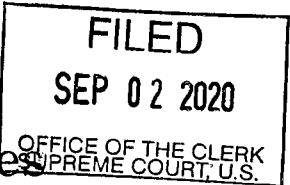


20-336

ORIGINAL

IN THE

Supreme Court of the United States



RICHARD J. KELLY and ETHEL J. KELLY,

Petitioners

v.

MARJORY MOTIAYTIS,

Respondent

On Petition For Writ Of Certiorari  
To The Illinois Supreme Court

PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

Just laws and constitutional laws are the foundation of our legal system. We, the people, DEPEND on the United States Supreme Court for justice.

(1)

Whether 65 ILCS 5/11-13-15 is *unconstitutionally vague* in violation of the *due process* clauses of the 14th and 5<sup>th</sup> Amendments of the United States Constitution?

(APPENDIX F)

Whether 65 ILCS 5/11-13-15 is unconstitutionally vague and is, therefore, *unconstitutional both on its face and as applied*?

(2)

Whether 65 ILCS 5/11-13-15 violates the *due process* clauses of the 14th and 5<sup>th</sup> Amendments of the United States Constitution? (APPENDIX F)

Whether 65 ILCS 5/11-13-15 violates the *due process* clause of the 14<sup>th</sup> and 5<sup>th</sup> Amendments of the United States Constitution and is, therefore, *unconstitutional both on its face and as applied*?

(3)

Whether 65 ILCS 5/11-13-15 violates the due process clause of the 14<sup>th</sup> and 5<sup>th</sup> Amendment of the United States Constitution when it is necessary to refer to and to utilize another *statute* in order to *determine the “prohibited conduct”*?

Whether 65 ILCS 5/11-13-15 is *unconstitutionally vague* when it is necessary to refer to and to utilize another *statute* in order to *determine the “prohibited conduct” and is, therefore, unconstitutional both on its face and as applied*?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

## RELATED CASES

### Trial Court

Motiaytis v. Kelly, No. 16 CH 912, 19<sup>th</sup> Judicial Circuit, Lake County, Illinois. Judgment entered on March 26, 2018.

### Appellate Court

Kelly v. Motiaytis, No. 2-18-0599, Illinois Appellate Court, Second District. Judgment entered on September 17, 2019.

### Illinois Supreme Court

Kelly v. Motiaytis, No. 125419, Illinois Supreme Court. Judgment entered on April 7, 2020.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The trial court's order was entered on March 26, 2018. (**APPENDIX A**)

The Summary Order of the Illinois Appellate Court, Second District, affirming the trial court's ruling is unpublished and was entered on September 17, 2019. (**APPENDIX B**)

The Illinois Supreme Court denied the Petitioners' motion for leave to file a motion for reconsideration of the order denying petition for leave to appeal on April 7, 2020. That order is attached in (**APPENDIX C**)

## JURISDICTION

The date on which the highest state court decided our case was April 7, 2020. A copy of that decision appears at APPENDIX C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

28 U.S.C. § 1257(a) reads as follows:

(a)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, 5th Amendment

United States Constitution, 14<sup>th</sup> Amendment

65 ILCS 511-13-15

United States Constitution, Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, 14<sup>th</sup> Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

65 ILCS 5/11-13-15

(65 ILCS 5/11-13-15) (from Ch. 24, par. 11-13-15)

Sec. 11-13-15. In case any building or structure, including fixtures, is constructed, reconstructed, altered, repaired, converted, or maintained, or any building or structure, including fixtures, or land, is used in violation of an ordinance or ordinances adopted under Division 13, 31 or 31.1 of the Illinois Municipal

Code, or of any ordinance or other regulation made under the authority conferred thereby, the proper local authorities of the municipality, or any owner or tenant of real property, within 1200 feet in any direction of the property on which the building or structure in question is located who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding (1) to prevent the unlawful construction, reconstruction, alteration, repair, conversion, maintenance, or use, (2) to prevent the occupancy of the building, structure, or land, (3) to prevent any illegal act, conduct, business, or use in or about the premises, or (4) to restrain, correct, or abate the violation. When any such action is instituted by an owner or tenant, notice of such action shall be served upon the municipality at the time suit is begun, by serving a copy of the complaint on the chief executive officer of the municipality, no such action may be maintained until such notice has been given.

In any action or proceeding for a purpose mentioned in this section, the court with jurisdiction of such action or proceeding has the power and in its discretion may issue a restraining order, or a preliminary injunction, as well as a permanent injunction, upon such terms and under such conditions as will do justice and enforce the purposes set forth above.

If an owner or tenant files suit hereunder and the court finds that the defendant has engaged in any of the foregoing prohibited activities, then the court shall allow the plaintiff a reasonable sum of money for the services of the plaintiff's attorney. This allowance shall be a part of the costs of the litigation assessed against the defendant, and may be recovered as such.

An owner or tenant need not prove any specific, special or unique damages to himself or his property or any adverse effect upon his property from the alleged violation in order to maintain a suit under the foregoing provisions.  
(Source: P.A. 80-419.)

#### STATEMENT OF THE CASE

## INTRODUCTION/BACKSTORY

It is undisputed that this case arose when the Plaintiff filed a lawsuit in the trial court alleging that property maintenance violations existed on the Defendants' real property. The purpose of the statute, 65 ILCS 5/11-13-15, is that it allows private landowners to institute property maintenance actions against homeowners.

(APPENDIX E) The Defendants contend that local property maintenance should be the responsibility of municipalities not the State of Illinois.

It is also undisputed that the Property Maintenance Code of the City of Waukegan was adopted from the BOCA National Property Maintenance Code/1966.

(APPENDIX D) It is also undisputed that the Waukegan property maintenance code was used by the Plaintiff to identify the said violations.

65 ILCS 5/11-13-15 authorizes private individuals to enforce the Waukegan property maintenance code (APPENDIX E), however, both the BOCA code and the Waukegan Property Maintenance Code, only authorizes code officials to enforce the Property Maintenance Code of the City of Waukegan. (PM-105.1)

(APPENDIX D)

PM-105.1 reads as follows:

PM-105.1 General : The code official shall enforce all of the provisions of the code. (APPENDIX D)

It is undisputed that the Plaintiff is not a code official.

Code official is defined in PM-202.0 as the official who is charged with the administration and enforcement of this code, or any duly authorized representative. (Appendix D)

65 ILCS 5/11-13-15 is both unconstitutional and unnecessary. The BOCA National Property Maintenance Code/1996 is the *model building* regulations for the protection of public health, safety and welfare. Many cities adopt this model code instead of attempting to “reinvent the wheel.” It is undisputed that the City of Waukegan adopted this model property maintenance code.

This model code has proved to be adequate for the protection of public health, safety and welfare for the City of Waukegan. No evidence has been introduced to the contrary.

The Defendants’ due process rights guaranteed by the 14<sup>th</sup> and 5<sup>th</sup> Amendments to the United States Constitution have been violated by the Plaintiff. By Summary

Judgment, the Plaintiff *prevailed simply by introducing evidence that shows that the Defendants' property had property maintenance violations while not really considering or addressing the Defendants' unconstitutional defense.* (APPENDIX

A) 65 ILCS 5/11-13-15 reads in pertinent part:

In any action or proceeding for a purpose mentioned in this section, the court with jurisdiction of such action or proceeding has the power and in its discretion may issue a restraining order, or a preliminary injunction, as well as a permanent injunction, upon such terms and under such conditions as will do justice and enforce the purposes set forth above.

If an owner or tenant files suit hereunder and the court finds that the defendant has engaged in any of the foregoing prohibited activities, then the court shall allow the plaintiff a reasonable sum of money for the services of the plaintiff's attorney. This allowance shall be a part of the costs of the litigation assessed against the defendant, and may be recovered as such.

An owner or tenant need not prove any specific, special or unique damages to himself or his property or any adverse effect upon his property from the alleged violation in order to maintain a suit under the foregoing provisions.

Local solutions should be used to solve local problems. Routine property maintenance should be handled by the City of Waukegan, not the State of Illinois.

## RELEVANT LAW

An unconstitutional law is *void*. (16 Am. Jur. 2d, Sec. 178) The Defendants contend that their strongest argument is their *unconstitutional* questions:

### QUESTIONS PRESENTED

(1)

Whether 65 ILCS 5/11-13-15 is *unconstitutionally vague* in violation of the *due process* clauses of the 14th and 5<sup>th</sup> Amendments of the United States Constitution?

Whether 65 ILCS 5/11-13-15 is unconstitutionally vague and is, therefore, *unconstitutional both on its face and as applied*?

(2)

Whether 65 ILCS 5/11-13-15 violates the *due process* clauses of the 14th and 5<sup>th</sup> Amendments of the United States Constitution?

Whether 65 ILCS 5/11-13-15 violates the *due process* clause of the 14<sup>th</sup> and 5<sup>th</sup> Amendments of the United States Constitution and is, therefore, *unconstitutional both on its face and as applied*?

(3)

Whether 65 ILCS 5/11-13-15 is *unconstitutionally vague* when it is necessary to refer to and utilize another *statute* in order to *determine the "prohibited conduct"*?

Whether 65 ILCS 5/11-13-15 is *unconstitutionally vague* when it is necessary to *refer to* and *utilize* another *statute* in order to *determine the “prohibited conduct” and is, therefore, unconstitutional both on its face and as applied?*

In her final order entered on March 26, 2018 the trial court did not address the Defendants' *unconstitutional* defense at all. (APPENDIX A) This is of *maximum* importance because if a statute is *unconstitutional*, nothing else really matters.

The general rule is that an unconstitutional statute, though having the form and the name of law, is in reality no law, but is wholly void and ineffective for any purpose since unconstitutionality dates from the time of its enactment and not merely from the date of the decision so branding it; an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed ... An unconstitutional law is *void*. (16 Am. Jur. 2d, Sec. 178)

In Paragraph 12 of her order (APPENDIX A), the trial judge simply wrote as follows:

12. On June 28, 2017, Defendants filed their motions to declare 65 ILCS 5/11-13-15 unconstitutional. The motions were first continued due to Defendants' failure to serve notice on the Attorney General as required by Supreme Court Rule 19 and the motions were subsequently denied on July 20, 2017. (APPENDIX A)

The trial court judge did not address “*why*” she dismissed the motions pertaining to the unconstitutionality of 65 ILCS 65 ILCS 5/11-13-15. (APPENDIX A)

The ruling from the Second District, Illinois Appellate Court does not address *unconstitutionality* and, of course, the Illinois Supreme Court did not address *unconstitutionality*. (APPENDIX B and C)

The Illinois Supreme Court simply denied the Petitioners' motion for leave to file a motion for reconsideration of the order denying petition for leave to appeal on April 7, 2020. (APPENDIX C)

The Defendants' unconstitutional issue should have definitely been covered in the trial judge's final order and by the Illinois Appellate Court, Second District.

#### REASONS FOR GRANTING THE PETITION

This petition should be granted because no person should ever be subject to an *unconstitutional* statute or law.

The general rule is that an unconstitutional statute, though having the form and the name of law, is in reality no law, but is wholly void and ineffective for any purpose since unconstitutionality dates from the time of its enactment and not merely from the date of the decision so branding it; an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed ... An unconstitutional law is *void*. (16 Am. Jur. 2d, Sec. 178)

In the case at bar, the underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.

65 ILCS 5/11-13-15 is a State of Illinois statute covering the property maintenance of *every* homeowner in the State of Illinois. ( APPENDIX E)

It is an *unconstitutional* and *unnecessary* statute.

The void for vagueness doctrine is a constitutional rule. *The courts have generally determined that vague laws deprive citizens of their rights without fair process, thus violating due process.*

A criminal statute or quasi-criminal statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess at its

meaning and differ as to its application lacks the first essential of due process of law. Connally v. General Const. Co., 269 U.S. 385 (1926)

Void for vagueness simply means that criminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is proscribed. United States v. Harriss, 347 U. S. 612, 617 (1954).

The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed. Connally v. General Const. Co., 269 U.S. 385 (1926)

#### THIS CASE HAS BROAD APPLICATION

It is undisputed that the Plaintiff is alleging that the Defendants violated a city property maintenance ordinance.

This case has broad application to the entire State of Illinois and anyone who owns property within the State of Illinois. The issue in this case affects every homeowner in the State of Illinois; the maintenance of their real property. Maintenance of real property is an ongoing responsibility of every homeowner.

Property maintenance refers to the overall upkeep of real property and land.

This case has broad application to the entire State of Illinois.

When one enters a courtroom, it is not wise to leave one's common sense at the door. No homeowner in the State of Illinois or any other state, for that matter, is expected to maintain their property without any violation of the city's property maintenance code at all times.

If this contention is accepted, then every homeowner in the State of Illinois would summarily lose a lawsuit filed against them pursuant to 65 ILCS 5/11-13-15.

There is absolutely no way that the State of Illinois INTENDED such an unfair and absurd result.

Unlike the City of Waukegan property maintenance code, 65 ILCS 5/11-13-15 does not mandate that a homeowner be given notice of any alleged violation and a reasonable opportunity to correct it by code officials before action is taken.

(APPENDIX D and E) 65 ILCS 5/11-13-15 *simply* requires violation of the ordinance and the Plaintiff prevails and is awarded attorney fees.

The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed. Id.

A criminal statute or quasi-criminal statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess at its meaning and differ as to its application lacks the first essential of due process of law. Connally v. General Const. Co., 269 U.S. 385 (1926).

A void for vagueness due process challenge is likely to be successful where the terms of a statute *threatens a constitutionally protected right and where the conduct at issue in a particular case is not clearly proscribed*. In addition, *where the conduct in question is at the “margins” of an unclear statute*, the statute will likely be struck down, “as applied”. United States v. National Dairy Corp., 372 U.S. 29 (1963).

In the case *at bar*, 65 ILCS 5/11-13-15 clearly *threatens a constitutionally protected right and the conduct at issue is not clearly proscribed*.

Roots of the vagueness doctrine extend into the due process clauses in the Fifth and Fourteenth Amendments to the United States Constitution. (APPENDIX F) The courts have generally determined that vague laws deprive citizens of their rights without fair process, thus violating due process.

65 ILCS 5/11-13-15 reads as follows:

(65 ILCS 5/11-13-15) (from Ch. 24, par. 11-13-15)  
Sec. 11-13-15. In case any building or structure, including fixtures, is constructed, reconstructed, altered, repaired, converted, or maintained, or any building or

structure, including fixtures, or land, is used in violation of an ordinance or ordinances adopted under Division 13, 31 or 31.1 of the Illinois Municipal Code, or of any ordinance or other regulation made under the authority conferred thereby (Emphasis Added), the proper local authorities of the municipality, or any owner or tenant of real property, within 1200 feet in any direction of the property on which the building or structure in question is located who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding (1) to prevent the unlawful construction, reconstruction, alteration, repair, conversion, maintenance, or use, (2) to prevent the occupancy of the building, structure, or land, (3) to prevent any illegal act, conduct, business, or use in or about the premises, or (4) to restrain, correct, or abate the violation. When any such action is instituted by an owner or tenant, notice of such action shall be served upon the municipality at the time suit is begun, by serving a copy of the complaint on the chief executive officer of the municipality, no such action may be maintained until such notice has been given.

In any action or proceeding for a purpose mentioned in this section, the court with jurisdiction of such action or proceeding has the power and in its discretion may issue a restraining order, or a preliminary injunction, as well as a permanent injunction, upon such terms and under such conditions as will do justice and enforce the purposes set forth above.

If an owner or tenant files suit hereunder and the court finds that the defendant has engaged in any of the foregoing prohibited activities, then the court shall allow the plaintiff a reasonable sum of money for the services of the plaintiff's attorney. This allowance shall be a part of the costs of the litigation assessed against the defendant, and may be recovered as such.

An owner or tenant need not prove any specific, special or unique damages to himself or his property or any adverse effect upon his property from the alleged

violation in order to maintain a suit under the foregoing provisions.

(Source: P.A. 80-419.)

The conduct at issue is not clearly proscribed

65 ILCS 5/11-13-15 clearly *threatens a constitutionally protected right in the case at bar*: *the right to* reasonably understand that contemplated conduct is proscribed.

65 ILCS 5/11-13-15 contains a plethora of unconstitutionally vague language.

The following constitutionally *vague* language in 65 ILCS 5/11-13-15 determines what conduct is *proscribed*:

*“In case any building or structure, including fixtures, is constructed, reconstructed, altered, repaired, converted, or maintained, or any building or structure, including fixtures, or land, is used in violation of an ordinance or ordinances adopted under Division 13, 31 or 31.1 of the Illinois Municipal Code, or of any ordinance or other regulation made under the authority conferred thereby,”* (APPENDIX E)

This language is clearly unconstitutionally vague. In order for the *plaintiff*; in order for the *defendant*; and in order for the *judge* to determine the *proscribed conduct*, they must first examine the Illinois Municipal Code and refer to its *table*

*of contents.* The proscribed conduct "must be included" *within* the statute and the Defendants should not be required to refer to and utilize other parts of the *Illinois Municipl Code.*

Following is the relevant, *partial* Table of Contents from the Illinois Municipal Code:

**"PARTIAL" TABLE OF CONTENTS**

**MUNICIPALITIES**

(65 ILCS 5/) Illinois Municipal Code.

Art 11 prec Div 11 - Planning, Zoning and Urban Rehabilitation

Division 11 - Urban Rehabilitation

Division 11.1 - Fair Housing

Division 11.2 - Improvement of Group Relations

Division 12 - Plan Commissions

Division 12.1 - Revenue Bonds for Conservation Plan Areas

Division 13 - Zoning

Division 14 - Set-Back Lines

Division 15 - Approval of Maps And Plats

Division 15.1 - Annexation Agreements

Division 15.2 - Annexation; Drainage Districts

Division 15.3 - Wind Farms

Division 15.4 - Municipal Urban Agricultural Areas

Art 11 prec Div 30 - Control Over Building and Construction

Division 30 - General Regulatory Powers

Division 31 - Unsafe Property

Division 31.1 - Building Code Violations

Division 32 - Regulation of Heating, Air Conditioning and Refrigeration

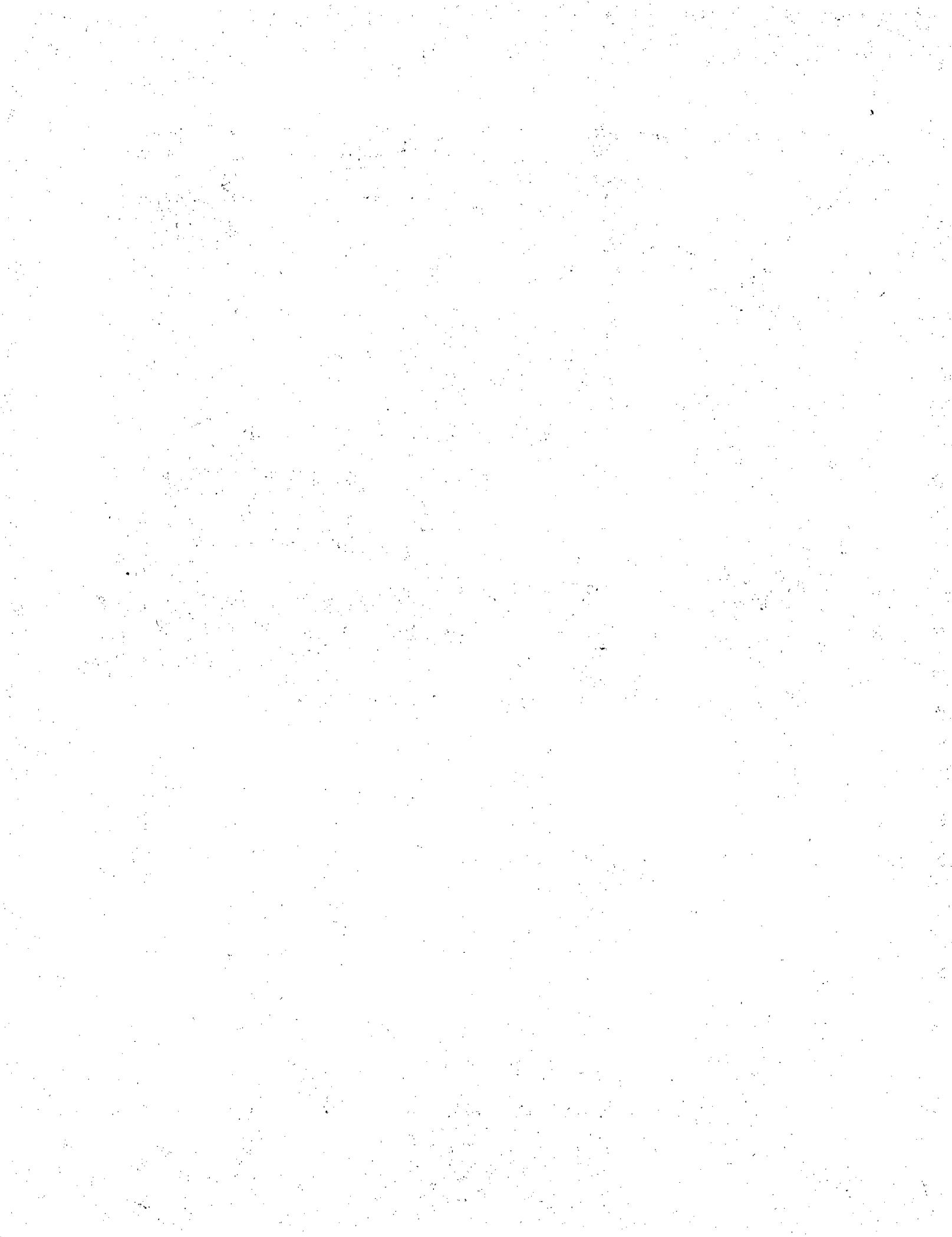
Installations

Division 33 - Registration of Electrical Contractors

Division 34 - Steam Boiler Inspection and Operator Licensing

Division 35 - Board of Plumbing Examiners in Municipalities Of 500,000 Or More

Division 36 - Licensing of Mason Contractors in Municipalities of 500,000 or More



Division 37 - Inspection of Electrical Equipment

Division 38 - Inspection of Lodging House Plans

Division 39 - Recording of Building Permits

Division 39.1 - Community Planning and Development

In order to find Division 13 in the Illinois Municipal Code, you must first find: *Art*

*11 prec*

*Div 11 – Planning, Zoning and Urban Rehabilitation* in the table of contents and

then scroll down to Division 13, *Zoning*. (See “Partial” Table of Contents above)

In order to find Division 31 of the Illinois Municipal Code, you must first locate Art

11 prec

Div 30 – *Control Over Building and Construction*, and then scroll down to

Division 31, *Unsafe Property*. (See “Partial” Table of Contents above)

In order to find Division 31.1 of the Illinois Municipal Code, you must first locate

Art 11 prec Div 30 – *Control Over Building and Construction*, and then scroll down

to Division 31.1, *Building Code Violations*. (See “Partial” Table of Contents

above)

There is a total of 38 pages to be reviewed, (APPENDIX G, H, I) . Division 13 "Zoning" consists of 18 pagesm (APPENDIX G); Division 31, "Unsafe Property" consists of 14 pages (APPENDIX H) and Division 31.1, "Building Code Violations" consists of 6 pages (APPENDIX I). This is a total of *38* pages to be reviewed.

Can anyone imagine a Plaintiff or Defendant or a Judge determining what conduct is prohibited in the case at bar?

A plaintiff, defendant and judge has to go through all of this to find out what conduct is *proscribed* by 65 ILCS 5/11-13-15.

In addition, the Plaintiff, Defendant and Judge must locate all of the ordinances adopted under Divisions 13, 31, and 31.1 and other regulations made under the authority conferred thereby in their search for the prohibited conduct. (APPENDIX E)

A criminal statute or quasi-criminal statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess at its meaning and differ as to its application lacks the first essential of due process of law. Connally v. General Const. Co., 269 U.S. 385 (1926).

It is very difficult if not *impossible* for the plaintiff, defendant or judge to determine the *prohibited conduct* in this case.

Just laws and constitutional laws are the foundation of our legal system.

We, the people, **DEPEND** on the United States ***Supreme*** Court for ***justice***.

This petition should be granted because no person should ever be subject to an ***unconstitutional*** statute or law.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard J. Kelly

Richard J. Kelly

Ethel J. Kelly

Ethel J. Kelly

Date: September 2, 2020