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No. _____

IN THE
SUPREME COURT OF ILLINOIS

WALTER P. MAKSYM, JR. and THOMAS L. MCMAHON, Respondents-Appellants, v. BOARD OF ELECTIONS COMMISSIONERS OF THE CITY OF CHICAGO, et al., Petitioners-Appellees.	Petition for Leave to Appeal from the Appellate Court of Illinois for the First Judicial District, First Division Appellate Court No. 11-0033 There Heard on Appeal from the Circuit Court of Cook County, County Department, County Division, No. 10 COEL 020 Honorable Mark J. Ballard, Judge Presiding.

PETITION FOR LEAVE TO APPEAL OF RAHM EMANUEL

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Dated: January 25, 2011

PRAYER FOR LEAVE TO APPEAL

Pursuant to Supreme Court Rule 315, petitioner Rahm Emanuel ("Emanuel") respectfully prays that this Court grant him leave to appeal from the decision of the Appellate Court of Illinois, First District.

JURISDICTION

The Appellate Court issued its opinion on January 24, 2011. App. A-1.[1] No petition for rehearing was filed.

POINTS RELIED UPON FOR REVERSAL

The Appellate Court's decision is one of the most far-reaching election law rulings ever to be issued by an Illinois court, not only because of its implications for the current Chicago mayoral election but also for the unprecedented restriction that it imposes on the ability of numerous individuals to participate in every future municipal election in this State.

Reversing the unanimous judgment of the Board of Election Commissioners and the decision of the Circuit Court, the Appellate Court held by a 2-1 vote that Emanuel is not qualified to run for Mayor of the City of Chicago because he does not satisfy the requirement that a candidate must have "resided in the municipality at least one year next preceding the election or appointment . . . ." 65 ILCS 5/3.1-10-5(a). That determination should be reviewed and reversed by this Court for six fundamental reasons.

First, the Appellate Court's ruling is squarely inconsistent with decisions by this Court and other Appellate Courts regarding the standard for determining a candidate's residency. These precedents hold that principles developed in the context of voter

[1] Citations to the appendix required by Rule 315(b)(6) are noted as App.__. Citations to the record on appeal are noted as R____ or C____.

residency also apply in assessing a candidate's residency. *See Smith v. People of the State of Illinois ex rel. Frisbie*, 44 Ill. 16 (1867); *People ex rel. Baumgartner*, 355 Ill.App.3d 842, 847 (4th Dist. 2005); *Delk v. Bd. Election Comm'rs*, 112 Ill.App.3d 735, 735 (1st Dist. 1983); *Walsh v. County Officers Electoral Bd. Of Cook County*, 267 Ill.App.3d 972, 976 (1st Dist. 1994).

Second, the contrary rule adopted by the majority below—applying a more restrictive rule for candidate residency—has never been endorsed by this Court or by any other appellate court. As the dissenting Justice explained, "the majority promulgates a new and undefined standard for determining candidate residency requirements despite the plethora of clear, relevant and well-established precedent that has been used by our circuit courts and election boards for decades." App. A-40.

Third, this Court has consistently recognized that restricting a candidate's access to the ballot implicates the "constitutional right to vote," a right that courts must "vigilantly ensure" not be infringed. *Tully v. Edgar*, 171 Ill.2d 297, 307 (1996); *see also Lucas v. Lakin*, 175 Ill.2d 166, 176 (1997). The majority's new candidate residency rule, by contrast, imposes a new, significant limitation on ballot access and thus directly contravenes this fundamental principle.

Fourth, the majority's decision rests on its conclusion that the identical statutory phrase—"has resided in"—has a meaning in the Municipal Code different from its meaning in the Election Code. That violates the settled principle that similar statutory language should have the same meaning, especially when—as here—the two provisions in which the phrase appears are *in pari materia*.

Fifth, the novel legal principle constructed by the Appellate Court will—if not overturned by this Court—create tremendous uncertainty regarding residency requirements that had settled meanings under this Court's longstanding precedent. As the dissenting Justice below explained, "[t]he majority's application of a new standard in this case shows a careless disregard for the law shortly before an election for the office of mayor in a major city. One can hardly imagine how future potential candidates for municipal office in Illinois will navigate the maze invented by the majority's amorphous standard. The majority's new standard is ill-reasoned and unfair to the candidate, voters and those of us who are charged with applying the law." App. A-41.

Sixth, by establishing a new "actually resides" requirement and at the same time rejecting the applicability to candidates for municipal office of the provision in the Election Code protecting the residence of one absent on the "business of the United States or of this State," the majority's decision violates the *in pari materia* principle and fails to give effect to the principle that, as the Board explained, "Illinois law expressly protects the residential status and electoral rights of Illinois citizens who are called to serve their national government." App. A-91 (Board Decision ¶ 74). There is no basis in Illinois law for depriving Illinois voters of the opportunity to choose one of these individuals to serve in state or municipal elective office.

The dissenting Justice below concluded that "the majority's decision certainly 'involves a question of such importance that it should be decided by the Supreme Court.'" App. A-41. "An opinion of such wide-ranging import and not based on established law but, rather, on the whims of two judges, should not be allowed to stand." *Id.* at A-42. Review by this Court is clearly warranted.

STATEMENT OF FACTS

The unanimous decision of the Board that is the subject of this action is the product of extensive administrative proceedings. The Hearing Examiner's Report and Recommendation, which the Board adopted, contained extensive findings of fact and conclusions of law. Those findings of fact include the following:

Emanuel and his spouse, in 1998, purchased a home at 4228 Hermitage Avenue in Chicago; they lived their with their family "continuously until the events of 2009." App. A-84 (Board Decision ¶ 66(e)).

"In January 2009, . . . [Emanuel] accepted employment in Washington, D.C., as Chief of Staff of the Office of Presidential Transition and then, after January 20, 2009, as Chief of Staff to the President of the United States." App. A-86 (Board Decision ¶ 66(o)). From January through May 2009, Emanuel "lived in an 'in-law apartment' in Washington, D.C., . . . while his spouse and children continued to live during that time in the Hermitage house in Chicago." *Id.* at A-86 (Board Decision ¶ 66(p)).

"In June 2009 [Emanuel] leased a house at 3407 Woodley Road [in Washington, D.C.] for a term commencing on June 1, 2009, and ending on August 31, 2010, which lease was subsequently extended to end on June 30, 2011" and Emanuel, his spouse, and his children moved into that house. App. A-86 (Board Decision ¶ 66(q) & (r)).

Emanuel and his spouse "leased the Hermitage house to Robert and Lori Halpin for an initial term of from September 1, 2009, to August 31, 2010)"; the lease was extended to end on June 30, 2010. App. A-87 (Board Decision ¶ 66(x) & (y)). "The ending date of the extension of the lease to the Halpins of the Hermitage house was timed to coincide with the end of the school year of [Emanuel's] children." *Id.* at A-88 (Board

Decision ¶ 66(z)). Emanuel "never sought or attempted to sell the Hermitage house." *Id.* at A-88-89 (Board Decision ¶ 66(ee)).

"In 2009, [Emanuel] and his spouse left behind in the Hermitage house numerous household items . . . left in the rooms of the Hermitage house to be used and occupied by the Halpins." App. A-88 (Board Decision ¶ 66(aa). Emanuel and his spouse "also left behind in a crawl space storage area of the Hermitage house numerous other possessions of sentimental value, family heirlooms, china, and books, occupying more than 100 boxes." *Id.* at A-88 (Board Decision ¶ 66(bb)).

Emanuel "maintained an Illinois driver's license ever since 1998"; his family car was registered at the Hermitage house from 1999 through September 2010"; Emanuel "registered to vote from the Hermitage house in 1999 and has voted consistently from that address in every election from that time until and including February 2010"; Emanuel and his spouse "have paid real property taxes on the Hermitage house every year since 1998." App. A-85, 87 (Board Decision ¶ 66(j), (k), (l), (h) & (w)).

Emanuel "testified that he considers Chicago to be his true home; that he has never considered living anywhere other than Chicago on a permanent basis; and that he always intended to return to Chicago, and to the Hermitage house, when his service to the President of the United States had ended." App. A-89 (Board Decision ¶ 66(ff)). Emanuel "made consistent statements to sundry friends regarding his consideration of Chicago as his permanent home and of his intention to serve the President of the United States for no more than 18 months to two years before returning to Chicago." *Id.* at A-89 (Board Decision ¶ 66(gg)).

"On October 1, 2010, [Emanuel] resigned the office of Chief of Staff to the President of the United States" and rented an apartment at 754 North Milwaukee Avenue in Chicago for a term commencing on October 1, 2010, and ending on June 30, 2011—when the Hermitage lease terminates. App. A-89 (Board Decision ¶ 66(hh) & (ii)).

The Board found as a fact that "[t]he preponderance of this evidence establishes that the Candidate never formed an intention to terminate his residence in Chicago; never formed an intention to establish his residence in Washington, D.C., or any place other than Chicago; and never formed an intention to change his residence." App. A-89-90 (Board Decision ¶ 67). It therefore concluded that Emanuel "in 2009 and 2010 did not abandon his status as a resident of Chicago, and so remained a resident of Chicago." *Id.* at A-93 (Board Decision ¶ 78(e)).

The objectors' principal argument before the Board was that Emanuel's decision to rent his Chicago home on a short-term basis—and lease a house in Washington, D.C., on the same short-term basis so that his family could live with him while he served temporarily as President Obama's Chief of Staff—vitiated his Chicago residency. The Board rejected that contention, holding that "[o]nce residence has been established in Illinois, the touchstone of continued residence is the intention of the resident and not the physical fact of 'having a place to sleep.' *Smith v. People of the State of Illinois ex rel. Frisbie*, 44 Ill. 16 (1867)." *Id.* at A-90 (Board Decision ¶ 72).

The Board also held that Emanuel's Chicago residency was preserved by an Illinois statute providing that "[n]o elector . . . shall be deemed to have lost his or her residence in any precinct or election district in this State by reason of his or her absence on business of the United States, or of this State." 10 ILCS 5/3-2(a). The Board found

that "[d]uring the entire time, from February 22, 2010, to October 1, 2010, for which Objectors contend that the Candidate was not a 'resident' of Chicago by reason of his physical presence during that time outside Illinois, the Candidate was employed as the Chief of Staff of the President of the United States." Board Decision ¶ 73. The Board determined that his absence from Chicago during 2009 and 2010 was by reason of his attendance to business of the United States." *Id.* at A-93 at ¶ 78(g). The Board determined that Emanuel's "absence from Illinois during the time in question is excused, for purposes of the safeguarding and retention [of] his status as a resident and elector, by express operation of Illinois law." *Id.* at A-92 at ¶ 76.

The Circuit Court upheld the Board's decision in all respects. "Once a residence has been established," the Circuit Court explained, "it is presumed to continue until the contrary is shown, and the burden of proof is on the person who claims there has been a change." App. A-46 (citing *Hatcher v. Anders*, 117 Ill.App.3d 236, 239 (2d Dist. 1983)). "Only when abandonment has been proven is residence lost." App. A-47 (citing *Hatcher*, 117 Ill.App.3d at 239 (citing *Stein v. County Bd. of Sch. Trs. of DuPage County*, 40 Ill.2d 477, 479 (1968))).

The Circuit Court rejected the objectors' contention that Emanuel had abandoned his Chicago residency, finding "sufficient evidence to support the Board's conclusion that Candidate Emanuel intended to remain a Chicago resident during his temporary absence, and did not, therefore, abandon his Chicago residency." App. A-47. The court also found, based on its review of five Illinois Supreme Court decisions, that "an individual's residency is not abandoned, even though that individual may not have a right to sleep in some place within the jurisdiction of his residency." *Id.* at A-48. Finally, the Circuit

Court upheld "the Board's conclusion that the Candidate's residency was maintained while he was serving the President as Chief of Staff." App. A-48-49.

The objectors renewed before the Appellate Court their argument that because Emanuel rented out his house, rather than allow it to stand vacant, he must be deemed to have abandoned his Chicago residency based on voter residency principles. The Appellate Court majority did not accept that argument. It instead held that the Board and Circuit Court had erred by "appl[ying] the test for residency that has been used for voter qualification under the Election Code." App. A-15-16. Holding that a different, stricter, standard applied, the majority determined that a candidate "must have actually resided within the municipality for one year prior to the election, a qualification that [Emanuel] unquestionably does not satisfy." App. A-20-21.

Further, while the majority agreed "with the candidate that his service constituted 'business of the United States'" thereby preserving his residency as an elector under the Illinois Election Code, it concluded that section 3-2 applies "only to voter residency requirements, not to candidacy residency requirements." App. A-21-22.

Justice Lampkin dissented. App. A-25-42. In her view, the Board and the circuit court correctly applied the voter residency standard and correctly determined that Emanuel satisfied that standard.

REASONS WHY THE PETITION SHOULD BE GRANTED

I. The Appellate Court Majority's Unprecedented "Actually Resided" Standard Conflicts With The Decisions Of This Court And Other Appellate Courts Addressing Candidate Residency, Violates Fundamental Principles Of Statutory Interpretation, And Imposes A Vague And Uncertain Standard That Will Dramatically Restrict Ballot Access.

The majority below held that (a) the residency standard for candidate eligibility is different from, and more demanding than, the residency standard for voter eligibility; (b)

that more demanding standard requires that a candidate "must have actually resided within the municipality for one year prior to the election" in order to be eligible to run for municipal office; and (c) that Emanuel did not satisfy that standard. App. A-20-21. Review by this Court of these determinations is warranted for five separate reasons.

First, the decision below squarely conflicts with other appellate rulings addressing candidate residency requirements that utilize the voter residency standard in applying candidate residency requirements. *See Baumgartner*, 355 Ill.App.3d at 847; *Delk*, 112 Ill.App.3d at 735; *Walsh*, 267 Ill.App.3d at 976. Although the majority asserted that these decisions equate voter and candidate residency requirements "without discussion," the dissenting Justice "disagree[d] with the majority's characterization of the analysis in" these decisions. App. A-31; *see also Baumgartner*, 355 Ill.App.3d at 847 (explaining that "because eligibility to run for office is closely linked to the ability to vote within a particular jurisdiction, we will use the definition of 'residence' as used within the Election Code for voter registration").

Similarly, in *Smith v. People of the State of Illinois ex rel. Frisbie*, 44 Ill. 16 (1867), which addressed a residency requirement for judicial appointees, this Court applied the voter residency test in determining that the individual did not violate the residency requirement. The majority below asserted that *Smith* is distinguishable because it was a *quo warranto* action carrying a "clear and convincing" burden of proof. App. A-6-7. But the burden of proof determines the strength of the evidence required; the substantive legal standard does not vary with the burden of proof. This ground for distinguishing *Smith* simply makes no sense.

The majority also stated that "although the supreme court's discussion in *Smith* was based nominally on principles of 'residence,' it appears from its analysis that it actually applied concepts of domicile." App. A-7. As the dissenting Justice explained in detail, "[s]uch speculation is baseless and refuted by the text" because, among other reasons, "in its opinion, the *Smith* court spoke of *residence* and never used the term *domicile*." *Id.* at A-34 (emphasis in original).[2] The dissenting Justice correctly concluded that "*Smith* cannot be distinguished from the relevant issue the majority should have addressed here, *i.e.*, whether the candidate abandoned his Chicago residence." *Id.* at A-32.

Second, the majority was unable to find a single appellate decision supporting its novel legal standard. It cited *People ex rel. Moran v. Teolis*, 20 Ill. 2d 95 (1960), for the proposition that the statutory requirements for candidates distinguish between electors and candidates. App. A-9. As the dissenting Justice explained, however, the distinction noted by the Court "was not based on the nature of their residency but, rather, on the length of time necessary to establish their residency. . . . The majority's attempt to read this temporal distinction between candidates and electors as some sort of indication from the supreme court that the majority may embark on a revision of Illinois law concerning candidate residency requirements is indefensible." *Id.* at A-37-38.[3]

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[2] Moreover, an Appellate Court is bound to follow a decision of the Supreme Court, "whatever [its] personal views of that decision might be[.]" *People v. Jones*, 114 Ill. App. 3d 576, 585 (1st Dist. 1983). Even if a lower court "entertains genuine doubt about the continued vitality of a reviewing court decision," it must "rule in accordance with existing law . . . ." *In re R.C.*, 195 Ill. 2d 291, 298 (2001); *State Farm Fire and Cas. Co. v. Yapejian*, 152 Ill. 2d 533, 540 (1992).

[3] The majority also cited *People ex rel. v. Ballhorn*, 100 Ill. App. 571 (4th Dist. 1902), but that case did not turn on the meaning of "residence." To the contrary, one of the two

Third, it is a fundamental principle of statutory interpretation that statutory phrases should be given the same meaning. Both the voter qualification statute and the candidate qualification statute incorporate the same standard: a voter must have "***resided in*** this State and in the election district 30 days next preceding and election therein" (10 ILCS 5/3-1); and a candidate must have "***resided in*** the municipality at least one year next preceding the election" 65 ILCS 5/3.1-10-5(a). The dissenting Justice correctly concluded: "Nothing in the text or context of these statutes distinguishes 'has resided in' as used to define a 'qualified elector' from 'has resided in' as used to define the length of time a candidate must have been resident in order to run for office. Moreover, if the legislature had intended the phrase 'has resided in' to mean *actually lived in,'* as the majority proposed, then the legislature surely would have chosen to use the more innocuous word *live* rather than the verb reside and the noun residence, which are charged with legal implications." App. A-37-38 (emphasis in original).

That conclusion is further supported by this Court's consistent determination "that provisions of the Election Code and the Illinois Municipal Code may be considered *in pari materia* for purposes of statutory construction." *Cinkus*, 228 Ill.2d at 218; *see also United Citizens of Chicago & Illinois v. Coalition to Let the People Decide in 1989*, 125 Ill.2d 332, 338-39 (1988). "Accordingly, a court that is construing provisions of the Municipal Code concerning candidate residency requirements should also consider the

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statutes invoked by the plaintiff in that case provided that "every elective office shall become vacant upon the incumbent 'ceasing to be an inhabitant of . . . the precinct for which he was elected.'" 100 Ill. App. at 572. The court relied on that very different statutory language in determining that the official could not remain in office because he was not physically present in the relevant jurisdiction.

similar provisions of the Election Code concerning voter residency requirements." App. A-35-36. (dissenting opinion).

The majority below pointed out that the candidate qualification statute requires that a candidate be an "elector" as well as that he reside in the jurisdiction for the specified period, and asserted that "[t]he fact that the two requirements are stated separately an in the conjunctive leads to the inference that they be considered separately from, and in addition to, each other." App. A-14. But the majority's interpretation is not necessary to accomplish that result: the "elector" prong requires that the individual be validly registered to vote (which necessitates that he have completed the formalities for registration and that he resided in the jurisdiction for 30 days), the durational prong requires that the individual have resided for the one-year period, whether or not registered to vote during that period.

The majority also relied on the text of subsection 3.1-10-5(d), which addresses the situation in which a service member "resides anywhere outside the municipality." App. A-16-17. To begin with, this provision was enacted 14 years after the candidate residency requirement at issue here—and *after* two Appellate Court decisions applying voter residency standards to candidate residency requirements. There is no evidence whatever that the legislature intended to alter the existing standards for interpreting subsection (a) of the provision.

In addition, the majority simply asserts that subsection (d) accords different meanings to the terms "resident" and "reside." App. A-17. The much more logical reading of the provision is that both resident and reside refer to the legal concept of

residence.[4] That statute provides servicemembers with an exemption from ordinarily-applicable residency requirements that is different and much broader than the one created by the Illinois voter statute, which provides only that an individual does not *lose* his residency "by reason of his or her absence on business of the United States." Under the voter statute, an individual who establishes residency elsewhere *does* lose his Illinois residency for voting purposes—the voting statute provides only that the individual's absence from the State cannot be used to prove abandonment, but does not preclude consideration of other factors such as, for example, registering to vote in another state. Because the municipal residency subsection provides broader protection, and limits it to active service members, it establishes no basis for finding an intent by the legislature to override the general legal principle that candidacy requirements are interpreted by reference to standards governing voting residency.

Fourth, this Court has recognized repeatedly that questions involving candidates' access to the ballot implicate important constitutional principles. *Lucas*, 175 Ill.2d at 176; *Tully*, 171 Ill.2d at 307. The Court is "mindful of the need to tread cautiously when construing statutory language which restricts the people's right to endorse and nominate the candidate of their choice." *Lucas*, 175 Ill.2d at 176; *see also Tully*, 171 Ill.2d at 307 (holding that restricting a candidate's access to the ballot implicates the "constitutional right to vote," a right that courts must "vigilantly ensure" not be infringed); *Hossfeld v. Illinois State Bd. of Elections*, 398 Ill.App.3d 737, 743 (1st Dist. 2010).

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[4] While the majority cites Webster's Third International Dictionary to define the term "reside," it fails to point out that the same dictionary defines "resident" as "a person who *resides in* . . ." (Webster's International Dictionary, 1931 (3d. ed. 1961)) the same language that is used in both statutes. This definition provides further evidence that the majority's attempt to assign different meanings to these terms is wholly insupportable.

The decision of the majority below rests on precisely the opposite approach, construing statutory language to impose a novel, and extremely restrictive, standard for ballot access never before recognized in a decision of this Court or of another Appellate Court. As the dissenting Justice stated, "[t]he majority's decision disenfranchises not just this particular candidate but every voter in Chicago who would consider voting for him. Well-settled law does not countenance such a result." App. A-41. Review of the ruling is essential to protect Emanuel's right to ballot access, as well as to protect the right of the Chicago voters—90,000 of whom signed his nominating petitions—to vote for him if they so choose. It is also necessary to protect future candidates: the Appellate Court's new rule applies to every candidate for every municipal office in the State.

Fifth, the meaning of the new "actually resides" standard adopted by the majority below is completely opaque: as the dissenting Justice pointed out, "the majority does not write a single sentence explaining how it defines 'actually resided in.' It is patently clear that the majority fails to even attempt to define its newly discovered standard because it is a figment of the majority's imagination." App. A-39. Thus, "[h]ow many days may a person stay away from his home before the majority would decide he no longer 'actually resides' in it? Would the majority have us pick a number out of a hat? . . . If the majority had picked even an arbitrary number of days that voters need not sleep in their own beds before they violated this new arbitrary standard, then at least we would be able to apply this new standard. Should a court consider the number of days a voter or candidate is absent or are there other relevant factors under the new standard?" *Id.* at A-40.

Although the standard is far from clear, it at the minimum casts substantial doubt on the eligibility of a variety of potential candidates for municipal office. For example:

- An individual whose company assigns him to work for a month on a special project in New York would presumably fail this standard because he would not have "actually reside[d]" in Chicago during the full year.
- Representatives in Congress typically are absent from Chicago—and working in Washington—for at least 4-5 days a week, and sometimes for longer periods. They do not "actually reside[]" in Chicago during that time; does that mean their eligibility to run for municipal office can be challenged?
- The same is true of State Representatives and State Senators, who must be present in Springfield for considerable amounts of time. Are they ineligible under this standard?
- Certainly President Obama does not meet the standard adopted by the two Justices, because he does not "actually reside[]" in Chicago.

Years of litigation will be necessary to define this new standard. There can be no doubt that it will preclude many candidates from running for office who satisfy the voter residency standard. And the threat of litigation costs and uncertainty will deter even more candidates. That means reduced choice for voters throughout Illinois. This Court should grant review to prevent this unjustified reduction in ballot access and voter choice.

II. The Appellate Court Erred When It Found That Emanuel's Residency Is Not Protected By The Election Code's Provision For "Business Of The United States."

The Appellate majority further erred when it found that Emanuel became ineligible for municipal office when he was absent serving as Chief of Staff to the President of the United States. The Illinois Election Code provides that "[n]o elector . . . shall be deemed to have lost his or her residence in any precinct or election district in this

State by reason of his or her absence on business of the United States, or of this State." 10 ILCS 5/3-2(a). The Appellate Court agreed "with the candidate that his service constituted 'business of the United States'" thereby preserving his residency as an elector under the Illinois Election Code, but concluded that section 3-2 applies "only to voter residency requirements, not to candidacy residency requirements." App. A-21-22. This holding runs afoul of clear Illinois Supreme Court precedent.

The Court has several times held "that provisions of the Election Code and the Illinois Municipal Code may be considered *in pari materia* for purposes of statutory construction." *Cinkus*, 228 Ill.2d at 218; *see also United Citizens of Chicago & Illinois v. Coalition to Let the People Decide in 1989*, 125 Ill.2d 332, 338-39 (1988). That principle of statutory construction means that these statutory provisions are presumed to be

> "'[G]overned by one spirit and a single policy, and that the legislature intended the enactments to be consistent and harmonious. [Citations.] [Furthermore], it is clear that sections *in pari materia* should be considered with reference to one another so that both sections may be given harmonious effect. [Citations.] Even when in apparent conflict, statutes, insofar as is reasonably possible, must be construed in harmony with one another.
>
> In determining what that intent is, the court may properly consider not only the language used in a statute, but also the reason and necessity for the law, the evils sought to be remedied, and the purpose to be achieved."

Id. at 338-39 (internal citations and quotation marks omitted). Indeed, "because eligibility to run for office is closely linked to the ability to vote within a particular jurisdiction," Illinois courts routinely interpret candidacy requirements by reference to "the definition of 'residence' as used within the Election Code for voter registration." *Baumgartner*, 355 Ill.App.3d at 847; *Delk*, 112 Ill.App.3d at 738 (determining residence

of candidate for ward alderman by applying two elements necessary to create a residence "for voting purposes").

Given these well-established principles, the Board correctly determined that the statutory protection for the "residence" of an "elector" should apply as well in determining where a candidate has "resided"—so that these two virtually identical terms are construed in pari materia. "Illinois law expressly protects the residential status and electoral rights of Illinois citizens who are called to serve their national government." App. A-36 (Board Decision ¶ 74). That legislative policy plainly extends to the ability of Illinois citizens to run for office as well as their right to vote. That is why the majority is wrong in concluding that in pari materia is inapplicable on the ground that the two provisions supposedly do not apply to the same subject; both provisions apply to the determination of residency in connection with the electoral process and are therefore extremely closely related.

Further, the Appellate Court's decision ignores that section 3.1-10-5, by its requirement that eligibility for elective office is conditioned on a person being a "qualified elector of the municipality," necessarily incorporates the residency, citizenship, and age requirements of the Election Code, which includes the protection of section 3-2 for those absent on the "business of the United States." Section 3.1-10-5 simply extends the 30-day period that an elector must have "resided in" the election district to a one-year period that an elected official must have "resided in" the municipality. There is nothing in this section that suggests that the legislature intended to incorporate the protections of section 3-2 for purposes of the 30-day durational residency

requirement applicable to establishing qualification as an elector, but not the one-year durational residency requirement applicable to a candidate for elective office.[5]

The Appellate Court found support for its ruling that section 3-2 of the Election Code is inapplicable because of a subsequent provision added to the municipal candidate residency requirement in 2007 that provides:

> "If a person (i) is a resident of a municipality immediately prior to the active duty military service of that person or that person's spouse, (ii) resides anywhere outside of the municipality during that active duty military service, and (iii) immediately upon completion of that active duty military service is again a resident of the municipality, then the time during which the person resides outside the municipality during the active duty military service is deemed to be time during which the person is a resident of the municipality for purposes of determining the residency requirement under subsection (a)."

65 ILCS 5/3.1-10-5(d), added by Ill. Public Act No. 95-61 (2007). The Appellate Court concluded that if it "were to interpret section 3-2 as applying to candidates as well as voters, then section 3.1-10-5(d) would become wholly redundant." App. A-23. That position is wrong for two separate reasons.

First, this subsection addresses the situation in which a service member "resides anywhere outside the municipality"—in other words, where a service member abandons his municipal residence and establishes residence elsewhere. For example, a soldier from

[5] The Appellate Court notes that Article 4 of the 1870 Illinois Constitution, later incorporated into the Election Code, provided an exception to the residency requirement for voters engaged in "business of the United States," but "conspicuously omitted the exception as it related to candidates." App. A-24. Nevertheless, Adlai Stevenson II successfully ran for governor of Illinois in 1948 after having been absent from the State for much of the period 1945 through 1948 while serving as an American delegate to a UN conference in London and later being appointed by President Truman to the UN delegation in New York, despite the requirement of the Illinois Constitution (art. 5, §3) that to be eligible for the office of Governor a person must have been "a resident of this State for the three years preceding his election." *The Papers of Adlai Stevenson,* 1941-1948, Vol.2. (Ed. By Walter Johnson), 247-70 (1973).

Illinois stationed at an Army base in New Jersey might decide to obtain a New Jersey driver's license, register his car in New Jersey, and vote in New Jersey. Ordinarily, those facts would establish abandonment of the soldier's Illinois residency. Under this statute, however, if that soldier "immediately upon completion of that active duty military service is again a resident of the municipality," he will be "deemed" to have maintained his municipal residency *even though he had in fact abandoned his Illinois residency and established residency in another jurisdiction.*

The statute refers to a person who "is a resident" and then becomes "again a resident," clearly establishing that during the intervening period, he or she was not a resident. Contrary to the majority's contention, nothing in Sen. Luechtefeld's comments in the Senate support a different conclusion.

Second, the municipal residency requirement was enacted in 1993 and the subsection was not added until 2007. At the time the residency requirement was adopted—and for the first 14 years of its existence—there was no basis for barring consideration of the voter statute. Nothing in the 2007 amendment provides grounds for changing that conclusion. *Cf. Jackson v. H. Frank Olds, Inc.*, 65 Ill.App.3d 571 (1st Dist. 1978) ("It is a primary rule of statutory construction that the courts disfavor the implied repeal of statutes. Rather, when two statutes relate to the same subject matter, provided that the newer act does not expressly state that it is the exclusive remedy, the two should be construed harmoniously.").

Illinois has proudly provided the federal government with some of the most talented public servants in our nation's history. These public servants include two presidents, who under the Appellate Court's decision could not return to Illinois

following their presidencies and continue their public service as elected officials. Illinois law specifically provides that these individuals need not choose between their ties to our State and serving the national government in places outside Illinois. There simply is no basis in Illinois law for depriving Illinois voters of the opportunity to choose one of these individuals to serve in state or municipal elective office when these individuals come home following their federal service.

CONCLUSION

For the foregoing reasons, the Petition for Leave to Appeal should be granted.

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Respectfully submitted,
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