

STATE BOARD OF ELECTIONS

BOARD MEETING

Friday, August 27, 2004

Chicago, Illinois

11:00 a.m.

MINUTES

PRESENT:

John R. Keith, Chairman
Jesse Smart, Vice Chairman
William M. McGuffage, Member
David E. Murray, Member
Albert S. Porter, Member
Elaine Roupas, Member
Bryan A. Schneider

ABSENT:

Wanda L. Rednour, Member

ALSO PRESENT:

Daniel W. White, Executive Director
Colleen Burke, General Counsel
Darlene Gervase, Assistant to the Director

The meeting of the State Board of Elections was called to order at 11:10 a.m. with six members present. Chairman Keith held Mrs. Rednour's proxy. Mr. Schneider phoned to say he would be a few minutes late for the meeting and arrived at 11:15 a.m.

The Chairman opened the meeting by leading everyone in the pledge of allegiance.

Chairman Keith presented the minutes of the July 19 regular monthly board meeting and July 26, and August 2 special board meetings. Mr. Porter moved to adopt the minutes as presented and Mrs. Roupas seconded the motion which carried unanimously.

Director White presented a 30 year award to Rick Fulle. Mr. Keith thanked Rick on behalf of the Board and all of the people of the state of Illinois.

Promote the Vote was discussed and Mr. White thanked Amy Calvin, Cris Cray and Becky Glazier for their work organizing and setting up the booth during the 2004 Illinois State Fair in Springfield and noted that it has been over 20 years since the Board has had a booth at the fair. He thanked the numerous staff who manned the booth during the Fair. Informational materials such as SBE brochures and promotional materials reminding citizens to vote were available as well as federal mail in voter registration forms in English and Spanish and information on voter districts. Punch card and optical scan ballots examples were also available. Election authorities were invited to send deputy registrars and Sangamon County placed a deputy registrar at the booth every day. He estimated the cost at approximately \$11,000 in federal funds, plus staff costs and looks forward to repeating the project in 2 years. Mr. Murray thought the booth was a great idea and asked how many people registered. Mr. White had no idea at this time,

and said there was interest in the mail-in registration. Mrs. Roupas thanked the Director and stated her belief that education is an important part of our agency. Mr. White stated that they may look to include other fairs, *i.e.*, DuQuoin in the future.

Director White reviewed the Public Service Announcements that were filmed Monday, August 23rd at the Sangamon County Clerk's office. The topics include qualifications to vote and why it is important to vote. Clerk Joe Aiello and his staff supplied the office space and voting booths for filming. John Levin of the Board's Springfield staff has professional experience in broadcasting and helped with the announcing and scripting. Two announcements were filmed and will appear on cable and radio stations. Mrs. Roupas asked what costs were involved. Mr. White informed the Board that the IIS is an arm of Central Management Services and that there will be no cost unless we contract for air time. The staff time to put together a script and the filming took a couple of hours, but there are no additional costs at this point. Mrs. Roupas commended Director White for the good use of time and sources.

Mr. White's update on disbursement of HAVA and EAID funds included the disbursement of \$1.5 million in HAVA discretionary and \$870,000 in EAID funds for accessibility for the November 2 General Election. To date, we have disbursed \$1,355,158 in HAVA funds and \$762,069 in EAID funds. We will begin the next phase of HAVA fund distribution in early September by disbursing \$3 million to election authorities for the general improvement of the 2004 Presidential Election. These funds are discretionary and we will forward the guidelines mapped out by HAVA. Next year the judges' stipend will be fully funded.

The Judges of Election School schedule was presented for informational purposes. Director White noted that we will have a record number of election judge class before the November election.

The Populex item was withdrawn from the agenda at their request, but Member Murray stated that if this matter comes before the board again, he would like staff input. The Director stated that staff is working towards an answer to Populex.

The Director presented the FY04 Fiscal Report which indicated that we are in great shape to meet fiscal obligations and will be returning significant funds to the General Treasury. Because of the extended legislative session and budget negotiations, the FY05 Fiscal Status Report was not available. Furthermore, the FY05 \$10.1 million Budget Appropriation Request survived budgetary negotiations with no reductions. Mr. Murray stated that in the past we have been able to return money to the state and it appeared that we will be able to return money back to the general fund again. He thanked and complimented the Director and the Agency.

Mr. White presented the two-year plan of staff activity for the months of August and September for the board's review and information.

Certification of the ballot was the next item on the agenda, but since the Board announced it would certify the ballot at 12:01 the meeting proceeded to the General Counsel's report.

The first matter was consideration of a proposed emergency rule on Administrative Complaint Procedures under HAVA. Ms. Burke asked the Board's permission to submit the rules as presented to JCAR. General Discussion was had among the members. Chairman Keith asked two board members to serve as a committee to review the rules and make changes if necessary. Members McGuffage and Schneider will review the rules and make any changes. Vice Chairman Smart moved and Mrs. Roupas seconded a motion to appoint Members McGuffage and Schneider and staff attorney Steve Sandvoss to

proceed to revise and review the rules, and to adopt and send the rules to JCAR on the recommendation of the committee with the concurrence of the General Counsel. The motion passed 8-0

The Chairman suggested reviewing the Temporary Restraining Order in *Temple, et al., v. ISBE* (the Calvin Giles case) before proceeding to the Campaign Disclosure matters. Ms. Burke stated that Judge Raymond Jagielski ordered the Board to certify the name of Calvin Giles, candidate for the 8th Representative District to the ballot today. Although 2 other individuals also owe fines, the court made it clear that the Order applies exclusively to Calvin Giles. Mr. Murray asked who are the other plaintiffs and Ms. Burke stated they are voters in Mr. Giles' district who want to see his name on the ballot and vote for him.

The next item on the General Counsel's report was an update of the American Taxpayers Alliance (ATA) and Law Enforcement Alliance of America (LEAA) campaign disclosure complaints. Ms. Burke stated that she has not had the time to issue a ruling and if she does not find the opportunity to do this within the next month, she will ask for an outside hearing officer.

SBE v. Howard Samuelson/Earth Network, 03CD62 was presented for final order. Ms. Robin Forbes Wilke attended the meeting with Mr. Samuelson, but declined to file an appearance in the matter. The complaint alleged that respondents violated Section 9-6(b) of the Election Code by failing to report to the campaign finance committee supporting Steve Mandel for election to the office of Mayor of Highland Park, the in-kind value of (1) certain video tapes discussing the election's issues and generally supporting Mr. Mandel's candidacy, and (2) flyers announcing the public screening of the video and giving a telephone number where free copies of the video might be obtained. The complaint contended that the video tapes consisted of an in-kind donation whose value the donor was required to report to the candidate. A public hearing was held on June 23, 2004. The hearing officer found that the video as presented on the cable channel met the terms of the exception. Mr. Samuelson placed value of \$40 on the videos themselves and did not exceed the amount for notifying committees of in-kind donations and Mr. Mandel valued the tapes at \$350. The hearing officer found that Mr. Samuelson was not required to disclose the distribution of the tapes. Further, he found that there is no requirement that requires the newspaper, magazine or broadcast to be for profit as media can and do give away copies of an edition for a variety of purposes and are provided free of charge. He recommended that the Respondents did not violate Section 5/9-6 of the Election Code. Member McGuffage noted that the video was distributed and became a campaign piece and asked how we can say this is not a violation. Mrs. Roupas asked if the distribution is what should have been disclosed? Ms. Burke stated that the primary purpose of the production of the video was on public television and cable access and agreed with the hearing officer's recommendation. Mr. McGuffage believes it is a campaign piece and first amendment protection is valid if it is on public television, but once it goes beyond, to distribution, it is political literature, especially when it is used to convince people one way or the other. This piece was negative towards Belsky and positive towards Mandel. Mr. Murray agreed with all of Mr. McGuffage's comments and moved to separate the issue between production and distribution and the Chairman asked to divide it first that it was filed on justifiable grounds for determination and divide it. Mr. Murray agreed and moved that the Board find the complaint was filed on justifiable grounds. Mr. McGuffage seconded the motion which passed 8-0. Mr. Murray moved with regard to the two campaign violations that there is a violation on the basis that it was produced, irrespective for public access, and that it still becomes something of value and should have been reported. Although it was produced for public television, it is so slanted in favor of one candidate it should not be exempt from the definition of anything of value. The motion failed for a second. Member Murray moved that when the video was distributed free to the public, it became something of value for one candidate and should not be exempt from the anything of value rule and therefore constituted a violation. Mr. McGuffage seconded the motion which passed 8-0. The order will reflect that the in-kind contribution is to be reported to the candidate.

Three appeals continued from the June meeting were considered next. The first item was *SBE v. Friends of Blagojevich*, S7720, 02AG9. Steve Sandvoss, Deputy General Counsel summarized the case. A check in the amount of \$40,500 was received by staff of the committee, but since there was no preprinted information on the check regarding the donor, it was held until it could be authenticated. Once authenticated, it was given to the Assistant Treasurer who deposited it and filed the A-1. The result was that the donation was reported 1 day late. The hearing officer recommended the appeal be granted. Mr. Mathias Delort appeared on behalf of the committee. He reiterated his statements from June that they hold that a check is not received until it has been presented to an officer of the committee or the candidate. Member Murray sympathized but stated that to find otherwise would set a bad precedent and create an unintended loophole that could be exploited. He said he didn't think that the governor would want us to treat his committee in a favored way. Mr. Murray moved to find that it is a technical violation of the Act, but that no penalty should be imposed. Vice Chairman Smart seconded the motion and the Chairman asked for any comments. Mrs. Roupas noted that our rules have allowed this defense before and if there is a loop hole we need to clarify that rule and asked Mr. Sandvoss, the hearing officer if the issue of when the committee rather than the officers of the committee had allowed that defense to be acceptable. Mr. Sandvoss recalled many instances where that defense had been presented and thought that if the testimony was credible and the circumstances surrounding the receipt was plausible, that his recommendation was to grant the appeal. Mr. Delort was asked how much time elapsed between the time received and reported and he answered that the check was received on Saturday, verified on Monday and reported on Wednesday which made it 1-day late. Mr. McGuffage moved to accept the general counsel's recommendation. Before Mr. Porter seconded the motion, he stated that believes that we must look at each individual case and make a decision based on those individual facts. The Chairman concurred with everything that Mr. Murray said and that it is a technical violation, but we have recommendations today to give other committees passes. He stated that the governor does not get passes because he's the governor, but he should not get any imposition on him because he's the governor when we've treated other people in the recent past differently. This may be our interpretation today, but in the future will this interpretation be the same, he asked? Mr. McGuffage agreed and stated that this is a loophole that must be closed. The hearing officer is the person who determines credibility and the check was only held for a couple of days. Mr. Murray agreed that it is easy to say that he finds a technical violation and leave us open in the future. Further he has problems interpreting the law different from the way he is voting this time. Mrs. Roupas noted that this fine occurred in 2002, while it was still not clear and in limbo. Discussion ensued about the lack of receiving 5 votes and Ms. Burke stated that a motion lacking 5 votes results in the assessment standing. Vice Chairman Smart wanted to include the Chairman's comment that from this day forward we'll interpret this way and asked to amend the motion to include that statement. Mr. Murray objected to including those comments and Vice Chairman Smart agreed. Chairman Keith called the motion to find that the complaint was filed on justifiable grounds, that there was a technical violation and no penalty be assessed. The motion failed by a vote of 4-3-1. Members McGuffage, Porter, Roupas and Keith voted no; and Member Rednour recused herself. The Chairman asked Member McGuffage if he wished to present his motion. Mr. McGuffage restated his motion to accept the recommendation of the hearing officer and the general counsel and find that no violation occurred, which was his motion; but beyond that to tighten up our rules. Mr. Porter seconded the motion which failed by a vote of 4-3-1 with Members Murray, Schneider and Vice Chairman Smart dissenting and Mrs. Rednour recused herself. Chairman Keith stated that appeal is denied unless it is granted and Ms. Burke stated that would be her recommendation. Mr. Schneider asked if a charging document was ordered by the Board. He was advised that the staff sends out the assessment letters, and that the Board, in 1988 or 1989, authorized staff to audit and to assess fines according to a formula. Mr. McGuffage stated that the charging document is the report of the Hearing Officer after a closed preliminary hearing and that the civil penalty provision was promulgated under 125.425 of our Rules and

approved by JCAR. Ms. Burke stated that the \$40,500 fine stands and if the respondent does not stipulate that this is a first violation, the fine is stayed as a first time violation. But, the committee may ask for a reduction to 10% of the original fine. Mr. Porter stated that any letter that is written should reflect the action and the motions of the board. Ms. Burke stated that in the past, where there has been an appeal pending, the fine is reduced to 10% of the violation if it is a first time offense and if the committee violates the statute again the initial fine is due and owing. Mr. Murray asked how a penalty can be imposed without finding a violation of the Act. Mr. Schneider said that no response from the committee is perceived to be guilty by default which leads him to believe that this is a charge document and the board may review facts in the public record. Mr. Porter asked if we do nothing, the case will be treated as a first time violation and the fine reduced to 10%. Mr. Murray said that this is a technical violation and does not want to assess a fine as it is technical, not willful. But, there is a violation. The Board offered Mr. Delort time to contact his clients before another motion was proposed and tabled the matter until later in the day.

The matter of *SBE v. Citizens for Marovitz*, S420, 00JS61 and 00GP142 was called. Mr. McGuffage received communication from Mr. Mike Lavelle, who filed an appearance in this matter, requesting a continuance until the October meeting. Mr. McGuffage moved and Mr. Porter seconded a motion to continue this matter to October and the motion carried unanimously.

The last appeal continued from the June meeting, *SBE v. Naperville Township Republican Organization*, L1434, 02JS153, was considered. Ms. Jennifer Firth and Treasurer of the Committee, Thomas Laz, appeared for the respondent. The committee failed to file 3 reports totaling \$8,700. Their defense was that problems occurred during the transition of two treasurers. The current treasurer, Mr. Laz assured the board that the transition problems were corrected and that every effort would be made to insure that future filings would be timely filed. He further stated that statutory language explains that "shall" is not always mandatory and may be directive and that the Board has discretion despite a mandatory "shall" language. Ms. Fritz expounded on the "shall" and "may" language and stated that their committee is small, has limited funds and is comprised of volunteers. Ms. Burke agreed that the "shall" language may be interpreted as directory, but did not believe that this is the case in this matter. The provision cited by counsel applied only to A-1s and that language is not in section 9-10 which pertains to semi-annual reports. Ms. Burke believes the Board has discretion to grant or deny the appeal, but does not have discretion with regard to the amount of the fine since it is a semi-annual report. Respondents proposed a settlement offer of \$1500. Ms. Burke stated that the Hearing Officer's recommendation that the appeal be denied for lack of recognized defense and she concurred. Member Murray moved to deny appeal and accept the settlement offer of \$1500. Vice Chairman Smart seconded the motion which passed unanimously.

At 1:10 p.m. the Board returned to the Report of the Executive Director to call for Certification of the Ballot for the November 2, 2004 General Election. The Director presented for the Board's signature, the official certification of the ballot from Cook County for the November 2, 2004 General Election and requested a motion for approval of the certification for all jurisdictions of the state. The certification would not include the names of the presidential and vice presidential candidates of the Republican Party as the convention has not yet begun and the certification would not be sent to the Board until Friday, September 3, 2004. Ms. Freeman previously spoke with staff of the Republican National Committee to advise them that the certification would not have a presidential and vice presidential candidate and at this point we have not yet printed out the certification. The board discussed candidates on the ballots that face forfeiture for failure to pay campaign disclosure fines. The Chairman asked Rupert Borgsmiller if any candidates, besides Calvin Giles, had not paid their fines. Mr. Borgsmiller had checks from the 3 remaining committees and the only other candidate who did not pay the fine is Ken Toftoy, candidate for

county coroner. Mr. Murray moved to certify the ballot subject to the checks clearing from the candidate who's paid by check today. No second was received to the motion. The Chairman asked Ms. Burke if the Board may uncertify anyone if their payment is insufficient and if they still owe fines and she stated that the certification can be amended if that occurs. Mr. Schneider asked if litigation was continuing in the Giles matter and Ms. Burke answered that status was set for September 16, 2004. Mr. McGuffage asked if the county candidate, Mr. Toftoy, would be certified even if he doesn't pay his fine. Mr. White stated that the local election authority has been notified of the Board's position and what action the Board will take in this matter. Chairman Keith suggested waiting to see if Mr. Toftoy pays the fine or if he violates Section 9-30.

Vice Chairman Smart moved to certify the ballot for all primary winners, appointments of vacancies, independent and new parties that filed during the June filing period and judicial retention candidates. Member Murray seconded the motion. General discussion was had among the members. The General Counsel pointed out that there is no explicit statutory provision saying that the Republican State Central Committee fills the vacancy in nomination for U.S. Senate, but that is her recommendation in terms of who should fill the vacancy. Vice Chairman Smart called for the motion. Mr. McGuffage moved to divide the question and put Alan Keyes on hold until a reason is shown for that vacancy to be filled. He moved to divide the question and certify everyone except Alan Keyes. Chairman Keith seconded the motion. Mr. Schneider moved to proceed to the immediate consideration of the certification of Alan Keyes for the office of United States Senator. Three motions were on the floor. Mr. Murray seconded Mr. Schneider's motion and Mr. Schneider stated that his motion was procedural in nature. The Chairman asked if they wished to divide and just vote on Mr. Keyes. Mr. Schneider renewed his motion to immediately proceed to the question of Mr. Keyes' certification. Mr. Schneider then commented that his motion may be out of order if the dividing the ballot had not yet been passed. Upon confirmation from the Chairman that the motion to divide was still pending, Mr. Schneider withdrew his motion. Vice Chairman Smart asked for clarification on the motions and Mr. Murray stated that the motion to divide would highlight the fact that Alan Keyes has been nominated by the Republican State Central Committee, since there is no statutory provision of filling that vacancy. The Chairman stated that under Robert's Rules of Order a motion to divide be heard before the motion that is pending. During discussion, Mr. Murray stated that he believed splitting the Republican Senator candidate is a poor precedent and divides the board politically. Chairman Keith was disturbed that Mr. Murray believed that this matter would divide the Board and that he did not hear the General Counsel say that she is recommending certification. Further, this matter is an issue of authority. Mr. Keith was sorry that Mr. Murray thought the matter was partisan, when the issue is authority. The Chairman did not believe he was upholding the laws of the United States if there is no authority to fill this vacancy and was in favor of dividing the ballot. Upon direct questioning from Mr. Murray, the General Counsel explained that she was recommending certification of Alan Keyes as the candidate selected by the Republican State Central Committee. Although there is no Illinois statute, she believes the state central committee is the empowered party to make the appointment and she cited some legal authority. The Chairman called for the roll call vote on the motion to divide the question of the certification of the ballot as presented by Vice Chairman Smart as to all parties other than Alan Keyes and separate as to Alan Keyes. The motion failed by a 4-4 vote with Members Murray, Roupas, Schneider and Vice Chairman Smart dissenting. The Chairman called for Member Smart's motion to certify the primary winners, independent new party, appointed and judicial retention candidates. Mr. Schneider asked to see the certification and Ms. Freeman stated that the certification would have Mr. Keyes' name included and with the issue of ballot forfeiture the ballot is not printed ahead of time. Ms. Freeman offered to print the ballot. The Chairman called for the roll call vote and Mr. Porter stated that this motion is to certify all candidates - period. Vice Chairman Smart restated his motion to certify all winners of the primary, appointed replacements, independent candidates that filed before the deadline, judicial retention and new parties. Mr. Schneider

moved that the board recess until the ballot could be printed. The Chairman explained that it may be appropriate to adjourn into Executive Session, have lunch and then proceed with the public hearing.

Member Schneider moved and Vice Chairman Smart seconded the motion which passed unanimously. The Board recessed at 1:44. The Chairman announced that the Board was in executive session until at least 2:00 p.m.

The Board returned to public session at 2:47 p.m. with 7 members present.

The Chairman stated that ballot certification for president and vice president candidates from the Republican Party will be addressed after September 2, 2004 and asked that the Board meet at 3:00 p.m. on Friday, September 3 via telephone conference call. After the ballot is certified staff is authorized to affix the board's signatures via auto pen. Member Murray asked that the meeting be moved to Noon and adjusted if necessary, the Chairman agreed and the meeting was scheduled accordingly.

Mr. Delort was called and asked if he had any objection to the Board adopting the Motion to find a technical violation. He stated that they would have no objection to the Board adopting a motion finding the committee in technical violation but imposing no fine in light of the way the case has set itself up. Mr. Porter moved to reconsider the motion to find a technical violation and no fine. Vice Chairman Smart seconded the motion to reconsider which passed 7-0; Member Rednour recused herself from the vote. The motion upon reconsideration, made by Mr. Murray and seconded by Member Smart was called and passed by a vote of 7-0, with Member Rednour recusing herself. Mr. McGuffage suggested that this loophole be closed and define a technical violation and Chairman Keith preferred to direct the staff to prepare an amendment to the rules to resolve this problem by defining receipt more in line with the members' comments.

The issue regarding certification, motion made by Member Smart and seconded by Member Murray to certify the primary winners, all new and independent party filings, all people named to vacancies and judicial retention was revisited. Ms. Freeman presented a proposed certification if that motion passed and the Chairman called the motion. Members McGuffage, Murray, Porter, Roupas, Schneider and Vice Chairman Smart voted yea and Messrs. Porter and McGuffage asked what they were voting on. Chairman Keith stated the motion was Vice Chairman Smart's motion to certify all primary winners, all independent and new party candidate filings, persons who had been submitted to fill vacancies and judicial retentions. Members Porter and McGuffage withdrew their votes and asked the vote be taken again. General discussion was had among the members. Member Schneider moved to certify the ballot in its entirety. Vice Chairman Smart seconded the motion which failed by a vote of 4-4, with Members Porter, McGuffage, Rednour and Chairman Keith dissenting.

Mr. Schneider moved that the Board certify only the candidacy of Mr. Calvin Giles for the office of State Representative for the 8th Representative District pursuant to the order of the Cook County Circuit Court with Member Murray's second. Ms. Freeman was asked to clarify certification when an objection is pending. She stated that if an objection is filed subsequent to certification, the certification is amended, the candidate's name remains on the ballot with "objection pending" next to their name. The motion failed by 4-4 vote with Members McGuffage, Porter, Rednour and Chairman Keith voting against the motion. Mr. Porter and Mr. Keith stated that Mr. Giles should be certified when the other candidates are certified.

Mr. Schneider moved that the position of the Board be that the Republican State Central Committee, pursuant to Article 7-8 of the Election Code has the authority to fill the vacancy in nomination for United

States Senate. Vice Chairman Smart seconded the motion and discussion was had among the members. The motion failed by a vote of 4-4, with Members Porter, McGuffage, Rednour and Chairman Keith dissenting.

Chairman Keith moved to certify all primary candidate winners, all independent filings, all new party filings, all persons submitted to fill vacancies, except Alan Keyes, and the judicial retention. Mr. Porter seconded the motion. Messrs. Schneider and Murray thought that motion had already been voted on and called for point of order. Mr. Schneider moved to overrule the Chair. The motion failed by 4-4 vote with Members McGuffage, Porter, Rednour and Chairman Keith voting against the motion. Discussion ensued. Mr. Murray several times begged the chair and the Democrats not to hold the statewide ballot hostage to their desire to strike Alan Keyes. He noted that the objection period is still open until September 2nd and voters can object until then. The Board should not be applying the "apparent conformity test in this case. The Chairman accepted Member Porter's amendment to certify all primary winners, all independent and new party filings, judicial retention and all persons submitted to fill vacancies, except Mr. Keyes at this time, and to continue certification of Mr. Keyes until the meeting on September 3rd. Mr. Schneider moved to recess to allow time for necessary research was seconded by Mr. Murray. The motion failed by 4-4 vote with Members McGuffage, Porter, Rednour and Chairman Keith voting against the motion. The Chairman called his motion as amended by Mr. Porter and accepted by the Chairman, to certify all primary election winners, all new candidate, new party and independent candidate filings, all judicial retention filings and all vacancy filings except for Mr. Keyes to the ballot for the general election and to delay until September 3rd consideration of the issue of certification of Mr. Keyes as the candidate for the Republican nomination to be on the ballot for the United States Senate. The motion failed by 4-4 vote with Members Murray, Roupas, Schneider and Vice Chairman Smart voting against the motion. Vice Chairman Smart excused himself and gave his proxy to Mr. Murray at 3:55 p.m.

Mr. McGuffage moved to return to the report of the General Counsel as many people were present and patiently waiting for their cases to be called. Hearing no objection the Board called Item 2.b; Ms. Burke stated she had an appearance by Ms. Mary T. Nicolau on behalf of the IAPC, #7. In all of these cases the Hearing officer recommended the general counsel agreed to grant the appeals. Mr. Murray moved and Mrs. Roupas seconded the motion to accept the recommendations of the hearing officer and general counsel and to grant the appeals. The motion carried 8-0. The committees are: *SBE v. Cuba Township Republican Club*, L1336, 04GP16; *SBE v. Citz. for Don Craft*, L9541, 04GP63; (*SBE v. PEACE*, L10513, 04GP29; *SBE v. Friends of Randy Hill*, L11169, 04GP31; *SBE v. Democratic Party of Oak Park*, S2130, 02AG79; *SBE v. Carroll County Republican Central Committee.*, S3001, 04GP37; *SBE v. Italian-American Political Coalition*, S6318, 02AG105; *SBE v. Citizens to Elect Judge Kenneth Cortesi*, S7956, 02AP96; and *SBE v. Friend of Laura Bertucci Smith*, S8163, 02AP14.

Mr. Patrick Buras filed an appearance representing Friends of Maureen Murphy and requested that the matter be continued to September. Mr. Buras is aware that the meeting is in Springfield and is willing to travel. Mr. Porter moved and Mr. Murray seconded a motion to continue *SBE v. Friends of Maureen Murphy*, L9310, 02AP80 to September. The motion carried 8-0.

Mr. Dean Vallas appeared for *SBE v. Vallas for Illinois*, S7898, 02AP55. The treasurer of the committee was new and was not familiar with reporting loans on A-1s Mr. Vallas asked that the appeal be granted as the treasurer did not receive the check until after the election. The Chairman advised Mr. Sandvoss that if the appeal was granted, today would be the last day this particular defense would be acknowledged. The hearing officer recommended that the penalty be reduced to \$450. Mr. Vallas had not had a chance to

review the recommendation of the hearing officer and the Chairman suggested taking the remaining disclosure items and returning to this committee.

Item c. was new appeals where the hearing officer recommended the appeals be denied. Mr. Porter moved and Mr. Murray seconded a motion to accept the hearing officer and general counsel's recommendations and deny the appeals. The committees are: *SBE v. Union County Republican Women's Club*, L1954, 04DS124; *SBE v. Citizens for Healy*, L9642, 04DS14; *SBE v. Citizens for Nikolaos Manouspoulos*, L10337, 03AE33; *SBE v. Citizens to Elect Ronald M. Serpico Sr., Inc.*, L11082; *SBE v. Referendum 219 Community Committee*, L11274, 02AG68; *SBE v. Good Neighbor Party*, L11614, 04DS102; *SBE v. Team Gilberts*, L11732, 04DS128; *SBE v. Citz. for Leon Rockingham*, L11812, 04GP73; *SBE v. Depke County Board*, L11959, 04GP78; *SBE v. Citizens for Judy Barr Topinka*, S2271, 02AG46; *SBE v. IL CRNA PAC*, S3496, 04GP39; 14; *SBE v. Carpenter Union Local 434 Political Action Fund*, S8350, 02AG123; *SBE v. Inform IL PAC*, S8411, 02AG145; and *SBE v. Citizens for Jesse Granato*, S8484, 04MA1;

A typographical error was noticed in *SBE v. Referendum 219 Community Committee*, L11274, 02AG68. The fine was assessed at \$300, but should have been \$750. Mrs. Roupas moved to deny the appeal and assess the correct amount of \$750. Mr. Murray seconded the motion which carried 8-0. The appeal is denied and the fine is assessed at \$750.

The issue of when a contribution is deemed received was discussed. Mr. Murray moved to accept the hearing officers' supplemental recommendation providing that the general counsel concurs. Mrs. Roupas seconded the motion which carried unanimously. The Chairman stated that today is the last day that line of defense will be recognized by him and the rules will be tightened up to prevent this loophole.

The General Counsel introduced item d) New Appeals. The hearing officer recommended the appeals be granted in part and denied in part and agreed with all the following recommendations:

- 1) *SBE v. Democratic Party of Milton Township*, L887, 04DS132 & 04GP1; Appeal denied since the report was never received and the penalty of \$50 be stayed as this is a first violation.
- 2) *SBE v. Friends of District 46*, L10764, 04DS135 & 04GP4; Appeal granted; assess penalty of \$450 and stayed as a first violation. Committee filed final report and if they remain inactive for a period of two years from July 8, 2004, the fine is abated.
- 3) *SBE v. Citizens for Lower Taxes*, L11658, 04DS141 & 04GP10; Appeal be granted, committee to file a Statement of Non Participation for the March 16 Primary Election and recommend a penalty of \$100 for the late filing of the 2003 December Semi annual report and \$125 penalty for the late filing of the 2003 June semi annual report which is due and payable.
- 4) *SBE v. Credit Union PAC*, S879, 02AG74; Appeal of the assessed penalty for two contributions be granted. Appeal of the penalty assessed for Southeast Chapter donations be denied, but reduced to \$200 and appeal of assessment for the Oak Trust donation be denied, but reduced to \$75. The total \$275 assessment is now due and payable.

Mr. Murray moved to adopt the hearing officer and general counsel's recommendations. Mr. McGuffage seconded the motion which passed 8-0.

Ms. Burke noted that item 3. Consideration of civil penalties, item *SBE v. Citizens to Elect Kevin M. Gallaher*, 04 CD10 was ordered to file electronically on July 19, 2004, but still filed on paper. Mr. Murray moved and Mr. Schneider seconded a motion to assess a penalty in the amount of \$500. The motion passed unanimously.

The General Counsel added that *SBE v. Citizens to Elect Barbara Reyes*, 04CD20 and *SBE v. Illinois Progressive Leadership PAC* 04CD27 were assessed civil penalties for failure to timely file their reports. Neither committee has filed their reports and a \$500 fine each is recommended. Mr. Schneider moved and Mr. Murray seconded the motion to accept the recommendation of the general counsel and assess each committee \$500. The motion passed 8-0.

Assessments and final orders and payment of civil penalties were presented to the board for informational purposes. Mr. Rupert Borgsmiller asked the board to consider allowing staff to issue final orders on non-controversial assessments that were not appealed under the Chairman's signature. The matter was tabled until the September meeting.

At 4:18 p.m. Mr. McGuffage moved to recess to Executive session for litigation. Mrs. Roupas seconded the motion which carried unanimously. The Board returned to open session at 5:04. Member Murray gave a written proxy transferring both his vote and Vice Chairman Smart's vote to Mr. Schneider. The Chairman entertained a motion to recess to the State Officers Electoral Board to address the minutes. Mrs. Roupas moved and Mr. Porter seconded the motion which carried unanimously.

The meeting reconvened at 5:06 pm with five members present.

Mr. McGuffage moved to direct Mr. Ted Clark, to intervene in union matters on behalf of the Board as discussed in executive session. Mr. Schneider seconded the motion which passed 8-0.

Mr. Schneider wished to make a motion and asked Mrs. Roupas to explain the phone call she had received. There was no second to the motion. Mrs. Roupas said that the Republican National Committee had given authority and point to a rule that they authorized the Illinois State Central Committee to fill the vacancy in U.S. Senate. Mrs. Roupas offered her phone and the direct number of Mr. Charles Spies to Ms. Burke. The Board stood at ease at 5:12 p.m. Ms. Burke spoke with Mr. Spies, who identified himself as the General Counsel of the Republican National Council and he indicated he can put something in writing to the Board within the hour and will be available by phone, but that he has numerous obligations with the convention starting today. General discussion was had among the members. Mr. Schneider moved to adjourn until receipt of the communication from Mr. Spies, but amended the time to 7 p.m. Ms. Burke said that the vote to certify the ballot would need 5 signatures. Ms. Freeman was asked to bring two ballot certifications to the Board room, one with Mr. Keyes name and the other without. Ms. Burke said that she spoke with Mr. Spies again and he said that he is not at his office and cannot put anything in writing at the moment and requested a little time to do some research. However he would make himself available at 7 p.m. via telephone. Mr. Schneider moved to stand in recess until 7:00 p.m. Mr. McGuffage moved that the board recess until September 3 to certify the ballot and the Republican presidential nominee. Ms. Freeman had been asked to prepare certifications with and without the name of Alan Keyes. Mr. Porter asked for the certification and signed the certifications for all candidates except Alan Keyes, followed by Mr. McGuffage and Chairman Keith. A question was asked about ballot style and Ms. Freeman explained the difference between the ballot and how they give each county their style choice. Chairman Keith gave Director White the certifications signed by Mr. McGuffage, Mr. Porter and himself noting that he did not have Mrs. Rednour's permission to sign her name to the document. Mr. Schneider and Mrs. Roupas signed the certifications including Alan Keyes and included a statement that their signatures shall not be considered with any other document. The Chairman called Mr. Schneider's motion to recess until 7:00 p.m. Mrs. Roupas seconded the motion which failed by 4-4 vote with Members Porter, McGuffage, Rednour and Chairman Keith dissenting. Mr. McGuffage moved to recess until September 3 and take up the issue of certifying the presidential and vice presidential nominees and certification of the Republican U.S. Senate candidate at the same time. Mr. Porter seconded the motion

which failed 4-4 with Members Murray, Roupas, Schneider and Vice Chairman Smart voting against the motion.

Ms. Burke stated that Mr. Spies would be available for a conference call with the board at 7:00 p.m. Central Daylight Savings Time. As there was nothing further for the board to consider Chairman Keith stated that since the teleconference call would be taken in the conference room in the office of the Board on the 14th floor that we should change venue, no Board action will be discussed, and reassemble in the Board's office upstairs. The Board recessed at 6:28 p.m. and reconvened at 6:57 p.m. Members McGuffage, Porter, Roupas, Schneider and Keith appeared in person and Rednour, Murray and Smart by proxy.

After a check of the signed proxy's, it was noted that Mrs. Roupas holds Vice Chairman Smart's proxy. She voted Mr. Smart's proxy from this point on.

At 7:00 p.m Mr. Spies was called and introduced himself as the Election Law Counsel for the Republican National Committee in Washington. He stated that the RNC's Rule 11, indicates that they defer to state parties on this sort of matter and since the state law is ambiguous on that question, the decision would belong to the state party. He believes the US Supreme Court's deference to the First Amendment right of association of a state political party in the California Dems case (*California Democratic Party v. Jones*), is instructive and provides a Constitutional basis to defer to the Illinois Republican Party in their ability to choose a Republican U.S. Senate nominee. He stated that the state party did act consistent with the rules of the RNC. Mr. Spies promised a written, more detailed response on the following Monday. The Chairman thanked Mr. Spies on behalf of the Board. Mr. McGuffage asked for a written opinion and said he is willing to certify Mr. Keyes pending that information Mr. McGuffage moved to reconsider the vote on the certification of all of the candidates that the State Board of Elections has jurisdiction to certify. Mr. Schneider seconded the motion which passed unanimously.

The next motion before the board was made by Member McGuffage to reconsider the motion made by Vice Chairman Smart and seconded by Mr. Murray to certify all winners of the primary elections to certify all candidates who were elected in the primary, all independent and new party candidates who have filed with us, all persons whose nominations have been submitted to fill vacancies in nomination, including Alan Keyes and the judicial retention that motion was seconded by Member Schneider and passed 8-0. A short discussion was had on the original motion being reconsidered. The motion passed by a vote of 7-0-1 with Member Rednour passing. The certification was signed by all members present and presented to the Director.

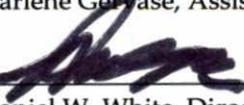
The Chairman entertained a motion to adjourn until noon on Friday, September 3, 2004. Mr. Schneider moved and Mrs. Roupas seconded the motion which passed unanimously.

DATED: September 16, 2004

Respectfully Submitted:



Darlene Gervase, Assistant to the Director



Daniel W. White, Director