

**STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT  
COUNTY OF WINNEBAGO**

JESUS PEREIRA, Solely in his Official Capacity )  
as the Duly appointed and qualified Superintendent )  
of the VETERANS ASSISTANCE COMMISSION )  
OF WINNEBAGO COUNTY, a Special District and )  
a Unit of Local Government of the State of Illinois, )

Case No. 2025 MR 50

Plaintiff, )

Judge Ronald A. Barch

v. )

COUNTY OF WINNEBAGO, a Non-Home Rule )  
Unit of Local Government of the State of Illinois, )  
JOSEPH V. CHIARELLI, AARON BOOKER, )  
JAMES WEBSTER, RAY THOMPSON, BRAD )  
LINDMARK, DAVID TASSONI, KEITH )  
MCDONALD, PAUL ARENA, JOHN BUTITTA, )  
JOHN PENNY, JOSEPH HOFFMAN, KEVIN )  
McCARTHY, JAMIE SELGADO, ANGIE GORAL, )  
TIM NABORS, CHRISTOPHER SCROL, )  
CHRISTINA VALDEZ, RAY THOMPSON, )  
VALERIE HANSERD, ANGELA FELLERS, and )  
JOHN SWEENEY, )

Defendants. )

**PLAINTIFF’S COMBINED RESPONSE TO DEFENDANTS’ COMBINED  
MOTION TO DISMISS PLAINTIFF’S COMPLAINT PURSUANT TO  
SECTION 2-615(a) AND SECTION 2-619(9)  
OF THE ILLINOIS CODE OF CIVIL PROCEDURE**

**NOW COMES** Jesus Pereira, solely in his Official Capacity as the Superintendent of the Veterans Assistance Commission of Winnebago County, Plaintiff herein, by and through his attorney, Michael J. Phillips, hereby responds to the Defendants’ Combined Motions To Dismiss Complaint as follows:

This Combined Response includes a Memorandum of Law.

Plaintiff states as follows:

1. On or about April 3, 2025, the named Defendants herein (hereinafter collectively referred to as the “Defendants”) filed a Combined Motion To Dismiss Under Sections 2-615(a) and “2-619(9)” (sic)<sup>1</sup> of the Illinois Code of Civil Procedure to the Complaint for Mandamus, Declaratory Judgment and Injunctive Relief as previously filed herein by Jesus Pereira (hereinafter, “Plaintiff”) in his Official Capacity as Superintendent of the Veterans Assistance Commission of Winnebago County (hereinafter, the “VACWC”). Because the Defendants had changed the Budget of the VACWC for Fiscal Year 2025 without notice to or the consent of the VACWC and without requesting the VACWC to amend such Budget, Section 2(2) of the Illinois Military Veterans Assistance Act (hereinafter, the “MVAA”) **required** Superintendent Pereira, Plaintiff herein, to file such Complaint for Mandamus against the Defendants. Thus, the Complaint for Mandamus is not only authorized by state statute, but it is MANDATORY that such Mandamus Complaint be filed in such situations. Said statute provides as follows, in pertinent part:

(2) If any . . . county board fails or refuses after such recommendation [of a veterans assistance commission] to provide just and necessary sums of money for such assistance, then the . . . **superintendent of any Veterans' Assistance Commission** located in the district of such supervisor of general assistance or such county board **shall apply** to the circuit court of the district or county **for relief by mandamus** upon the supervisor of general assistance or county board requiring him, her or it to pay, or to appropriate and pay such sums of money, and upon proof made of the justice and necessity of the claim, the circuit court shall grant the sums so requested. (**bold-faced emphasis** added)

2. In sum, the Illinois Military Veterans Act combined with the MVAA and the Illinois Public Act Code mandates that a county fund its local veterans assistance commission (hereinafter, a “VAC”) for both the

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<sup>1</sup> No such statute exists as part of the Illinois Code of Civil Procedure. The Defendants may be referencing §2-619(a) (9).

“just, necessary and needed” actions and services to eligible military veterans and their families as well as the salaries, benefits and operational costs of the local VAC. Contrary to the Defendants’ claims, in no part of the Complaint herein does the Plaintiff claim that the Defendants must fund whatever amount the VACWC determines, only the “just, necessary and needed” actions and services and related operational costs. Also, the Defendants mistakenly allege that the VACWC argues that the Defendants must “APPROPRIATE” sufficient funds for the VACWC. Contrarily, the VACWC merely argues that the Defendants must “FUND” the “just, necessary and needed actions and services as well as the operational costs of the VACWC. The VACWC voluntarily acknowledges that the amount of an appropriation by the Defendants is a matter of discretion to be determined solely by the Defendants. However, the VACWC is arguing that the Defendants failed in their mandatory statutory duty to FUND the VACWC in amounts as described above and does not request any specific amount of an annual appropriation.

3. The word "shall" also indicates a mandatory legislative intent. *See Fumarolo v. Chicago Board of Education* (1990), 142 Ill. 2d 54, 566 N.E.2d 1283, 153 Ill. Dec. 177. [J]udicial relief will lie in cases where the power to approve has been abused by unreasonable, arbitrary or discriminatory action. *Gustafson v. Wethersfield Township High School District* 191 (1943), 319 Ill. App. 255, 49 N.E.2d 311. To "approve" is to "confirm, ratify, sanction, or consent to some act or thing done by another." (*Black's Law Dictionary* 94 (5th ed. 1979); *see also Gustafson*, 319 Ill. App. 255, 49 N.E.2d 311, which defines the power of approval as the option to sanction or disapprove an act submitted.)

4. The issue before this Honorable Court is whether the VACWC’s Complaint For Mandamus, when viewed in the light most favorable to the Plaintiff, adequately sets forth a cause of action for that the county board has failed to fulfill its statutory minimal funding obligations. There is an obligation on behalf of this Honorable Court to construe the MVAA so that the VACWC is able to provide just, necessary and needed services to eligible military veterans and to their families. (330 ILCS 45/2).

“The purpose of this Act is, in part, to provide, in accordance with this Section, just and necessary assistance and services to military veterans . . . The following actions shall be taken in support of that purpose: (1) . . . the county board shall provide such sums of money as may be just and necessary to be drawn by the . . . the superintendent of any Veterans' Assistance Commission of the county, upon the recommendation of the . . . Veterans' Assistance Commission.

5. If this Honorable Court were to adopt the assertion that Section 9 of the MVAA gives the county board supremacy over the VAC, including that to exclusively determine without the right of court review of any amount of annual funding of the VACWC, that would be granting the county board the power to thwart the very purpose of the MVAA.

6. The Defendants' reliance on *Ickes v. Board of Sup'rs of Macon County*, 415 Ill. 557, 114 N.E.2d 669 (1953) is misplaced. In *Ickes* the Illinois Supreme Court ruled that the former version of the MVAA vested a discretion in a county board as to amount to be appropriated to properly compensate a VAC's officers and employees who administer assistance to eligible military veterans and their families, and a writ of mandamus would not lie to challenge the sufficiency of such appropriation. Unfortunately for the Defendants, since the issuance of the *Ickes* opinion the Illinois General Assembly has amended the MVAA to repeal the Defendants' authority to establish the salaries of the officers and employees of a VAC.<sup>2</sup> *Secondly*, as explained above, in no part of the Complaint filed herein does the Plaintiff seek a *Writ or Mandamus* because of the Defendants' failure to APPROPRIATE the monies needed by the VACWC. The Plaintiff herein only seeks an Order of Mandamus because of the Defendants' failure to fulfill its statutory duty to FUND the “just, necessary and needed” actions and services for eligible military veterans and their families as well as operational expenses from one of the three statutorily-authorized financial sources (VAC Real Estate Tax Levy, the County General Corporate Fund and monies from the Illinois

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<sup>2</sup> Public Act 102-732, Amending 330 ILCS Section 10 (Pages 15-16).

Department of Human Services<sup>3</sup>).

7. In the last two years the General Assembly amended the MVAA to expressly state that a county may utilize three different sources of funding to fund the “just, necessary and needed” services provided by a VAC.<sup>4</sup> The Defendants may choose from the (A) Annual Real Estate Tax Levy of the VACWC, (B) the County General Corporate Fund and (C) “State funds from the Department of Human Services.” The Defendants have chosen not to request nor utilize funds from the Illinois Department of Human Services (hereinafter, the “IDHS”) to finance the Annual Budget of the VACWC. The Defendants are entitled to discretion to decide from which of the three sources to utilize to fund the Annual Budget of the VACWC and in what amounts from each source. But the Defendants do not have discretion to fail to FUND the necessary amounts for the VACWC.

8. Appellate Courts have affirmed the authority of a Circuit Court to enter an Order of Mandamus on behalf of a VAC against a county board or a county. In *Lavite I*, the Illinois Appellate Court held that the circuit court properly issued an Order of Mandamus ruling that the county board lacked authority to subject the VAC to county ordinances applicable to expenditure of monies in excess of \$5000 and/or competitive purchasing. Further the Appellate Court allowed the issuance of an Order of Mandamus requiring the county to pay the attorneys’ fees of the counsel for the Superintendent of the VAC from funds already appropriated to the VAC. Lastly, the Order of Mandamus required the county to pay the attorney fees incurred by Superintendent from funds already appropriated to the VAC, to the extent such funds were available. *Lavite v. Dunstan*, 2016 IL App (5th) 150401, 405 Ill.Dec. 686, 58 N.E.3d 1270 (2016).

9. In *Lavite III*, the circuit court properly issued an Order for Mandamus to require the county board to pay first warrant presented for attorney fees of the Superintendent of the VAC

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<sup>3</sup> Section 2(1)(A) of the MVAA.

<sup>4</sup> Illinois Public Act 102-732, Amending 330 ILCS 45/2(1)(A).

because the county board did not possess the authority to refuse to pay such warrant. *Lavite v. Dunstan*, 2019 IL App (5th) 170114, 434 Ill.Dec. 960, 138 N.E.3d 119 (2019)

10. The process in which the above-cited statutes require<sup>5</sup> is as follows:

A. The full VAC votes to adopt a Budget and sends the Budget to the Defendants for the County Board's review;

B. The Defendants either accept the Budget as submitted or returns the Budget to the VACWC saying the Budget is not acceptable in its current form and thus needs an amendment(s);

C. The VACWC either amends the Budget and returns the same to the County Board or declines to change the Budget and so informs the Defendants;

D. The Defendants then establish the sums needed by the VACWC from one or more of the three statutory sources of funding (VACWC Real Estate Tax Levy, County General Corporate Fund or Illinois Department of Human Services funds received by the County);  
or

E. If the Defendants fail or refuse to allot the sums as stated in the VACWC's Budget, then either the Superintendent of the VACWC or the VACWC itself is required to file a Complaint For Mandamus with the local Circuit Court seeking an Order compelling the Defendants to allot sums sufficient for the VACWC to provide just, necessary and needed actions and services to the eligible

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<sup>5</sup> "Initially the VAC initially makes a recommendation of an amount that it believes to be appropriate under the law. The [Grundy] county board then acts upon that recommendation, either to approve or disapprove the recommendation. [Citation.] If the board approves the VAC's recommendation, the matter is resolved. If the board disapproves the recommendation, the VAC then has two options: it may submit a new recommendation for a different amount or the superintendent may seek judicial relief for *mandamus*. After listening to the views of the parties, the circuit court may issue a writ of *mandamus* for either the amount sought by the VAC or a different amount." *Veterans Assistance Comm'n v. County Board*, 274 Ill.App.3d 32, 37, 210 Ill.Dec. 920, 654 N.E.2d 219, 223 (1995).

military veterans and their families and to cover the salaries, benefits and operational costs of the VACWC. In the case at hand the Defendants never informed the VACWC of the Defendants' disapproval of the VACWC's budget nor offered the VACWC an opportunity to submit an amended Budget. On Thursday, September 26, 2024 the Finance Committee of the Defendants recommended a lower amount than as stated in the VACWC's Approved Budget and the final vote by the Winnebago County Board was on Monday, September 30, 2024, which was only two working days later (Friday and Monday).

11. After more than 70 years of published court opinions discussing the arguments and relationship between a county board and the local VAC<sup>6</sup>, in 2022 the Illinois General Assembly enacted new laws to clarify and restrict the authority of a county board as to the VAC. For example, in *Lavite III* the Court of Appeals explained as follows:

In essence, the Madison County Board and the VAC are grappling over the amount of control and oversight the county has over VAC operations and expenditures under the Act ( 330 ILCS 45/0.01 *et seq.* (West 2016). This is not the first dispute between a county board and a local veterans assistance commission over the meaning and interpretation of the Act. Litigation has occurred over decades. [Citation omitted].

Disagreements between county officials and veterans assistance commissions have also occurred outside the courthouse. A scan of more recent legislative history of the Act reveals that between 1987 and 1991, the Illinois legislature was engaged in discussions and debates about the respective roles of the county boards and the local commissions. [Citations omitted].

*Lavite III*, ¶¶ 50, 51.

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<sup>6</sup> *Ickes v. Board of Sup'rs of Macon County*, 415 Ill. 557, 114 N.E.2d 669 (1953); *Hazen v. Peoria County*, 138 Ill.App.3d 836, 485 N.E.2d 1325, 93 Ill.Dec. 115 (3<sup>rd</sup> Dist. 1985); *Lavite v. Dunstan*, 2016 IL App (5th) 150401, 405 Ill.Dec. 686, 58 N.E.3d 1270 (2016) (“*Lavite I*”); *Lavite v. Dunstan*, 2018 IL App (5th) 160519-Unpublished (“*Lavite II*”); *Lavite v. Dunstan*, 2019 IL App (5th) 170114, 434 Ill.Dec. 960, 138 N.E.3d 119 (2019) (“*Lavite III*”); *Monson v. County of Grundy*, 394 Ill.App.3d 1091, 334 Ill.Dec. 205, 916 N.E.2d 620 (3<sup>rd</sup> Dist. 2009); *Veterans Assistance Comm'n v. [Grundy] County Board*, 274 Ill.App.3d 32, 37, 210 Ill.Dec. 920, 654 N.E.2d 219, 223 (1995)

12. As of January 1, 2023, it is a whole new world of operating a VAC. All of the published court opinions cited by the Defendants in their Motion To Dismiss ignore the fact that the Illinois General Assembly enacted two Public Acts 102-732 (effective January 1, 2023) and Public Act 102-1132 (effective February 10, 2023) after the issuance of each of the cases relied upon the Defendants. These Public Acts amended the Illinois Counties Code, the MVAA and the Illinois Public Aid Code to remove and/or restrict the authority of the counties over the Veterans Assistance Commissions (hereinafter, the “VAC”). For example, the county board and/or its Chair

A) lost their general oversight of the distribution of all moneys and supplies appropriated . . . for the benefit of military veterans and their families,

B) lost their authority to establish the salaries and compensation of VAC Employees and Officials,

C) lost any control over the “administration of such assistance provided under the Illinois Public Aid Code for military veterans and their families”,

D) lost any control over the minimum amount of funds to be provided annually to the VAC, and

E) shall now appropriate such additional sums, upon recommendation of the Veterans Assistance Commission, to properly compensate the officers and employees required to administer such assistance

13. Illinois Public Act 102-732, effective on January 1, 2023, repealed and restricted the authority of the Defendants as to the VACWC as follows:

A) Amended Section 5-2006 of the Illinois Counties Code by added wording that the county shall separate all VAC funds from county funds;

B) Amended Section 5-2006 of the Illinois Counties Code by adding wording requiring the county to disburse VAC funds directly from the separate VAC Fund;

C) Amended Section 5-2006 of the Illinois Counties Code by adding wording clearly stating that the VACs “shall be in charge of the administration of such assistance provided under the Illinois Public Aid Code for military veterans and their families”;

D) Amended Section 2-14 of the Illinois Public Aid Code by adding wording increasing the authority of a VAC to provide general assistance to non-indigent veterans (formerly read “indigent war veterans”);

E) Amended Section 2(1)(A) of the MVAA

(1) To state that there exists **three different sources of funds** for the county to fund the actions of a VAC (i.e., the VAC real estate tax, County General Corporate Fund and Illinois Department of Human Services monies),

(2) Requires the county to finance a minimum amount annually to the VAC unless the delegates of the VAC “determine that a lesser amount covers the just and necessary sums”, and

(3) requires the presiding judge to enter an order granting the amount of money as requested by the VAC if said requested amount is found to be just and necessary.

F) Added Section (9)(1)(B) to the MVAA to require the county board to FUND (not appropriate) the VAC annually in an amount no less than the amount as stated in Section 12-21.13 of the Illinois Public Aid Code.

“(B) The minimum amount to be provided annually to Veterans Assistance Commissions is provided in Section 12-21.13 of the Illinois Public Aid Code<sup>7</sup>, unless the delegates of the County Veterans Assistance Commission determine that a lesser amount covers the just and necessary sums.”

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<sup>7</sup> Section 12-21.13 of the Illinois Public Aid Code provides, in pertinent part, as follows:

“In a county of less than 3 million population in which there is created a County Veterans Assistance Commission, the county shall levy for assistance to military veterans and their families, within the time that such levy is authorized to be made, a tax of an amount which, when added to the unobligated balance available for such purpose at the close of the preceding fiscal year will equal .02% of the last known assessed value of the taxable property in the county, . . .” This quoted limit expressly limits the discretion of the Defendants herein.

G) Amended Section 9(b) of the MVAA

(1) deletes the authority of “the president or chairman of the county board, or some other county officer appointed by him” to “have general oversight of the distribution of all moneys and supplies appropriated . . . for the benefit of military veterans and their families”,

(2) deletes the restriction that the VAC Superintendent shall have the oversight of the distribution of all moneys and supplies appropriated (strikes out “~~BY THE COUNTY~~”), and

(3) deletes the authority of the county to establish “such rules, regulations, administrative procedures or audit reviews . . . to carry out the spirit and intent of this Act”;

H) Amended Section 9(c) of the MVAA by adding the following wording thereto

“The Veterans Assistance Commission shall be in charge of the administration of any benefits provided under Articles VI and IX of the Illinois Public Aid Code for military veterans and their families. The Veterans Assistance Commission shall represent veterans in their application for benefits through State and federal agencies, including representing veterans in their appeals of adverse decisions. . . .”

I) Amended Section 10 of the MVAA to add the following wording as to the County’s

duty to maintain an office for the VAC:

(1) “the Commission for providing the just, necessary, and needed services mandated by law”

(2) to require that the “county shall provide for the funding of the office and furnish all necessary supplies, including telephone, printing, stationery and postage therefor.”

(3) adds the words “in addition to sums appropriated for these just, necessary and needed services as provided by law and approved by the Commission under this Act, appropriate such additional sums, upon recommendation of the Veterans Assistance Commission, to properly compensate the officers and employees required to administer such assistance.”

(4) deletes the authority of the county board to approve the amounts recommended by the VAC for personnel costs (contradicts and impliedly repeals *Ickes*).

(5) deletes the standards to be utilized by the county board as to salary amounts of the VAC personnel (because County Board has NO authority to approve their salaries as established by the VAC).

13. Illinois Public Act 102-1132 (effective February 10, 2023) repealed and restricted the authority of the Defendants as to the VACWC as follows:

A) Amended Section 5-2006 to add authority to expend the proceeds of the VAC Real Estate Tax Levy “for the authorized reimbursement of any officer or employee” of the VAC as provided in Section 10 of the MVAA;

B) Amended Section 9(a)(8) of the MVAA to allow the County Board to name a non-voting representative to the VAC who may attend all public meetings and only some nonpublic (i.e., Closed or Executive Sessions) meetings of the VAC. Such person must be a veteran and may not hold any office or title with the VAC;

C) Amended Section 9(g) of the MVAA by adding wording to require the VAC to adopt certain County policies BUT allows the VAC to change such County policies to fit the VAC’s organizational structure;

D) Amended Section 9(h) of the MVAA by adding wording to authorize ONLY the Superintendent of the VAC to approve warrants for the payment of money and repeals the authority of the county to do so;

E) Amended Section 9(i) of the MVAA by adding wording to authorize the VAC to choose a non-County Auditor for its annual audit;

F) Amended Section 9(j) of the MVAA to require the VAC and the county board to “fully cooperate with the boards, commissions, agencies, departments, and institutions of the State.”

G) Added Section 9.1 to the MVAA to authorize the Attorney General to investigate and sue for violations of Sections 8, 9, 10(a), 10(b) and 10(c) of the Illinois Military Veterans Assistance Act

H) Added Section 9.2 to the MVAA to establish the remedies that may be obtained by the Attorney General's Office

I) Added Section 10(e) to the MVAA to require the county to provide all necessary furnishings, supplies and services to the VAC:

“(e) The county shall provide for the funding of the office and provide furnish all necessary furnishings, supplies, and services as passed by the county board in its annual appropriation, and the county shall provide or fund services, including, but not limited to, human resources and payroll support; information technology services and equipment; telephone services and equipment; printing services and equipment; postage costs; and liability insurance. Any litigation or legal settlement that has a financial impact to the county is subject to the approval of the county board.”

J) Adds Section 10(f) to require the county to provide the same benefits to the employees of the VAC as are offered to employees of the county with the VAC required to pay the employer's contribution costs of said VAC employee benefits:

“(f) The county shall also provide to the employees of the Commission all benefits available to county employees, including, but not limited to, benefits offered through the Illinois Municipal Retirement Fund or any other applicable county retirement fund; health, life, and dental insurance; and workers compensation insurance. Employer contributions and costs for these benefits, services, and coverages may come from Commission funds. Counties not currently providing benefits to Commission employees must comply with this subsection within 90 days after the effective date of this amendatory Act of the 102nd General Assembly.”

K) Relabels a paragraph of Section 10 of the MVAA as “Section 10(g)” which requires “the county board shall . . . in addition to sums appropriated for these just, necessary and needed services as provided by law and approved by the Commission under this Act, appropriate such additional sums, upon recommendation of the Veterans Assistance Commission, to properly compensate in accordance with the requirements of subsection (g) of Section 9 and subsection (e) of this Section, . . .”

**RESPONSE TO MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-615(a)**

14. A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based upon defects that are apparent on the face of the complaint. *Heastie v. Roberts*, 226 Ill. 2d 515, 531 (2007). In determining whether a complaint is legally sufficient, a court must accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Id.* The crucial inquiry in ruling upon a section 2-615 motion to dismiss is whether the allegations of the complaint, when considered in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Board of Directors of Bloomfield Club Recreation Ass'n v. Hoffman Group, Inc.*, 186 Ill. 2d 419, 424 (1999). A cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that the plaintiff can prove no set of facts that would entitle the plaintiff to relief. *Heastie*, 226 Ill. 2d at 531.

15. A section 2-615 motion to dismiss attacks the legal sufficiency of a complaint.

*Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 29, 390 Ill.Dec. 74, 28 N.E.3d 727. As courts of review have said many times before, the defendant[s are] saying, “ ‘So what? The facts the plaintiff has pleaded do not state a cause of action against [us].’ ” *Grant v. State*, 2018 IL App (4th) 170920, ¶ 12, 425 Ill.Dec. 31, 110 N.E.3d 1089 (quoting *Winters v. Wangler*, 386 Ill. App. 3d 788, 792, 898 N.E.2d 776, 779, 325 Ill.Dec. 729 (2008)). “When ruling on such a motion, the court must accept as true all well-pleaded facts in the complaint, as well as any reasonable inferences that may arise from those facts.” *Id.* “A complaint should be dismissed under section 2-615 only if it is clearly apparent from the pleadings that no set of facts can be proved that would entitle the plaintiff to recover.” *In re Estate of Powell*, 2014 IL 115997, ¶ 12, 382 Ill.Dec. 14, 12 N.E.3d

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16. A party seeking mandamus relief must establish the following: 1) a clear right to the requested relief; 2) a clear duty of the public official to act; and 3) clear authority allowing the public official to comply with the issuing court's writ. *Sharp v. Baldwin*, 2020 IL App (2d) 181004, ¶9. The Complaint For Mandamus as set forth herein alleges sufficient facts, when viewed in the light most favorable to the Plaintiff, to set forth an adequate cause of action. Thus, Part I of the Defendants' Motion To Dismiss on the basis of Section 2-615(a) of the Illinois Code of Civil Procedure should be denied.

17. The delegates of the VACWC have never requested a lower amount than as stated in its Approved Budget for FY2025. Prior to the enactment of Public Act 102-732 the county board could choose to provide funds to a VAC in any amount so long as the "just, necessary and needed" services were provided to eligible military veterans and the VACWC's operational costs were covered. After Public Act 102-732, a county board now has a mandatory floor for funding of a VAC of an amount equal to ".02% of the last known assessed value of the taxable property in the county." There is not controversy in the attached Complaint For Mandamus that the Defendants for FY 2025 have funded the VACWC in an amount in excess of 0.02% off the last known assessed value of the taxable property in the county".

18. The Defendants' claims about increasing the approved funding of the VACWC by approximately \$300,000 from FY2024 are meritless. The Defendants did not raise the amount of funding from the generosity of their hearts; rather the State statute mandated that the Defendants increase such funding. For years the county boards in Illinois, including the Defendants, have consistently underfunded the operations of VACs so that Illinois ranks #49 in its funding of services to its military veterans. Exhibit C shows the continuing increasing need over the last few

years in payments to needy military veterans and their families. The costs of providing “just, necessary and needed” services to eligible military veterans increases because the need for said services (and the operational costs for the same) also increases.

19. Another change mandated by Public Act 102-732 is that the employees of a VAC are now required to receive the same employment benefits as do employees of its corresponding county. The employer’s portion of said increased employment benefits are paid by the VAC, not by the county. Formerly, employees of the VACWC were only part-time with no employment benefits and performed their employment duties without a Veterans Service Officer (“VSO”) Certification.

20. State law require the VACs to represent the military veterans in the administrative appeals before the Federal Veterans Administration after the denial of Veterans Benefits<sup>8</sup>. To do so an employee of a VAC must often review detailed medical records of the veteran and then draft documents to pursue the administrative appeal. In order to act as representative and to draft those required documents, a VAC employee is required to be an accredited VSO (which also requires successful completion of annual Mandatory Continuing Education Credits and such mandatory educational sessions are not held in the Winnebago County, but often requires costly out-of-state travel and hotel expenses).

21. Mandamus relief is an extraordinary remedy that is used to compel a public officer or body to perform a nondiscretionary (mandatory) official duty. *McFatridge v. Madigan*, 2013 IL 113676, ¶ 17. In order to obtain mandamus relief, the plaintiff must establish three elements: (1) that the plaintiff has a clear right to the relief requested; (2) that the public officer has a clear duty to act; and (3) that the public officer has clear authority to comply with an order granting

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<sup>8</sup> Section 9(l) of the MVAA.

mandamus relief. *Id.* As the elements indicate, mandamus may not be used to compel a public officer to perform an act that involves the exercise of the public officer's discretion. *See id.* Despite the extraordinary nature of mandamus relief, mandamus proceedings are governed by the same pleading rules that apply to other actions. *See Noyola v. Board of Education of the City of Chicago*, 179 Ill. 2d 121, 133 (1997). To survive a section 2-615 motion to dismiss, a plaintiff who seeks mandamus relief must allege in the complaint sufficient facts to establish the above three elements. *Id.*

22. In the case at hand, the Plaintiff has a clear right to the relief requested because state statute [i.e., Section 2(2) of the MVAA] mandates that the Plaintiff file the Complaint For Mandamus herein because the Defendants herein failed to fund the VACWC in the amounts as stated in the VACWC's Approved Budget. *Secondly*, the Plaintiff herein, in his Official Capacity of Superintendent of the VACWC, is required by the above cited statute to file the Complaint For Mandamus herein because of the inadequate funding of the VACWC. *Id.* *Lastly*, the Defendants herein, as public officers, possess the "clear authority to comply with an order granting mandamus relief". It is undisputed that in more than one published court opinions the Appellate Court has required county board officials to expend funds which these same officials have previously failed to do so.

23. In *Lavite I*, the Court of Appeals "determined that county officials did not have the authority to subject the VAC to the county's ordinances addressing competitive purchases and/or expenditures in excess of \$5000 when they processed the VAC's warrants to pay the plaintiff's attorney fees from funds that had already been appropriated for VAC expenses in that fiscal year. In that opinion, the Appellate Court noted that the defendants conceded that the plaintiff's attorney fees must be paid from funds that had been appropriated to the VAC, so long as the VAC

has the necessary funding.” *Lavite v. Dunstan*, 2019 IL App (5th) 170114, ¶47, 434 Ill. Dec. 960, 974, 138 N.E.3d 119, 133 (“*Lavite III*”).

24. In the case at hand, the Defendants did not merely disapprove the Approved Budget of the VACWC; instead, without seeking the approval or amendment by the VACWC, the Defendants unilaterally and totally changed the VACWC’s Approved Budget. The Defendants transformed the VACWC’s Approved Budget from a specific 22-line-item appropriations to a more general two-line item budget for FY 2025. *See Exhibits C and D to the Complaint For Mandamus*. These 22-line-item appropriations clearly show the reasons for the “just, necessary and needed” expenses of the VACWC as well as the reasons for the operational costs of the VACWC. As discussed in the Appellate Court opinion of *Veterans Assistance Comm’n v. [Grundy] County Board*, 274 Ill.App.3d 32, 37, 210 Ill.Dec. 920, 654 N.E.2d 219, 223 (1995), “If the [county] board disapproves the recommendation [of the annual Budget as approved by the VAC], the VAC then has two options: it may submit a new recommendation for a different amount or the superintendent may seek judicial relief for *mandamus*.” In the case here, the VACWC had no opportunity to consider its option to submit a new Approved Budget for a different amount because the Defendants failed to notify the VACWC of the county board’s disapproval and failed to allow the VACWC a sufficient amount of time to submit an amended Approved Budget (here, only two working days to conduct a Special Meeting of the multiple-member VACWC).

**RESPONSE TO MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619(9) (sic)**

25. *First*, Part II of the Defendants Motion To Dismiss alleges that the Complaint herein is barred by 735 ILCS 5/2-619(9) (sic). The Complaint herein is not so barred because said alleged such statute does not exist. Therefore, Part II of the Defendants' Combined Motion To Dismiss should be denied as the cited authority for said Dismissal does not exist and provides no authorized legal basis for the dismissal of the Complaint herein.

26. *Secondly*, assuming *arguendo* that this Honorable Court wishes to consider Part II of the Motion To Dismiss, the issue of the statutory mandatory duty of the county<sup>9</sup> to fund the “just, necessary and needed actions and services” for eligible military veterans and their families by the VACWC is not a “political” question. The issue presented is whether the Defendants fulfilled their mandatory legal duty to fund the just, necessary and needed actions and services by the VACWC to the eligible military veterans and the mandatory statutory duty to fund the salaries, employee benefit and other operational costs of the VACWC<sup>10</sup>.

27. The sums requested by the VACWC to provide “just, necessary and needed” actions and services to eligible military veterans as well as the salary, benefits and operations costs of the VACWC are pursuant to a legal duty of the VACWC. The VACWC in Exhibit D to the Complaint herein set forth a 22 line-item appropriation explaining the sums needed for the “just, necessary and needed” expenses as well as the salary, benefits and operational costs for the Fiscal Year beginning on October 1, 2025 (hereinafter, “FY 2025”).

28. If this Honorable Court finds that the sums as requested by the VACWC which are needed to provide such “just, necessary and needed” actions and services, then Section 2(2) of

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<sup>9</sup> 330 ILCS 45/2(1).

<sup>10</sup> 330 ILCS 45/10(e), (f) and (g).

the MVAA requires this Honorable Court to enter a Court Order requiring the Defendants to pay such sums to the VACWC: “upon proof made of the justice and necessity of the claim, the circuit court shall grant the sums so requested.”

29. Defendants cite no legal authority which would prevent this Honorable Court from entering a Court Order to correct a legal wrong, that is, to require the Defendants to fund the just, necessary and needed actions of the VACWC for the benefit of eligible military veterans and their families.

30. Plaintiff’s Complaint should not be dismissed because there exists a justiciable issue before this Honorable Court. The question presented is whether the Defendants have violated their mandatory statutory duty to fund the VACWC, and is not a discretionary act as is the amount of the real estate tax levy appropriation.

31. In any event, the Defendants fail to cite any legal authority which would prevent this Honorable Court to compel the Defendants to follow state statute as cited by the Plaintiff in his Complaint.

**WHEREFORE**, based on the above and foregoing, Plaintiff respectfully requests that this Honorable Court enter an Order as follows:

- A. Denying the Defendants' Combined Motion To Dismiss in all parts thereof; and
- B. Schedule a date certain for the Defendants' to file their written Answer to the Complaint filed herein; and
- C. For such other and further relief as this Honorable Court deems equitable and just.

Respectfully submitted,

Jesus Pereira, Plaintiff.

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### **PROOF OF SERVICE**

The undersigned hereby certifies that at or about 9:00 o'clock p.m. on Wednesday, May 14, 2025, at the Belvidere Post Office, Belvidere, Illinois, he emailed a true and accurate copy of the foregoing document, Plaintiff's Response To Defendants' Combined Motion to Dismiss Plaintiff's Complaint Pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure, to: Assistant States Attorney John Gilliberti at [jgiliberti@sao.wincoil.gov](mailto:jgiliberti@sao.wincoil.gov).

/s/ Michael J. Phillips  
Attorney for Plaintiff Jesus Pereira