

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

SHORGE SATO,

Plaintiff,

vs.

CITY OF CHICAGO,

Defendants

Case No.: _____

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

NOW COMES plaintiff Shorge Sato ("Plaintiff"), and for his Complaint for Declaratory Judgment and Injunctive Relief against the defendant CITY OF CHICAGO ("Defendant" or the "City"), states and alleges as follows:

INTRODUCTION

1. On March 28, 2018, the Chicago City Council passed an ordinance, the Condominium Owners Privacy Ordinance (or the "COPO"), a copy of which is attached as *Exhibit "A"* hereto, that purported to provide privacy protections for condominium unit owners following an amendment to Section 19 of the Illinois Condominium Property Act, 765 ILCS 650/1 *et seq.* (the "ICPA") that became effective on January 1, 2018.

2. In passing the COPO, the Chicago City Council was reacting to an amendment to Section 19 of the ICPA that expanded the rights of condominium unit owners to request and obtain not only the names, weighted voting percentages and mailing addresses of

their fellow members of the condominium association, but also their phone numbers and email addresses.

3. Disclosure of unit owner phone numbers and email addresses has generated a lot of controversy, but this controversy is not the subject of this lawsuit.

4. Instead of limiting the COPO to its stated purpose - the controversies regarding disclosure of unit owner phone numbers and email addresses to other unit owners – the City Council has gone further and without any public debate, deleted other long-standing, fundamental rights of all unit owners to access and obtain (1) a list of the names, weighted voting percentages and mailing addresses of their fellow unit owners and (2) the election ballots and proxies for any elections or votes in the previous 12 months.

5. It is almost unbelievable, but it's true: one only has to compare and contrast a condo owner's rights under Section 19 of the ICPA, post-amendment (a copy of which is attached hereto as *Exhibit "B"*) and the COPO (*Exhibit "A"*).

6. In the name of "privacy," the Chicago City Council has quietly deleted the right to vote of hundreds of thousands of condo owners in Chicago. The fundamental right to vote is necessarily predicated on the right to vote in a "free and equal" election. *See* Ill. Const. of 1970, Art. III, Sec. 3 ("All elections shall be free and equal"). There is, of course, no real right to vote where incumbent condo board directors can freely discard ballots, manufacture proxies, stuff ballot boxes, manipulate election results and declare victors and losers without any meaningful ability to contest or challenge.

7. The ability to not only see the election ballots (and proxies), but to also compare those ballots and proxies to the official unit owner list (including weighted vote percentages), is fundamental to protect the integrity of any election process.

8. The ability of an outsider to a condominium board to campaign for election by accessing the same unit owner list and unit owner information available to the incumbent board members is also of vital importance to the health of the condominium polity. In the name of "privacy," the COPO would restrict the ability of condominium owners to hear any dissenting voices to the "party line" of the condo board.

9. This is ultimately a fundamental issue of vital state importance: the protection of the rights of outsider (non-board member) unit owners in condominium associations. Condominiums are creatures of state law, and by design, the ICPA contains dozens of specific protections for the governance process to protect non-board-member condo unit owners. The City of Chicago has no right to tamper with the very definition of what a condominium is, and how it is to be governed, especially on issues of fundamental importance such as the rights of condo board outsiders to disseminate information, to associate with fellow unit owners, to campaign for election and/or to vote in free and equal elections.

PARTIES, STANDING, VENUE & JURISDICTION

10. Plaintiff is a resident of the City of Chicago, Cook County, Illinois. Plaintiff is a licensed Illinois attorney and the secretary for the board of managers for his condominium association.

11. Defendant is a municipal corporation.

12. Venue is appropriate under 735 ILCS 5/2-101, because this action is commenced in the county of residence of a defendant joined in good faith and in the county in which the cause of action arises.

13. This Honorable Court has general and original subject-matter jurisdiction pursuant to Article VI, Section 9 of the Illinois Constitution of 1970, and pursuant to the Illinois Declaratory Judgment Act, 735 ILCS 5/2-701(a).

14. I am bringing this lawsuit, *pro se*, because as the secretary of my condo association and as a board member, I have fiduciary duties to my unit owner constituents and further, as Secretary, I am the official custodian of records. The COPO puts me in an untenable legal bind because if a unit owner requests a full unit owner list and/or election ballots or proxies, I have conflicting legal obligations and duties under state law (*i.e.*, disclose) and Chicago ordinance (*i.e.*, do not disclose).

COUNT I – DECLARATORY JUDGMENT – HOME RULE

15. Plaintiff restates and incorporates by reference the allegations in paragraph 1 through 14 as if fully set forth herein.

16. An actual controversy exists between Plaintiff and Defendant regarding whether the COPO is enforceable or whether it is null and void, which gives rise to this action seeking judicial review and a declaratory judgment.

17. The City enacted the COPO under an assertion of its "Home Rule" authority. Article VII, Section 6(a) of the Illinois Constitution of 1970 states that "[e]xcept as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt."

18. As the Illinois Supreme Court observed in *City of Chicago v. Stubhub, Inc.*, 2011 IL 111127, "Section 6(a) gives municipalities any powers pertaining to their governments and affairs, including the power to tax, but not the power over matters such as divorce, real property, trusts and contracts... The framers' intent was clear: 'the powers of home-rule units relate to their own problems,' not problems more competently solved by the state." *Id.* at *P19.

19. However, the "pertaining to its government and affairs" language of Section 6(a) is a general and uncertain limitation on the powers of Home Rule units such as Defendant. While there is some "leeway for judicial intervention," the constitutional design for home rule authority suggests that "courts should step in to compensate for legislative inaction or oversight only in the clearest cases of oppression, injustice, or

interference by local ordinances with vital state policies.” *Id.* at *P22 (quoting David Baum, *A Tentative Survey of Illinois Home Rule (Part I): Powers and Limitations*, 1972 U. Ill. L.F. 137 (1972)).

20. Here, the COPO touches on an issue of vital state interest that is central to the very design of the Illinois Condominium Property Act: the protection of non-board-member, condo unit owner interests and rights.

21. Condominiums are purely creatures of state law. The ability to vertically and horizontally subdivide a parcel of real estate into severable units, with communally administered common areas, could only work in practice with the official legal framework provided by each state.

22. Because condo boards are granted a number of official powers, such as the power to represent others, the powers to collect and enforce assessments, and the power to determine and adjudicate rules violations, the ICPA contains a number of protections for non-board unit owners – or “outsiders” – including the rights of “outsiders” to the board to demand and receive disclosures of information from the condo board, the right to have notice of and attend open board meetings, and the fundamental rights of all units owners to have free and equal elections.

23. An actual controversy therefore exists over whether the City of Chicago has the power, under its Home Rule authority, to make whatever changes it wishes to make with respect to condominium governance and statutory protections for “outsider” unit

owners, including but not limited to provisions of the ICPA designed to protect the fundamental right to campaign and vote in free and fair condo elections.

24. Judicial resolution of this controversy will substantially terminate the controversy or parts thereof.

WHEREFORE, plaintiff Shorge Sato respectfully prays for a declaration that the City of Chicago's Condominium Owner Privacy Ordinance (SB2018-162) is an unconstitutional exercise of the City of Chicago's Home Rule authority and is therefore null and void, for injunctive relief, for an award of attorneys' fees and costs (if applicable) and for such other relief as is just and equitable.

COUNT II – DECLARATORY JUDGMENT – SUBSTANTIVE DUE PROCESS

25. Plaintiff restates and incorporates by reference the allegations in paragraph 1 through 24 as if fully set forth herein.

26. The Fourteenth Amendment to the United States Constitution declares that no state shall "deprive any person of life, liberty or property, without due process of law."

27. Plaintiff has a property interest in his condominium unit, as well as in the voting interest of his condominium unit.

28. The Due Process Clause of the 14th Amendment to the United States Constitution prohibits Defendant from enacting an ordinance that disenfranchises condo unit owners and denies them the right to campaign and vote in free and equal elections. The Due

Process Clause of the 14th Amendment also protects Plaintiff's property interest from dilution by creating greater voting and membership rights in others.


29. An actual controversy exists, that can be resolved by this Honorable Court through a Declaratory Judgment, as to whether the COPO should be declared unconstitutional as violative of the right to substantive due process under the 14th Amendment to the United States Constitution, even if the City of Chicago has the power under the Illinois State Constitution "Home Rule" authority to enact the COPO.

30. Although Mr. Sato currently is a board member, his term is limited to 2 years and he does not intend to serve indefinitely, and he is also a non-board member condo owner at another condominium building in Chicago. Accordingly, Mr. Sato has standing to bring this claim.

WHEREFORE, plaintiff Shorge Sato respectfully prays for a declaration that the City of Chicago's Condominium Owner Privacy Ordinance (SB2018-162) is violative of his and others' substantive rights to Due Process under the 14th amendment to the United States Constitution, and an unconstitutional exercise of the City of Chicago's authority and is therefore null and void, for injunctive relief, for an award of attorneys' fees and costs (if applicable) and for such other relief as is just and equitable.

Respectfully Submitted,

Shorge Sato


Pro se

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