

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

RICK FACCIN, in his official capacity as)
Madison County Auditor,)
)
Plaintiff,) 2019MR000431
)
v.) 19-MR-_____
)
)
MADISON COUNTY BOARD,)
KURT PRENZLER, in his official capacity as)
Madison County Board Chairman,)
DOUGLAS HULME, in his official capacity as)
Madison County Administrator, and)
CHRIS SLUSSER, in his official capacity as)
Madison County Treasurer,)
)
Defendants.)

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

Plaintiff Rick Faccin, in his official capacity as Madison County Auditor, complains of Defendants Madison County Board (the “Board”), Kurt Prenzler, in his official capacity as Madison County Board Chairman (“Chairman”), Douglas Hulme, in his official capacity as Madison County Administrator (“Administrator”), and Chris Slusser, in his official capacity as Madison County Treasurer (“Treasurer”), as follows:

The Parties

1. Plaintiff is the duly-elected Auditor of Madison County, Illinois (the “Auditor”).
2. The Board consists of duly-elected members from the Madison County Board Districts and is responsible for passing “all ordinances, rules and regulations to implement the powers granted to counties.”¹

¹ Citizen’s Guide to Madison County Government, Madison County, Illinois 2018-2020, p. 1, available at https://www.co.madison.il.us/document_center/Government%20Transparency/CitizensGuide%20updated%20Dec.%202012,%202018.pdf.

3. Kurt Prenzler is the duly-elected Chairman of the Board, and “is responsible for overseeing the daily operations of County departments and coordinating management with other Countywide Officeholders.”² The Chairman also “implement[s] the decisions and policies of the Board.” Code of Ordinances of Madison County, Illinois § 30.04(B).

4. Douglas Hulme is the Madison County Administrator. The Administrator is appointed by the Chairman and approved by the Board.

5. Chris Slusser is the duly-elected Treasurer of Madison County, Illinois.

6. Venue is proper in Madison County pursuant to 735 ILCS 5/2-101 in that all or part of the transactions giving rise to this cause of action occurred in Madison County.

The Auditor’s Use of USL Financial System

7. To perform his statutory duties, the Auditor utilizes software provided by USL Financials, Inc. (“USL”).

8. The Auditor’s office began using the USL software in 2001.

9. To date, the USL software contains hundreds of thousands of records maintained by the Auditor’s office.

10. The records contain other data that is protected under the Health Insurance Portability and Accountability Act (“HIPAA”), and other personal information subject to exemption from public disclosure under state law, including:

- names, addresses, social security numbers, payroll identification numbers, and bank account numbers for many County employees who have been reimbursed for travel, worker’s compensation claims, and other items processed through the Auditor’s office;

² *Id.*

- references to medical procedures for employees' claims paid through the County Health Benefits fund and Tort fund and processed through the Auditor's office;
- names and addresses of citizens who are the recipients of numerous types of assistance provided through various County funds and processed through the Auditor's office; and
- names and addresses of citizens who have served on grand juries in the County.

11. Under Illinois law, the Auditor's is charged with controlling the internal operations of the office and procuring equipment, materials and services necessary to perform the duties of the office. 55 ILCS 5/3-1004.

12. Currently, the USL software is installed on computers located at the Auditor's office and the only people with full access to the data on the USL system are the Auditor, his deputy, and the Auditor's staff through password-protected access.

13. Since the Auditor began using the USL system in 2001, no prior County administration, chairman, board member, or treasurer has had, or requested access to, the USL system.

Investigation and Seizure of County Computers and Records

14. In January 2018, eight search warrants were served on Madison County offices, including the offices of public relations manager and then Freedom of Information Officer Cynthia Ellis, Administrator Hulme, and the County's IT Department.³ According to the Chairman, the items seized pursuant to these warrants were computers and records.⁴

15. The investigation was turned over to the Illinois Attorney General's office in September 2018.

³ <https://www.bnd.com/latest-news/article218395230.html>

⁴ <https://www.bnd.com/news/local/article194009064.html>

16. Neither the Auditor nor the USL system was subject to a warrant or seizure of computers and records for this investigation.

**The Board's Resolution to Compel the Auditor to Provide
Access to the USL System and Data**

17. Currently, the Board has access to the County's financial information needed to complete the annual budget through a detailed financial statement of the County issued by the Auditor's office.

18. The Auditor's office also provides the Board on a monthly basis a budget expenditure analysis report, which shows a line item approved budget for each department.

19. The Auditor's office also provides the Board on a monthly basis a comparative financial report for all County funds.

20. The County's checkbook is also available for review through a computer portal that the Board may access at any time.

21. The Auditor's office also provides the Board upon request an Excel spreadsheet with a general ledger detail for all County accounts, with redactions made to the HIPAA and other private personal information.

22. On March 20, 2019, the Board approved a "Resolution to Insure Access to the Madison County USL Financial System" (the "Resolution"). A copy of the Resolution is attached hereto as Exhibit 1.

23. The Board approved the Resolution by a vote of 13 in favor and 12 opposed, with 4 absent voters.

24. The Resolution provides that "the County Chairman and his/her designees, the County Administrators, as well as the County Treasurer, shall have read access to the County

USL financial system in real time and the proper software installed on their County computers.”

Ex. 1.

25. On March 25, 2019, the Chairman notified the State’s Attorney that he “asked the IT Director to implement the County Board’s Resolution and to begin read-only access of the County’s financial records on Monday, April 1.”

COUNT I
Declaratory Judgment

26. Plaintiff incorporates by reference herein the allegations set forth above.

27. Under Illinois law, “[n]o county board may alter the duties, powers and functions of county officers that are specifically imposed by law.” 55 ILCS 5/5-1087.

28. Like several other county officers, the county auditor is authorized by statute to control the internal operations of his office:

Internal operations of office. The county auditor shall control the internal operations of the office and procure equipment, materials and services necessary to perform the duties of the office, subject to the budgetary limitations established by the county board.

55 ILCS 5/3-1004. *See also* 1996 Ill. Op. Att’y Gen. 21, p. 5 (“The General Assembly has conferred upon the . . . county auditor . . . the express power to control the internal operations of their respective offices, including the authority to procure the equipment materials and services that the officers determine necessary to perform the duties of such office.”).

29. According to the Illinois Attorney General, “it is clear that the county board cannot exercise direct control over purchases made by . . . county officers who have been granted internal control authority . . .” 1996 Ill. Op. Att’y Gen. 21, p. 6. *See also* 1991 Ill. Op. Att’y Gen. 11 (County executive or board may not circumvent the internal control of the auditor over his office, and to the extent the board may install financial records systems in county offices and

divisions, such installation must occur through the auditor's office); 1977 Ill. Op. Att'y Gen. 93 (county boards cannot regulate or control internal equipment and material of county clerk's office); 1977 Ill. Op. Att'y Gen. 136 (custody and care of the courthouse must remain in the office of sheriff and cannot be taken away by a county ordinance); *Moy v. County of Cook*, 159 Ill. 2d 519, 526 (1994) (finding no agency relationship between the county and the elected sheriff and explaining that "[t]he county is given no authority to control the office of the sheriff").

30. Here, the Resolution is an unauthorized legislative action by the Board that seeks to: (a) circumvent the Auditor's duties and internal control over his office provided by the Illinois legislature; and (b) regulate and control the Auditor's internal equipment and control over the USL software.

31. Alternatively, the Resolution is an unauthorized legislative action by the Board in that it permits any designee of the Chairman, regardless of whether that person is a County official or employee, to access the private and protected data on the USL system.

32. Alternatively, the Resolution, which requires the purchase of additional software licenses to access the USL system, is an unauthorized legislative action by the Board because it was not approved by two-thirds of the Board members pursuant to 55 ILCS 5/5-1130, which provides:

The county board of each county may, upon the affirmative vote of two-thirds of its members, enter into one or more leases for a period of not to exceed 5 years for computer equipment, data processing machinery, and software, as may be required for its corporate purposes.

33. An actual controversy exists between the parties concerning the validity of the Resolution, the Auditor's duties to comply with the Resolution, and the Defendants' right to access the USL software without the Auditor's authorization pursuant to the Resolution.

WHEREFORE, Auditor prays that this Court enter an order declaring that the Resolution is invalid and unenforceable, that Defendants are not entitled to access the USL system unless expressly authorized to do so by the Auditor, and granting Auditor the costs of this action and such other and further relief as this Court deems just and proper.

COUNT II
Injunction

34. Plaintiff incorporates by reference herein the allegations set forth above.

35. Injunctive relief is necessary to prevent Defendants and their agents from enforcing or taking action pursuant to the unauthorized Resolution. See *Ziller v. Rossi*, 395 Ill. App. 3d 130, 138 (2nd Dist. 2009) (“[C]ourts should restrain the enforcement . . . of[] unauthorized orders, resolutions, or ordinances.”).

36. The Chairman has indicated that he intends to implement the Resolution and begin accessing the USL financial system on April 1, 2019.

37. Because of the threat of implementation of a Resolution that exceeds the Board’s statutory authority as set forth herein, Plaintiff has a clearly ascertainable right in need of protection and is likely to succeed on the merits.

38. The Auditor also faces irreparable harm if injunctive relief is not granted. In addition to the invasion of statutory rights and duties by the implementation of the *ultra vires* Resolution, turning over the data contained in the USL software to third-parties, including parties whose prior computers and records were seized pursuant to an investigation by the Illinois Attorney General, without proper authorization or authority will disclose the private and protected data contained in hundreds of thousands of records to unauthorized individuals and could expose the Auditor and the County to significant liability under federal and state law.

39. The Auditor has no adequate remedy at law or in equity to compensate him for the loss of statutory powers or losses incurred by unauthorized disclosure of private information.

WHEREFORE, Auditor prays that this Court enter an order enjoining Defendants, and their respective managers, officers, agents, employees and anyone acting in concert with or at the direction of said Defendants, from implementing the Resolution or otherwise accessing, or attempting to access, the USL system unless expressly authorized to do so by the Auditor, and granting Auditor the costs of this action and such other and further relief as this Court deems just and proper.

By: /s/ Kevin P. Green

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Appointed Special State's Attorney for Plaintiff

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Complaint are true and correct.

A handwritten signature in cursive script, appearing to read "Rick Faccin", written over a horizontal line.

Rick Faccin, Madison County Auditor

RESOLUTION TO INSURE ACCESS TO THE MADISON COUNTY USL FINANCIAL SYSTEM

WHEREAS, the County financial system is USL Financials, and is under the authority of the County Board, and serves as the official book of financial accounts for the County; and

WHEREAS, the County financial system consists of financial data that is public information and it is important that the County be transparent; and

WHEREAS, the financial data maintained on the County financial system is essential to evaluate fiscal performance of the County and its departments and should be used by the elected officials, department heads, supervisors and the public to insure efficient government; and

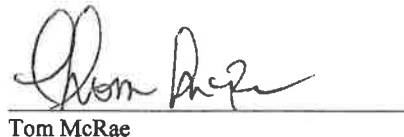
WHEREAS, it is essential for open and honest government that the details of the County financial system be accessible to the County Board Chairman, the County Administrator, and the County Treasurer; and

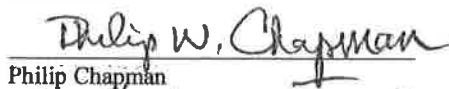
WHEREAS, the County Chairman and his/her designees, the County Administrator, as well as the County Treasurer, shall have read access to the County financial system as a function of their responsibilities of county fiscal management oversight.

NOW THEREFORE BE IT RESOLVED that the County Chairman and his/her designees, the County Administrators, as well as the County Treasurer, shall have read access to the County USL financial system in real time and the proper software installed on their County computers.

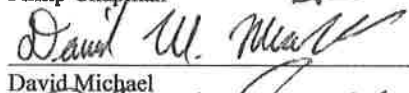
Respectfully submitted,


Don Moore

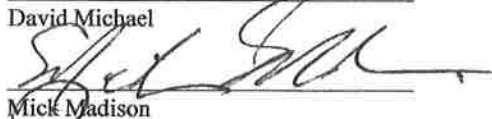

Tom McRae

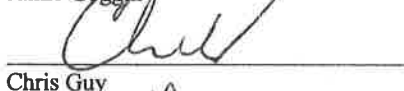

Philip Chapman

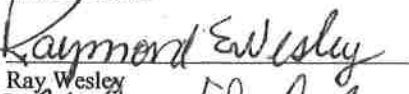
Gussie Glasper

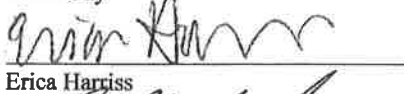

David Michael

Jamie Goggin


Mick Madison


Chris Guy


Ray Wesley


Erica Harriss


Mike Walters


Clint Jones

Michael Holliday, Sr.

Executive Committee
March 20, 2019