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LEGAL ALERT

RETROACTIVE TERM LIMIT REFERENDA BARRED

Illinois Supreme Court upholds constitutionality of prospective term limits only.

The Illinois General Assembly added Section 3.1-10-17 to the Illinois Municipal Code, effective July 19, 2019, which requires any imposition of term limits by ordinance, referendum or otherwise to be prospective only—that is, that service prior to the enactment of any term limit not be counted towards the limit. ([65 ILCS 5/3.1-10-17](#)).

A proponent of term limits in Elk Grove Village filed petitions to place a referendum on the March 17, 2020 primary election ballot that would have restricted the offices of Village Trustee and Village President (Mayor), in Elk Grove Village, to candidates who had not already served two or more consecutive, four-year terms.

The Electoral Board sustained an objection to the proposed referendum on the basis that it directly conflicted with 65 ILCS 5/3.1-10-17. The Circuit Court of Cook County reversed the Electoral Board, concluding that 65 ILCS 5/3.1-10-17 was unconstitutional and that the proposed referendum should appear on the March 17, 2020 ballot. While the Circuit Court acknowledged that the General Assembly has the authority to restrict home-rule municipalities from enacting retroactive term limits, the Circuit Court focused on a provision in the section which

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specifies that it applies to all term limits enacted after November 8, 2016. That provision would retroactively affect term limit requirements enacted between November 8, 2016 and July 19, 2019, the effective date of 65 ILCS 5/3.1-10-17.

The Illinois Supreme Court took up the question on an expedited appeal. In a unanimous 6-0 decision, the Illinois Supreme Court overruled the Circuit Court and struck the proposed referendum from the ballot. The Illinois Supreme Court concluded that the General Assembly validly exercised its constitutional power to expressly limit the power of home-rule municipalities. However, the Illinois Supreme Court did not opine on the retroactive application of 65 ILCS 5/3.1-10-17. Instead, the Illinois Supreme Court pointed out that this did not affect the Elk Grove Village measure because the ballot measure was proposed for the 2020 election—after the July 2019 effective date of 65 ILCS 5/3.1-10-17-- and that it did not need to address the retroactivity as it potentially applied to voters in other municipalities.

While the Illinois Supreme Court left the door open to challenges to any term limits enacted between November 8, 2016 and July 19, 2019, it was unequivocal that 65 ILCS 5/3.1-10-17 is currently valid (prior to the enactment of the term limits), and prevents the enactment of any term limits that propose to consider prior time in elective office in calculating whether the term limit has been reached.

Burns v. The Municipal Officers Electoral Board of The Village of Elk Grove Village, et al., 2020 IL 125714 (February 26, 2020).