

STATE OFFICERS ELECTORAL BOARD
Special Meeting
Friday, August 22, 2014

MINUTES

PRESENT:

Jesse R. Smart, Chairman
Charles W. Scholz, Vice Chairman
Harold D. Byers, Member (Springfield)
Betty J. Coffrin, Member
Ernest L. Gowen, Member
William M. McGuffage, Member
Bryan A. Schneider, Member
Casandra B. Watson, Member

ALSO PRESENT:

Rupert Borgsmiller, Executive Director
Jim Tenuto, Assistant Executive Director
Steve Sandvoss, General Counsel
Ken Menzel, Deputy General Counsel
Bernadette Harrington, Asst. General Counsel
Darlene Gervase, Administrative Assistant III

The State Officers Electoral Board of Elections convened at 10:40 a.m., with all members present.

Vice Chairman Scholz moved to adopt the Minutes of the July 21, 2014 special meeting. Member Gowen seconded the motion which passed by 8 voices in unison.

General Counsel Steve Sandvoss summarized item 2a. *Sherman v. Hawkins & Kusch*, 14SOEBGE506, wherein candidates were required to file 25,000 signatures and submitted 2; Candidate filed a Motion to Dismiss raising a procedural and a Constitutional challenge. Based on the failure to submit sufficient valid signatures; the objection should be sustained and the candidate not be certified for the 2014 General Election ballot. The Candidate's Motion to Dismiss due to the failure of the Objector to appear should be dismissed as the Objector appeared at all scheduled hearings, including the initial case management conference. The Candidate's Constitutional challenge was not considered by the Hearing Officer as the Board lacks the authority to address such challenges. Neither the Objector, nor Candidates were present. Vice Chairman Scholz moved to adopt the Hearing Officer and General Counsel's recommendations to sustain the objection and not certify the candidates for the 2014 General Election. Further, the procedural portion of the Motion regarding the objector's attendance should be dismissed and the constitutional challenge was not considered. Member Gowen seconded the motion which passed unanimously 8-0 by roll call vote.

Item 2b, *Atsaves & Gale v. Hawkins & Kusch*, 14SOEBGE511 was identical to the previous matter, Mr. Sandvoss said. Attorney John Fogarty was present for the Objector and no one was present for the Candidates. Member Gowen moved to adopt the Hearing Officer and General Counsel's recommendations to sustain the objection and not certify the candidates for the 2014 General Election. Further, the procedural portion of the Motion regarding the objector's attendance should be dismissed and the constitutional challenge was not considered. Vice Chairman Scholz seconded the motion which passed unanimously 8-0 by roll call vote.

Mr. Sandvoss indicated that insufficient valid signatures was the basis of the objection in 2c, *Carruthers v. Dill*, 14SOEBGE510. The 13th Congressional seat requires 15,205 valid signatures, but the candidate submitted 232. The Candidate filed a Motion to Dismiss and Objectors filed a Response thereto. The General Counsel recommended adopting Hearing Officer's recommendation to sustain the objection and not certify the Candidate for the 2014 General Election ballot. Furthermore, the Candidate's Constitutional arguments should not be considered as the Hearing Officer and Board lack the authority to consider such challenges. Attorney John Fogarty was present for the Objector in Chicago and Candidate Dill was present in Springfield. Vice Chairman Scholz moved to adopt the Hearing Officer and General Counsel's recommendation to sustain the objection due to the insufficient amount of valid signatures and the Candidate's Constitutional argument was not considered. Member Gowen seconded the motion which passed unanimously by roll call vote.

Item 2.d. *Atsaves & Gale v. Oberline, et al.*, 14SOEBGE514, the objection alleged a lack of valid signatures and therefore a records examination was conducted. The Candidates of the Constitution Party were required to file 25,000 valid signatures; 30,412 signatures were submitted. The records exam was suspended after the total number of valid signatures was reduced to 23,452. The Candidate elected not to challenge the results of the records exam and did not offer any evidence to reverse the results. John Fogarty, attorney for the objector and Ross Secler, attorney for the candidates were present in Chicago. The Hearing Officer recommended sustaining the objection, declaring the Candidates' petition invalid and not certifying the Constitution Party or its candidates to the 2014 General Election ballot. General Counsel Sandvoss concurred. Member McGuffage moved to adopt the Hearing Officer and General Counsel's recommendations and sustain the objection, declare the Candidates' petition invalid and not certify the Constitution Party or its candidates to the General Election ballot. Vice Chairman Scholz seconded the motion which passed 8-0.

Mr. Sandvoss continued with 2.e, *Atsaves & Gale v. Grimm, et al.*, 14SOEBGE515 in which Libertarian Party candidates were required to submit 25,000 valid signatures and submitted a total of 43,014. Objections were filed to 23,775 of those signatures as well as certain circulators. A records exam was ordered and 12,789 objections were sustained leaving 30,197 valid signatures. Candidates filed a Rule 9 Motion to rehabilitate certain signatures; objectors did not challenge the motion. The Hearing Officers recommended the Rule 9 Motion be denied in part and granted in part and that 66 signatures that were stricken be reinstated, which overrules the objections thereto. The Candidates' petitions then contained 30,263 valid signatures. However, signatures were struck on certain circulators sheets resulting in a total of 25,989 valid signatures. Argument was then heard regarding the circulation of petitions by Sarah Dart, which the Objector's specifically took issue with. The Hearing Officer recommended overruling the objection and certifying the Libertarian Party and its candidates to the 2014 General Election ballot. The General Counsel concurred and discussion was had among the Board. John Fogarty, attorney for the objector; Ross Secler, attorney for the candidates were present in Chicago. Member McGuffage moved to overrule the objection and certify the Libertarian Party for the General Election ballot. Member Byers seconded the motion which passed 5-2-1 with Member Gowen abstaining. Members Coffrin and Schneider voted against the Motion. Member Schneider did not adopt the Hearing Officer's recommendation, and questioned certain of the Findings and Conclusions related to circulator Dart, as detailed by the Hearing Officer.

In the case of 2f. *Yarbrough v. Lopez, et al.*, 14SOEBGE516, the General Counsel indicated that 25,000 valid signatures were required for a new party Statewide slate of candidates; 29,687

signatures were submitted and objections were filed to 12,797 signatures. Candidates filed a Motion to Strike and Dismiss objector's Petition; Objector filed a Response to the Motion to Strike and Dismiss and Candidate filed a Reply in Support of Candidate's Motion to Strike and Dismiss. The Candidate also filed Objections to the "Records Examination" Procedures and a Motion to Stay the "Records Examination." The binder check was ordered and resulted in 7,024 objections being sustained reducing the number of valid signatures to 22,663 which is 2,337 signatures below the statutory minimum. As to the Motions: since administrative agencies have no authority to address the Constitutionality of statutes, no recommendation was made by the Hearing Officer. The Hearing Officer then recommended that the Motion to Dismiss for failing to state the nature of the objection be denied, as the Objector's alleged with specificity each signature objected to. The Hearing Officer then found that since the State Officers Electoral Board (SOEB) is temporarily an entity comprised of the State Board of Elections (SBE), the SBE staff temporarily becomes the staff of the SOEB and are permitted to perform the records examination. The Rules of Procedure and its implementation were challenged based on a lack of due process and evidentiary deficiencies and although the Hearing Officer did not make a recommendation regarding the Constitutional claims including due process, he noted that both parties were given notice and able to be present at the records examination as well as the opportunity to challenge rulings. Ergo, the Hearing Officer believes Candidates were afforded adequate due process. Candidate complained of the integrity and trustworthiness of the SBE's electronic voter database. The Hearing Officer concluded that the veracity and trustworthiness of the database was intact and parties had an opportunity to present evidence to challenge the signature invalidity determinations. Finally, Candidates allege the SOEB violated the Open Meetings Act, but offered no evidence to support the allegation. Present in Chicago were James Morphew for the objectors and Andrew Finko for the candidates. Mr. Sandvoss agreed with the Hearing Officer that the objection be sustained. He noted that the candidates were not denied due process, and recommended that the Green Party and its Candidates not appear on the 2014 General Election ballot. Member Schneider moved to adopt the recommendations of the Hearing Officer and General Counsel, and that the Green Party and its Candidates not be certified to the 2014 General Election ballot. Vice Chairman Scholz seconded the motion which passed 7-0-1, with Member Watson abstaining.

Mr. Gary Sheperd, candidate for the 115th Representative for the Green Party in 2.g *Compton v. Shepherd*, 14SOEBGE518 was required to file 2,407 valid signatures, his petition contained 1,806 signatures. Due to the insufficient amount of signatures submitted, the Hearing Officer recommended the objection be sustained and the Green Party Candidate, Gary Sheperd, not be certified to the 2014 General Election ballot. Further, although the Candidate filed a Motion to Strike and Dismiss and Objector filed a Response to the Motion; the Hearing Officer noted that the Board lacks the authority to consider Constitutional challenges. Present in Chicago were James Morphew for the Objector and Andrew Finko for the Candidate. General Counsel Sandvoss concurred with the Hearing Officer. Vice Chairman Scholz moved and Member Coffrin seconded a motion to sustain the objection and declared that the name of Gary Sheperd, a Green Party Candidate will not be certified to the 2014 General Election ballot.

Item 2.h, Flores *v. Ward*, 14SOEBGE519 was summarized by Mr. Sandvoss. He stated that an Independent Candidate, Harold "Noonie" Ward, voted the ballot of the Democratic party in the General Primary election in March, 2014, in violation of Section 7-43 of the Election Code. Present in Chicago was Kevin Morphew for the Objector and Candidate Ward. Although the Candidate states that he requested, but did not vote the Democratic ballot in the 2014 March Primary election, evidence presented by Objector from the Chicago Board of Elections refutes candidate's claim, showing that he applied for and voted the Democratic ballot. The Hearing Officer recommended that the Candidate's Motion to Strike and Dismiss be denied. The

Hearing Officer recommended the objection be sustained and the Candidate not be certified to the General Election ballot. Mr. Sandvoss concurred. Member Schneider moved to sustain the objection and adopt the Hearing Officer and General Counsel's Recommendations. Vice Chairman Scholz seconded the motion which passed 7-1 with Mr. Byers voting no.

In the matter of *Pavelonis v. Tripp*, 14SOEBGE520, Candidate was required to file 2399 valid signature, but filed 1713. Candidate filed a Motion to Strike and Dismiss and Objector filed a Response thereto. Present in Chicago was Kevin Morphew for the Objector and Andrew Finko for the Candidate. Based on the Candidate's failure to file the required number of valid signature, the Hearing Officer recommended to sustain the objection and not certify the Candidate for the 2014 General Election ballot. As to the Constitutional issues raised in the Candidate's Motion to Strike and Dismiss, the Board found that they lack the authority to consider Constitutional challenges. Vice Chairman Scholz moved to adopt the Hearing Officer and General Counsel's recommendations and Member Watson seconded the motion which passed unanimously.

There being nothing further before the State Officers Electoral Board, Chairman Smart asked for a motion to adjourn. Vice Chairman Scholz so moved and Member Gowen seconded the motion which passed unanimously by 8 voices in unison. The State Officers Electoral Board adjourned at 12:30 p.m.

Respectfully submitted,



Rupert Borgsmiller, Executive Director



Darlene Gervase, Administrative Assistant III