

STATE BOARD OF ELECTIONS BOARD MEETING

Monday, April 20, 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 10:51 a.m. and led everyone in the pledge of allegiance. Seven members were present in Chicago and Member Walters was present in the Springfield office via video conference.

To accommodate parties present, the Chairman called matters out of order.

The Chairman called Item 2.a. Voting system issue for the 2010 elections and noted that Messrs Lance Gough, Executive Director of the Chicago Board of Election Commissioners and Daniel Madden, representing the Cook County Elections Board were present. Director White confirmed that this matter was carried over from the previous two meetings. In response to the Board's inquiry at the March meeting, General Counsel Sandvoss' memorandum, Fiscal Director Roate's brief summary of costs and Director Felts' comments regarding testing were presented. Mr. White summarized the reports and concluded that the main issue is whether to wait for EAC to respond or start testing subject to EAC approval. He added that 14-16 states are moving ahead, and although there are risks, the 2010 election is not far off. After discussion by the Board, Member Smart moved and Member McGuffage seconded a motion to proceed with the testing as staff has recommended. The motion passed 7-1, with Member Brady voting in the negative.

Mr. White presented the minutes from the February 23 and March 10 special meetings and the March 16 regular meeting and noted revisions suggested by Member Keith. Member Rednour moved to adopt the minutes as revised. Member Smart seconded the motion which passed unanimously by roll call vote.

Chairman Porter called Item 3.a.29, *SBE v. Democratic Central Committee of Stephenson County, S272, 08GE023*, a new appeal of a campaign disclosure fine wherein the hearing officer recommended the appeal be denied. Mr. Tom Jackson, Chairman of the committee was present. Mr. Sandvoss said that the hearing officer recommended that the brochure at issue did constitute expenditures of money and that the committee was required to file a pre elections report no later than October 20, 2008. The report was received 11 days late which resulted in a total assessment fine of \$2700. He further recommended the appeal be denied. Mr. Sandvoss concurred with the recommendation. Mr. Jackson apologized and explained that in his four terms as president, he has had four treasurers and this complaint occurred while treasurers were changing. He indicated that paying the fine would put the committee \$1700 in debt and that he would have to personally pay this fine. Member McGuffage advised him that it was the committee's responsibility and he was not personally responsible. The Chairman asked if the Board has ever forgiven these amounts and Mr. Sandvoss replied that the statute does not allow discretion in this matter. Chairman Porter thanked Mr. Jackson for appearing and advised him to meet with

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Mr. Borgsmiller to arrange a payment plan. Member Keith moved to adopt the recommendations of the hearing officer and General Counsel and deny the appeal. Member Brady seconded the motion which passed unanimously by roll call vote.

The Chairman called *SBE v. Democratic Party of Illinois*, S4866, 08AG007 and recognized Mr. Michael Kasper who filed an appearance for the respondent. Mr. Sandvoss summarized the appeal and agreed with the hearing officer that proper notice was not provided to the committee so they could timely file the required reports and amend their December 2008 semiannual report. Member Smart moved to adopt the recommendation of the hearing officer and General Counsel and Member Rednour seconded the motion. The motion passed 7-1 with Member Brady voting no.

Mr. Gerald Frazier was present for the *SBE v. Friends of Gerald Frazier*, L14519, 09DS079. Mr. Sandvoss indicated that the committee had been filed \$425 in 2008 and the committee's semiannual and final reports were received January 26, 2009, 4 days late. He concurred with the recommendation of the hearing officer that the appeal be denied, the stay lifted and the total assessed penalty \$625. But since the committee filed a final report and if the committee remains dissolved for 2 years following the date of the final order, the fine should be abated. Member Smart moved and Vice Chairman Schneider seconded the motion to adopt the hearing officer and General Counsel's recommendations. The motion passed by 8 voices in unison.

The Chairman called *SBE v. Friends of John Corrigan*, S9443, 08AP086 and recognized John Corrigan. Mr. Corrigan had no objection to the hearing officer's recommendation to grant the appeal. The General Counsel concurred with the recommendation and the Chairman asked for a motion. Member Smart so moved and Member Rednour seconded a motion to adopt the recommendations of the hearing officer and general counsel. The motion passed by 8 voices in unison.

Mr. Joseph Handley, present in Springfield via video conference was called in *SBE v. Illinois Cable PAC (Comcast Cable)*, S3482, 08GE036, a new appeal wherein the hearing officer recommended the appeal be denied. Mr. Sandvoss indicated that the committee was 4 days late in filing the 2008 pre-election report. Further, that the committee was assessed a civil penalty in 2000, twice in 2006 and all fines have been paid. He concurred with the hearing officer that the appeal be denied for lack of adequate defense. Mr. Handley reiterated his request for leniency from the Board. Mr. Sandvoss did not change his recommendation. Member Smart moved to adopt the hearing officer and General Counsel's recommendations. Member Keith seconded the motion which passed unanimously by 8 voices in unison.

Mr. Walters indicated Michael Holliday was present in Springfield regarding *SBE v. Citizens for Michael Holliday*, S9838, 09MA005. General Counsel Sandvoss concurred with the hearing officer's recommendation to deny and grant this new appeal. The appeal should be granted in regarding to the filing of the D-1 Statement of Organization as the threshold was not crossed until December 12th and the D-1 had been timely filed on December 5, 2008. She recommended the appeal regarding the 2008 December Semi-Annual Report should be denied for lack of an adequate defense, however, as this is a first violation, the \$450 civil penalty would be stayed. Member Keith moved and Member Rednour seconded a motion to adopt the hearing officer's and General Counsel's recommendation and to deny in part and grant in part this appeal. The motion passed unanimously by 8 voices in unison.

The Chairman called Michael Kasper, attorney for the respondent in *SBE v. Committee for Ed Smith*, L822, 08MA011, an appeal carried over from February wherein the hearing officer recommended the appeal be granted and denied in part. Mr. Sandvoss offered a short summary of the committee's activities and Mr. Kasper asked for leave to work out a payment plan with staff. Member Keith moved to adopt the hearing officer and General Counsel's reports and grant and deny the appeal. Member Brady seconded the motion which passed unanimously by 8 voices in unison.

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The Chairman asked the General Counsel to continue his report with item 3.a.10, *SBE v. William Davis for State Representative*, S8040, 08AG010 and noted the appearance of the treasurer, Ms. Tawny Smith. He said that this was a new appeal and the hearing officer recommended the appeal be granted. After hearing Mr. Sandvoss' summary, Member Keith moved to grant the appeal as to the I.P.A.C.E check and return the Illinois Medical PAC matter back to the Hearing Officer and Mr. Sandvoss for further evidence. Vice Chairman Schneider seconded the motion which passed by 8 voices in unison.

The Chairman called Mr. John Butts in the matter of *SBE v. Friends of Dorothy Brown*, L8922, 08AP085, a Motion for Reconsideration. General Counsel Sandvoss indicated that the Motion for Reconsideration was filed in connection to the untimely filing of an A-1. In the Motion for Reconsideration, the Treasurer sets forth a defense for which the proper form is an appeal affidavit. Mr. Sandvoss recommended the Motion be denied. Mr. Butts defense was that he was out of town and when he returned he had only 2 days to file. Mr. Sandvoss countered that the committee was given 30 days to appeal the issue and the committee has 3 officers who could have submitted the appeal. He reiterated that the Motion should be denied. Member Keith moved to adopt the recommendation of the General Counsel and deny the Motion as there is no evidence to grant the appeal at this time. Member Smart seconded the motion which passed by 8 voices in unison.

Member Smart moved to grant the appeals in Items 3.a.: 3, 4, 5, 6, 8, 9, 11, 12, 13, and 14. Member McGuffage seconded the motion which passed by 8 voices in unison. Appeals were granted in: *SBE v. Citizens for Arlene Mulder*, L3242, 09DS012; *SBE v. Citizens Committee for Ronnie Lewis*, L14974, 09DS118; *SBE v. Pulaski County Republican Central Committee*, S560, 09DS124; *SBE v. DuPage Young Republicans*, S4900, 09DS147; *SBE v. The Alliance PAC*, S5926, 09DS151; *SBE v. Illinois School Administrators PAC*, S8664, 09DS175; *SBE v. Friends of Kwame Raoul*, S8749, 09DS176; *SBE v. Friends to Elect Jason Briscoe*, S9096, 09DS187; and *SBE v. ActBlue Illinois*, S9277, 08MA017.

Member Smart moved to deny the appeals in Items 3.a.: 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 32, 33, 34, 35, 36, 37 and 38. Member Rednour seconded the motion that passed by 8 voices in unison. Appeals were denied in: *ISBE v. Edwardsville Republican Women*, L2166, 09S009; *SBE v. Citizens to Elect Ersel C. Schuster*, L2384, 08GE003; *SBE v. Citizens for Steve Kim*, L8214, 09DS025; *SBE v. Collinsville-Maryville Republican Central Committee*, L8896, 09DS027; *SBE v. McHenry County Republican Foundation Committee*, L8930, 09DS028; *SBE v. Friends of Brad Mills*, L12693, 09DS052; *SBE v. Citizens for John F. Sweeney*, L123647, 09DS064; *SBE v. Friends of Nero*, L14460, 09DS074; *SBE v. Renew it! Now*, L14803, 09DS099; *SBE v. Committee to Elect Jim Soeldner*, L14820, 09DS101; *SBE v. Warren County Committee for Public Safety*, L14840, 09DS103; *SBE v. Hardin County Republican Central Committee*, S90, 08GE022; *SBE v. Ogle County Democratic Central Committee*, S948, 08GE031; *SBE v. Cook County Democratic Women*, S3909, 09DS144; *SBE v. IL Conservation Voters*, S7450, 09DS160; *SBE v. Friends of Annazette R. Collins*, S7707, 08AP048; *SBE v. Citizens for Gary Grasso*, S8802, 09DS179; *SBE v. Citizens to Elect Jill C. Marisie*, D9071, 09DS186; *SBE v. Quality Education 203.org*, S9401, 09DS199; *SBE v. Friends of Rich Kelly*, S9712, 08AP015.

Vice Chairman Schneider moved to retire to executive session to hear complaints following closed hearings. Member Keith seconded the motion which passed by 8 voices in unison. The Board recessed at 11:45 a.m.

The Board returned to open session at 12:22 p.m. with all members present.

Vice Chairman Schneider offered a series of motion to complete the matters considered in closed session. So with respect to 3.a.43, *Marino v. The New Broadview Tea Party*, 09CD009, to enter an order that the complaint was filed on justifiable grounds, but no public hearing at this time. Regarding 3.a.45, *The Orland Township First Party v. The Orland Township Board*, 09CD011, the matter was filed on justifiable grounds and order a public hearing. As to matter 3.a.44, *McArtin v. Friends of Pat DUBY*, 09CD010, the complaint was not filed on justifiable grounds therefore concluding the matter. Item 3.a.42, *Lemmons v. Aurand*, 09CD008, as to counts 1 and 2; and Item 3.a.48, *Garcia v. Cicero Voters Alliance (the Larry Dominick Team)* 09CD001, were filed on justifiable grounds but there is no requirement for public hearing. As to 3.a.46,

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Machynia v. Citizens for Itasca Party, 09CD012 and 3.a.47, *Durante v. Addison Township Democratic Organization*, 09CD013, the complaint was filed on justifiable grounds, but there is no requirement for public hearing and these matters are referred to staff for penalty administration. The Chairman asked for a motion to adopt the foregoing. Vice Chairman Schneider so moved and Member Brady seconded the motion. The motion passed by 8 voices in unison.

As to Assessments and Final Orders considered in Executive Session, Member Keith moved to enter final orders to committees listed on pages 254, 255, 256, 257, and 258. Member Smart seconded the motion which passed unanimously by 8 voices in unison.

The Chairman returned to the Report of the Executive Director. Mr. White presented proposed rule, P.A. 95-971 "Ethics" legislation as a permanent rule. He indicated that emergency and permanent rules can run simultaneously. Copies have been distributed to agencies impacted by these rules as well as interested persons and organizations. General Counsel Sandvoss explained the rulemaking process and time constraints and noted that the emergency rule will not expire until August 1st, but it would be best to have a permanent rule in place before then. He added that the rule will be resubmitted at the May meeting incorporating comments received from the Board and the public hearings.

Director White offered an informational report of the consolidated and special election and pre testing of voting systems as submitted by Mark Mossman, Director of Election Information and Dianne Felts, Director of Voting Systems and Standards. The low volume of calls and typical questions resulted in a smooth election. In Mr. Mossman's report, he suggests proactive training of local election officials as there were ballot issues - some candidates were left off the ballot. These problems are not new. He suggested reinstituting these classes and perhaps these issues would not occur in the future. Member Keith asked about money and budget concerns. Mr. White replied that these classes could be held in conjunction with judges of election training schools, perhaps the judges in the morning and the election officials in the afternoon. This would cut down on traveling expenses and keep overnight stays to a minimum. Ms. Felts' report was submitted with no comments, or questions.

Mr. White continued with the legislative and budget update. A preview of legislation pending in the 2009 session included the listing and status of all election bills introduced and a list of 2009 election legislation by topic was presented by Ms. Cristina Cray. He added that the legislature will adjourn May 31st. The Director indicated a meeting with Chairman Sullivan was scheduled for April 25th regarding the budget; that the meeting with House Chairman Joyce was concluded; and no inquiries have been received from the governor's office as confirmed by Fiscal Director Mike Roate. Mr. White will keep the Board advised of updates. Member McGuffage asked if the additional duties of the board will result in new staff and equipment. He also asked that the next listing of the election bills include which bills are alive and moving and a synopsis of the bills.

Mr. White asked Kyle Thomas to give the HAVA update. Mr. Thomas was happy to report that as of April 18th, Illinois is HAVA compliant. The statewide database and Department of Corrections share information. The final act was to bring Cook County into line. He credited ES&S with bringing this to fruition. He indicated that he will report to the EAC that we are HAVA compliant and revise the state plan. This will free up \$4 million for improvement of election registration that was granted by Congress. Mr. Thomas confirmed that members of the public will only have to access our site to confirm that they are or are not registered; political committees will be charged a fee; and Catalyst modifications will be performed in-house. Safeguards are applied so no one else can view an individual's information. Board members had other questions that will be researched and addressed by Mr. Thomas at the May meeting. Some of the questions included: notification if your application was accepted or denied; chances of potential duplicates; searching other states; sharing between states; identifying students away at school; and FOIA requests. Member Keith congratulated Mr. Thomas on behalf of the board.

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Mr. White presented the proposed FY2010 Board meeting schedule for the Board's consideration, indicating the meeting is usually the 3rd Monday of each month. He added that video conferencing is available simultaneously in multiple locations; the terms of the way the meeting are conducted; and notice is provided in each office. Discussion was had among the Board. Member Keith moved and Vice Chairman Schneider seconded a motion to approve the FY2010 meeting schedule. The motion passed by 8 voices in unison.

The Executive Director updated the Board on the agency conversion to fiber optics, which makes our communications faster, at no additional costs. He congratulated Steve Flowers, Kevin Turner and the remarkable IT staff.

Mr. White concluded his report with informational reports of the FY09 March budget, Help Illinois Vote Fund, EAC Data collection grant and the two-year plan of activity for April and May and noted little activity with HAVA.

The only item remaining on the General Counsel's Report was 3.b., the issue of temporary and/or contractual employees subjected to Section 5/1A-13 of the Election Code. Discussion ensued among the Board. This matter was continued to the May meeting.

At 1:18 p.m. the Board retired to executive session to discuss personnel and litigation and returned to open session at 1:25 p.m. with all members present.

There being nothing further before the State Board of Elections, Vice Chairman Schneider Keith moved to adjourn until Friday, May 8th at 10:30 a.m. subject to certifying the results of the Consolidated and Special Election in the 5th Congressional District or the call of the Chairman. Member Keith seconded the motion which passed unanimously by 8 ayes in unison.

The Board adjourned at 1:27 P.M.

Dated: April 27, 2009

Respectfully Submitted,

Daniel W. White, Executive Director

Darlene Gervase, Administrative Assistant II