

2012 Ill. App. (2d) 120103-U
No. 2-12-0103
Order filed March 6, 2012

NOTICE: This order was filed under Supreme Court Rule 23(c)(3) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

JENNIFER STAHL, BILL EAGAN, and KIM BENDIS,)	Appeal from the Circuit Court of Du Page County.
)	
Petitioners-Appellants,)	
)	
v.)	No. 12-MR-71
)	
MUNICIPAL OFFICERS ELECTORAL BOARD OF THE CITY OF NAPERVILLE) and its members, A. GEORGE PRADEL,) DOUG KRAUSE, and PAMELA) LaFEBER; and WILLIAM C. DAWE,))	Honorable Bonnie M. Wheaton, Judge, Presiding.
Respondents-Appellees.)	

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Zenoff concurred in the judgment.

ORDER

Held: Appeal challenging decision of electoral board regarding inclusion of referendum on ballot was moot where it was too late to alter the ballot.

¶1 Petitioners, Jennifer Stahl, Kim Bendis, and Bill Eagen, appeal an order of the circuit court of Du Page County affirming an order of respondent, the Municipal Officers Electoral Board of the City of Naperville (the Board) denying petitioners' request to place a referendum on the ballot for

an election to be held on March 20, 2012 (additional named respondents are A. George Pradel, Doug Krause, Pamela LaFeber, and William C. Dawe). Both the Board and Dawe have filed appellate briefs. Dawe moves to dismiss this appeal, arguing that it is moot. The Board contends the appeal is moot as well. We agree.

¶2 Generally, a court will not entertain moot issues. *Fisch v. Loews Cineplex Theaters, Inc.*, 365 Ill. App. 3d 537, 540 (2005). A case is moot where intervening events “render it impossible for the reviewing court to grant effectual relief to either party.” *Bluthardt v. Breslin*, 74 Ill. 2d 246, 250 (1979). Matters *dehors* the record may be considered in assessing whether a case is moot. *PACE, The Suburban Bus Division of The Regional Transportation Authority v. Regional Transportation Authority*, 346 Ill. App. 3d 125, 132 (2003).

¶3 In his motion, respondent asserts that, “[a]s a practical matter, a decision in this appeal cannot be effected in time to permit the printing of ballots that include the referendum question at issue here.” Indeed, in their motion to expedite this appeal, petitioners state that “February 3, 2012, is the last day for election authorities to have in their office a sufficient number of ballots printed and available for mailing to persons in the United States Service or their spouse and dependents, citizens temporarily residing outside the territorial limits of the United States and nonresident civilians.” Furthermore, in their reply brief, they acknowledge that ballots have been “previously mailed overseas.”

¶4 Obviously, it is beyond our power to order that petitioners’ referendum question be included on the ballots that have already been mailed. Petitioners contend that this fact does not render this case moot. To this end, they advance the following argument:

“In deciding on an appropriate remedy, a significant factor distinguishes a ballot referendum like this one from cases where a candidate prevails after objection litigation. There will only be one ballot line for the Advisory Referendum, as opposed to two or more competing candidates. A person votes either ‘yes’ or ‘no’ on the question (or of course exercises his or her right to skip the question entirely). The election result with respect to the public question is determined simply by measuring the relative votes based on who voted on the question. Neither side in the issue debate [*sic*] is measurably harmed if the referendum does not appear on each and every ballot, such as those previously mailed overseas. Both sides in the issue debate [*sic*] compete on a level playing field for the votes of those persons who will have the complete ballot on which the Advisory Referendum appears.”

We find this argument wholly unpersuasive. Most importantly, we would be extremely skeptical of any remedy that disenfranchises an entire class of voters (particularly troubling is that the class that would be disenfranchised in this case includes members of the military serving overseas). In essence, petitioners propose that the referendum be decided by a poll of a subset of the electorate, which would then be assumed to be representative of the entire electorate. The assumption that those voting would be representative of those who were disenfranchised is a dubious one at best. Voters physically residing in Naperville may not share identical concerns to those residents serving in the military or otherwise residing overseas. Thus, any assumption that they would vote in proportionally the same manner is unfounded. Equally unfounded, in turn, is petitioners’ contention that “[n]either side in the issue debate [*sic*] is measurably harmed if the referendum does not appear on each and

every ballot, such as those previously mailed overseas.” We also note that petitioners cite no authority in support of this argument.

¶5 The Board cites two cases where issues regarding the content of ballots were rendered moot when an election was held before the case was resolved. See *Richardson v. Rock Island County Officers Election Board*, 179 Ill. 2d 252, 256 (1997); *Rivera v. City of Chicago Electoral Board*, 2011 IL App (1st) 110283, ¶16. While these cases differ from the instant case in that they involved situations where an election had already been held, they are similar to the extent that the occurrence of the elections made altering the ballots impossible. Thus, they provide some guidance here. We have also located one foreign case that is pertinent. In *Miller v. Burk*, 124 Nev. 579, 599 n.70 (2008), the court explained, “the primary election is imminent and it appears that the ballots therefore have already been printed, [so] we deny as moot any relief directed at the 2008 primary election.” Thus, the law that exists does not support petitioners’ position.

¶6 In light of the foregoing, we dismiss petitioners’ appeal. All pending motions are stricken.

¶7 Appeal dismissed.