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STATE OF ILLINOIS**

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**AGENDA
STATE BOARD OF ELECTIONS
BOARD MEETING
Friday, May 30, 2014
3:30 p.m.**

2329 S. MacArthur Blvd.
Springfield, Illinois
and via videoconference
James R. Thompson Center – Suite 14-100
Chicago, Illinois

Call State Board of Elections to order.

1. **Consideration of Motion for Extension of Time submitted by the Proponents; Yes for Independent Maps.**
2. **Other business.**
3. **Adjourn until June 17, 2014 at 10:30 a.m. in Chicago or until call of the Chairman, whichever occurs first.**

**BEFORE THE STATE BOARD OF ELECTIONS OF THE STATE OF ILLINOIS AS
THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD FOR THE
REVIEW AND HEARING OF QUESTIONS FOR PROPOSED AMENDMENTS TO
ARTICLE IV OF THE CONSTITUTION OF THE STATE OF ILLINOIS PURSUANT
TO SECTION 3, ARTICLE XIV OF THE CONSTITUTION OF THE STATE OF
ILLINOIS**

In the Matter of Yes for Independent Maps,)
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)
)
) Before the Hon. Barbara B. Goodman
) Hearing Examiner
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PROponents’ MOTION FOR CLARIFICATION AND EXTENSION OF TIME

Now comes Yes for Independent Maps (the “Proponents”), by its attorneys, William J. Cadigan and Michael C. Dorf, and requests that the Hearing Examiner (1) clarify certain inconsistencies, ambiguities, and apparent violations of and among the Illinois Election Code, 10 ILCS 5/1-1, et seq. (the “Code”), the Procedures to Process a Petition to Place a Constitutional Amendment on the Ballot (the “Procedures”), and the Rules of Procedure of the State Officers Electoral Board (the “Rules”); and (2) extend the time allowed Proponents to present evidence in support of the validity of the petitions filed in support of the 2014 Illinois Independent Redistricting Amendment (the “Amendment”). In support of its Motion, Proponents state as follows:

I. BACKGROUND

On May 1, 2014, in accordance with the procedures set forth in Section 3 of Article XIV of the Constitution of the State of Illinois (the “Illinois Constitution”), Proponents filed with the Illinois Secretary of State 37,618 petition sheets containing over 500,000 signatures¹ in support of placing the Amendment on the ballot at the General Election to be held on November 4, 2014 (the “Petition”).

Pursuant to Section 28-9 of the Code, and also on May 1, 2014, the Secretary of State then delivered the Petition to the State Board of Elections.

On May 2, 2014, in accordance with Section VII of the Procedures, Proponents timely filed with the State Board of Elections a certification and registration certifying that it publicly supports the Amendment.

The Petition was the second of two petitions filed with the Secretary of State and the Board of Elections to amend Article IV of the Illinois Constitution. An earlier petition, to create

¹ The exact number of signatures submitted is in dispute. During the evidentiary hearing, Proponents will request a total recount of pages and signatures.

term limits for certain state elected officials, was filed by a separate set of proponents on April 30, 2014 (the “First Filed Petition”).

On May 12, 2014, prior to any examination of the First Filed Petition, the Board of Elections commenced a Signature Verification Examination (the “Examination”) of 25,375 signature lines from the Petition, which the Board of Elections claimed to be a random sample created pursuant to procedures set forth in Appendix C of the Procedures. The Proponents were neither notified of the date, time or location, nor permitted to be present at the creation of the random sample. The random sample procedures provide for an initial examination of 5% of the signature universe and, if certain criteria are met, examination of a second 5% of the signatures.

The Examination was held in the Springfield and Chicago offices of the Board of Elections. Watchers on behalf of the Proponents, as well as registered opponents of the Amendment, were permitted to be present at the Examination during business hours of the Board of Elections.

In addition to the Examination proceedings held during business hours, the Board of Elections also conducted Examination proceedings of, and rulings on, signature lines known as “administrative holds”, after business hours. Again, watchers on behalf of the Proponents were neither notified of, nor permitted to be present at, these after hour proceedings.

On May 20, 2014, the General Counsel of the Board of Elections provided a document to Proponents titled “Validation Status Report 5% Sample” (the “First 5% Report”) indicating that 13,807 signature lines had been declared invalid, and that the “maximum estimate of 235,036 falls short of the required number by 63,364 signatures.” The First 5% Report does not indicate if or when the second 5% sample will be taken. Nor does it indicate the number of signatures needed to be rehabilitated in order to validate the initial 5% sample. The Board of Elections also provided an Excel spreadsheet purporting to give the reasons for its rulings.

On May 20, 2014, the General Counsel further advised Proponents by e-mail that the issuance of the First 5% Report “will commence the 7 business day period in which to produce evidence to rehabilitate signatures determined invalid by SBE staff”.

II. REQUESTS FOR CLARIFICATION

The actions of the Board of Elections, as well as the interplay of the language of the Code, the Procedures, and the Rules, contain numerous ambiguities, inconsistencies, and violations, all of which prejudice Proponents’ ability to mount an effective rehabilitation, particularly if restricted to a seven business day period in order to gather evidence. Without waiving the right to raise additional issues in the course of the rehabilitation hearing, as well as the right to challenge globally the sufficiency and fairness of the sampling and examination procedures, Proponents respectfully make the following requests for clarification, which we believe will also make clear the need for additional time to prepare.

A. Please Clarify Why the Board Ignored the Procedures and Examined the Petition prior to the First Filed Petition. Section II of the Procedures states that:

“In the event that two Amendment Petitions are filed, the State Board of Elections (SBE) will process the Petitions in the order in which they are filed. **Once the signature validation process is completed on the first Petition filed,** (that is, the SBE has completed the evaluation of each signature in the Random Sample, and made an initial determination of each signature’s validity), the SBE will commence the processing of the second Petition filed. Signature rehabilitation proceedings involving the first petition may still be ongoing at the commencement of the processing of the second Petition.” (emphasis added)

As earlier stated, the First Filed Petition was filed with the Secretary of State and the Board of Elections one day earlier than the Petition was filed. Relying on the process set forth in the Procedures, under which Proponents would go second, Proponents allocated resources and manpower accordingly. Instead, the Board disregarded the Procedures and examined the Petition first, giving Proponents insufficient time to prepare for the Examination.²

B. Please Clarify the Number of Valid Signatures Required to Rehabilitate the Petition. The First 5% Report states only that the Petition falls short by 63,364 signatures. Obviously, since Proponents are only working with a universe of 13,807 signatures declared invalid, it cannot rehabilitate 63,364 signatures. In order to prepare and provide evidence sufficient to rehabilitate the Petition, Proponents request that the Board provide the number of signatures which must be rehabilitated.³

C. Please Clarify the Number of Valid Signatures Necessary to Require a Second 5% Sample. The Random Sample method set forth in Appendix C of the Procedures provides for a second 5% sample to be taken if certain criteria are met. The First 5% Report makes no mention of the second sample. Proponents request that the Board explain why a second 5% examination has not been ordered. In addition, if the Board’s response is that there were not sufficient signatures found to be valid, Proponents request clarification whether a second sample will be examined should rehabilitation reach the second sample target but fall short of full validation.

D. Please Clarify How Inconsistencies Between the Procedures and the Rules will be Resolved. Section VIII of the Procedures states that the Hearing Examiner “shall have the duties and powers of the SBE as set forth in the most recent Rules of Procedure related to the petition objection process (i.e. State Officers Electoral Board Rules of Procedure, 2014 General Primary Election)...” The Rules, however, contain clear inconsistencies. For example, Rule 8

² In addition to violating Section II of the Procedures, the Board originally scheduled the Examination for May 8, 2014, even though this date was one day earlier than the deadline set by the Procedures for certification of Proponents and Opponents. It was only after this inconsistency was pointed out by Proponents to the General Counsel, along with Proponents’ objection to the Section II violation, that the Examination was rescheduled to May 12, 2014, still far too little time adequately to prepare.

³ Proponents contend that, despite the comments of the General Counsel, the First 5% Report is not concluded and the seven business day “clock” does not begin running until Proponents are told how many signatures are needed to rehabilitate. Proponents wish to emphasize, however, that such argument does not remove the need for an extension of time.

of the Rules, relating to subpoenas, states that requests for subpoena “must be filed no later than 4PM on Monday December 23” and that the Hearing Examiner must make a recommendation to the Board “no later than 3PM on December 27”. Given the large number of voting records which Proponents will require from more than 100 election authorities around the state, Proponents request clarification as to the subpoena process and provision for realistic deadlines.

E. Please Clarify the Form in which Proponents may Present Evidence of an Independent Sample. Section 10-10 of the Code states in part that:

In the event of a State Electoral Board hearing on **objections to a petition for an amendment to Article IV of the Constitution pursuant to Section 3 of Article XIV of the Constitution**, or to a petition for a question of public policy to be submitted to the voters of the entire State, the certificates of the county clerks and boards of election commissioners showing the results of the random sample of signatures on the petition shall be prima facie valid and accurate, and shall be presumed to establish the number of valid and invalid signatures on the petition sheets reviewed in the random sample, as prescribed in Section 28-11 and 28-12 of this Code. Either party, however, may introduce evidence at such hearing to dispute the findings as to particular signatures. In addition to the foregoing, in the absence of competent evidence presented at such hearing by a party substantially challenging the results of a random sample, **or showing a different result obtained by an additional sample**, this certificate of a county clerk or board of election commissioners shall be presumed to establish the ratio of valid to invalid signatures within the particular election jurisdiction.

Proponents reserve the right during the rehabilitation hearing to provide an additional sample, pursuant to Section 10-10, showing the inadequacy of the random sample established by the Board. Please provide the form in which such sample should be submitted.

F. Please Clarify the Means by which Non-Matching Signatures were Determined. The Excel spreadsheet provided by the Board following the Examination lists names and addresses solely for petition signers whose signature was declared valid following comparison with the voter database. It does not include the names of signers whose signatures were declared not to match the database entry. Unlike non-registered signers, whose name would not be in the database, in order to have made a declaration that a signature is invalid, the Board examiner must have been able to read the petition signature, compare it to a name found in the database, and then declare it did not match. Without knowing what name the Board examiner was comparing, Proponents are greatly hindered in acquiring an affidavit from that voter to rehabilitate the signature. It should be noted that both the Cook County Clerk and the Chicago Board of Election Commissioners’ databases and “Final Petition Detail Reports” list the names and addresses of signers whose signatures do not match the database. Proponents request that the Board provide such information prior to commencement of any rehabilitation hearing and provide sufficient time for Proponents to prepare and present evidence.

III. AS A MATTER OF FUNDAMENTAL FAIRNESS, PROPONENTS REQUEST THAT THE DEADLINE FOR PRESENTATION OF EVIDENCE TO REBUT THE BOARD'S FINDINGS BE EXTENDED TO JUNE 13, 2014.

As demonstrated above, the combination of the Board of Election's violation of its own Procedures and the lack of clarity both in process and execution have severely prejudiced Proponent's ability to prepare for rehabilitation of signatures found invalid by Board examiners. The failure of the Board to permit watchers to observe while the Board made rulings at night, outside the times designated for the signature examination established by the Board's own staff, is also extremely troubling. The Board has not even told Proponents how many signatures will need to be rehabilitated, nor what the result of achieving such numbers will be. It is also clear that whatever the final number of signatures necessary to rehabilitate, it will be in the thousands. This will require the request for documents, by FOIA or subpoena, of scores of election authorities, a process which cannot be achieved in the seven business days set by the Procedures.

Section X of the Procedures, Signature Rehabilitation Hearing, states in part:

Such evidence offered to refute the SBE finding must be submitted to the Hearing Examiner no later than 5PM on the seventh business day following the date of the transmittal of the final results of the Examination, **unless extended by the Hearing Examiner or the Board.** (emphasis added)

The Hearing Examiner clearly has the authority to extend the deadline. Proponents request that the deadline be extended for the following reasons:

A. Proponents Cannot Control the Speed at Which Election Authorities Provide Documents. Proponents have contacted representatives of several election authorities, including the Cook County Clerk and the Chicago Board of Election Commissioners, to determine how much time will be required to process requests for thousands of certified registration records. Proponents are still awaiting a response. The procedures of the other 108 election authorities, which may be less familiar with these types of requests, guarantees that the seven business day deadline is unlikely to be met. The Rules regarding subpoenas, with their out of date timetables, provide Proponents with no meaningful guidance on how to avail themselves of a critical discovery tool. In addition, if the Board refuses to issue subpoenas for documents, and Proponents are required to resort to FOIA filings, these election authorities will, by statute, be legally able to avoid response until well after the deadline.

B. The Board Has Not Provided Sufficient Information for Proponents to Prepare a Rehabilitation. Initially, as previously stated, the Board has not informed Proponents how many rehabilitated signatures it will require to meet any of its statistical methods. In addition, the Signature Invalidity Reports are woefully insufficient, particularly when judged against the well established standards used by other election authorities, and particularly when compared to those typically generated by the Cook County Clerk and the Chicago Board of Election Commissioners. By not providing the voter name and address information in the manner the aforementioned election authorities are able to provide, Proponents clearly will require more time to prepare.

C. Proponents Require Additional Time to Prepare Its Independent Sample. By ignoring the order of examination set forth in the Procedures, the Board took away at least two calendar weeks in which Proponents could arrange for the preparation of the independent sample contemplated by, and to which Proponents are entitled to pursuant to Section 10-10.

D. Proponents Require Time to Review Original Petition Sheets held in Springfield. There was clear evidence during the Examination that many of the scanned petition sheets reviewed by the Board were illegible. In addition, many of these unreadable lines were placed on “administrative hold” by the Board, and then re-examined and ruled upon by Board staff in secret. Proponents request the opportunity to review the original petition sheets for these lines to determine the true intent of the signer.

E. Proponents Require Time to Subpoena Witnesses and Prepare Additional Evidence Showing the Inconsistent Examination Process, the Improper Procedures, and the Inappropriate Behavior of Board Staff. During the course of the Examination, Proponents observed lack of training, inconsistent rulings, undue pressure by Board supervisors on Board examiners, and even inappropriate personal behavior by Board staff toward Proponents’ watchers. Combined with the failure of the Board to follow its own Procedures, the failure to take actions in public, the lack of notice to Proponents of major actions, and the other issues raised in this Motion, due process under the United States Constitution requires that the Board, at a minimum, provide Proponents with sufficient time to prepare an adequate rehabilitation. Although the Hearing Examiner and the Board are prohibited from considering constitutional claims, Proponents need additional time to subpoena witnesses and preserve evidence of these violations.

F. There is No Calendar Need to Rush the Process. Proceedings before Cook County Judge Mikva in the related litigation concerning the validity of the Amendment under the Illinois Constitution are proceeding without waiting for this process to conclude. Similarly, the Secretary of State, who is charged with preparing and distributing pamphlets explaining the Amendment, is currently working with Proponents regarding his obligations and is not being delayed by this proceeding. Finally, certification itself of the Amendment need not take place before August 22, 2014. There is simply no need for the self-imposed haste which the Board has imposed on this process.

IV. CONCLUSION

Illinois has never before used this sampling process, nor has the Board of Elections ever before had to review a statewide referendum petition of this magnitude without the assistance of the 110 election authorities around the state. The Board is trying to create new procedures and new rules to fulfill the responsibilities placed on it by the Illinois Constitution and by the Election Code. It may be that the gaps, irregularities and deficiencies in the policies and their execution by Board staff were inevitable. The seven business day rule is such a deficiency, because there was no previous experience by which to measure how much time a petitioning party would need to marshal an effective rehabilitation effort with such an enormous universe of pages and signatures to be reviewed. There is no need for the Board to take an unduly hasty,

adversary position with respect to the Proponents just because they are the first to venture into uncharted territory. Proponents have requested clarification concerning the inconsistencies and ambiguities within the rules, and have reasonably requested sufficient time to mount a defense and rehabilitation.

WHEREFORE, for the reasons above stated, Proponents Yes for Independent Maps requests the issuance of clarifying information concerning the issues described above and an order extending to June 13, 2014, the time allowed Proponents to present evidence in support of the validity of the petitions filed in support of the 2014 Illinois Independent Redistricting Amendment.

Respectfully submitted,



One of the attorneys for Proponents
Yes for Independent Maps

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