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Mark Von Nida
Clerk of Circuit Court
Third Judicial Circuit, Madison County Illinois

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

RICK FACCIN, in his official capacity as Madison County Auditor,	)	
Plaintiff,	)	19-MR-431
v.	)	
MADISON COUNTY BOARD, et al.	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO DEFENDANT MADISON COUNTY BOARD'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Rick Faccin, in his official capacity as Madison County Auditor, for his Response to Defendant Madison County Board's Motion for Summary Judgment, states:

INTRODUCTION

This action arises out of a resolution (the "Resolution") passed by the Madison County Board ("Board") that purports to give the County Chairman, his unnamed "designee," the County Administrator, and the County Treasurer access to the auditing software of the County Auditor ("Auditor"), a separate constitutional officer. The Resolution also requires the purchase of additional licenses for the auditing software and the installation of the Auditor's software outside of the Auditor's office. The Resolution would permit the unauthorized disclosure of confidential information of county citizens and employees.

The Board has moved for summary judgment, arguing that the Resolution is valid and enforceable. The Board's motion should be denied.

First, the Board nowhere addresses the fact that the Resolution failed to pass with a 2/3 vote, as required by Illinois law. This fact alone renders the Resolution unenforceable.

Second, the Board, like Prenzler and Hulme, improperly equates a right to obtain financial information with a right to access the Auditor's software. The Board's right to financial information, however, is different from open access to software containing that, and other confidential information, which is specifically protected by law. The Illinois Legislature has recognized the distinction between the production of information and the right to access. 5 ILCS 140/3(a) (as public body, the Auditor, "may not grant to ***any person*** or entity, whether by contract, license, or otherwise, the exclusive ***right to access*** and disseminate any public record as defined in [the] Act."); *see also Hites v. Waubonsee Community College*, 2016 IL App (2d) 150836, ¶ 71.

Third, the dissemination of information is subject to legal protections that prohibit the dissemination of confidential information held by the Auditor. The Board seems confused, first arguing that FOIA does not protect intra-governmental disclosure of information, then, two paragraphs later, conceding that FOIA prohibits intra-governmental disclosure by the State's Attorney and Sheriff's Department. Board MSJ, pp. 7-8. The Board then states: "If the Illinois Legislature *** believed an Auditor held information of such importance, it could have passed similar legislation." *Id.* at 8. The Board overlooks that, in fact, the Illinois Legislature ***has passed*** similar legislation ***specifically restricting the disclosure of information held by an Auditor***, including: (1) certain communications "between a public body and an *** ***auditor*** representing the public body"; and (2) "***materials prepared or compiled with respect to internal audits of public bodies***." 5 ILCS 140/7(1) (m). Thus, to paraphrase the Board, "the Illinois Legislature, in its wisdom, ***has established*** specific legislation that protects certain information held by" the Auditor "from ever being disseminated." Board MSJ, p. 8 (emphasis added). The fact that this confidential information is not to be disclosed within a governmental unit is also

supported by the plain language of FOIA, which allows for the withholding of exempt information "to any person," (not just "to the public"). 5 ILCS 140/3(a).

The Board also ignores that FOIA is not the only law prohibiting the Auditor's disclosures. Illinois law recognizes the confidentiality of disclosures made to auditors. *See, e.g.*, *Sherman v. Ryan*, 392 Ill. App. 3d 712, 737-38 (1st Dist. 2009). The Illinois Code of Criminal Procedure also prohibits the disclosure of the grand juror identities contained in the USL software. The Board does not address these laws, which also preserve the confidentiality of the other departments' disclosures to the Auditor.

Fourth, the Board admits that "the actual information has already been provided" by the Auditor. Board MSJ, p. 10. Thus, the repeated claim that the Auditor is hiding or withholding financial information is pure fiction. The Board's motion underscores that ***this case is not about the Auditor providing or withholding information—it is about access to software.***

Thus, to justify the intrusion into the Auditor's software, the Board argues that "it is not the information, it is the format," and that "[t]he problem lies in the fact the information is not in a workable format that would allow specific 'groupings' for department specific information, expenditures, etc., that could be obtained essentially by hitting a button as opposed to reviewing thousands of entries to make sense." Board MSJ, pp. 9, 10. The Board does not cite any source to support this statement. And the undisputed facts in the record show this claim too is fiction.

The undisputed facts demonstrate that the Auditor provides, among other things: (1) ***daily*** financial reports to the Treasurer regarding investment and cash balances; (2) ***monthly*** budget variance reports and budget expenditure reports to the Board's Finance Committee detailing budgets, expenditures, and projections for each county department and office (with further breakdown by fund within each department/office); (3) ***monthly*** comparative financial

statements to the County Administrator showing revenues and expenditures; (4) ***quarterly*** financial statements to the Board showing actual and projected revenues, expenditures, and conditions of all funds and appropriations, numerous other reports, documents and information upon request; and (5) a ***Microsoft Excel file*** containing requested portions of the General Ledger (with redactions made for confidential information, such as grand juror identities). This Excel file of the General Ledger can be filtered, searched, or grouped "by hitting a button" and the data can be manipulated using the myriad accounting functions in Excel. Using this information, the Board can pinpoint and analyze every line-item expenditure of each department/office during a particular timeframe and easily determine that, for instance, in March 2019, the Circuit Court paid 222 jurors a total of $14,375.00. The average amount of these payments was $64.75. It made 102 of these payments (totaling $3,225.00) on March 27, 2019. From January 1 to March 31, 2019, the Court had paid jurors a total of $47,575.00, which amounted to 32.81% of its annual budget of $145,020.00, leaving a balance of $97,445.00. The January through March jury payments constituted 30.39% of the Court's non-salary expenditures (and 13.76% of its total expenditures) during that period.

This is why the former Republican Chair of the Board's Finance Committee for the current administration, Lisa Ciampoli, states under oath that the Auditor's office is "extremely cooperative" in providing information and documents requested, and never withheld from the Chair or Finance Committee financial information necessary to: (1) track the financial performance of the various Offices and Departments; and (2) establish their budgets. Consistent with Ms. Ciampoli's testimony, the Board's sworn responses to Plaintiff's Request for Production of Documents in this case demonstrate that ***the Board cannot identify a single document "evidencing a denial by the Auditor within the past 24 months for information or***

records requested by" the Board, Prenzler, Hulme, or Slusser.

Thus, it is pure fiction that the Auditor is not providing necessary financial information to the Board, or that the information provided is unusable or in an unworkable format. Defendants have failed to identify what specific non-confidential information the Auditor has failed to provide. In fact, the Resolution itself fails to identify any information being withheld by the Auditor to the Board. The Resolution thus reveals Defendants true intent: to move the Auditor's file cabinet to their own offices. This goes well beyond the "budgetary limitations" that the Illinois Legislature has allowed county boards to exert over elected offices' control of their operations. 55 ILCS 5/3-1004. This goes well beyond the elected Auditor's right to "operate free from interference" from the Board. *Heller v. County Board of Jackson County*, 71 Ill. App. 3d 31 (5th Dist. 1979). Kurt Prenzler agreed with the Board's own attorney that neither he nor the Board are entitled to enter the system of any constitutional office without the office's authorization or permission:

> Q. And you understand that offices like the treasurer and the county clerk, the circuit clerk, sheriff's department and the state's attorney's office are found in the Illinois Constitution; correct?
>
> A. I'm aware that certainly the state's attorney and the treasurers are in the Constitution. ***I'm not familiar with the auditor's office being in the Constitution***.
>
> ***
>
> Q. Okay. Now, you would agree, wouldn't you, that, and correct me if I'm wrong, that ***you would not attempt to obtain information or enter any system of any constitutional office without authorization or permission***; isn't that correct?
>
> A. I'm glad we are having this process so that we are doing everything legally.
>
> Q. Right. ***Am I correct when I make that statement***?
>
> A. ***Yes. Yes***.

Pl. MSJ Ex. 3, Prenzler Dep. 143:17-144:23

The Auditor's case is straightforward: The Auditor is a constitutional office. Entering the system (or file cabinet) of a constitutional office requires the officer's permission.

The Resolution is unenforceable because, in addition to lacking the requisite 2/3 vote, it pushes aside the Auditor, and improperly gives individuals access to the entirety of the Auditor's software without his permission, requires the installation of the software outside of the Auditor's office, opens the records containing confidential information to individuals outside the Auditor's office, alters his duties, powers, and functions, dictates how he performs his duties, and delegates the auditing functions to unelected appointees and unnamed designees.

Accordingly, the Court should deny the Board's Motion for Summary Judgment and enter summary judgment in favor of Plaintiff.

UNDISPUTED FACTS

Plaintiff incorporates by reference his Statement of Undisputed Facts in his Motion for Summary Judgment ("Pl. SOF"). The Board does not dispute these facts. Board MSJ, p. 1 ("The Defendants have no real differences with the facts submitted by any of the parties***.).

PROCEDURAL POSTURE

Although this case has been expedited pursuant to Defendants' repeated requests to do so, the procedural posture of this case is not a "vague issue" as the Board suggests.[1] The following motions are currently pending: (1) Prenzler and Hulme's Motion to Dismiss Complaint; (2) Plaintiff's Motion to Dismiss Counterclaim; (2) Plaintiff's Motion for Summary Judgment; (4) Prenzler and Hulme's Motion for Summary Judgment; (5) the Board's Motion for Summary Judgment; and (6) Plaintiff's Motion for Preliminary Injunction. The background for these motions is as follows:

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[1] The undersigned has never experienced a civil case move through this Court as quickly as this one has—from filing of the Complaint on March 29, 2019 to a Summary Judgment hearing on June 6, 2019.

- Plaintiff filed a complaint seeking declaratory judgment and injunctive relief on March 29, 2019. Both Defendants have answered (Prenzler/ Hulme on April 22, 2019; the Board on May 29, 2019). Prenzler and Hulme also filed a Motion to Dismiss the Complaint that remains pending.

- Plaintiff moved for a Temporary Restraining Order with notice. After an extensive hearing, the Court, on April 1, 2019, issued a TRO that currently expires on June 6, 2019, unless otherwise extended by the Court. Prior to the Court's expedited schedule, Plaintiff also moved for a preliminary injunction.

- On April 22, 2019, Prenzler and Hulme filed a counterclaim seeking declaratory judgment. Plaintiff filed a Motion to Dismiss the Counterclaim that remains pending.

- At the last conference with the Court, the parties agreed that this case should be resolved on summary judgment motions in an expedited manner. The parties and Court thus agreed to continue the preliminary injunction hearing and agreed to an expedited summary judgment briefing schedule.

- In accordance with that schedule, Plaintiff, Prenzler and Hulme, and the Board have filed cross-motions for summary judgment. Plaintiff's MSJ seeks judgment for Plaintiff as a matter of law on the Complaint and on the Counterclaim. Prenzler and Hulme's MSJ seeks judgment for Defendants as a matter of law on Plaintiff's Complaint and on the Counterclaim. The Board seeks judgment for Defendants as a matter of law on Plaintiff's Complaint.

The summary judgment motions repeat and add to the legal issues presented in the motions to dismiss. The premise of cross-motions for summary judgment (and motions to dismiss) is that there are no material factual issues in dispute, making any evidentiary hearing on these motions unnecessary and improper.

The Board argues that "[u]nless Faccin is willing to concede the Court's decision on the current motions is dispositive of all issues he has presented, a ruling by this court may only serve to 'postpone' an eventual hearing on Faccin's underlying cause of action ***." Board MSJ, p. 3. Plaintiff concedes simply that all of the parties have requested summary judgment on all claims currently pending. As with any case, a court granting summary judgment for any party would certainly be dispositive of the issues on which judgment is granted. Likewise, if the Court

denied each party's motion for summary judgment based on a finding of disputed material facts, those disputed facts would necessarily need to be presented at a subsequent trial. Since it appears the material facts are undisputed, however, summary judgment is warranted.

Finally, the granting of summary judgment for any party would also moot the requested motion for preliminary injunction. Therefore, to avoid additional expense to the taxpayers caused by a preliminary injunction hearing, and in light of the expedited summary judgment schedule, Plaintiff requests that the Court extend the current TRO until it has ruled on the cross-motions for summary judgment. This is permissible as the TRO was entered after notice and an extensive hearing, and the 10-day rule for TRO's only applies to TROs entered *without* notice. 735 ILCS 5/11-101 ("Every temporary restraining order granted ***without notice*** *** shall expire by its terms within such time after the signing of the order, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period.") (emphasis added); *Kable Printing Co. v. Mount Morris Bookbinders Union*, 63 Ill. 2d 514, 524 (1976) ("[A] temporary restraining order issued ***with notice*** is, in its practical results, no different than a preliminary injunction issued with notice.") (emphasis added).[2] Here, the Court has already found the TRO/preliminary injunction elements satisfied and extending the

[2] Moreover, a hearing prior to the issuance of a preliminary injunction is only necessary if an answer denies material allegations of the complaint, at which point the hearing focuses on those denials. *Schlicksup Drug Co. v. Schlicksup*, 129 Ill. App. 2d 181, 186-187 (3d Dist. 1970) ("Where no answer has been filed, the injunction may be issued based solely on the sufficiency of the complaint, but where an answer has been filed, both the answer and the complaint, must be considered. If the answer contains denials ***of material allegations*** of the complaint, a hearing ***on those matters*** must be had before the injunction may issue.") (emphasis added). As set forth herein, all parties have agreed there are no disputed issues of material fact.

TRO temporarily preserves the status quo in these expedited proceedings until the Court enters its order on the dispositive summary judgment motions.[3]

ARGUMENT

For all the reasons set forth in Plaintiff's Motion for Summary Judgment and Legal Memorandum, incorporated herein by reference, the Resolution, which seeks unrestricted access to the Auditor's software system, is invalid and unenforceable.

I. The Resolution is Unenforceable Because it was not Approved by 2/3 of the Board.

The Resolution requires the Board to purchase USL license agreements for the individuals designated in the Resolution. Pl. SOF ¶ 94. The Board nowhere addresses the law that requires a 2/3 vote for such licenses. The Resolution passed by a majority vote of 13 to 12, short of the 2/3 required by law. Pl. SOF ¶ 92. It is, therefore, invalid and unenforceable. *See* Pl. MSJ Brief, pp. 7-8.

II. Obtaining Financial Information is not the same as Accessing Auditing Software.

The Board misstates the Auditor's position as a "belief that any piece of information obtained or held by his office is essentially 'his' to use, not use, disseminate, or not disseminate, to whomever he chooses, and when he chooses." Board MSJ, p. 6. The Board's mischaracterization of the Auditor's position is revealed, however, by the Board's subsequent admission that all the information they say they need "has already been provided." Board MSJ, p. 10. This admission underlines the fact that ***this case is not about the Auditor providing or withholding information—it is about access to the auditing software.***

The Board's right to financial information, however, is different from open access to software containing that, and other confidential information, which is specifically protected by

[3] If all of the summary judgment motions are denied, a preliminary injunction hearing, if needed, may be set at that time.

law. The Illinois Legislature has recognized the distinction between the production of information and the right to access. 5 ILCS 140/3(a) (as public body, the Auditor, "may not grant to ***any person*** or entity, whether by contract, license, or otherwise, the exclusive ***right to access*** and disseminate any public record as defined in [the] Act."); *see also Hites v. Waubonsee Community College*, 2016 IL App (2d) 150836, ¶ 71 ("[T]he database is akin to a file cabinet, and the data that populates the database is like the files. FOIA permits a proper request for a single file, some of the files, or all of the files.").

Although the Auditor may have to produce files from the cabinets (subject to exemptions for confidential information), the Auditor's statutory power to control his office's operations surely includes the right to control where the file cabinets are located and who gets a key. 55 ILCS 5/3-1004.

III. The Obligation to Disseminate Information is Subject to Legal Protections that Prohibit the Dissemination of Confidential Information Held by the Auditor.

The Board argues that intra-governmental disclosures are not restricted because FOIA only applies to information "disseminated to the public." Board MSJ, p. 7.

First, this argument ignores the plain language of FOIA. Nothing in FOIA limits it to dissemination of information to the public. Instead, FOIA specifically provides for the inspection or copying of "public records" of a "public body" "to any person," subject to exemptions. The Board concedes that the Auditor is a public body. Board MSJ, p. 8. "Public records" means all records "under the control of any public body." 5 ILCS 140/2(c). FOIA does not limit "person" to a member of the public. Rather, "'Person' means any individual, corporation, partnership, firm, organization or association, acting individually or as a group." 5 ILCS 140/2(b). Thus, the Board, Prenzler, Hulme, and their designees are "persons" under

FOIA. While FOIA requires the Auditor (a public body) to produce information, it provides that certain information is exempt from disclosure "to any person." 5 ILCS 140/3(a); 5 ILCS 140/7.

Second, the Board contends that its duty to protect confidential information equates to a right to access all confidential information held by any county office, and, therefore, a county officer cannot restrict information to other county government units. Board MSJ, pp 7-8. The logical conclusion of the Board's argument is that the Board is entitled to see all information held by any public office of the county. Following this logic, the Board Members or Administrator (or any government official?) could, with or without a resolution, obtain read-only access to the software of the State's Attorney, Sheriff's Department, Circuit Court, or Chief Judge's offices. If the Board Members or other county officials came across confidential information in these software programs, they "would be under the same obligation to protect the CI and PII as the [officer]." Board MSJ, p. 7. Essentially, no harm, no foul.

The Board clearly recognizes the fallacy of this argument because, in the very next section of its brief, ***the Board argues that FOIA prohibits the intra-governmental dissemination*** of certain information held by the State's Attorney and Sheriff's Department. Board MSJ, p. 8 ("[T]here is some information within those Departments that is so important and/or confidential, legislation was passed to protect it. ***See for example, 5 ILCS 140/7*** (1) (c), (d), (d-5), (e), and (m) (2018) [FOIA exemptions]") (emphasis added).

In other words, immediately after arguing that FOIA does not prohibit intra-governmental disclosure of private information, the Board agrees that FOIA exemptions prohibit intra-governmental disclosure by the State's Attorney or Sheriff's Department of: (1) personal information (5 ILCS 140/7(c)); (2) information that could interfere with a law enforcement proceeding (§ 140/7(d)); (3) information created by a different law enforcement agency in a

shared records management system (§ 140/7(d-5)); (4) information relating to or affecting security of correctional institutions and detention facilities (§ 140/7(e)); and (5) attorney-client and other specified communications and materials (§ 140/7(m)).

The Board then argues that "[t]here is no similar legislation referable to the Auditor's held information. If the Illinois Legislature, again in its wisdom, believed an Auditor held information of such importance, it could have passed similar legislation." Board MSJ, p. 8.

In fact, there is "legislation referable to the Auditor's held information," and, incredibly, it is found in the very same provision relied on by the Board to argue other offices do not have to disclose information: § 140/7(m), which ***specifically exempts from disclosure information held by the Auditor***.

> "[T]he following shall be exempt from inspection and copying:
>
> ***
>
> (m) Communications between a public body and an attorney ***or auditor*** representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, ***and materials prepared or compiled with respect to internal audits of public bodies***." 5 ILCS 140/7(m) (emphasis added).

Thus, to paraphrase the Board, "the Illinois Legislature, in its wisdom, ***has established*** specific legislation that protects certain information held by" the Auditor "from ever being disseminated." Board MSJ, p. 8 (emphasis added). It is undisputed that the Auditor, by statute, "maintain[s] a continuous internal audit of the operations and financial records of the officers, agents, or divisions of the county, and ha[s] access to all records, documents, and resources necessary for the discharge of this responsibility." 55 ILCS 5/3-1005(g). It is undisputed that USL contains materials prepared or complied with respect to these internal audits of public bodies. Pl. SOF ¶¶ 15-25.

The FOIA provision in §140/7(m) is also in concert with Illinois law holding that disclosures to auditors and accountants are confidential and do not constitute a waiver of a privilege. *See, e.g.*, *Sherman v. Ryan*, 392 Ill. App. 3d 712, 737-38 (1st Dist. 2009) ("[C]ourts have declined to find a waiver of work product protection when documents are disclosed to independent auditors, generally because such disclosure 'does not substantially increase the opportunity for potential adversaries to obtain the information.' [Citations.] Illinois case law supports defendants, and the reasoning of the federal courts against a waiver of work product when documents are disclosed to auditors is persuasive. Therefore, the trial court correctly held that Aon's disclosure of privileged documents to outside auditors does not constitute a waiver of the work product privilege."). In light of this confidentiality, the Board's argument that the Auditor's position means other departments/offices will have to withhold information from the Auditor misses the mark.

Finally, FOIA is not the end of the inquiry. FOIA specifically provides that there are other statutes that may restrict the disclosure of information:

> "This Act shall be the exclusive State statute on freedom of information, ***except*** to the extent that other State statutes might create ***additional restrictions on disclosure of information*** or other laws in Illinois might create additional obligations for disclosure of information to the public." 5 ILCS 140/1 (emphasis added).

As set forth in Plaintiff's Motion for Summary Judgment, the Illinois Code of Criminal Procedure is another statute through which the Illinois Legislature created additional restrictions on the disclosure of information in the Auditor's possession—as relevant here, the disclosure of the identity of grand jurors. 725 ILCS 5/112-6(b); *Better Gov't Ass'n v. Office of the Special Prosecutor*, 2019 IL 122949, ¶ 36. This information, which the Jury Commission provides to the Auditor in confidence, is protected by specific legislation that prohibits its dissemination.

If the Board wants information about inmates or criminal proceedings, it has to ask for it from the State's Attorney or Sherriff. It cannot simply grant itself the power to access their software systems. This is because, like the Auditor's system, there is certain information protected from disclosure within those systems. This reality is acknowledged by the Board. *See* Board MSJ, p. 8 ("[T]here is some information within those Departments that is so important and/or confidential" that is not "subject to invasion and scrutiny" and that is protected "from ever being disseminated"). The Board's reasoning for why it cannot freely access the software of the State's Attorney and Sheriff's Department applies equally to the Auditor.

IV. It is Undisputed that the Auditor does not Withhold Financial Information or Provide Unworkable Data.

As the Board tells it in the second half of its brief, the problem is not with the provision of information. Instead, "[t]he problem lies in the fact the information is not in a workable format that would allow specific 'groupings' for department specific information, expenditures, etc., that could be obtained essentially by hitting a button as opposed to reviewing thousands of entries to make sense." Board MSJ, p. 10. The Board cites no fact to support this assertion.

Moreover, the undisputed facts in Ms. Zoelzer's and Ms. Ciampoli's affidavits show this assertion is plainly wrong. The former Republican Chair of the Board's Finance Committee for the current administration, Lisa Ciampoli, states under oath that the Auditor's office is "extremely cooperative" in providing information and documents requested, that she never needed or requested access to USL to perform her budgeting or other duties, and that the Auditor never withheld from the Chair or Finance Committee financial information necessary to: (1) track the financial performance of the various Offices and Departments; and (2) establish their budgets. Pl. SOF ¶¶ 39, 72, 74. Consistent with Ms. Ciampoli's testimony, the Board's sworn responses to Plaintiff's Request for Production of Documents demonstrate that the Board cannot

identify a single document "evidencing a denial by the Auditor within the past 24 months for information or records requested by" the Board, Prenzler, Hulme, or Slusser. Pl. SOF ¶ 75.

In fact, the Auditor provides, among other things: among other things: (1) ***daily*** financial reports to the Treasurer regarding investment and cash balances; (2) ***monthly*** budget variance reports and budget expenditure reports to the Board's Finance Committee detailing budgets, expenditures, and projections for each county department and office (with further breakdown by fund within each department/office); (3) ***monthly*** comparative financial statements to the County Administrator showing revenues and expenditures; (4) ***quarterly*** financial statements to the Board showing actual and projected revenues, expenditures, and conditions of all funds and appropriations, numerous other reports, documents and information upon request; and (5) a ***Microsoft Excel file*** containing requested portions of the General Ledger (with redactions made for confidential information, such as grand juror identities). Pl. SOF ¶¶ 48-62. The financial information provided by the Auditor daily, monthly, quarterly, and upon request is specifically grouped by department and by fund within each department. Pl. MSJ Ex. 1A-1F.

The Microsoft Excel file of the General Ledger can be filtered, searched, or grouped "by hitting a button" and the data can be manipulated using the myriad accounting functions in Excel. Pl. SOF ¶¶ 64-67. Using this information, the Board can pinpoint and analyze every line-item expenditure of each department/office during a particular timeframe. For example, in March 2019, the Circuit Court paid 222 jurors a total of $14,375.00. Pl. SOF ¶ 67. The average amount of these payments was $64.75. It made 102 of these payments (totaling $3,225.00) on March 27, 2019. From January 1 to March 31, 2019, the Court had paid jurors a total of $47,575.00, which amounted to 32.81% of its annual budget of $145,020.00, leaving a balance

of $97,445.00. The January through March jury payments constituted 30.39% of the Court's non-salary expenditures (and 13.76% of its total expenditures) during that period.

Furthermore, the process for searching/filtering accounts or expenses within the USL software is similar to searching/filtering in the Excel file. However, in the juror example, someone with unrestricted or read-only access to USL would see each juror's unredacted name. Pl. SOF ¶ 68. Someone with read-only access to USL could also determine specific juror's dates of service or view the other modules within USL besides the General Ledger, which contain other confidential information such as the tax ID number of any juror paid for a length of service requiring a 1099 tax document. Pl. SOF ¶ 69.

The unsubstantiated claim that the data is in an unworkable format does not serve as a proper basis under any statute to deprive the Auditor of the control over his software and operations, alter his duties and functions, dictate how he performs his duties, or delegate the auditing functions to other Board members and county officials.

CONCLUSION

For the foregoing reasons, the Board's Motion for Summary Judgment should be denied and summary judgment should be entered for Plaintiff.

By: */s/ Kevin P. Green*

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CERTIFICATE OF SERVICE

The undersigned certifies that on May 31, 2019, a copy of the foregoing document was electronically filed with the Circuit Court of Madison County, Illinois, which sent notification to all parties of record as of that date. 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 Certificate of Service are true and correct.

By: *<u>/s/ Kevin P. Green</u>*