

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

THE PEOPLE OF THE STATE OF ILLINOIS, by and
through ILLINOIS ATTORNEY GENERAL LISA
MADIGAN and COOK COUNTY STATE'S
ATTORNEY KIMBERLY M. FOXX,

Plaintiff,

v.

ERIC KELLOGG, Mayor of the City of Harvey,
DONALD NESBIT, Alderman of Harvey's Fifth Ward,
KEITH PRICE, Alderman of Harvey's Sixth Ward, and
the CITY OF HARVEY, an Illinois municipal
corporation,

Defendants.

2016CH15981
CALENDAR/ROOM 13
TIME 00:00
Injunction

Case No. _____

COMPLAINT

The People of the State of Illinois, by and through Lisa Madigan, Attorney General for the State of Illinois, and Kimberly M. Foxx, Cook County State's Attorney (collectively, "the People"), bring this action to remedy recent and imminent violations of the Open Meetings Act, 5 ILCS 120/1 *et seq.*, relating to the City Council of Harvey, Illinois.

Introduction

1. On November 28, 2016, the mayor of Harvey, Illinois, Eric J. Kellogg, declared that he was removing four of the six democratically elected aldermen from the Harvey City Council and "temporarily" appointing two aldermen as replacements. Without any lawful vote by the City Council on either the removal or replacement of the four aldermen, and without including either issue on the posted agenda for the Council meeting scheduled to take place on that day, Mayor Kellogg swore in Reverend James Sims and Tracy Key as aldermen of Harvey's

third and fourth wards, respectively. Alderman Donald Nesbit and Alderman Keith Price were the only aldermen present for these actions.

2. Relying solely on the presence of his appointees and Aldermen Nesbit and Price.

Mayor Kellogg declared the existence of a quorum. Numerous ordinances and resolutions came to the floor, and Reverend Sims, Mr. Key, Alderman Nesbit, Alderman Price, and Mayor Kellogg purported to enact them before the meeting adjourned. Several of these measures had previously been blocked by a majority of Harvey's democratically elected aldermen.

3. Mayor Kellogg and the aldermen who assisted him violated the quorum and notice requirements of the Open Meetings Act through their conduct on November 28, 2016. Their actions at the November 28, 2016 meeting were invalid and unlawful. Through this lawsuit, the Attorney General and Cook County State's Attorney ask the Court to declare that actions that occurred at the November 28, 2016 meeting were invalid, and to enjoin Mayor Kellogg, Aldermen Nesbit, Aldermen Price, and the City of Harvey from future violations of the Open Meetings Act. The Attorney General and Cook County State's Attorney also seek immediate relief to prevent violations of the Open Meetings Act that, absent the Court's intervention, are likely to occur at the next regularly scheduled meeting of the Harvey City Council on Monday, December 12, 2016, at 7:00 p.m.

The Parties

4. This action is brought for and on behalf of the People by Lisa Madigan, Attorney General for the State of Illinois, and Kimberly M. Foxx, Cook County State's Attorney.

5. The Attorney General, as legal officer for the State, has authority to enforce the provisions of the Open Meetings Act pursuant to 5 ILCS 120/3 and 15 ILCS 205/4 & 7(f). The

Attorney General is also authorized to act through her powers under the common law, Article V § 15 of the Illinois Constitution of 1970, and the doctrine of *parens patriae*.

6. Cook County State's Attorney Kimberly M. Foxx has authority to enforce the provisions of the Open Meetings Act against violations occurring in Cook County pursuant to 5 ILCS 120/3.

7. Defendant Eric J. Kellogg ("Mayor Kellogg") is the mayor of Harvey, Illinois, a city of approximately 25,000 residents located in Cook County. On April 7, 2015, Mayor Kellogg was re-elected to a fourth term. Mayor Kellogg's current four-year term concludes in 2019. Mayor Kellogg has served as Harvey's mayor since 2003.

8. Defendant Donald Nesbit is alderman of Harvey's fifth ward. Alderman Nesbit is currently serving a four-year term that began in 2015 and concludes in 2019.

9. Defendant Keith Price is alderman of Harvey's sixth ward. Alderman Price is currently serving a four-year term that began in 2015 and concludes in 2019.

10. Defendant City of Harvey is a municipal corporation organized under the laws of the State of Illinois.

The Removed Aldermen

11. Shirley Drewenski is a resident of Harvey who is currently serving a four-year term as alderwoman of Harvey's first ward. Alderwoman Drewenski's term began following her re-election on April 7, 2015. Alderwoman Drewenski's term concludes in 2019.

12. Joseph Whittington, Jr. is a resident of Harvey who is currently serving a four-year term as alderman of Harvey's second ward. Alderman Whittington's term began following his re-election on April 7, 2015. Alderman Whittington's term concludes in 2019.

13. Christopher J. Clark is a resident of Harvey who is currently serving a four-year term as alderman of Harvey's third ward. Alderman Clark's term began following his election on April 7, 2015. Alderman Clark's term concludes in 2019.

14. Lamont Brown is a resident of Harvey who is currently serving a four-year term as alderman of Harvey's fourth ward. Alderman Brown's term began following his election on April 7, 2015. Alderman Brown's term concludes in 2019.

Mayor Kellogg's Appointees

15. James Sims is a resident of Harvey. Upon information and belief, Sims is Reverend of the Outreach Church of God in Christ, located at 200 W. 147th St., in Harvey, Illinois, 60426. As of November 28, 2016, Reverend Sims purports to hold office as alderman for Harvey's third ward. Reverend Sims did not appear on the ballot for the most recent election for the office of alderman of Harvey's third ward.

16. Tracy Key is a resident of Harvey. As of November 28, 2016, Mr. Key purports to hold office as alderman for Harvey's fourth ward. Mr. Key did not appear on the ballot for the most recent election for the office of alderman of Harvey's fourth ward.

Venue

17. This Court is the proper venue for this action pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-101, and the Open Meetings Act, 5 ILCS 120/3. All Defendants reside in Cook County and the conduct out of which this action arose occurred in Cook County.

The Composition and Operation of Harvey's City Council

18. Harvey is governed by a mayor and a city council. The Harvey City Council is comprised of six aldermen and the mayor. Aldermen in Harvey are elected from six wards with one alderman elected from each ward.

19. The Illinois Municipal Code governs various aspects of the composition and operation of Harvey's municipal government, including the Harvey City Council. The Illinois Municipal Code specifies that city council meetings "shall" be "in accordance with the Open Meetings Act." 65 ILCS 5/3.1-40-5.

20. The Open Meetings Act states, among other things, that "[a] quorum of members of a public body," such as the Harvey City Council, "must be physically present at the location of an open meeting." 5 ILCS 120/2.01. The Open Meetings Act also requires "[a] quorum of members of a public body," such as the Harvey City Council, to "be physically present at the location of a closed meeting." *Id.* The Open Meetings Act mandates that "[a]ll meetings of public bodies shall be open to the public" subject to specific exceptions, and that a meeting may only be closed based on those exceptions pursuant to specific procedures. 5 ILCS 120/2. A public body, such as the Harvey City Council, may not take "final action" on matters before it except in a properly constituted open meeting. *Id.* § 2(e).

21. Although the Open Meetings Act does not specify what constitutes a "quorum" for a body such as the Harvey City Council, the Illinois Municipal Code does. The Illinois Municipal Code states that "[a] majority of the corporate authorities shall constitute a quorum to do business." 65 ILCS 5/3.1-40-20. The Illinois Municipal Code also specifically addresses the quorum requirement when "there is a vacancy in an elective office and, for any reason, there is not a quorum in office of the corporate authorities" *Id.* § 3.1-10-55. In those circumstances, "appointments to fill vacancies may be made or confirmed by a majority of the corporate authorities holding office at the time the appointment is made or confirmed." *Id.*

22. The Illinois Municipal Code defines "corporate authorities" as "the mayor and aldermen or similar body" in the case of a city, such as Harvey. 65 ILCS 5/1-1-2(2)(a).

23. The Illinois Municipal Code also regulates the manner in which Harvey's aldermen are selected. 65 ILCS 5/3.1. Ordinarily, aldermen are elected to four-year terms. 65 ILCS 5/3.1-15-5, 20-35. The Illinois Municipal Code establishes specific procedures that apply for determining when an elective office, such as alderman, is vacant and how a vacancy may be filled. 65 ILCS 5/3.1-10-50.

24. The Illinois Municipal Code identifies different ways in which a vacancy can occur. 65 ILCS 5/3.1-10-50. For example, a vacancy can occur "by resignation," "by reason of death of the incumbent," or "by permanent physical or mental disability rendering the person incapable of performing the duties of the office." 65 ILCS 5/3.1-10-50(a)-(b). In the case of resignation, the vacancy occurs "as of the effective date of the resignation." *Id.* § (a)(3). In the case of death, the vacancy occurs as of the date of death. *Id.* § (b). In the case of disability, the vacancy occurs upon the date of a "determination" by the "corporate authorities" that the elected official is "incapable of performing the duties of the office due to permanent physical or mental disability" *Id.*

25. The Illinois Municipal Code also refers to the following vacancies "by other causes": "[a] vacancy occurs in an office by reason of abandonment of office; removal from office; or failure to qualify; or more than temporary removal of residence from the municipality; or in the case of an alderman of a ward or councilman or trustee of a district, more than temporary removal of residence from the ward or district, as the case may be." *Id.* § (c)(1). The Illinois Municipal Code specifically states that "[t]he corporate authorities have the authority to determine whether a vacancy under this subsection has occurred." *Id.* As noted, in the case of a city such as Harvey, the "corporate authorities" consists of "the mayor and the aldermen or similar body." 65 ILCS 5/1-1-2(2)(a).

26. A vacancy arising in the course of a four-year aldermanic term in a city such as Harvey must be filled in one of two ways, depending on the circumstances. When the vacancy arises at least 28 months before the expiration of the term and at least 130 days before the next regularly scheduled general municipal election, “then the vacancy shall be filled for the remainder of the term at that general municipal election.” 65 ILCS 5/3.1-10-50(f).

27. If the vacancy arises outside this time frame, the mayor may appoint a “qualified person” to fill the vacancy “within 60 days after the vacancy occurs.” *Id.* § (e). The Municipal Code further provides that “[o]nce the appointment of the qualified person has been forwarded to the corporate authorities, the corporate authorities shall act upon the appointment within 30 days.” *Id.* If the “corporate authorities” do not provide their “advice and consent” within 30 days, the mayor “shall appoint and forward to the corporate authorities a second qualified person” whose appointment would again be subject to the “advice and consent” of the “corporate authorities” within 30 days. *Id.* If the second appointment also fails to receive the “advice and consent” of the “corporate authorities” within 30 days, the mayor may appoint one of the two “qualified persons” previously referred to the “corporate authorities,” without the advice and consent of the corporate authorities, through a “temporary appointment.” *Id.* The “temporary appointment” lasts until “an appointment has received the advice and consent and the appointee has qualified or until a person has been elected and has qualified, whichever occurs first.” *Id.*

28. On April 7, 2015, voters in Harvey elected a mayor and six aldermen. Mayor Kellogg won re-election to a four-year term as mayor. The six aldermen elected to Harvey’s City Council on April 7, 2015 were: Shirley Drewenski for the first ward; Joseph Whittington, Jr. for the second ward; Christopher J. Clark for the third ward; Lamont Brown for the fourth ward;

Donald Nesbit for the fifth ward; and Keith Price for the sixth ward. All six aldermen elected were elected to four-year terms.

Defendants' Actions on November 28, 2016

29. Since the 2015 municipal election in Harvey, the relationship between Mayor Kellogg and four aldermen—Alderman Drewenski, Alderman Whittington, Alderman Brown, and Alderman Clark—has become extremely contentious. These aldermen contend that Mayor Kellogg has disregarded their role in the government of Harvey by, among other things: enacting measures without a proper vote by the Harvey City Council; implementing measures by executive order that the Harvey City Council expressly rejected; refusing to provide official documents such as written vetoes of measures passed by a majority of the Harvey City Council; and engaging in behavior perceived to be personally harassing.

30. Since the April 25, 2016 meeting of the Harvey City Council, Alderman Drewenski, Alderman Whittington, Alderman Brown, and Alderman Clark have not attended regular council meetings in an effort to signal their opposition to Mayor Kellogg's alleged actions and to preclude the existence of a quorum required to take official action. Mayor Kellogg is aware of these aldermen's actions and has commented on them. For example, in a letter dated November 21, 2016, Mayor Kellogg pointed to their actions as a basis for declaring that their offices were vacant due to abandonment. All four of these aldermen have stated under oath that they have not abandoned and do not intend to abandon their respective offices. (*See Verified Statements of Alderman Drewenski, attached hereto as Exhibit A; Alderman Whittington, attached hereto as Exhibit B; Alderman Clark, attached hereto as Exhibit C; and Alderman Brown, attached hereto as Exhibit D, all of which are incorporated by reference as if fully set forth herein.*)

31. The Harvey City Council is scheduled to hold “regular meetings” under the Open Meetings Act, 5 ILCS 120/2.02(a), on the second and fourth Mondays of every month. The Open Meetings Act requires “[e]very public body” to give public notice “at the beginning of each calendar or fiscal year” of “the regular dates, times, and places” for its “regular meetings.” *Id.* The most recent of the “regular meetings” of the Harvey City Council was scheduled to occur on Monday, November 28, 2016 at 7:00 p.m. in council chambers at the Harvey Municipal Center. At that date, time, and location, Mayor Kellogg appeared in council chambers. The only other members of the Harvey City Council present were Alderman Nesbit and Alderman Price. As later acknowledged by Mayor Kellogg, the presence of Mayor Kellogg, Alderman Nesbit, and Alderman Price was not sufficient to establish a quorum of the Harvey City Council. (*See* Verified Statement of Donald Drewenski, attached hereto as Exhibit E, ¶ 9.)

32. After observing the absence of the other members of the Harvey City Council, Mayor Kellogg declared that the absent aldermen—Alderman Drewenski, Alderman Whittington, Alderman Brown, and Alderman Clark—had “abandoned” their offices. Mayor Kellogg further stated: “Today we are making a corporate decision to abandon and vacate their seats and we are swearing in the aldermen temporarily for 30 days, starting with Reverend Sims.” (*Id.* ¶ 5.)

33. Mayor Kellogg announced that Reverend Sims would be “sworn in to the office of the third ward.” Immediately following Mayor Kellogg’s declarations, Reverend Sims took an oath to “faithfully discharge [his] duties as alderman of the third ward to the best of [his] abilities.” (*Id.* ¶ 6.) The appointment of Reverend Sims as alderman for the third ward was not and has never been the subject of any resolution or vote by a properly constituted quorum of the Harvey City Council.

34. Mayor Kellogg then asked that Tracy Key be sworn in as the “new” alderman for the fourth ward. (*Id.* ¶ 7.) Immediately following Mayor Kellogg’s request, Mr. Key took an oath to “faithfully discharge the duties of alderman of the fourth ward according to the best of [his] abilities.” (*Id.*) The appointment of Mr. Key as alderman for the fourth ward was not and has never been the subject of any resolution or vote by a properly constituted quorum of the Harvey City Council.

35. After taking their oaths, Reverend Sims and Mr. Key assumed the seats reserved for the aldermen of the third and fourth wards, respectively. Aldermen Nesbit and Price welcomed Reverend Sims and Mr. Key to the tables ordinarily reserved for members of the Harvey City Council.

36. Based solely on the presence of Reverend Sims, Mr. Key, Alderman Nesbit, and Alderman Price, Mayor Kellogg stated: “With that said, tonight we will address the items on the agenda *now that we have a quorum.*” (*Id.* ¶ 9 (emphasis added).) Mayor Kellogg then “welcome[d] the new aldermen,” “call[ed] [the] meeting to order,” and asked the clerk to call roll. (*Id.*) The only persons responding to the roll call were Reverend Sims, Mr. Key, Alderman Nesbit, Alderman Price, and Mayor Kellogg.

37. The “agenda” referenced by Mayor Kellogg had been publicly posted prior to the November 28, 2016 meeting. (Ex. C, Verified Statement of Christopher J. Clark, at Ex. C-1.) The items on the publicly posted agenda did not include consideration of whether Alderman Drewenski, Alderman Whittington, Alderman Brown, and Alderman Clark had “abandoned” their offices such that those officers were “vacant” within the meaning of the Illinois Municipal Code. (*Id.*) Likewise, the items on the publicly posted agenda did not include consideration of

the appointment of Reverend Sims as alderman for the third ward or the appointment of Mr. Key as alderman for the fourth ward. (*Id.*)

38. The agenda included over a dozen ordinances and resolutions, including measures that the elected aldermen had previously blocked. (*Id.*) After Mayor Kellogg purported to call the meeting to order on November 28, 2016, Defendants proceeded to introduce, vote on, and approve multiple ordinances and resolutions from the agenda.

39. The meeting adjourned on November 28, 2016 without Alderman Drewenski, Alderman Whittington, Alderman Brown, or Alderman Clark being present for any roll call, vote, or final action.

40. The next regular meeting of the Harvey City Council is scheduled to occur on Monday, December 12, 2016 at 7:00 p.m. Upon information and belief, Mayor Kellogg, Alderman Nesbit, and Alderman Price are likely to convene with Reverend Sims and Mr. Key at that date and time. Mayor Kellogg is likely to declare the existence of a quorum based on the presence of Reverend Sims and Mr. Key as putative aldermen, as he did on November 28. Mayor Kellogg, Alderman Nesbit, Alderman Price, Reverend Sims, and Mr. Key are likely to take actions on December 12 purportedly in the name of the Harvey City Council and, by extension, the City of Harvey that they are not legally authorized to take.

COUNT I
Violation of the Open Meetings Act

41. The People reallege and incorporate by reference the allegations in Paragraphs 1 to 40 as if fully set forth herein.

42. Defendants' actions on November 28, 2016 as alleged herein violated the quorum requirement of the Open Meetings Act. 5 ILCS 120/2.01.

43. There was no quorum of the Harvey City Council physically present in the council chambers of the Harvey Municipal Center on November 28, 2016 at 7:00 p.m. or at any relevant time on that date. 65 ILCS 5/3.1-40-20.

44. Without a quorum of the Harvey City Council, the meeting held on November 28, 2016 did not comply with the Open Meetings Act. 5 ILCS 120/2.01.

45. Absent a quorum of the Harvey City Council, the final actions purportedly taken at the November 28, 2016 meeting were invalid and without legal effect. 5 ILCS 120/2(e) & 2.01. The invalid final actions include: the determination that the offices of first, second, third, and fourth ward aldermen were vacant; the appointment of Reverend Sims as alderman for the third ward; the appointment of Tracy Key as alderman for the fourth ward; and the adoption of ordinances and resolutions at the November 28, 2016 meeting.

46. Defendants' actions relating to the public agenda for the November 28, 2016 meeting violated the notice requirements of the Open Meetings Act.

47. The Open Meetings Act requires the public posting of "[a]n agenda for each regular meeting" of the Harvey City Council. 5 ILCS 120/2.02(a). The Open Meetings Act further requires that "[a]ny agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." *Id.* § (c).

48. The determination that a vacancy in an elected office such as alderman has occurred is a "final action" required to be on the regular meeting agenda. *Id.* The appointment of a "qualified person" to fill a vacancy in an aldermanic office is also a "final action" required to be on the regular meeting agenda. *Id.*; 65 ILCS 5/3.1-10-50(e).

49. The regular meeting agenda for the November 28, 2016 meeting did not indicate that “final action” would be taken to determine the existence of vacancies in the offices of aldermen for Harvey’s first, second, third, and fourth wards. The regular meeting agenda for the November 28, 2016 meeting did not indicate that “final action” would be taken to appoint Reverend Sims as alderman for Harvey’s third ward. The regular meeting agenda for the November 28, 2016 meeting also did not indicate that “final action” would be taken to appoint Mr. Key as alderman for Harvey’s fourth ward.

50. The Open Meetings Act affords the Court substantial discretion in fashioning appropriate relief to address both past and future violations:

The court, having due regard for orderly administration and the public interest, as well as for the interests of the parties, may grant such relief as it deems appropriate, including granting a relief by mandamus requiring that a meeting be open to the public, granting an injunction against future violations of this Act, ordering the public body to make available to the public such portion of the minutes of a meeting as is not authorized to be kept confidential under this Act, or **declaring null and void** any final action taken at a closed meeting in violation of this Act.

5 ILCS 120/3(c) (emphasis added).

51. The Attorney General Act also grants the Attorney General the authority to seek “injunctive or other relief . . . to prevent a violation of the Open Meetings Act . . . and for such other relief as may be required.” 15 ILCS 205/7(f).

52. Appropriate relief in this case includes a declaration by the Court that the final actions purportedly taken at the November 28, 2016 meeting are invalid and without legal effect.

53. Furthermore, immediate injunctive relief is necessary to prevent imminent violations of the Open Meetings Act that are likely to occur at the next regularly scheduled meeting of the Harvey City Council on Monday, December 12, 2016 at 7:00 p.m.

WHEREFORE, the People of the State of Illinois, by and through Lisa Madigan, Attorney General for the State of Illinois, and Kimberly M. Foxx, Cook County State's Attorney, respectfully request that the Court enter an order:

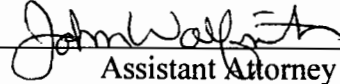
- a. Declaring that there was no quorum for the regularly scheduled meeting of the Harvey City Council on November 28, 2016;
- b. Declaring invalid the determination that vacancies had occurred in the offices of aldermen for Harvey's first, second, third, and fourth wards;
- c. Declaring invalid the appointment of James Sims as alderman of Harvey's third ward;
- d. Declaring invalid the appointment of Tracy Key as alderman of Harvey's fourth ward;
- e. Declaring invalid all ordinances and resolutions purportedly enacted in the name of the Harvey City Council on November 28, 2016;
- f. Enjoining Mayor Eric J. Kellogg, Alderman Donald Nesbit, Alderman Keith Price, and the City of Harvey from taking any action to implement or enforce any ordinance or resolution purportedly enacted on November 28, 2016;
- g. Enjoining Mayor Eric J. Kellogg, Alderman Donald Nesbit, and Alderman Keith Price from relying on the physical presence of either or both of James Sims and Tracy Key to establish the existence of a quorum of the Harvey City Council on December 12, 2016 or at any other date, absent lawful action appointing either or both of James Sims and Tracy Key as aldermen of Harvey;

- h. Enjoining Mayor Eric J. Kellogg, Alderman Donald Nesbit, and Alderman Keith Price, from any further actions in violation of the Open Meetings Act, including, but not limited to, noncompliance with the quorum and notice requirements; and
- i. Awarding such other and further relief as justice and equity may require.

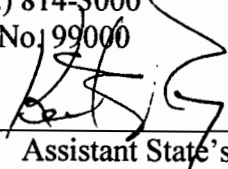
Date: December 9, 2016

Respectfully submitted,

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