

STATE BOARD OF ELECTIONS BOARD MEETING

Monday, June 15, 2009

MINUTES

PRESENT: Albert S. Porter, Chairman
Bryan A. Schneider, Vice Chairman
Patrick A. Brady, Member
John R. Keith, Member
William M. McGuffage, Member
Wanda L. Rednour, Member
Jesse R. Smart, Member
Robert J. Walters, Member

ALSO PRESENT: Daniel W. White, Executive Director
Steve Sandvoss, General Counsel
Rupert Borgsmiller, Assistant Executive Director
Darlene Gervase, Administrative Assistant II

Chairman Porter called the meeting to order at 10:31 a.m. with all members present and led everyone in the pledge of allegiance. Present via telephone were: Vice Chairman Schneider (at 11:57 a.m.), Members Brady and Rednour. Present via video conference were Members Smart and Walters in the Springfield office.

As is the Chairman's policy to accommodate guests, the Chairman called matters out of order. Mr. White requested that all parties identify themselves by stating their name, the case name, and number for the benefit of the court reporter.

The Chairman called Item 3.a.1., a Motion for Reconsideration in the matter of *SBE v. Illinois Academy of Physicians Assistants PAC*, S6880, 08GE042. Member Keith moved to grant the Motion. Member McGuffage seconded the motion which passed by ayes in unison and none opposed. Ms. Kari Catton, Executive Director for the respondent, was present in the Springfield office. General Counsel Steve Sandvoss said the PAC filed the Motion to Reconsider the decision made by the Board at its May 18th meeting to assess a \$1400 civil penalty because it was unable to attend the meeting and present an explanation. Ms. Catton indicated that the report was delayed through no fault of their own as delivery by the U.S. Postal Service took 9 days. Mr. Sandvoss' reaffirmed his recommendation that the appeal be denied for lack of an adequate defense and concurred with the hearing examiner's recommendation to apply the \$1400 civil penalty. Member Keith moved to deny the appeal. Member Brady seconded the motion which passed 5-3 with Members Smart, Walters and Chairman Porter voting against the motion.

The Chairman recognized Mr. Sylvio Bartolo in item 3.a.6, *SBE v. Int'l Union of Operating Engineers Local 150 State & Local Area PAC*, S2759, 08AP34. Mr. Sandvoss explained that the contributions in question were a percentage of the members' dues and no individual member's amount was \$500 or more. As the Labor Union makes donations strictly from the Union's treasurer, it is not covered by the Illinois Campaign Disclosure Act, no penalty should be assessed and the Appeal granted. The General Counsel concurred. Member Smart moved and Member Keith seconded a motion to grant the appeal. The motion passed by ayes in unison and none opposed.

The Board continued with a motion by Member Smart to grant the appeals in items 3.a.2, 3, 4,5,7,8,9,10 and 11. Member Rednour seconded the motion which passed by ayes in unison and none opposed. Appeals are granted in: 2) *SBE v. Westmont Village Committee*, L12726, 09DS053; 3) *SBE v. Citizens for Linda Painter*, L14278, 08JS097; 4) *SBE v. Citizens for Responsible Garden Prairie Government*, L14492, 08JS230; 5) *SBE v. Sangamon County Democratic Central Committee*, S481 08AG034; 7) *SBE v. Illinois Cable PAC (Comcast Cable)*, S3482, 08AG028; 8) *SBE v. Friends of George P.*

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Shadid, S5785, 08AG039; 9) SBE v. Citizens for Bomke, S6377, 08AG040; 10) SBE v. Downers Grove Township Republican Organization, S8211, 08JS156; and 11) SBE v. Friends to Elect Eugene "Gene" Staples, S9751, 08JS240.

The Chairman welcomed Mr. David Morrison, Director of the Illinois Campaign for Political Reform and 4 summer interns.

Chairman Porter called Mr. Don Vopalensky, the State's Certification Manager with Premier Election Solutions. Mr. White was asked to summarize item 2.b. of the Agenda. He indicated that this matter was on the agenda at the May meeting for discussion that centered around Article 24 of the Election Code that requires voting systems identify ballots that do not have votes cast for state offices. This had been discussed earlier at our advisory meeting and how it would play out in the 2010 primary election. He said that the Board directed him to contact Premier and find out where they are at on this issue and as a result sent a letter which is contained in the board packet. During a conference call meeting among Dianne Felts, Don Vopalensky and Kathy Rogers of Premier, Premier Staff agreed to put into writing their responses and we appreciate the responses and the efforts of Mr. Vopalensky and Ms. Rogers. Mr. Vopalensky noted that the board was aware that vendors have gone through the testing since 2006 and this process has been taking numerous years because it is under the 2002 standards. He said they have a system in place that rejects all or nothing and what Illinois requires is something that is not what we do. This is not an easy change for us to make. If someone did not vote or over voted will have to be identified by a poll watcher and given a new ballot. Member Keith asked if there is a kickback for undervoting, does the equipment specify which race or races are undervoted. Mr. Vopalensky answered yes, that the LCD screen will displace an undervote – if the voter did not vote for 5 races, it would kick it back 5 times. But, Premier has an extra that is required by statute. Member Keith asked if there could be instructions to say there is no need to advise the voter that there is an undervote unless it is one of the statewide races, and, if that's something the Board could authorize. Mr. Sandvoss indicated that a directive by our agency might be more appropriate than authorization county by county. Mr. Vopalensky confirmed that the feature could be turned off for local elections. Champaign County Clerk Mark Shelden was recognized by the Chairman. He added that he has posted on his web site, champaigncountyclerk.com, a link to the questions the other clerks have and a compilation of letters and administrative regulations. He added that the only other state, New York, requires it and they have not had an election run under this provision. No other states have it and other states have specific provisions against it. Director White said that he expected letters from various election officials regarding this concern, but they had not yet been received. He offered to forward them to the Board Members, Mr. Sandvoss and Ms. Felts. Mr. Keith asked about financial costs passed onto the customers, the counties. Mr. Vopalensky answered that it would be an estimated 2–3 months to make these changes; another 2–3 months for testing and then it would take extensive development costs at about one-quarter million dollars, but Mr. Vopalensky could not guarantee any figure. As it is unique to Illinois, they would charge the 60 counties in Illinois because they would have to physically touch the systems incurring travel, labor, screen and have new software for Illinois' 3500 optical scans. The costs for EAC testing is already at \$4 million and that is spread between all of our customers, however only one system has gone through 2002 standards and then it is a whole new game again. Ms. Felts approved the system as long as the General Counsel believes it complies with the law and added that very long lines resulted in kicked back under votes. Bill Barrett, a Liberty representative, was introduced.

Executive Director White reported that the General Counsel and he reviewed minutes of the executive sessions from October 15, 2007 through March 16, 2009 for confidentiality issues. The necessity of confidentiality exists to closed preliminary cases as follows: February 17, 2009 regarding *Garcia v. Cicero Voters Alliance*; February 23, 2009, *Cundari v. Cicero Equality Committee*; and March 9, 2009, *Swiss, et al., v. Roupas and Wiggins v. Foster*. All other minutes may be released. However, verbatim recordings require specific authorization. In the future, Messrs. White and Sandvoss will review closed meeting minutes every April and October. Member Keith moved to release minutes of executive session meetings from October 15, 2007 through March 16, 2009 with the exception of *Garcia, Cundari, Swiss and Wiggins*. Member Smart seconded the motion which passed unanimously by ayes in unison and none opposed.

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Mr. White asked for approval of the Minutes from the May 8 special meeting and the May 18 regular meeting. Member Keith so moved and Member Smart seconded to adopt the minutes as presented. The motion passed unanimously by ayes in unison and none opposed

Mr. White reported that his brief update of legislation and legislative liaison Cris Cray's report categorizing the issues before the legislature; a listing of election related bills by category; and the status of bills were included in the packet. He indicated that HB07, ethics legislation, and SB52 business registration provisions will be summarized. He added that a budget was passed, but is it described as a temporary or stop gap and the Governor would like to see additional revenues so talk continues. Mr. White thanked Ms. Cray for all the long hours she puts in and added that the legislature did not adjourn on the 31st until well after midnight. She added that no bills have been sent to the Governor's desk as of this morning. Ms. Cray advised the board that hearings around the state for redistricting will begin in July and continue all summer. She expects to write trailer bills for SB51 and HB07 which the General Assembly has already agreed to and understands our concerns so we know they are technically written and answers the questions correctly. Mr. Rupert Borgsmiller, Assistant Executive Director and Director of Campaign Finance, detailed the changes in SB51 and noted the need for clarification and solutions. He indicated that electronic registration is close to completion and an agreement with the Department of Revenue matches FEIN numbers, individual tax number and social security numbers to ensure the registrations are real. In SB51, the term "minor children" was deleted from affiliated persons, which was a big concern. The Governor has not yet signed the bill. Mr. Borgsmiller said that over 5600 business entities have filed with us, but we don't know how many have existing contracts or are bidding on a contract. Discussion was had among the Board. General Counsel Sandvoss and Assistant Director Borgsmiller will present a summary for the next meeting. Mr. White was asked to prepare a contingency plan if there is no agreed budget July 1.

Director White continued with an update of IVRS and a presentation by Catalyst. He expressed his thanks to Arvind Talwar, CEO of Catalyst and his staff, SBE's partners, for their exceptional work. He added that Catalyst stuck with us prior to HAVA and kept the project alive. Kyle Thomas, IVRS Director, thanked the Chairman and Board for allowing Catalyst to make their presentation. Mr. Talwar declared HAVA compliance and that it was a collaborative effort and without Kyle and his staff, and Steve Flowers and his team, they would not be at this point. Mr. Scott Hilkerk gave a project history and presentation of the IRVR capability and functionality. Chairman Porter thanked Catalyst and Kyle for the presentation. Mr. Thomas added that his department has created a 155 page manual and has travelled to the 4 zones in the state to sign up for training and receive recommendations on the use of the system. Member Keith suggested a monthly history of voter registration matches listed by election jurisdictions be reported by Mr. Thomas.

Mr. White offered fiscal status reports including the FY09 report ending May 31, 2009; Help Illinois Vote Fund; and EAC Data Collection Grant for informational purposes. He indicated that we are 11 months into the fiscal years and have executed transfers mostly related to the retirement line items, which are always underfunded.

The Chairman returned to items 3(a) 12 through 16 which are appeals of civil penalties where the hearing officer recommended the appeals be denied. The General Counsel concurred with the recommendations of the hearing officers. Member Smart moved to deny the appeals on Items 12, 13, 14 15 and 16 and Member Rednour seconded the motion. The motion passed by 8 voices in unison and none opposed. Appeals were denied to *SBE v. Citizens to Elect Robert Eastern III*, L14197, 08JS091; *SBE v. LaSalle County Republican Century Club*, S3515, 09DS141; *SBE v. Tri-City Building Trades Council PAC*, S46666, 09DS145; *SBE v. Concerned Citizens for a Better Peoria*, S9836, 09MA004; and *SBE v. More with Lattimore's Campaign*, S9841, 09DS221.

General Counsel Sandvoss continued his report with a recommendation that the matter of *SBE v. Committee to Elect Lori De Young*, S9711, 08AG014. Mr. Sandvoss concurs with the hearing examiner that the appeal be denied in part and granted in part since the \$2924 would not have been timely filed, but the duplicate filings totaling \$1722.84 be granted.

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AS it is the Committee's first violation, the penalty for that one violation be reduced to 10% of the original assessment or \$293 and as a first violation the penalty is stayed. Member Smart moved to accept the hearing officer and general counsel's recommendations. Member McGuffage seconded the motion which passed by 8 voices in unison and none opposed.

Mr. Sandvoss presented Civil penalty assessments necessitating a Final Board Order. Member Keith moved to issue Final Board Orders in the amounts listed on the committees listed on pages 149 and 150 of the Board's agenda. Member Smart seconded the motion which passed unanimously by 8 ayes in unison.

The General Counsel submitted a list of civil penalties that have been paid by committees and a year to date accounting of total amounts of civil penalties collected by the State Board of Elections for informational purposes.

The Political Activity Waiver form regarding temporary/contractual employees was presented for informational purposes. No action was taken.

Consideration of the proposed rule to implement ranked balloting was discussed by the Board. Mr. Sandvoss indicated that this would be used for people living outside the U.S., who want to vote in the Consolidated Primary and Consolidate Elections or municipal and township races; and who lived in those municipalities that use the ranked ballot procedure. Member McGuffage moved to submit the rule to JCAR to begin implementation of Part 218, Procedures for Ranked Balloting. Vice Chairman Schneider seconded the motion this passed unanimously by roll call vote.

A response to Champaign County Clerk Mark Shelden was presented for informational purposes.

Member Keith moved to recess to Executive Session for pending litigation, personnel and closed preliminary hearings and Member Smart seconded the motion. The motion passed unanimously by 8 ayes in unison.

The Board recessed at 12:20 p.m. and returned to open session at 12:42 p.m.

Roll call was taken and all members were present.

Mr. Keith reported the outcome of executive session and began with case #27. Upon Motion of the Chairman regarding *SBE v. Independent Democracy*, 09CD036, the case was continued until the August 17, 2009 meeting.

The hearing officer recommended items 20 through 26, 28 and 41 were filed on justifiable grounds and no further action except in accord with the standard rule for violation of fines. The General Counsel concurred. Member Keith moved to adopt the hearing officer and general counsel's recommendations. Vice Chairman Schneider seconded the motion which passed by 8 voices in unison. The cases are: *Atkinson v. Committee to Elect Kathy Wessel*, 09CD017; *Atkinson v. Committee to Elect Sandy Kim*, 09CD018; *SBE v. Friends of George A. Cardenas*, 09CD022; *SBE v. The Best 2005 Referendum Committee*, 09CD023; *SBE v. Friends for Derrick Prince*, 09CD026; *SBE v. Ed Smith for Recorder of Deeds*, 09CD030; *SBE v. Committee to Elect George Hess*, 09CD032; *SBE v. Realtors PAC of IL*, 09CD041; and *SBE v. Tax Payers Alliance of Northern IL*, 09CD050.

Member Keith moved to set for public hearing items 29 through 40 and 42 through 45; and to adopt the hearing officer and general counsel's recommendations that the complaints were filed on justifiable grounds. Member Rednour seconded the motion which passed unanimously. Public Hearings will be held in: *SBE v. 16th Ward Regular Democratic Organization*, 09CD019; *SBE v. Friends of Mickey Polk*, 09CD025; *SBE v. Salamanca for Change*, 09CD027; *SBE v. Friends of Tony Fabri*, 09CD029; *SBE v. Committee to Elect James Larry Karraker*, 09CD031; *SBE v. George O. Wendt Campaign Committee*,

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09CD034; *SBE v. Citizens for Nimrod for State Senate*, 09CD037; *SBE v. 8th Ward Regular Democratic Org.*, 09CD038; *SBE v. Pulaski County Republican Boosters Club*, 09CD040; *SBE v. 22nd Ward Democratic Committeeman Fund*, 09CD042; *SBE v. Citizens for Jenisch*, 09CD043; *SBE v. Taxpayers United for Fairness*, 09CD051; *SBE v. Committee to Elect Dennis Barnard*, 09CD055; *SBE v. Friends of Frank Calabrese*, 09CD056; and *SBE v. Citizens for Marijan*, 09CD057.

Member Keith moved to reappoint Dianne Felts and Mike Roate to four-year terms. Member Smart seconded the motion which passed unanimously by ayes in unison and none opposed.

In the matter of *Citizens United to Save the Tax Cap v. SBE*, Member Keith moved to direct the General Counsel to proceed in accordance with the directions given in executive session. Member McGuffage seconded the motion which passed by 8 ayes in unison.

The Chairman announced that the next meeting is July 1st in Springfield for election of new officers. There are no comments from the Chairman or Vice Chairman.

There being nothing further before the State Board of Elections, Member Smart moved to adjourn until Wednesday, July 1st at 10:30 a.m. or the call of the Chairman. Member Walters seconded the motion which passed unanimously by 8 ayes in unison.

The Board adjourned at 12:46 p.m.

Dated: June 24, 2009

Respectfully Submitted,

Daniel W. White, Executive Director

Darlene Gervase, Administrative Assistant II