IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

L & W CORPORATION, et al., Plaintiffs, vs. BOARD OF ELECTIONS OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, et al., Defendants.	CIVIL ACTION NO. 89-957 **ORDER**

A hearing was held on October 18, 1989 to determine various legal issues that pertain to the popular initiative petition submitted to the certifying officer pursuant to Article XVIII of the Constitution and the Rules and Regulations of the Board of Elections promulgated on June 19, 1983.

ISSUE I
What are the number of valid signatures required on the petition?

Article XVIII, Section 4 a) of the Constitution states that the petition shall be signed by at least fifty percent of the persons qualified to vote in the Commonwealth. There is no guidance given as to when that percentage is computed. The

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regulations provided a date which is 120 days prior to the general election. Translated into numbers and a date, this means that on July 7, 1989, the proponents of the initiative had to produce 4,166 valid signatures. They failed to do that.

On August 16, 1989, the certifying officer notified the proponents that there were not enough signatures and this triggered Section 3-105 of the regulations which gave the proponents an additional five days to file signatures to satisfy the constitutional requirements.

On August 21, 1989, the proponents filed additional signatures with the certifying officer. Between July 7, 1989 and August 21, 1989, the Board of Elections registered additional voters so that by August 21st, 50% of the persons qualified to vote in the general election had risen to 4,379. The government concedes that there were not that many valid signatures in the August 21st submission Gut that there were at least 4,166.

The plaintiffs argue that if the 4,166 number is used, only 47.5 percent of the qualified voters on the 21st of August signed the petition. This percentage is computed by dividing 4,166 by 8,757 which is the total registered voters on August 21, 1989.

The Government asserts that July 7th was the cut-off date established for determining the 508 figure and the 4,166 figure remains even though it may take longer for the proponents to obtain the required number of signatures.

In resolving this issue, the court is mindful of the proposition that the benefit of the doubt should be extended to the proponents of the measure and mere technicalities should not prohibit the submission of the initiative to the voters.

However, what is raised here is not a technical nor minor obstacle but a constitutional requirement.

If the Board of Elections' regulations had established July 7th as the one and only date for submission of signatures, this matter would be simple. Both the date and manner of computing the number of signatures required would be easily ascertained. The "second chance" regulation, Section 3-105, introduced uncertainty as to the date and manner of arriving at the required signatures. The proponents must accept the good (the second chance) with the concurrent responsibility (to obtain at least 50% of the qualified voters on the second submission date).

In this case, a total of six weeks expired from the original cut-off date (July 7th) to the second submission date (August 21st). If the regulations were able to freeze in time the number of needed signatures but allow a significant time lapse for submission of signatures when registration of voters is increasing, the constitutional requirements could be easily circumvented.

Voter registration numbers are in a constant state of flux. It is reasonable, indeed necessary, to establish a date certain for computing the number of signatures necessary to

comply with the Constitution. The two factors, date and number of qualified voters, must coincide. If one is changed, the other must be likewise altered. Once the July 7th submission date was changed to August 21st, so did the number of needed signatures dependent on the registered voters on that date.*

ISSUE II
Who can withdraw their signatures?

A certain number of individuals desired to withdraw their signatures after certification. One group asserts they, through a representative, requested the certifying officer to withhold certification so they could submit their withdrawals but the certification proceeded. The court rules that the certifying officer could and did perform his task of issuing

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* Certain assertions have been made by the plaintiffs that the certifying officer, the Attorney General, and his staff engaged in improper activities in the certification process. In the heat of litigation battle, assertions are sometimes easily made but never proven. Since this case is disposed without reaching the factual determination of all the claims of the plaintiffs, the court does not, nor can it, find one way or the other as to the merit of all the claims. The court does note, however, that from the very nature of the certification process, the Attorney General and his staff were burdened with a most tedious, demanding, and stressful task which had to be performed in a relatively brief period. There is nothing in the record to suggest to the court that this task wasn't approached in a completely professional manner. The magniiude of the task confronting the Attorney General is easily demonstrated by the massive effort put forth by the plaintiffs in their review of the work of the staff of the Attorney General. When over 4,000 signatures have to be verified in a short span of time, it. is not surprising that different results will occur. This does not automatically translate into bad faith or fraud.

his certification and did not need to wait for any withdrawals. The court finds no bad faith or improper conduct in this regard.

As to those persons who claim the initiative was misrepresented to them, the court rules that after certification one can move to withdraw his/her signature upon a showing of fraud.

ISSUE III

Do the regulations mandate the insertion of the printed name, date **of** birth or voter registration number, mailing address, voting district, and date of signature?

Section 3-103 provides that the signature pages shall contain a place for the signing party to provide this information. The regulation does not, per se, state that the information must be included to be able to count the signature. Since the signatures are the vital data, the other information, if not mandated, is simply for the ease of identifying the person signing the petition. This does not rise to a regulatory or constitutional requirement. Once the space is provided on the petition for the identifying information, all legal requirements in this reqard have been met.

ISSUE IV

May a circulator of a petition sign and date the affidavit required, prior to the execution of the petition by a voter?

Section 3-104 of the regulations require the circulator of a petition to submit with the petition an affidavit to the

effect that the circulator obtained the signature(s), that he/she witnessed the signing, and that the person signing was in fact the same person. Additionally, the circulator must attest that the full text of the initiative was attached to the signature page. This is a basic and essential part of the signature gathering process. It would defeat the purpose of Section 3-104 and go to the very integrity of the petition gathering process to allow the execution of the circulator's affidavit prior to the voters signing the petition. Any such affidavits and the signatures accompanying them shall not be counted.

ISSUE V

May a circulator witness his/her own signature?

For the same basic reason as stated with respect to ISSUE IV, this procedure is not permissible. It is implicit in Section 3-104 as well as the need to have signatures independently attested to that a circulator cannot witness his/her own signature.

ISSUE VI

May a person 17 years of age, but who will be 18 on election day, sign the petition?

The persons that fit into this category are qualified voters because they can vote on November 4, 1989 an6 therefore eligible to sign and he counted on the initiative petition so long as they have gone through the voter registration process. 1 CMC § 6201.

With the above issues determined, it is concluded that the petition in support of the initiative to ban most forms of gambling in the Commonwealth has failed to garner the constitutionally required number of signatures.

Consequently,

IT IS ORDERED that the Board of Elections, its agents, and officers, are enjoined from submitting the anti-gambling initiative to the electorate on November 4, 1989.

Dated at Saipan, MP, this 19th day of October, 1989.

Robert A. Hefner, Presiding Judge