

September 14 Court Ruling from Ed Gassman

As most of you probably know, four Divisions (Eastern, European, Pacific NW, and Rocky Mt) supported the issuance of a Petition. These four were recently joined by a fifth Division (Intermountain). The purpose of the Petition was to allow members the opportunity to vote on changes to the Articles of Incorporation that effect the nomination process, election process, National Board member term limits, and member rights. If you are unfamiliar with the details of the Petition and changes to the Articles you can view it at <http://www.nsprmd.org/>.

The National Board was notified on 28 July 05 that positive Petition responses had exceeded the 10% required by statute (2,500 required; we had over 3000 responses in only 4 days, and now have about 4400 positive responses from the 8500 emails we sent out). The lawyer for the National Board, notified the lawyer for the members' petition on 19 Aug 05 that the National Board would not grant a member vote. On 31 Aug 05 Counsel for the members filed an action with the Colorado District Court to interpret if the National Board must grant a member vote as requested by the Petition. The Court granted a very quick hearing for 14 Sept 05.

At that hearing the Court issued a preliminary injunction directing the National Board to suspend all activity relative to upcoming Board elections. This ruling was based by the Court on the fact that the Court believes, that a final hearing on a member vote will likely result in a favorable decision directing that member vote. The Court believed that dues paying members do have a right to be involved in changing the Articles of Incorporation. The Court issued the injunction because if a vote of the members is successful, then the process for the upcoming Board elections would change. The Court agreed with Counsel for the members, that to have an election under existing procedures would be unfair to the members.

Based on this strong Court finding on behalf of the Petition and issuance of the preliminary injunction, we hope the National Board will now allow the members to vote without spending more of the members' dues on more court fights and without the need for further Court intervention.

Ed Gassman
Rocky Mountain Division Director

Petition Process Update from Ed Gassman

September 5

Each of the five Divisions supporting the petition process may have slightly different pressures/reasons but they all believe it is the most constructive way of having members involved in the governance of NSP. It is important to note the petition just covers the three fundamental issues that all the Division Directors agreed needed to be fixed prior to the Annual Board Meeting in June.

What Happened When the Petition Was Published

- The petition was made available via email to a little over 8,000 members. Within four days we had 3,000 positive responses in support of the petition. There are 24,963 voting NSP members--so 2500 is approximately 10%.

- Rick Hamlin sent an email to Chairman Sachs on July 28th notifying him of this.
- Ed Gassman sent a letter the same day to Steve Over attaching Rick's email.
- On August 1st the National Board issued their email response to the petition.
- On August 3rd Ed Gassman had a nice conversation with Steve Over where they mutually agreed that if the National Board agreed to a member vote, then they would work together to facilitate the process. On the other hand if the Board refused to grant a vote, then they would step back and allow outside counsel to handle any legal arguments.
- On August 19th counsel for NSP notified the member counsel that had helped prepare the petition that the National Board would not grant a member vote in response to the petition.
- The Board's position of refusing to allow a vote has no legal precedent in Colorado. Hence, there is no record of a non-profit ever having refused to grant a vote. This creates a unique legal situation as there are no previous court decisions to provide guidance.
- Legal counsel for the petition offered to include any proposals from the Board on the same ballot as the petition proposals as well as meet with an agreeable arbitrator. These seemed like very fair win-win proposals.
- Unfortunately no response was received to the above offers so member counsel submitted the issue to the Jefferson County District Court on August 31st for guidance. An initial hearing was scheduled for September 14, 2005.
- Of significant concern to member counsel was that the normal fall vote using the current *no vote is a yes vote* should not take place before the vote on the petition, as the member vote could change the present voting procedures.
- Member counsel has indicated they would still honor the previous offers but due to timing issues indicated above needed to initiate the request to the Court.
- Apparently the Court believes quick resolution is important. A normal hearing date is 6 months to 1 year after filing--not the 2 weeks granted.
- It is important to note there is no issue as to the legality of the petition itself--rather the National Board has taken the position that for various reasons they are not bound by the petition to grant a member vote.

Where Do We Go From Here

- If the Court rules there must be a member vote, counsel will work to have it conducted quickly this fall.
- If the Court rules that the current petition does not require the National Board to have a member vote, then member counsel will redo the petition in accordance with Court direction and it will be immediately resubmitted to the members.

General Comments

The National Board's refusal to grant a vote has taken members who were on the fence and pushed them to a negative position. Ed Gassman has received hundreds of emails to this effect. Even some saying several patrols around the country have decided not to re-register with NSP.

It doesn't seem to make legal sense for the Board to fight a member vote--at best it appears it just delays a few months a member vote--probably why this has never happened before.