STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

In Re: the Union of Round Lake	)	GEN. NO. 16 MC 1

ORDER

Petitioner in this matter requests a ballot initiative seeking to join the Villages of Round Lake, Round Lake Beach and Round Lake Park into one political subdivision ("Petition"). Petitioner filed the matter pursuant 65 ILCS 5/7-2-1, which allows 2 or more contiguous municipalities to be united pursuant to Section 16, which in turn confers jurisdiction upon the Circuit Court to entertain objections concerning the Petition. 65 ILCS 5/7-2-16.

The Villages of Round Lake, Round Lake Beach, and Round Lake Park, along with individuals Linda Lucassen, Daniel A. MacGillis and Richard H. Hill filed objections to the Petition ("Objectors"). Objectors assert that the Petition was not timely filed and consequently the court is without jurisdiction to hear the matter. Objectors also argue that Petitioner failed to publish its intent to place the referendum on the ballot, as required by statute, rendering the Petition null and void.

Petitioner filed this action on August 8, 2016, less than 122 days prior to the November election. Chapter 10 of the election code provides for both a 92 day deadline and a 122 day deadline for the submission of public questions to referendum. The provision states:

> § 28-2. (a) Except as otherwise provided in this Section, petitions for the submission of public questions to referendum must be filed with the appropriate officer or board not less than 92 days prior to

> a regular election to be eligible for submission on the ballot at such election…"
> (b) However, petitions for the submission of a public question to referendum which proposes the creation or formation of a political subdivision must be filed with the appropriate officer or board not less than 122 days prior to a regular election to be eligible for submission on the ballot at such election.

10 ILCS 5/28-2.

The publication provision Objectors maintain is applicable is found within the same section, and states:

> "A petition for the incorporation or formation of a new political subdivision whose officers are to be elected rather than appointed must have attached to it an affidavit attesting that at least 122 days and no more than 152 days prior to such election notice of intention to file such petition was published in a newspaper published within the proposed political subdivision, or if none, in a newspaper of general circulation within the territory of the proposed political subdivision…."

There is a further requirement under subsection (g) of 28-2 which mandates the publishing of a notice of intent to file the Petition. The form of the notice is provided in 28-2(g), of which the Petitioner must substantially comply, which includes notice that the officers of the new political subdivision "will be elected on the same day as the referendum," and that the notice must contain the "territories" that will be included within the new political subdivision. The requirement concerning the election of officers on the same day is required only "[w]here applicable." 10 ILCS 5/28-2(g). Failure to comply with the requirements of this provision renders "any referendum held pursuant to such petition, null and void." *Id.*

If Section 28-2(b) applies to the instant case -- as Objectors assert -- Petitioner has missed the 122 day filing requirement and, thus, the Petition is not timely. The court must determine what the legislature meant by the phrase "creation or formation of a political subdivision." Petitioner argues that paragraph (b) "applies by its terms to the creation or formation of a

political subdivision as opposed to the Union of existing political subdivisions." Restated, Petitioner essentially argues that the union of three existing political subdivisions into one new political subdivision, does not amount to a "creation or formation" of a new political subdivision. The Objectors argue that such a reading flatly ignores the plain reading of the statute and, if applied, would render the deadlines set forth in the statute for placing the issue on the ballot impossible to meet.

It is the preeminent role of statutory construction to give effect to the language and intent of the legislature. *People v. Bole*, 155 Ill. 2d 188, 195 (1993). Words used in the statutory provision should be given their plain and ordinary meaning. *People v. Hicks*, 164 Ill. 2d 218 (1995). One must also presume that when the legislature enacts a law, it does not intend to produce absurd, inconvenient or unjust results. *Vine Street Clinic et al. v. Healthlink, Inc.,* 222 Ill.2d 276, 282 (2006). "Where a general statutory provision and a more specific statutory provision relate to the same subject, we will presume that the legislature intended the more specific provision to govern." *Moore v. Green*, 219 Ill. 2d 470, 480 (2006).

Merriam-Webster's online dictionary defines "create" as follows: "to make or produce (something): to cause (something new) to exist." Merriam–Webster Online Dictionary, http://ww w.merriam-webster.com/dictionary/create (last visited Sept. 13, 2016). "Formation" is defined as "the act of forming or creating something: something that is formed or created." Merriam–Webster Online Dictionary, http://www.merriam-webster .com/dictionary/formation (last visited Sept. 13, 2016).

As Objectors note, One Round Lake does not today exist. The proposed referendum upon passing will cause One Round Lake to exist, or, to use Merriam-Webster's phraseology, it will "cause (something new) to exist." The Illinois Supreme Court used the same word in

describing an analogous situation when 22 park districts were extinguished and one was thereafter created: "The creation of the Chicago Park District and the consequent dissolution of the superseded districts have been held to be a valid exercise of legislative power." *Kocsis v. Chicago Park Dist.*, 362 Ill. 24, 31, 198 N.E. 847, 851 (1935). [1] That the three current political subdivisions will no longer exist after they are unified into one as a result of the referendum proposal has absolutely nothing to do with whether a new political subdivision is created or formed. Petitioner's argument ignores the very plain language of the statute.

Petitioner, however, advances several arguments as to why the court should step away from the plain language of the statute and instead look at caselaw and related statutes to drill down and discern the true meaning of the words selected by the legislature, rather than simply accepting the "colloquial meaning" of the terms. In support, petitioner cites *People ex rel. Montgomery v. Lierman*, 415 Ill. 32 (1953). *Montgomery* in no way dealt with the meaning of "creation or formation" of a political subdivision. Instead, the case concerned the validity of the Revised Cities and Villages Act relating to the union of the contiguous municipalities of Champaign and Urbana, and whether a mandamus should issue directing the county judge to call the unification proposal for election.

The Petitioner cites several quotations within the opinion where the Supreme Court referred to the proposal with forms of the words "unite" and "merge." Petitioner's Opposition to Motion to Dismiss, p. 10. Petitioner then notes that the Court distinguished between various types of actions that could be authorized with respect to a governing body, including

[1] Objectors aptly note that there are six examples set forth within 65 ILCS 5/7-2, where the legislature referred to the term "formation" or "formed" with reference to a "United City." For example , 65 ILCS 5/7-2-26 says: "The formation of a united city under Section 7-2-1 …." These examples are in obvious reference to situations such as the instant one where two or more contiguous political subdivisions are unified into one.

"organizing, uniting, dividing or annulling." Id. at 11. Thus, Petitioner asserts, the court found a material distinction between "organizing" and "uniting."

How one can conclude therefrom that the terms "creation or formation" as set forth in Section 28(b) excludes referenda involving unification of contiguous political subdivisions is lost on this Court. The fact that the court used forms of the word "unite" in describing the issues confronting the court in *Montgomery* is of no moment in the instant case. *Montgomery* in no way convinces this court to ignore the plain reading of the statute and adopt Petitioner's interpretation.

Petitioner further claims the 122-day deadline does not apply to the case at hand because when interpreting the statutory scheme as a whole, it is evident that Sections 28-2(b) and 28-2(g) apply only to instances where a political subdivision is created or formed in whole or in part from unincorporated territory. This argument, too, is unpersuasive and ignores the tenant that statutes should be construed, if possible, so that no term is rendered superfluous, meaningless, or redundant. *Balmoral Racing Club, Inc. v. Topinka*, 334 Ill. App. 3d 454, 459 (1st Dist. 2002).

Section 28-2(g) requires that a "petition for the incorporation or formation of a new political subdivision whose officers are elected rather than appointed must have attached to it an affidavit attesting that at least 122 days and no more than 152 days prior to such election notice of intention to file such petition was published in a newspaper published in the proposed political subdivision. . ." Petitioner's argument that 28-2(g) only applies to a new political subdivision from unincorporated territory would render the terms "incorporation" and "formation" redundant in 28-2(g). Rather, to avoid redundancy, "incorporation" and "formation" must have different meanings. If Petitioner's meaning of the term "incorporation" is correct, then 28-2(g) applies in part to new political subdivisions from unincorporated territory. It follows that in order for the

words to have different meaning, "formation" must refer to new political subdivisions from territory including incorporated zones such as municipalities.

This reasoning also applies to Section 28-2(b) which uses the terms "creation or formation of a political subdivision. . ." If formation of a political subdivision includes incorporated territories forming political subdivisions, the creation of a political subdivision would have a different meaning limited to incorporation of unincorporated territories to create political subdivisions.

Petitioner further cites *In re Incorporation of Vill. of Godfrey, Madison Cty., Ill.*, 243 Ill. App. 3d 915 (1993) in support of its argument that the terms only apply to incorporation of unincorporated territories. Because *Godfrey* in no way explicitly stands for such a proposition, Petitioner urges the Court to again drill deeper, and that careful scrutiny, *Godfrey* will reveal an implicit meaning that supports its position. First, as noted, the court will not ignore the plain language of Section 28-2(g) and add an exclusion based upon a supposed implicit finding in a 13 year old case. Further, the court disagrees that there is any such implicit finding that can be culled from the opinion that supports Petitioner's position.

In *Godfrey*, petitioners filed an affidavit and a copy of the published notice of the intent to form and incorporate a new municipality, the Village of Godfrey. The court certified the petition and it was approved by the voters. Subsequently, interveners argued that the court had no jurisdiction to certify the petition. Intervenors argued that the Petitioners violated Section 28-2(g) of the election code when they failed to comply with the asterisked portion of the notice provision relating to the election of officers on the same day of the referendum.

The court first noted that the Election Code and the Illinois Municipal Code were to be considered *in pari materia*, or in harmony with one another, when construing the provisions of

these codes. *Id*. at 917–18. The court then analyzed the Municipal Code and found that it clearly called for a two-step process for incorporating: 1) approval of the referendum to incorporate, and then subsequent to that 2) election of officers. *Id* at 920. The court then cross-referenced a provision from the Election Code[2] that stated that the election for establishment of a political subdivision and its officers must be held simultaneously only "if otherwise so provided by law." The court found that "if otherwise so provided by law" meant that the election of officials must be simultaneous with the ballot initiative only if "some other law, in addition to the election code, so provides." Id. at 921. "Because simultaneous elections were not required [by some other law], the asterisked paragraph of the notice form in section 28-2 was likewise not applicable," the court concluded.[3]

From this, Petitioner asks this court to conclude that *Godfrey* can be read to stand for the proposition that section 28-2(g) only applies to new incorporation of unincorporated territories and not to the union of existing political subdivisions. Again, this argument ignores the plain reading of the statute. Moreover, this Court cannot discern from *Godfrey* the implicit conclusion Petitioner asks this court to make.

Petitioner also asserts that construing 28-2(g) to apply to the union of municipalities leads to inconsistencies between the two items set forth in the Section 28-2(g) notice and the Union of Contiguous Municipalities procedures set forth in 65 ILCS 5/7-2-1 et seq. Subsection (g) of 28-2 requires an affidavit attesting that at least 122 days and no more than 152 days prior to an

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[2] Ill.Rev. Stat. 1989, ch. 46, par. 2A-1.2(f). Currently 10 ILCS 5/2A-1.2.

[3] Petitioner in the instant case then quotes *Godfrey* and mistakenly attributes the *Godfrey* quote as referring to section 28-2(g). The pertinent *Godfrey* quote referenced by Petitioner containing Petitioner's parenthetical attributing the quote to the current Section 28-2(g) is as follows: "The fallacy of the appellants' reasoning arises in viewing section 2A-1.2(f) **[now Section 28-2(g)]** currently as applying only to the incorporation of a village or city under the Illinois municipal code." Petitioner's Opposition to Motion to Dismiss, p. 4. As noted in footnote 2 above, Section 2A-1.2(f) of the former Chapter 46 is not Section 28-2(g) of the current Chapter 10. It instead is found in 10 ILCS 5/2A-1.2. *Godfrey* does indeed cite the current Section 28-2(g), but at the time *Godfrey* was published, the citation for Section 28-2 was Ill.Rev.Stat. 1989, ch. 46, 28-2. *Godfrey*, 243 Ill.App.3d at 918.

election a notice of intention to file such petition be published. The form of the notice is set forth in the provision and provides: "The officers of the new [political subdivision] will be elected on the same day as the referendum." Petitioner contends this provision conflicts with the Municipal code because the Union procedures do not provide for the election of officers at the same time the referendum is voted on. This argument is unpersuasive. As previously noted, a similar argument was discussed and dismissed in the *Village of Godfrey* matter. *Vill. of Godfrey,* 243 Ill. App. 3d at 920–21. The crucial language in this consideration is "the officers of the new political subdivision will be elected on the same day as the referendum. . .**where applicable**." 10 ILCS 5/28-2(g) (Emphasis added.). The plain meaning of this language indicates that the officers will be simultaneously elected with the vote on the referendum only if applicable with other law. If this court were to adopt the Petitioner's interpretation of this language -- that the Election Code takes precedence over the Illinois Municipal Code --the language of section 28-2(g) emphasized above and the language of the Illinois Municipal Code become superfluous, a result not intended by the legislature and a construction of the statutes to be avoided. *See Vill. of Godfrey*, 243 Ill. App.3d at 920-21.

Petitioner further alleges the notice is unnecessary for the Union of Municipalities because the officers are not elected at the same time as the vote on referendum. Therefore, the additional time needed to inform voters and potential candidates of an election on the same date as the referendum is unnecessary in the case of a Union. But, this was not a consideration for the *Village of Godfrey* court. In fact, *Godfrey* court specifically found that the Municipal Code section at issue provided the election of the municipal officers would follow at a later date. *Id*. at 920. Thus, this Court can find no support in the caselaw that the reason for the notice provision in 28-2(g) has to do with the election of the officers on the same day as the referendum.

The form notice in 28-2(g) also provides, "The territory prosed to comprise the new . . . . is described as follows: (description of territory included in petition)." Petitioner claims this provision is not relevant to the Union Petition since existing municipalities have legally defined boundaries, and thus, a description of the territory is unnecessary. This argument only works if the definition of "territory" includes unincorporated land and excludes incorporated areas and municipalities. It does not. The term "territory" is defined as "a geographic area belonging to or under the jurisdiction of a governmental authority" and "an indeterminate geographic area." Merriam-Webster Online Dictionary. Merriam–Webster Online Dictionary, http://www.merriam-webster.com/dictionary/territory (last visited Sept. 15, 2016). Both definitions could include a municipality and, certainly, do not exclude incorporated areas. Providing the name of the municipality would be helpful to referendum voters and does not appear to conflict with the form's request to provide a description of the territory included in the petition. Further, Article 7 of the Municipal Code is titled "Territory" and the provisions for Union of Contiguous Municipalities are listed under Article 7. Clearly, the term "territory" does not exclude incorporated areas and municipalities. There is no basis for the contention that the form notice in 28-2(g) is somehow inconsistent with the Union requirements in the Municipal Code.

This Court finds the Petition was subject to the 122-day filing deadline under 10 ILCS 5/28-2(b), as well as the requirement to file an affidavit and publish notice of the intent to file the Petition pursuant to 10 ILCS 5/28-2(g). It is undisputed that no affidavit was filed with the Petition and the record fails to disclose that the requisite notice was published. Further, the Petition was not filed on or before July 11, 2016 (which is 122 days prior to the general election.)

Therefore, the Petition was not filed within the time and under the conditions required by law and is dismissed.

ENTER:

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JUDGE SCHIPPERS

Dated at Waukegan, Illinois

this 16th Day of September 15, 2016