

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

JOHN BAMBENEK, et al)	
)	Case No. 3:20-cv-3107
Plaintiffs,)	
)	
vs.)	Honorable Judge Sue E. Myerscough
)	
JESSE WHITE, in his official capacity as Illinois Secretary of State, et al)	
)	
Defendants.)	
)	

**PLAINTIFFS’ EMERGENCY MOTION OF RECONSIDERATION
WITH REGARDS TO LOCAL REFERENDA**

NOW COMES Plaintiffs, and pursuant to Rule 59 of the Federal Rules of Civil Procedure, moves this Honorable Court for reconsideration of certain provisions of the Order denying their motion for preliminary injunction or temporary restraining order entered by this Court on May 1, 2020. Dkt. 24. In support of this Motion, Plaintiffs states as follows:

1. This motion for reconsideration only seeks reconsideration of this Court’s Order only with regards to the local referenda – that is the Cannabis Dispensary Advisory Question of Public Policy Referendum in the City of Decatur and the Binding Referendum to eliminate the office of Recorder of Deeds in Champaign County. Plaintiffs are not seeking reconsideration of this Court’s Order with regards to the proposed Constitutional Amendment and therefore no longer seeks relief from the Secretary of State or the Members of the State Board of Elections.

2. With Regards to the local referenda, this Court said the following in its order of May 1, 2020:

Finally, with regards to the Plaintiffs who seek to place referenda on the ballots for their local elections, Plaintiffs assert that the Governor's shelter in place orders preclude them from gathering the signatures needed, but the Governor's current order extends only through this month, while the deadlines Plaintiffs must meet for the local referenda are not until August 3, 2020. Moreover, as Plaintiffs themselves noted in their oral arguments, signature collection efforts for referenda drives like Plaintiffs' tend to ramp up in the final weeks. For that reason, any potential harms to Plaintiffs Kendall, Phillips, Reform Champaign County, and Decatur Dispensary Project are too speculative to support issuance of a preliminary injunction in this case. See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) ("Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.").

Dkt. 24, pp 7-8. Therefore, on May 1, 2020, this Court declined to grant relief because it determined that it was premature to do so when the Governor's Executive Order expired May 29, 2020 yet the deadline to submit signatures was August 3, 2020.

3. A request for reconsideration under Rule 59(e) "allows a party to direct the district court's attention to newly discovered material evidence or a manifest error of law or fact, and enables the court to correct its own errors and thus avoid unnecessary appellate procedures." *Moro v. Shell Oil Co.*, 91 F.3d 872, 876 (7th Cir. 1996).

4. Today, May 29th, Governor Pritzker signed a new 30-day Disaster Proclamation that extends the Coronavirus Pandemic Emergency to June 28, 2020. This Proclamation is attached as Exhibit A. Governor Pritzker also signed a new Executive Order mandating continuing "social distancing" of six feet, indoors and outdoors, during the new Disaster Period (Paragraph 2(a)). This Executive Order is attached as Exhibit B. These new Gubernatorial orders are newly discovered material evidence that make reconsideration under Rule 59(e) appropriate.

5. In the 28 days since this Court's Order the Plaintiffs have been unable to collect any signatures for their local referenda because of mandatory social distancing. Now, due to the Governor's new orders signed today, plaintiffs will still not be able to collect signatures until at

least June 28 due to mandatory social distancing. Additionally, after June 28, it is expected that the State will be in Phase 4 of the Restore Illinois Plan which continue having “Face Coverings and Social Distancing are the norm.” The State’s Restore Illinois Plan is attached as Exhibit C.

6. Because of the mandatory social distancing that has been in place for more than two months, and will continue to be in place for at least thirty more days, it has been and will continue to be impossible for the plaintiffs to circulate petitions for their local referenda.

7. The Declarations of Plaintiffs Lisa Kendall and John Phillips both state in Paragraph 4 that they have autoimmune diseases and therefore cannot circulate without risking their health due to the continuous risk of coronavirus. Dkt 20-4 and 20-5.

8. The Governor’s new Executive Order (Exhibit B) states in subparagraph 2.c. that “those with health conditions that may make them vulnerable are urged to stay in their residence and minimize in-person contact with others to the extent possible.” This further restricts Kendall’s and Phillips’ constitutional rights to obtain signatures.

9. Therefore, because the Governor has extended the Disaster Proclamation and mandatory social distancing (and effectively extended the shelter at home provision for Plaintiffs Kendall and Phillips) until at least June 28, it is no longer premature for the plaintiffs to ask for relief for the local referenda.

10. Plaintiffs believe that the district court may have made a manifest error of fact in its ruling by considering both petitions for local referenda to be seeking advisory referenda, when in fact the Champaign County Petition seeks to place a binding referendum on the ballot

11. On reconsideration, the Plaintiffs are no longer asking for signature requirements to be reduced. They are only asking that they be able to collect signatures electronically and that

the notary and circulator requirements be suspended as was granted in *Libertarian Party Et al. v. Pritzker Et al.*, (20-cv-2112 N.D. Ill) and by other courts in the wake of COVID-19.

12. The Plaintiffs reiterate their arguments from their previous filings and request an expedited briefing schedule and emergency hearing on this motion.

PRAYER FOR RELIEF

For all the reasons set forth above and in their previous filings, the Plaintiffs respectfully request that this Court:

- A. Assume original jurisdiction over this matter;
- B. Issue a temporary restraining order and/or preliminary injunction (i) enjoining or modifying enforcement of Illinois' petition collection requirements for initiative referendums for Illinois' November 3, 2020 general election; and (ii) granting certain elements of the same relief as Judge Pallmeyer granted in No. 20-cv-2112 in the Northern District, to wit:
 - a. eliminating requirement that voters sign in the presence of a circulator, and that the circulator's notarized signature be at the of each petition sheet;
 - b. eliminating the requirement that only original sheets with original signatures be filed;
 - c. allowing electronic signatures;
 - d. for whatever other or different relief this Court deems just.
- C. Issue a declaratory judgment stating that, in light of the current public health emergency caused by the COVID-19 and executive orders requiring that Illinois citizens stay at home and shelter in place, Illinois' petition collection requirements for qualifying Article

VII referendums, and question of public policy referendums per 10 ILCS 5/28-5 for the general election cannot be constitutionally enforced;

D. Issue a permanent injunction prohibiting enforcement of those Illinois' petition collection requirements set forth in Par. B for Article VII referendums and question of public policy question per 10 ILCS 5/28-6 for the November 3, 2020 general election;

E. Order Defendants to pay to Plaintiffs their costs and reasonable attorneys' fees under 42 U.S.C. § 1988(b);

F. Grant such other relief as this Court deems appropriate.

Respectfully submitted this 29th Day of May, 2020.

/s/ JOHN BEMBENEK, ET AL.,

Samuel J. Cahnman
Attorney at Law
915 S. 2nd St.
Springfield, IL 62704
217-528-0200
IL Bar No. 3121596
samcahnman@yahoo.com

Pericles Camberis Abbasi
Attorney at Law
6969 W. Wabansia Ave.
Chicago, IL 60707
773-368-5423
IL Bar No. 6312209
pericles@uchicago.edu

PROOF OF SERVICE

The undersigned certifies that he served the foregoing motion on the below attorneys, who have all filed appearances, through the e-filing system on May 29, 2020:

For the Secretary of State:

Mike Dierkes, AAG - mdierkes@atg.state.il.us

For Members of the Illinois State Board of Elections:

Erin Walsh, AAG - ewalsh@atg.state.il.us

For Decatur City Clerk:

John T. Robinson – jrobinson@decaturil.gov

For Champaign County Clerk:

Barbara Joan Mann – bmann@co.champaign.il.us

For Macon County Clerk:

Edward F. Flynn – eflynn@decatur.legal; Jerrold H. Stocks – jstocks@decatur.legal

/s/ PERICLES CAMBERIS ABBASI
Attorney at Law