

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

ANTHONY PERAICA and)	
TAXPAYERS UNITED OF AMERICA)	
Petitioners,)	
vs.)	No. 2011 CH 15442
)	
RIVERSIDE-BROOKFIELD SCHOOL)	
DISTRICT 208,)	Cal.13
)	Judge LeRoy K. Martin, Jr.
Respondent.)	

**First Amended Verified Petition
for Entry of Declaratory Judgment,
for Injunctive Relief and to Redress Constitutional Violations**

NOW COME the Petitioners, ANTHONY PERAICA (“PERAICA”) and TAXPAYERS UNITED OF AMERICA (“TUA”), by and through their attorney ANDREW B. SPIEGEL and pursuant to the U.S. and State Constitutions and the Election Code and Property Tax Code of the State of Illinois, petition against the Respondent RIVERSIDE-BROOKFIELD SCHOOL DISTRICT 208 to seek redress for the Constitutional violations which took place leading up to and including the public question referendum placed on the April 5, 2011 general election ballot by the Respondent. Petitioners seek injunctive relief, a Declaratory Judgment and redress for the violation of their civil rights by the Respondent pursuant to 42 U.S.C. §1983, et seq. In support of this Petition, the Petitioners state the following:

Parties

1. ANTHONY PERAICA (“PERAICA”) is a registered voter in Riverside-Brookfield School District 208. He is also a property owner and the parent of school children in said District and was so on April 5, 2011, the date of the Consolidated

General Election.

2. TAXPAYERS UNITED OF AMERICA (“TUA”), is a national taxpayer organization with a number of supporters in Riverside-Brookfield School District 208, including *inter alia* Peraica, who are registered voters, property owners and parents of school children in said District. TUA’s ability to raise funds from its supporters in District 208 has been adversely effected by the actions of the Respondent complained of herein.

3. RIVERSIDE-BROOKFIELD SCHOOL DISTRICT 208 (“hereinafter the “District”) is the school district with the statutory authority to conduct and administer the affairs of Riverside-Brookfield School District 208. Included in its responsibilities is the placement of referenda on election ballots seeking to increase revenue for the District. While acting under the color of state law, the Respondent engaged in election interference when it used public funds to seek approval of a referendum it placed on the ballot which would have increased the property tax in the District. Those actions are the subject of this lawsuit.

4. Prior to the general election, the District became aware that the tax rate increase and the estimated amount of said increase on a property with a fair market value of \$100,000.00 at the time of the election, as stated on the ballot, failed to include the state equalized assessed valuation of the property. The District also knew, prior to the election that it was understating the estimated amount of the tax increase by approximately two-thirds and that by doing so, it was deliberately failing to provide the voters with a fair and reasonable approximation of the effect of the increased property tax.

5. Despite knowing that the ballot language explaining the proposed

increase was misleading and understated the amount of the tax increase, the District deliberately proceeded with its referendum using the flawed ballot.

6. The District then proceeded to engage in election interference prohibited under the Election Code and in violation of the civil rights of the Petitioners by engaging in activities at public expense to promote an affirmative vote on the referendum. Such activities included, *inter alia*:

- a. producing and distributing leaflets in support of the referendum;
- b. electioneering activities calculated to discourage opposition to referendum and to promote an affirmative vote thereon.

These actions by the Respondent violated the 1st, 5th and 14th Amendment rights of the Petitioners as guaranteed under the U.S. Constitution and under the parallel provisions of the Illinois Constitution of 1970 (Article 1, §§ 2, 4 and 5.

***Count I
Declaratory Judgment***

7-13. The Petitioners re-allege and incorporate by reference paragraphs 1-6 above as if fully set forth herein as paragraphs 7-13 of this Count I.

14. The nature of this Count is a proceeding for declaratory relief under 735 ILCS 5/2-701 for the purpose of determining a question in actual controversy between the parties concerning whether the electioneering activities used by the Respondent prior to the election were in violation of established law.

15. The Board was required by the Property Tax Code to state what effect the approximate increase in tax bills would be on a home with the fair market value of \$100,000.00 at the time of the election if the referendum measure was to pass. The Respondent placed the question on the ballot without a fair and reasonable

approximation of its effect on such property.

16. The parties are governed by the Election and Property Tax Codes, by the language on the ballot, by the Constitution of the State of Illinois and by the U.S. Constitution.

17. A dispute has arisen between the Petitioners and the Respondent with respect to the effect of the Respondent's deliberate use of misleading figures on the referendum ballot and whether the Respondent's use of public funds to promote an affirmative vote on that referendum violated the law.

18. The Petitioners claim that the effect of the Respondent's failure to provide a fair and reasonable approximation of the property tax increase and its use of public funds to advocate an affirmative vote on the referendum violated the Election and the Property Tax Codes, and was a violation of both the State and U.S. Constitutions. The Respondent claims there was no violation of any law in either its electioneering efforts or in the ballot language it used on the ballot.

19. An actual controversy exists between the Petitioners and the Respondents.

WHEREFORE the Petitioners herein request a declaratory judgment in accordance with the free speech and assembly, due process and equal protection clauses of the 1st, 5th and 14th Amendments of the U.S. Constitution, of Article I, Sections 2, 4 and 5 and Article 3, Section 3 of the Illinois Constitution (1970) and of 10 ILCS 5/25.1 and 5/29-17 of the Election Code, §§18-115 and 18-190(a) of the Property Tax Code and 735 ILCS 5/2-701 against the Respondent as follows:

- a. the court declares the District 208's use of public funds to advocate an affirmative vote on the referendum ballot violated the Election Code;

- b. the court declares the ballot language invalid for failing to use the mandatory language required by the Property Tax Code to provide a reasonable approximation of the effect of the property tax increase on a home with a fair market value of \$100,000 at the time of the election;
- c. the court order the Respondent to pay all costs, expenses and attorneys, fees of this action;
- d. the Court grant Petitioners any other relief it may deem equitable in the circumstances.

Count II
Injunctive Relief

20- 26. The Petitioners re-allege and incorporate by reference paragraphs 1- 6 above as if fully set forth herein as paragraphs 20-26 of this Count II.

27. The Respondent was required by the Property Tax Code to determine how much tax bills would increase on a residential property with a fair market value of \$100,000.00 at the time of the election in order to comply with the mandatory language required by the Property Tax Code.

28. The Respondent was required to clearly indicate the substance of the public question. The substance of the public question could not be clearly indicated by understating the effect on a residence by a factor of three. Such a gross understatement of the effect could mislead voters. The District's failure to include the State equalizer in its approximation of that effect denied the voter a clear picture of what the measure would cost. Pursuant to *Smith v. Calhoun Community School District No. 40*, 16 Ill.2nd 328, 157 N.E.2nd 59 (1959), the Petitioners are likely to prevail on this issue.

29. The Property Tax Code requires that

The equalized assessed value of all property, as determined under this Code, after equalization by the Department, shall be the assessed valuation for all purposes of taxation, and limitation of indebtedness prescribed in any statute.

35 ILCS 200/18-115. The Respondent claims that the Property Tax Extension Limitation Law (“PTELL”) supersedes this clear, unambiguous mandate of the Property Tax Code.

30. Whether §18-115 does or not does apply to PTELL, does not change the fact that the Respondent was prohibited from using public funds to promote an affirmative vote on the public question.

31. The harm to the public will be far greater if the injunction was to fail and the District was allowed to misuse public funds in the future in another attempt to increase the property tax in the district.

32. A preliminary injunction should be imposed against the District to enjoin them from using public funds to promote any future referenda.

33. The Preliminary injunction should be imposed without bond as the Petitioners are in good faith defending their constitutional rights to free and fair elections under both the U.S. and State Constitutions for the benefit of all the property taxpayers in the 208th District and to require them to post a bond is not in the public interest.

34. The petitioners have incurred costs, expenses and attorneys' fees in prosecuting this cause and should be awarded all of such expenditures from the Respondent.

Wherefore, the Petitioners herein, by and through their attorney Andrew

B. Spiegel petition for entry of a preliminary injunction as follows:

- a. enjoining the Respondent from using any public funds to advocate passage of any referenda in the future;
- b. converting the preliminary injunction into a permanent injunction prior to any attempt by this Respondent to take any further action to place any future referendum on the ballot by using public funds to advocate its adoption by the electors;
- c. entering any injunctive relief issued without bond being required from these Petitioners;
- d. awarding the Petitioners all costs, expenses and attorneys' fees incurred as a result of this action with any such award to be paid jointly and severally from the individual Respondents herein;
- e. granting such further and additional relief as the court deems warranted in these circumstances.

***Count III
Violation of Civil Rights***

35-41. The Petitioners re-allege and incorporate by reference paragraphs 1-6 above as if fully set forth herein as paragraphs 35-41 of this Count III.

42. The Respondent violated 10 ILCS 5/9-25.1 of the Election Code (entitled Election Interference) by using public funds to support an affirmative vote on the District 208 question by:

- a. telling students to circulate “volunteer” forms to other students during school hours, to sign-up students for pro-referendum literature blitzes

and campaign activity;

b. allowing a pro-referendum group to use public resources such as tables, chairs, official publications and the like at school events on school grounds and inside the school building seeking support for the referendum from district residents;

c. hosting, on the school football field a student gathering and rally in support of an affirmative vote on the referendum;

d. providing student photos, taken by the district photographer, to a pro-referendum group for its use in pro-referendum fliers and other campaign literature;

e. producing a pro-referendum television spot for the school's cable television station RBTV urging an affirmative vote on the referendum;

f. using the same television spot on RBTV.org. the website for the television station;

g. producing a pro-referendum television program using two senior employees of the District;

h. mailing pro-referendum literature, produced at public expense, to 11,000 voters in District 208;

i. allowing an assistant principal to use school computers for maintaining pro-referendum campaign volunteer lists and other pro-referendum related information;

j. encouraging and allowing teachers to “blog” on local websites in support of an affirmative vote on the referendum;

k. allowing and encouraging numerous telephone calls and emails by

administrators and staff in support of an affirmative vote on the referendum;

1. directing senior personnel to speak to local groups urging them to cast an affirmative vote on the referendum.

Each of the above actions was done under color of state law by the Respondent.

43. Petitioners tried to express their views, during the campaign prior to the election, that were in conflict with those held by the Respondent. Petitioners were forced to struggle against the public funds wrongfully used by the Respondent to promote the tax increase in violation of the 1st, 5th and 14th Amendments to the U.S. Constitution and in violation of Article 1, §§ 2, 4 and 5 and Article 3, §3 of the Illinois Constitution (1970) and the guarantees of the Civil Rights Act of 1871, 42 U.S.C. §1983.

44. Petitioners have been injured by the actions of the Respondent, which have been arbitrary and capricious and which have caused injury to Petitioners' reputation and character.

45. Petitioners have incurred and will continue to incur costs, expenses and attorneys' fees in defending their rights.

WHEREFORE the Petitioners herein request the court enter judgment in accordance with the free speech and assembly clauses of the 1st Amendment and pursuant to the due process and equal protection clauses of the 5th and 14th Amendment of the U.S. Constitution, of Article I, §§ 2, 4 and 5 and Article III, § 3 of the Illinois Constitution (1970) and of 10 ILCS 5/25.1 and 5/29-17 of the Election Code, against the Respondent as follows:

- a. damages in favor of the Petitioners and against the Respondent in an amount not to exceed Fifty Thousand (\$50,000.00) Dollars for violation of their

Constitutional rights;

b. ordering the Respondent to pay all damages and all costs, expenses and attorneys, fees of this action pursuant to 42 U.S.C §1988;

c. granting Petitioners such other and further relief as it may deem fair and equitable in these circumstances.

Respectfully submitted,

Andrew B. Spiegel, Attorney for Petitioners

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Verification

ANTHONY PERAICA, certifies on oath that he has read and understood the foregoing Verified Petition and that the same is true in substance and in fact to the best of his knowledge, information and belief.

ANTHONY PERAICA

Subscribed and sworn to before
me this ____ day of September, 2011

Notary Public

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