

STATE OFFICERS ELECTORAL BOARD

Friday, August 27, 2010

MINUTES

PRESENT: Bryan A. Schneider, Chairman
Patrick A. Brady, Member
John R. Keith, Member
Albert S. Porter, Member
William M. McGuffage, Member
Jesse R. Smart, Member
Robert J. Walters, Member (via telephone)

ABSENT: Wanda L. Rednour, Vice Chairman

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

Chairman Schneider called the meeting of the State Officers Electoral Board to order at 9:22 a.m. Chairman Schneider and Members Brady, Keith, Porter, McGuffage, and Smart were present in Chicago and Member Walters was present via telephone. Member Keith held Vice-Chairman Rednour's proxy.

The first order of business was to consider objections to certain new party and independent candidate petitions for the November 2, 2010 General Election. Chairman Schneider said that he would first ask the General Counsel to present the case and his recommendation. The objector would then state his/her case and the Board would ask questions following with the candidate's statement and any questions. The General Counsel would offer his comments and recommendation and the Board would consider the matter. He asked the parties to remain in the office after the Board has determined each case as they would be furnished with a copy of the written order.

An objection was filed by Jay D. Webb to the nominating papers of Jason Rice, an Independent candidate for State Representative in the 117th District, 10 SOEB GE 107. Hearing Officer, Kelly McCloskey Churf, was appointed to hear the objection. The objector was represented by Attorney Michael Kasper and no one appeared for the candidate. A minimum number of 2,597 signatures are required. The objection claimed the nomination papers contained an insufficient amount of valid signatures as well as objections to individual signers and circulators and suspicion of a pattern of fraud by two circulators. After a records examination performed by SBE staff, the petition contained 1,866 presumably valid signatures, which is 731 below the minimum. The candidate was unable to rehabilitate enough signatures to exceed the minimum necessary to appear on the ballot. The Hearing Officer recommended the Objector's petition be granted and the Candidate's name not certified to the ballot. General Counsel Sandvoss concurred with her recommendation. Member Porter moved that in the matter of *Webb v. Rice*, 10 SOEB GE 107, the name of Jason Rice not be certified to the ballot and to accept the Hearing Officer's and General Counsel's recommendations that the candidate's petitions contained an insufficient number of signatures required to appear on the ballot. Member Smart seconded the motion that passed unanimously by roll call vote.

Mr. Sandvoss continued with 3.b. *Dunaway and White v. Dabney*, 10 SOEB GE 507. Thomas Dunaway and Ella White timely filed an objection to the nomination papers of Corey Dabney, an Independent candidate for U.S. Senator. The minimum requirement for this office is 25,000 valid signatures. The candidate submitted 48,263 and the objectors challenged 28,903 signatures, as well as objections to certain circulators. Also, there was an objection to the candidate filing his Nomination Papers and Statement of Candidacy without a party designation because he had previously filed and voted in the February 2, 2010 Primary Election as a Democrat. Candidate filed a Motion to Strike, however, Hearing Officer Barbara Goodman found that none of the issues presented in the Candidate's Motion to Strike and Dismiss would serve to strike the Objection in their entirety and recommended the Motion to Strike and Dismiss be denied. A record exam sustained 26,302 objections to signatures which resulted in 21,961 valid signatures, 3,039 below the 25,000 minimum. Both counsel for the objectors and candidates were timely given the totals and candidate was given until 5:00 p.m. Monday, August 16th to submit evidence to rehabilitate signers. Candidate filed a Request for 25 hour deadline for his Rule 9 Motion Submittal. Ms. Goodman determined that the candidate had ample time to prepare the Rule 9 motion in light of

the fact that there was an intervening weekend between the time the tally sheets were received and the deadline and she accepted candidate's evidence through August 16, 2010, 7:22 p.m. The Hearing Officer recommended that the Request be denied for the reasons stated in the Objector's Response. General Counsel Sandvoss agreed and stated that parties are given the Rules of Procedure at the Board's initial meeting which make it clear that these are expedited hearings. Both sides agreed that even if the Candidate rehabilitated those 3,020 signatures, he would still be below the minimum. Attorneys Michael C. Dorf represented the Objectors and Daniel Johnson-Weinberger for the Candidate both offered their comments and answered questions from the Board. Member Brady moved to accept the recommendations of the Hearing Officer and General Counsel and deny the Interlocutory Appeal regarding the Rule 9 deadline. Member Smart seconded the motion which passed unanimously by roll call vote. Member Brady moved and Member Keith seconded his motion that based on the recommendations of the Hearing Officer and general Counsel that the objection be sustained as to the inadequacy of the number of signatures, the other matters raised in the objection being found to be moot. The motion passed 8-0 by roll call vote. Member Keith asked that Mr. Dorf be granted leave to submit a photocopy of Demonstrative Exhibit #1 so marked for the record. There was no objection.

The General Counsel continued with *Nikic/Heffernan v. Dabney*, 10 SOEB GE 569 and noted the objection was virtually the same as the previous case. He reiterated the record exam showing the candidate below the minimum requirement and that the hearing officer recommended the candidate's name not be certified to the ballot. Based on the Board's decision the General Counsel recommended the matter be declared moot in light of the previous case. Attorneys John Fogarty and Brien Sheahan appeared for the objector and Attorney Daniel Johnson-Weinberger appeared for the candidate. Attorneys were afforded the opportunity to speak. Member Brady moved to accept the recommendation of the hearing officer and General Counsel in this case and not certify the candidate's name to the ballot and other matters raised in the objection are moot in light of the previous case that was heard and no further action is required. Member Keith seconded the motion which passed unanimously by roll call vote.

Mr. Sandvoss consolidated matters 3.d. *Heffernan v. Martin*, 10 SOEB GE 513 and e. *Sherman v. Martin*, 10 SOEB GE 565. He said that Mr. Martin was running as a new political party, the Illinois Reform Party. Some of the objections purported that the nomination papers contained an insufficient number of signatures, he did not file a complete slate and that he is prohibited to run as a new political party since he ran and was defeated as a Republican for U.S. Senate in the February 2, 2010 General Primary Election. Mr. Martin was given notice of the meetings and a copy of the objection via certified mail, yet he failed to appear at any of the meetings. Mr. Martin claimed the Board does not have jurisdiction over this matter and has filed a claim in Sangamon County and attempted to file a Federal lawsuit. However the Federal lawsuit resulted in an order remanding the case back to the board. All parties were informed of all the hearings by electronic mail. Attorney John Fogarty was present for the Objector and no one appeared for the candidate. The Hearing Officer found it clear from communications and correspondence received from the Candidate that he was aware of the objections and of the time and location of the hearings. The Hearing Officer sustained the objection because the candidate filed one petition sheet with one signature – 24,999 below the minimum; that he is prohibited to run as a new political party as he was a Republican candidate at the General Primary, February 2, 2010; and that he failed to file a complete slate. General Counsel Sandvoss concurred with the hearing officer in the first two objections, but suggested the Board not address the slate issue as litigation is in the courts. The Board chose to address the cases separately. Attorney John Fogarty was present for the objector and concurred with the General Counsel's recommendation, however he did not waive the "sore loser" issue. In the matter of 3.d.513, Member Keith moved and Member Smart seconded a motion to accept the recommendation as to lack of sufficient signatures and find that Mr. Martin was a candidate in the Republican primary and therefore is prohibited from filing as an independent and there is no finding as to the lack of filing a complete slate as same is moot. The motion passed 8-0. As to 3.e. 565, Member Keith moved and Member Smart seconded a motion to adopt the recommended findings of the General Counsel and find the issue is moot based upon the order entered in 513 with none of the matters being waived by the Objector and the candidate not be certified. The motion passed unanimously by roll call vote.

Continuing with the next case, *Heffernan and Nekic v. Libertarian Party*, 10 SOEB GE 567, Chairman Schneider noted the appearances of Attorneys John Fogarty and Brien J. Sheahan for the objectors and Andrew B. Spiegel for the candidates. Mr. Sandvoss summarized candidate's dispositive motions. He recommended the motion be denied based on the fact that the candidate failed to submit evidence rebutting the residency and voter registration of the Objectors. The Candidate's Motion to Strike on the basis of petition signers being eligible to sign a new political party petition despite the fact they had voted in the Primary Election of an established political party is moot, as the Objectors withdrew that portion of their Objection. A records examination was required and resulted in a determination that no less than 33,505 valid signatures were submitted. Based on that exam Hearing Officer Krasny recommended the Objector's petition to the Candidate's nominating papers be denied and Mr. Sandvoss concurred. Attorney Fogarty indicated he would waive the Objector's other objections if Attorney Spiegel would state on behalf of the Candidates a belief that the Objections were filed in good faith; Attorney Spiegel would not do so; therefore, Attorney Fogarty did not so waive any of the other objections; and all of said other objections were found to be moot. Member Brady moved to overrule the objection and accept the recommendations of the Hearing Officer and General Counsel and certify the names of the candidates in this case. Member Smart seconded the motion which passed unanimously by roll call vote.

The Chairman called *Heffernan and Necik v. Constitution slate*, 10 SOEB GE 570. Attorneys John Fogarty and Brien J. Sheahan were present for the Objectors and Attorney Doug Iwendahl was present for the candidates. An objection was

timely filed to the slate of the Constitution Party as well as Dispositive Motions. A records exam was required as the petition papers contained 32,998 signatures and 14,542 were objected to for various reasons. Several Dispositive Motions were filed by both sides and reasons for Hearing Officer Kelly McCloskey Cherf's findings of fact and support information are contained in her very thorough recommendation. The hearing officer recommended as to that part of the Candidate's Motion to Strike and Dismiss and Motion for Summary Judgment alleging that some if not all of the candidates failed to receive a copy of the objection be denied. The hearing officer recommended as to that part of the Candidate's Motion to Strike and Dismiss and Motion for Summary Judgment asking the objection be dismissed and/or an investigation as to who the "true" objectors are be denied. The hearing officer recommended as to that part of the Candidate's Motion to Strike and Dismiss and Motion for Summary Judgment alleging Objectors acted in bad faith raising a shot gun like objection be denied. The hearing officer recommended as to that part of the Objector's petition and Motion for Summary Judgment alleging unnumbered petition pages, duplicate page numbers and petition pages out of numerical order be overruled. The hearing officer recommended as to that part of the Objector's Motion for Partial Summary Judgment as to Improperly Notarized Petition Sheets be denied. The hearing officer recommended as to that portion of the Objector's petition challenging certain petition sheets circulated by Rodney Cherizol be overruled, and the Objector's Motion for Summary Judgment as to Petition Sheets circulated by Rodney Cherizol be denied. Finally, Hearing Officer McCloskey-Cherf recommended that the objector's petition be sustained in part and the Constitution party and its candidates should not be certified to appear on the November 2, 2010 General Election ballot as the nominating papers contain approximately 22,043 presumptively valid signatures. General Counsel Sandvoss concurred with her recommendations. Attorneys Fogarty and Ibendahl presented their cases to the board. After lengthy questions and discussion by the Board, Member Keith moved to adopt the recommendations of the Hearing Officer and General Counsel in all matters except those regarding Mr. Rodney Cherizol and remove the party and its candidates from the ballot and find that issue moot without it being waived by Mr. Fogarty based upon our determination of the other issues. Member Brady seconded the motion which passed unanimously by roll call vote.

There being nothing further before the Board, Member Brady moved and Member Porter seconded the motion to recess the State Officers Electoral Board to Monday, September 20th at 10:30 a.m. or the call of the Chair, whichever occurs first. The motion passed by 8 ayes in unison.

The Board adjourned at 11:23 a.m.

DATED: September 14, 2010

Respectfully submitted,

Daniel W. White, Executive Director

Darlene Gervase, Administrative Assistant II