

**CITY OF BATAVIA
100 N. ISLAND AVENUE
BATAVIA, IL 60510**

**CALL AND NOTICE OF MEETING OF THE BATAVIA ELECTORAL BOARD
ON FRIDAY, JANUARY 13, 2017, AT 4:00 P.M.
IN THE CITY HALL COUNCIL MEETING ROOM**

**Bill McGrath and Donetta McGrath
Petitioners-Objectors**

v.

**Sylvia Keppel
Respondent- Primary Proponent of Referendum Petition
No. 17 COB-EB 1**

**Call and Notice of Electoral Board Hearing
In the City of Batavia**

RE: Objectors' Petition - Bill McGrath and Donetta McGrath,
Petitioners/Objectors v. Sylvia Keppel, Respondent/Primary Proponent of
Referendum Petitioner dated, January 3, 2017

This Call and Notice of the Electoral Board Hearing in the matter of the Objectors' Petition of McGrath v. Keppel is being made this 10th day of January, 2017, by the undersigned, Alan Wolf, the Chair of the Batavia Electoral Board, having received the objectors' petition and Primary Proponent of the Referendum papers on the same date by hand delivery by the local Batavia Election Authority. The Electoral Board Hearing in the above referenced matter is hereby called on the date of **January 13, 2017, at 4:00 pm at the Batavia City Council Meeting Room at 100 N. Island Ave., Batavia, Illinois 605410**, being no more than five (5) days from the date of receipt of the objectors petition and nomination papers as required by the Illinois Election Code.

This Call of the Electoral Board Hearing in the above referenced matter is being made to the Primary Proponent of the Referendum, Sylvia Keppel at 1420 Becker Ave., Batavia, Illinois 60510, the objectors, Bill McGrath and Donetta McGrath at 407 Elm Street, Batavia, Illinois 60510, and to each of the Electoral Board Members, being: Chairman, Alan Wolff at, : 916 Blair St., Batavia, Illinois 60510, Dave Brown at, 1163 Millview Dr., Batavia, Illinois 60510, and Christine Simkins at 1432 Clybourne St., Batavia, Illinois 60510.

Included with this call of the Electoral Board Hearing is the proposed Electoral Board Rules that will govern the proceedings as adopted and/or amended by the Electoral Board, the Objector's Petition filed on January 9, 2017, and the Referendum Petition filed by the Primary Proponent of the Referendum on January 3, 20167, having already been hand delivered to the Objectors, the Primary Proponent of the Referendum Petition and the Electoral Board members previously. The Electoral Board has the Authority and may appoint a hearing officer to conduct the hearing. The Electoral Board or Hearing Officer (Presiding Authority) shall have the authority to issue subpoena's grant short continuances and rule on all motions and objections to the presentation of evidence. All parties, the objectors and Primary Proponent of the Referendum, have the right to be represented by legal counsel. All parties shall be required to file an appearance and proceed at the initial hearing on the date given herein.

/s/ Alan Wolff
Alan Wolff

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No. 17 COB-EB 1

Electoral Board Meeting Agenda

1. Call the Meeting to Order
2. Public Comments
3. Adopt the Rules of Procedure
 - A. Ask for comments
 - B. Deal with comments
 - C. Adopt rules as presented or amended
4. Announce the case of McGrath v. Keppel, Case No. 17 COB-EB 1
5. Appoint Hearing Officer
6. Ask for appearances from the parties and proofs of service
7. Preliminary Matters/Motions
8. Receive Evidence
9. Deliberation
10. Adjournment

ELECTORAL BOARD RULES FOR THE CITY OF BATAVIA

1. **APPEARANCE.** A candidate or objector may appear before the Board in person or by an attorney at law admitted to the bar of the Supreme Court of Illinois. The party must file a written appearance listing his/her name, address, and telephone numbers. The Board highly recommends that parties provide a mobile number and e-mail address, if possible. The parties shall be reasonably available by telephone during the day and night to receive Board communications during the course of the proceedings. Because of the expedited nature of the hearings, failure to monitor or be available at the numbers provided may result in waiver of rights. A party may be declared in default if all of the requirements of service as specified in the Election Code have been followed. The candidate and objector shall be deemed to have consented to the service of process at the addresses listed in the candidate's nominating papers and the objector's petition, respectively, unless and until a different address for service is given on the appearance form.

2. **HEARING DATE.** On the date set in the Call, both the objector and the candidate may be required to proceed to present their cases. The Board will not grant any continuance, except for good cause shown, or except on the Board's own direction.

3. **ELECTORAL BOARD POWERS.** The Electoral Board, or a hearing officer designated by the Electoral Board, (hereinafter, the Presiding Authority) shall conduct and preside over all hearings and take necessary action to avoid delay, maintain order, ensure compliance with all notice requirements, and ensure the development of a clear and complete record. The Board shall have all the powers necessary to conduct a fair and impartial hearing, including, but not limited to the following:

- (a) administer oaths and affirmations;
- (b) regulate the course of hearings, set the time and place for continued hearings, set times for filing of documents, provide for the taking of testimony by evidence deposition if necessary, and in general conduct proceedings according to the recognized principles of administrative law and these rules;
- (c) examine the witnesses and direct the witnesses to testify, limit the number of times any witness may testify, limit repetitive testimony, and set reasonable limits to the amount of time that each witness may testify; the Board members and the Board's attorney may also examine witnesses;
- (d) rule on offers of proof and receive relevant evidence;
- (e) direct parties to appear and confer for the settlement or simplification of issues and otherwise conduct prehearing conferences;
- (f) dispose of procedural requests or similar matters;
- (g) require the parties to prepare written briefs and proposed findings of fact and conclusions of law;

- (h) consider and rule on all motions presented in the course of the proceedings;
- (i) consider such evidence as may be submitted, including, but not limited to, documentary evidence, affidavits, and oral testimony;
- (j) prepare a record of its proceedings; the Executive Assistant to the City Administrator, or his/her designee, shall serve as ex officio Clerk of the Board and keep minutes of the Board's proceedings;
- (k) enter any order that further carries out the purpose of these rules; and
- (l) appoint a hearing officer and delegate the items (a) through (h) and (k) to the hearing officer to conduct and preside over the hearing.

4. **CASE MANAGEMENT CONFERENCE.** The Presiding Authority may direct the parties or their attorneys to appear at a conference with the Presiding Authority, Board and/or its attorney at any time, for the purpose of considering the following:

- (a) the formation and simplification of the issues;
- (b) the possibility of obtaining admissions of fact and genuineness of documents to avoid unnecessary proof;
- (c) the limitation of the number of witnesses;
- (d) the preparation and submission of written briefs and proposed findings of fact and conclusion of law;
- (e) scheduling of hearings on motions;
- (f) a proposed plan and schedule of discovery; and
- (g) any other matters that may aid in the disposition of the objections.

5. **ORDER OF PRESENTATION.** The Presiding Authority will first hear preliminary motions in the nature of a motion to dismiss under §2-615 of the Illinois Code of Civil Procedure. The Presiding Authority may, in its discretion, reserve rulings on such motions pending further hearings.

The objector shall present his/her case-in-chief after the consideration of such preliminary motions. The objector shall bear the burden of presenting evidence sufficient to support a decision sustaining the objection. The applicable evidentiary threshold on issues of fact shall be a "preponderance of the evidence." The Presiding Authority, in its discretion, may entertain a motion for a directed finding at the close of the objector's case-in-chief. After the conclusion of the objector's case-in-chief, the candidate may present his/her case-in-chief.

At the close of candidate's case-in-chief, the objector may offer a case in rebuttal. Matters in rebuttal will be strictly limited to matters raised by the issues then before the Presiding Authority. Surrebuttal is disfavored and may be allowed by the Presiding Authority only upon showing of compelling grounds.

In the interest of brevity, the Presiding Authority may terminate evidence or argument on repetitive matters or matters plainly beyond the scope of the case. The Presiding Authority may refuse to hear, with or without an objection of a party, evidence or argument it determines not germane to the electoral board hearing.

The objector need not adduce proof that the objector is a registered voter within the political subdivision at issue. The candidate may raise the lack of the objector's standing or eligibility as an affirmative defense in his/her own case-in-chief. The objector's motivation or personal knowledge of the factual basis for the objections is not relevant to the Presiding Authority and shall not be considered.

The Presiding Authority may alter the order of proof in order to expedite the hearing.

6. **RECORD CHECKS.** The Presiding Authority, in its discretion and when applicable, may order a record check to be conducted. The record check shall be used to initially determine the validity of most standard objections to individual signatures and circulators. At the record check, election documents and objections shall be compared with the permanent voter registration records of the local election authority by employees of the election authority acting under the direction and supervision of the Presiding Authority, if possible, and if not, then by the Board or its agent(s) or designee(s). If the records of the election authority are stored on a computer database, the records check may utilize the computerized records in lieu of or in addition to the originals. The record check shall determine the validity of the following general types of objections:

- (a) whether the signer of an election document is a registered voter at the address shown beside his/her signature;
- (b) whether the signature on an election document is genuine;
- (c) whether the signer of an election document is registered at an address within the relevant political subdivision or district involved; and
- (d) whether a petition signer signed the document more than once.

The objector and candidate shall have the right to have an attorney and one designated representative (watchers) present at the record check. If the designated representative is the objector or candidate, that party shall not be entitled to any additional watchers other than the attorney. The record check will proceed at the scheduled time. The failure of any party to appear at the comparison shall not delay nor affect the validity of the record check. The results of the record check shall be noted by the election authority's clerks on a form provided by the Presiding Authority. Failure or refusal of the watcher to sign the form does not affect the accuracy of the form. Blank copies of the form used shall be furnished to each watcher on request, so that the watcher may note the results of the comparison. The election authority or the Presiding Authority's representative(s) may order a watcher removed for misconduct that materially hampers the businesslike proceedings of the record check. If a watcher is removed, the record check will proceed immediately without that watcher.

A watcher may orally object to the findings of the clerk at the time the clerk enters his/her ruling on the form. This objection shall also be noted by the clerk. FAILURE TO OBJECT TO A

FINDING OF THE CLERK AT THE RECORD CHECK SHALL BAR THE PARTY FROM OBTAINING A CHECK OF ANY OTHER ELECTION AUTHORITY RECORDS RELATING TO THAT SIGNATURE AND ALSO FROM PRESENTATION OF ANY FURTHER EVIDENCE OR ARGUMENT BEFORE THE PRESIDING AUTHORITY WITH RESPECT TO THE ISSUE CONSIDERED AT THE RECORD CHECK.

7. MASTER/COMPUTER FILE CHECK — REQUIREMENTS AND TIMING. If the records have not already been examined during the initial record check, a party may request an examination of the master file registration records or computerized registration records relating to any name reviewed at the record check that the party objected to. (A party dissatisfied with the results of the record check may also proceed immediately under Rule 8 without requesting a file check under this Rule.) This request is limited to cases in which an objection has been sustained because the election document signer was not found to be registered or was “not in binder.” The party must make this request no later than 24 clock hours following the ruling on the last signature reviewed at the record check. The requesting party must file a separate 3 × 5 index card containing the printed name and address of each name to be checked in the master/computer file, as well as the sheet and line number of the name on the petition. These cards must be filed with the election authority that conducted the record check. Only one name and address shall be included on each 3 × 5 card. Upon timely receipt of the cards, the election authority or the Board’s representative shall examine the master and/or computer file for each name submitted in a manner similar to the procedures used pursuant to these rules for a record check. The election authority or the Presiding Authority may order a watcher removed for misconduct that materially hampers the businesslike proceedings of the master/computer file check. If a watcher is removed, the master/computer file check will proceed immediately without that watcher. FAILURE TO OBJECT TO A FINDING OF THE MASTER/COMPUTER FILE CLERK SHALL BAR THE PARTY FROM PRESENTATION OF ANY FURTHER EVIDENCE OR ARGUMENT BEFORE THE PRESIDING AUTHORITY WITH RESPECT TO THE ISSUE CONSIDERED BY THE CLERK.

8. TIMING OF OBJECTIONS TO RECORD AND MASTER/COMPUTER FILE CHECKS. Any party may object to the results of the record check and/or the master/computer file check by filing a written request for further hearing before the Presiding Authority. This request shall indicate the specific name(s) objected to by sheet and line of the election document and the ground(s) for the request. This request shall be filed no later than 48 clock hours following the clerk’s ruling on the last signature examined at the master/computer file check, if one is requested. If no master/computer file check is requested, then the request shall be filed no later than 48 clock hours after the ruling on the last signature at the record check.

The request shall be filed with the Board and served on the other parties to the case. No request will be considered if the party did not make an objection to the election authority’s finding at the time the election authority’s clerk entered his/her finding on the form.

At a Rule 8 hearing before the Presiding Authority, the ruling made by the clerks shall be deemed valid, and the moving party shall have the burden of demonstrating that the ruling was incorrect by a preponderance of the evidence.

9. SUBPOENAS. At the request of any party, the Chair may issue subpoenas requesting the attendance of witnesses and subpoenas duces tecum requiring the production of such books, papers, records, and documents as may be evidence of any matter before the Presiding Authority.

The party shall serve the subpoena, with the appropriate fee, in the same manner as for subpoenas used in the Circuit Court of the county in which the Board sits.

If any person served with a Board subpoena fails to honor it, the Board may seek judicial enforcement of the subpoena as provided by law.

10. **GENERAL CONSIDERATIONS.** The Presiding Authority will consider only objections to the objector's petition and to the nomination papers. All arguments and evidence must be confined to those matters. Any party may submit arguments in writing. The objector's petition may not be amended. The Presiding Authority will be governed by applicable Illinois statutory and caselaw.

11. **EVIDENCE.** The Board will consider such other evidence as may be submitted, including, but not limited to, other documentary evidence, affidavits, and oral testimony. Because the Presiding Authority must consider objections within a limited time, extended examination and cross-examination of witnesses will be subject to the discretion of the Presiding Authority. The Presiding Authority will, when practicable and appropriate, follow (but will not be bound by) rules of evidence that prevail in Illinois courts of law. The Chair, with the assistance of the Board's attorney, shall make all necessary evidentiary rulings, subject to appeal to the entire Board. The Board may overrule the Chair's rulings on such evidentiary matters by a majority vote of the Board. If a hearing officer is appointed, the hearing officer shall make those evidentiary determinations without the involvement of the Chair, Board or the Board's attorney.

12. **FAILURE TO FOLLOW DIRECTIVES.** Failure to adhere to these Rules shall be grounds for dismissal of the objector's petition or default of the candidate.

13. **FINDINGS.** The Board shall state its findings in writing, noting the objections that have been sustained. The Board shall not default a candidate until after a finding that the objections constitute sufficient grounds for removal from the ballot.

14. **GENERAL PROCEDURES.** For matters not covered herein, the Presiding Authority will generally follow rules of practice that prevail in the Circuit Court of the county in which the board sits and the Illinois Code of Civil Procedure. Because of the nature of these proceedings, the Presiding Authority shall not be bound by such rules in all particulars. Mandatory discovery is not permitted. The Presiding Authority rules of order shall be ROBERT'S RULES OF ORDER, NEWLY REVISED, 11th EDITION (Perseus Publishing, 2011).

The Board shall provide a certified court reporter for all hearings, but not for record or master/computer file checks. The Board may waive this requirement at any time without notice. The Board will not cause a transcript to be prepared unless it needs a transcript for a particular purpose. If a petition for judicial review of the Board's decision is filed, the Board will provide a record to the court as provided by the Administrative Review Law. Any party may purchase a transcript from the court reporter at his/her own expense.

The Board designates Kevin G. Drendel, and/or any attorney of the Drendel & Jansons Law Group, as its attorney. The Board's attorney is authorized and directed to defend the Board's decision at the Circuit Court level if a petition for judicial review is filed and to defend the Board in any litigation that may arise. The Board directs the appropriate officials of the Board's parent governmental body to pay the reasonable and necessary costs of the Board's operation, including attorneys' fees, court reporting fees, and similar expenses, from its general funds.

15. **SESSIONS.** After the Board convenes, it will be in session continuously until all objections are disposed of. The Board may recess from time to time.

16. **NOTICE OF FILING AND SERVICE.** Any party filing any document must give notice of that filing and a copy of the document being filed to all other parties to the case. If a party or his/her attorney has a fax machine or document scanner, service may be made to the fax machine or by e-mail transmission. Service shall be effectuated in a manner reasonably calculated to provide actual and prompt notice to the party. The party filing the document shall file a sworn Proof of Service with the Presiding Authority. The Proof of Service shall set forth the time, date, and manner of service. The Proof of Service shall be filed with the Executive Assistant to the City Administrator or his/her designee. All documents shall be filed with the Executive Assistant to the City Administrator or his/her designee during regular office hours, or with the Board in open session.

Copies of any documents filed with the City Deputy Clerk should also be sent by hand delivery, e-mail, or facsimile transmittal to the Electoral Board attorney, Kevin G. Drendel, Drendel & Jansons Law Group, 111 Flinn Street, Batavia, IL 60510; email: kgd@batavialaw.com; fax: (630) 406-6179.

Adopted January _____, 2017:

ELECTORAL BOARD

Chair

Member

Member