevertheless, Plaintiffs fail to state a claim against the County Clerk because the Clerk has no role in the referendum process and cannot provide the relief Plaintiffs seek. Accordingly,

because no justiciable controversy exists as to the County Clerk, this Court lacks subject matter jurisdiction and should dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(1) and also because it fails to state a claim under Rule 12(b)(6).

### CONCLUSION

For the foregoing reasons, no justiciable controversy exists between the Plaintiffs and the County Clerk. Plaintiffs' constitutional rights, to the extent they exist, have not been constrained in any way as the Illinois petition requirements have not yet been enforced. Additionally, Cook County Clerk Karen Yarbrough was named in the Complaint but clearly committed no wrongdoing, is not involved in the petition process, and has cannot effectuate the relief Plaintiffs seek. As such, Plaintiffs' Complaint should be dismissed in its entirety.

WHEREFORE Respondent Karen A. Yarbrough, Cook County Clerk, in her official capacity, respectfully requests that this Court dismiss Plaintiffs' Complaint against her, with prejudice, pursuant to FED R. CIV. P. 12 (b)(1) and (b)(6).

April 16, 2020

Respectfully submitted,

KIMBERLY M. FOXX  
State's Attorney of Cook County

*/s/ Jessica M. Scheller*  
Silvia Mercado Masters  
Assistant State's Attorney  
Jessica M. Scheller  
Assistant State's Attorney  
Chief; Advice, Business & Complex Litigation  
Division – Civil Actions Bureau  
500 Richard J. Daley Center  
Chicago, Illinois 60602  
(312) 603-6934  
[jessica.scheller@cookcountyil.gov](mailto:jessica.scheller@cookcountyil.gov)  
[silvia.mercadomasters@cookcountyil.gov](mailto:silvia.mercadomasters@cookcountyil.gov)

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on April 16, 2020, she caused to be filed through the Court's CM/ECF system the foregoing document, a copy of which will be electronically mailed to the parties of record.

s/ Jessica M. Scheller