

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WILLIAM MORGAN, et al.)	
)	
Plaintiffs,)	
)	Case No.: 20-cv-02189
vs.)	
)	Hon. Charles R. Norgle, Sr.
)	
JESSE WHITE, et al.)	
)	
Defendants.)	

**DEFENDANT JESSE WHITE’S RESPONSE TO PLAINTIFFS’ EMERGENCY
MOTION FOR A PRELIMINARY OR PERMANENT INJUNCTION AND
DECLARATION AS A MATTER OF LAW**

INTRODUCTION

Plaintiffs wish to circulate a petition for a constitutional amendment referendum to be placed on the November 3, 2020 general election ballot. They allege that due to the COVID-19 crisis and the Governor’s resulting Executive Order, they are unable to collect signatures in person, as required by the Illinois Election Code. In addition to the members of the Illinois State Board of Elections and several local defendants, they have sued Secretary of State Jesse White in his official capacity for declaratory and injunctive relief. But the Secretary of State does not enforce the petition collection requirements at issue here. His role is initially ministerial: proposed constitutional amendments are filed with the Secretary of State, who then “deliver[s] such petition[s] to the State Board of Elections” within one business day. 10 ILCS 5/28-9. Once the State Board of Elections hears and passes on any objections, *id.* at 5/28-4, the Secretary of State ensures that any proposed amendments are published in newspapers throughout the State (in multiple languages) and that pamphlets describing the amendments are mailed to every mailing address in the State (again, in multiple languages).

The Secretary of State takes no position regarding plaintiffs' challenge to provisions of the Election Code that he does not administer or enforce. However, as set forth below, he objects strongly to two components of plaintiffs' requested relief. First, he opposes plaintiffs' request that this Court extend the deadline for them to file their proposed referendum by three months, from May 3, 2020 to August 3, 2020. Such an extension would make it impossible for the Secretary of State to fulfill his obligations relating to the publication of proposed amendments and the distribution of pamphlets in time for the November 3, 2020 election. Second, to the extent that plaintiffs seek an order compelling the Secretary of State to develop and implement an online petitioning and signature collection system (their request is not clear), he opposes such relief. Any such request should not be directed at the Secretary of State, who does not administer or enforce the Election Code's petition collection requirements. Moreover, it is not feasible to develop such a system (again, if that is what plaintiffs are requesting) under the tight time frames at issue here.

ARGUMENT

Plaintiffs seek multiple forms of relief: (1) a declaration that the Election Code's petition collection requirements (mandating that signatures be collected in-person) cannot be constitutionally enforced under the current circumstances, and corresponding injunctive relief; (2) an order reducing by 50% the number of signatures required for a constitutional amendment referendum; (3) an order extending by three months the constitutional and statutory May 3, 2020 deadline for plaintiffs to collect signatures and file their proposed constitutional amendment referendum; and (4) an order requiring defendants to "allow for petitions to be submitted electronically via names of qualified electors collected by an online form to be created by the Secretary of State." (Dkt. No. 6 at 10-11)

1. In-Person Signature and Notarization Requirements

The Election Code requires that referendum petition sheets must include a sworn and notarized statement by the petition circulator that “the signatures on that sheet of the petition were signed in his or her presence and are genuine.” 10 ILCS 5/28-3; Dkt. No. 1 at 38. The Secretary of State does not administer or enforce this requirement, see 10 ILCS 5/28-4, and takes no position with respect to plaintiffs’ request to enjoin its enforcement in the present circumstances.

2. Number of Signatures Required

Both the Illinois Constitution and the Election Code require that petitions for constitutional amendments be signed by “a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election.” Ill. Const. Art. XIV, § 3; 10 ILCS 5/28-9. The Secretary of State does not administer or enforce this requirement, see 10 ILCS 5/28-4, and takes no position with respect to plaintiffs’ request for a reduction in the number of required signatures.

3. Deadline to Collect Signatures and File Petition

Under the Illinois Constitution and the Election Code, the deadline for plaintiffs to collect signatures and file their petition with the Secretary of State is May 3, 2020. Ill. Const. Art. XIV, § 3 (requiring petition for constitutional amendment to be filed “at least six months” before the general election); 10 ILCS 5/28-9 (same). Plaintiffs seek a court-ordered *three-month* extension of this deadline. The Secretary of State opposes this request. Such an extension—or, for that matter, any extension of the deadline by more than about two weeks—would make it essentially impossible for the Secretary of State to fulfill his publication and pamphlet distribution obligations for the November 2020 general election.

The existing timeframes are already tight. By statute, if a petition for a proposed constitutional amendment survives any challenges before the State Board of Elections and in court, the Secretary of State must publish the amendment at least one month before the election (October 3, 2020) “in at least one secular newspaper of general circulation in *every county* in this State in which a newspaper is published.” 5 ILCS 20/2 (emphasis added). In counties in which two or more newspapers are published, he must publish in two newspapers. *Id.* In counties with more than 500,000 people, he must publish in no less than six newspapers of general circulation. *Id.* After the first publication, the publication must be repeated once each week for two consecutive weeks. *Id.*

To meet the October 3, 2020 publication deadline, the Secretary of State starts working in early May, shortly after the petition filing deadline. (Ex. 1 (Williams Dec.) at ¶4) The National Voting Rights Act requires that the proposed amendments be translated into multiple languages prior to publication. *See* 52 U.S.C. § 10503. Thus, the Secretary of State must go through a procurement process for translation services, with informal bids for translators starting in mid-May and contracts awarded by around June 8. (*Id.* at ¶5) The Secretary of State must also procure newspaper publishing; a bid is posted by about May 20 to secure a publishing contract by the end of June. (*Id.* at ¶6) Final drafts of proposed amendments, in all languages, should be completed by early August, and all work on newspaper publication must be complete by about September 9 to ensure timely publication. (*Id.* at ¶7)

The Secretary of State must also ensure that proposed amendments are published in a pamphlet mailed to every address in the State at least one month prior to the election. (*Id.* at ¶8; 5 ILCS 20/2) The pamphlet must include not only the text of the amendment, but also an explanation of the amendment, the arguments for it (provided by its proponent), and the

arguments against it (provided by the General Assembly or Attorney General). (*Id.*) Once the Secretary of State receives the arguments, the pamphlet must be proofed, translated into multiple languages in accordance with the National Voting Rights Act, 52 U.S.C. § 10503, sent to a printer, printed, delivered from the printer to a mailing service, delivered from the mailing service to the post office, and shipped. (*Id.* at ¶9)

The existing timelines again have little margin for adjustment. The Secretary of State posts a bid for printing and mailing services by around May 18 in order to award a contract by the end of June. (*Id.* at ¶10) The pamphlet is developed and then translated into multiple languages by around mid-July. (*Id.* at ¶11) The final pamphlet proof must be sent to the printer in all languages by August 11. (*Id.*) The pamphlets are printed and delivered to a mailing service by September 1, with shipments to the post office until the end of September, so that the pamphlets can be in the mail by the October 3 statutory deadline. (*Id.*)

Plaintiffs' request for a court order extending the deadlines to submit a petition fails on the merits for the reasons stated in the State Board of Elections' opposition, which the Secretary of State adopts and incorporates by reference with respect to this point. Moreover, balance of harm considerations warrant denial of plaintiffs' request. As set forth above, plaintiffs' requested three-month extension would make it essentially impossible for the Secretary of State to comply with the publication and pamphlet deadlines for the November 3 election, thus jeopardizing the validity of any proposed constitutional amendments. Plaintiffs' requested three-month extension of the filing deadline should be denied.

4. Electronic Submission of Petitions and Online Form

Finally, plaintiffs seek injunctive relief requiring defendants to "allow for petitions to be submitted electronically via names of qualified electors collected by an online form to be created

by the Secretary of State.” (Dkt. No. 6 at 10-11) It is unclear exactly what plaintiffs are requesting, or why they have directed this request to the Secretary of State. As explained above, aside from his obligations relating to the publication of proposed amendments in newspapers and the distribution of pamphlets, the Secretary of State’s role is purely ministerial. “Upon receipt of a petition for a proposed Constitutional amendment, the Secretary of State shall, as soon as is practicable, but no later than the close of the next business day, deliver such petition to the Board of Elections.” 10 ILCS 5/28-9.

The Secretary of State understands that the State Board of Elections is willing to agree to enjoin the State’s in-person signature and notarization requirements set forth in 10 ILCS 5/28-3, given the ongoing COVID-19 public health crisis. Should the Court enjoin the in-person signature requirement (again, the Secretary of State takes no position on this issue), plaintiffs could circulate petition forms via their websites, by email, by mail, and petition signers could return signed¹ petitions via email, mail, other electronic means, or any other means. In these circumstances, the Secretary of State would not object to accepting the petition filing for a constitutional amendment (due May 3, 2020) in electronic form rather than hard copy, in order to transmit the filing to the State Board of Elections pursuant to Section 28-9 of the Election Code. 10 ILCS 5/28-9.

This should address plaintiff’s concerns. But if plaintiffs nevertheless seek a court order compelling the Secretary of State to develop and implement a system allowing persons to *electronically-sign* their petitions (again, the nature of their request is unclear), the Secretary of State would strongly oppose such relief. The Secretary of State does not administer or enforce the Election Code’s petition collection requirements, including the in-person signature

¹ A physical “wet” signature would still be required on the petition.

requirement at issue here. The Secretary of State is not responsible for vetting or verifying signatures; he receives petitions for constitutional amendments and promptly transmits them to the State Board of Elections. 10 ILCS 5/28-9. To the extent that plaintiffs are requesting the Secretary of State to develop an electronic signature system, their request is misdirected and should be denied.

Further, plaintiffs cannot satisfy the legal requirements for the issuance of a TRO or preliminary injunction compelling the Secretary of State to immediately implement an electronic signature platform for proposed constitutional amendments. Injunctive relief is “an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original). To obtain a temporary restraining order or preliminary injunction, plaintiffs must make a clear showing that: (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) that the injunction is in the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008). The court “must balance the competing claims of injury and must consider the effect on each party of granting or withholding the requested relief,” paying “particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Id.* at 24.

Plaintiffs’ burden in this case is even greater than usual because, rather than seeking to preserve the *status quo*, they seek *mandatory* relief requiring the development of a new system. Mandatory injunctions are “rarely issued,” interlocutory mandatory injunctions are “even more rarely issued,” and neither should be issued “except upon the clearest equitable grounds.” *W.A. Mack, Inc. v. Gen. Motors Corp.*, 260 F.2d 886, 890 (7th Cir. 1958); *see also Graham v. Med.*

Mut. of Ohio, 130 F.2d 293, 295 (7th Cir. 1997) (stating that “mandatory preliminary writs are ordinarily cautiously viewed and sparingly issued”). Moreover, “[a] preliminary injunction that would give the movant substantially all the relief he seeks is disfavored, and courts have imposed a higher burden on a movant in such cases.” *Boucher v. Sch. Bd. of Sch. Dist. of Greenfield*, 134 F.3d 821, 827 n.6 (7th Cir. 1998); *W.A. Mack*, 260 F.2d at 890 (“A preliminary injunction does not issue which gives to a plaintiff the actual advantage which would be obtained in a final decree.”).

Here, plaintiffs cannot meet their high burden. Plaintiffs have made no showing at all that implementation of an electronic signature system is necessary to prevent irreparable harm, especially if the State Board of Elections will to agree to enjoin the State’s in-person signature and notarization requirements set forth in 10 ILCS 5/28-3. Balance of harm and public interest considerations also weigh strongly against a court order compelling the immediate development and implementation of an e-signature platform. Unlike some other states, Illinois does not currently utilize an e-signature platform, and it is simply not possible for the Secretary of State to develop from scratch (or procure) such a system and implement it statewide for *immediate* use under the timeframes at issue here, given that the deadline to submit petitions for constitutional amendments is May 3, 2020, just a few weeks away.

Trying to implement a new e-signature system on a fire-drill basis—if that were even possible, which it is not—could likely lead to all kinds of problems and unanticipated issues, including an increased risk of fraud, which the signature requirement is intended to prevent. *See, e.g., John Doe No. 1 v. Reed*, 561 U.S. 186, 197 (2010) (“The State’s interest in preserving the integrity of the electoral process is undoubtedly important.”). The Supreme Court has “repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on

the eve of the election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, NA 19A1016, 2020 WL 1672702, at *1 (U.S. Apr. 6, 2020). *See also Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 191 (1999) (“States allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the initiative process.”).

In sum, this Court should reject any request by plaintiffs for a mandatory injunction requiring the State to adopt and implement a new e-filing system for constitutional amendment petitions for the November 3, 2020 general election. This is not possible under the time frames at issue here, plaintiffs have made no showing that such a system is necessary to prevent irreparable harm, and balance of harm and public interest considerations strongly weigh against such extreme relief.

CONCLUSION

For the foregoing reasons, this Court should deny plaintiffs’ motion with respect to certain requests for relief as detailed above.

Dated: April 16, 2020

KWAME RAOUL
Attorney General of Illinois

Respectfully submitted,

/s/ Michael T. Dierkes

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Counsel for Defendant Jesse White

EXHIBIT 1

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DECLARATION OF AMY WILLIAMS

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Amy Williams. I am an attorney at the Office of the Illinois Secretary of State. In my role, I am familiar with and have knowledge regarding the process and timelines for the Secretary of State to publish and distribute pamphlets regarding proposed constitutional amendments.

2. Exhibit A hereto is the internal working timeline that the Secretary of State uses to meet the deadlines for newspaper publication and pamphlet distribution. The attached timeline is specific to 2020; however, the Secretary of State has used the same timeline, making adjustments for the date of the general election but keeping the timeframes consistent, for at least the past seven years of elections.

3. By statute, if a petition for a proposed constitutional amendment survives any challenges before the State Board of Elections and in court, the Secretary of State must publish the amendment at least one month before the election (October 3, 2020) in newspapers throughout Illinois.

4. To meet the October 3, 2020 publication deadline, the Secretary of State starts working in early May, shortly after the petition filing deadline.

5. The National Voting Rights Act requires that the proposed amendments be translated into multiple languages prior to publication. Thus, the Secretary of State must go through a procurement process for translation services, with informal bids for translators starting in mid-May and contracts awarded by around June 8.

6. The Secretary of State must also procure newspaper publishing; a bid is posted by about May 20 to secure a publishing contract by the end of June.

7. Final drafts of proposed amendments, in all languages, should be completed by early August, and all work on newspaper publication must be complete by about September 9 to ensure timely publication.

8. The Secretary of State must also ensure that proposed amendments are published in a pamphlet mailed to every address in the State at least one month prior to the election. The pamphlet must include not only the text of the amendment, but also an explanation of the amendment, the arguments for it (provided by its proponent), and the arguments against it (provided by the General Assembly or Attorney General).

9. Once the Secretary of State receives the arguments, the pamphlet must be proofed, translated into multiple languages in accordance with the National Voting Rights Act, sent to a printer, printed, delivered from the printer to a mailing service, delivered from the mailing service to the post office, and shipped.

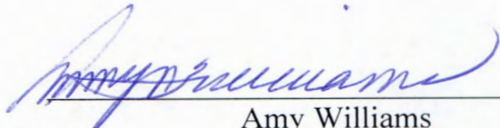
10. The Secretary of State posts a bid for printing and mailing services by around May 18 in order to award a contract by the end of June.

11. The pamphlet is developed and then translated into multiple languages by around mid-July. The final pamphlet proof must be sent to the printer in all languages by August 11. The pamphlets are printed and delivered to a mailing service by September 1, with shipments to the post office until the end of September, so that the pamphlets can be in the mail by the October 3 statutory deadline.

12. Thus, the Secretary of State must begin the process described above and in Exhibit A hereto in May in order to complete his obligations relating to the publication of proposed amendments and the distribution of pamphlets in time for the November 3, 2020 general election.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 16, 2020



Amy Williams

Williams Declaration Exhibit A

Due Date	Task	Responsibility
4/13/2020	Zip Code/Constituent Information from Library Requested	Program Staff
4/13/2020	Zip Code/Constituent Information from Library	Program Staff
5/4/2020	Last day for passage of Const Amendments by GA	
5/4/2020	Last day for filing of Const Amendment by petition	
5/6/2020	Copy to Communications to prepare English version	Program Staff
5/18/2020	Post Bid for Printing/Mailing in Procurement Bulletin	Budget
5/19/2020	Informal Bid for translators	Budget
5/20/2020	Post Bid for Newspaper Publishing in Procurement Bulletin	Budget
5/26/2020	Deadline for arguments from GA on legislative amendments	
5/26/2020	Deadline for arguments (pro) & explanation on petitions	
5/26/2020	Deadline for arguments (con) from GA on petitions	
5/27/2020	Const Amendment arguments to SOS Communications	Program Staff
5/29/2020	First proof of pamphlet (english) ready to distribute	Program Staff
6/1/2020	Letter to AG with arguments (pro) for petitions	Legal
6/3/2020	First round of changes of pamphlet (english version) due to Programs	All
6/3/2020	First round of changes to Communications	Program Staff
6/4/2020	Second proof back from Communications	Prog/Communications
6/4/2020	Second proof of pamphlet (english) distributed for review	Program Staff
6/8/2020	Bids for translators open	Budget
6/8/2020	Second round of changes of pamphlet (english) due to Programs	All
6/8/2020	Contracts awarded for translators	Budget
6/9/2020	Letter to Leaders re: impact of no budget	Legal
6/16/2020	Post "Intent to Award Notice" on Printing/Mailing	Budget
6/16/2020	Open Bids for Mailing/Printing Contract	Budget
6/16/2020	Open newspaper bids	Budget
6/16/2020	Post "Intent to Award Notice" on Newspaper Contract	Budget
6/19/2020	Arguments (pro) due back from AG on petitions	Legal
6/19/2020	MUST HAVE APPROPRIATION BY THIS DATE	
6/23/2020	Final english copy to translator #1 to be set in foreign languages	Communications
6/30/2020	Award Printing/Mailing Contract	Budget
6/30/2020	Award Newspaper Contract	Budget
6/30/2020	ALL CONTRACTS AWARDED	Budget
6/30/2020	Translation #1 due back	Budget
7/1/2020	If ready, send English only pamphlet to printer	Budget
7/1/2020	Proof sent to translator #2	Budget
7/8/2020	Translations from translator #2 due and return to #1 for corrections	Budget
7/13/2020	Final page count to the printer	Budget
7/17/2020	Corrected, final foreign language pamphlets due from translator #1	Budget
7/20/2020	Distribution of final proof with foreign languages for review	All
7/28/2020	Corrections on final proof to translator	Program Staff

7/29/2020	Kasper brief due to Supreme Court	
7/29/2020	Final proof with foreign languages from translator	
8/3/2020	Final draft completed for newspapers in all languages	Prog/Communications
8/3/2020	Final english draft to State Library for Braille translation	Library
8/3/2020	Final english draft sent for audio translation	Communications
8/4/2020	Reply brief due from Petitioners to Supreme Court	
8/11/2020	English/Polish pamphlets to SOS printer (3,000 copies)	Communications
8/11/2020	Final pamphlet proof to printer in all languages	
8/12/2020	Final proof from printer to Programs Programs	
	ISBE MUST CERTIFY ALL PROPOSED AMENDMENTS TO COUNTY	
8/21/2020	ELECTION OFFICIALS	
8/27/2020	Audio recording due from IIS	
9/1/2020	Pamphlets delivered from printer to mailing service and Index	
9/7/2020	Prepare legislative FAQs (see 2014 version)	Program Staff
9/9/2020	ALL WORK ON NEWSPAPERS MUST BE COMPLETE & SENT TO IPA	
9/11/2020	Pamphlets ready for delivery to post office from mail service	
9/14/2020	Final review of legislative FAQs	
9/21/2020	Final Proof from newspapers due	Program Staff
9/21/2020	Start shipping pamphlets to post office	
9/24/2020	Post Const Amendments (all forms) on cyberdrive	Program Staff
9/28/2020	Last shipment of pamphlets to post office	
9/28/2020	Send e-mail to legislators for pamphlet requests	Legislative
9/28/2020	Copy of Legislative FAQs to legislative affairs	Program Staff
9/28/2020	First week of newspaper publication	
10/2/2020	Extra pamphlets to ILSOS	
10/3/2020	ALL PAMPHLETS MUST BE IN THE MAIL	
10/6/2020	Extra pamphlets to DSD and legislative offices	Program/Legislative
10/6/2020	Extra pamphlets to libraries if needed	Program/Library
10/6/2020	Extra pamphlets to county officials	Program Staff
10/12/2020	Second week of newspaper publication	
10/19/2020	Third week of newspaper publication	
11/3/2020	ELECTION DAY	