

STATE OFFICERS ELECTORAL BOARD

MINUTES

Thursday, December 10, 2009

MINUTES

PRESENT:

Bryan A. Schneider, Chairman
Wanda L. Rednour, Vice Chairman (via telephone)
Patrick A. Brady, Member
John R. Keith, Member (via telephone)
Albert S. Porter, Member
William M. McGuffage, Member
Jesse R. Smart, Member
Robert J. Walters, Member (Godfrey, IL)

ALSO PRESENT:

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

The Chairman called the meeting of the State Officers Electoral Board to order at 2:13 p.m. The roll call resulted in five members present in Chicago; Mrs. Rednour and Mr. Keith present via telephone conference and Mr. Walters present in Godfrey via video conference.

Mr. Sandvoss asked the Board to consider Item 4(g), *Hossfeld v. Rauschenberger*, 09SOEBGP525 first. Attorneys for the objector, Michael Kasper and Courtney Nottage; and attorneys for the candidate, Sarah Gadola Gallagher and Burton S. Odelson requested the change. The Board agreed and Mr. Sandvoss summarized the matter. The objection alleges that the candidate is ineligible based on the decision of *Cullerton v. DuPage County Officers Electoral Board*, and Mr. Rauschenberger is locked in as a Democratic since he chose and voted a Democratic ballot at the consolidated primary election. Further that the Court held that person is locked into that party until the next general primary election which would be February 2, 2010. The candidate contends that *Cullerton* is limited to one election cycle, not from one general primary to the next general primary. The hearing officer recommended sustaining the objection and not to certify Mr. Cullerton to the ballot. Mr. Sandvoss concurred. Both parties presented their case to the Board and lengthy discussion was had among the Board. Mr. Porter moved to follow the recommendation of the hearing officer and General Counsel, to sustain the objection and enter an order that the candidate's name will not appear on the ballot. Member McGuffage seconded the motion. The Chairman asked for discussion on the motion. Member Smart was recognized. He stated that he would vote to the contrary of the motion. As a non attorney he was more persuaded with Mr. Odelson's presentation which he considered right on point. Member McGuffage stated he would vote to accept the recommendation of the hearing officer and General Counsel. Mr. Sandvoss presented the Candidate's Motion to Strike which he said should be addressed and could be combined as they allege the same arguments that were made in the merits of the case. Member Porter moved to include a motion to deny the motion to strike made by the candidate. Member McGuffage accepted the amendment to the motion. Chairman Schneider pointed out that he opposed the motion and clarified that he found Mr. Odelson's arguments persuasive. The Chairman called for the motion which resulted in a 4-4 split vote. Members Brady and Walters also voted no, concurring with the reasoning that Chairman Schneider articulated. Member Smart moved to overrule the objection with Mr. Brady's second. Member Keith said he would vote against the motion as he is persuaded by the presentations of the hearing officer, General Counsel, and supplemented by Mr.

Kasper's arguments. The motion resulted in a 4-4 split vote. There being no further motions, Chairman Schneider passed on the case recognizing that judicial relief is available to the parties if they choose to secure it.

The Chairman returned to Item 4(a), *Ferritto v. Scheurer*, 09SOEBGP500 and asked Mr. Sandvoss to present the case. Attorneys for the objector are Sally Saltzberg and Mike Kreloff and the Candidate is represented by Andrew Finko. He said this is similar to the previous case and the objector relies on the *Cullerton v. DuPage County Officers Electoral Board*. The Candidate filed a Motion to Strike to deny the objection and argued the same issues as they did on the merits. The hearing officer recommendation was to sustain the objection and the General Counsel concurred. The only difference was the candidate was running as a Green Party candidate in this matter. Counsel for both sides presented their case. Member McGuffage moved to accept the recommendations of the hearing officer and General Counsel to sustain the objections; enter an order that the candidate's name not be printed on the Ballot and include a denial of the motion to strike. Member Porter seconded the motion. The motion resulted in a 4-4 split vote. Member Brady stated that he votes no for the reasons articulated in *Hossfeld v. Rauschenberger* without necessarily adopting the supplemental arguments made by Mr. Finko today. Members Smart and Walter voted against the motion. Chairman Schneider voted no and explained that he adopts his own reasons as expressed in the *Hossfeld v. Rauschenberger* case. Member Brady moved to grant the motion to strike. Member Smart seconded the motion which failed in a 4-4 split vote. Member Keith voted against the motion as articulated by the hearing officer and General Counsel and supplemented by the arguments of Attorney Kreloff. Members Keith, McGuffage, Porter, and Vice Chairman Rednour voted against the motion.

Mr. Sandvoss continued with Item 4(b), *Bartholomae v. Boland*, 09SOEBGP504. He added that Mr. Boland is seeking the Democratic nomination for Lieutenant Governor of Illinois. The attorneys of record are James P. Nally for the objector and William L. Berry for the candidate; neither was present at the Board Meeting. The objection involved the number of signatures submitted on the nomination papers. After a records exam, 6,372 valid signatures remained; 1,372 signatures above the necessary minimum. The hearing officer recommended the objection be overruled and the candidate certified to the ballot. Mr. Sandvoss concurred. The candidate filed a Motion to Strike defending against the allegations contained in the objection. Issues that were raised in the motion were all resolved either at the records examination or that the candidate's attorney did not proceed any further once the results of the exam were concluded, and did not offer any evidence to support his contentions with regards to the challenges to the circulator or the pattern of fraud allegation. The only issue remains whether the candidate had a sufficient number of signatures to appear on the ballot and a typographical error in the word "November". Member Smart moved to accept the recommendation of the hearing officer and General Counsel to deny the motion to strike and overrule the objection. The motion was adopted 8-0; the motion to strike is denied and objection is overruled. The candidate's name will be printed on the ballot.

Item 4(c) *Bartholomae v. Link*, 09SOEBGP505, was an objection against Candidate Terry Link for the office of Lieutenant Governor of Illinois for the Democratic nomination. The objector was represented by James P. Nally and the candidate by Andrew M. Raucci. A record examination determined that 7,546 valid signatures remained; 2,546 above the statutory minimum. The candidate filed a motion to strike contesting pagination issues. The hearing officer recommended granting the motion to strike on the pagination issue and to overrule the objection and to place the candidate's name on the ballot as having the required number of signatures to qualify and Mr. Sandvoss concurred. Member McGuffage moved to accept the recommendations of the hearing officer and General Counsel to grant the motion to strike for pagination; the candidate's name be place on the ballot and overrule the objection. Member Smart seconded the motion which passed unanimously.

The Chairman called Item 4(d), *Perrin v. Forte-Scott*, 09SOEBGP509. Mr. Sandvoss said this objection to candidate Anita Forte-Scott, Republican for State Representative of the 56th District consists of an allegation of

a pattern of fraud and false swearing; and a false affidavit of the circulator wherein signatures were collected in 2007 rather than 2009. The objector is represented by Mr. John Countryman, present in our Springfield office and Mr. John Fogarty in our Chicago office. Attorney for the candidate is Andrew Spiegel, also present in Chicago. The candidate filed a dispositive motion, a Motion to Strike and Dismiss stating the objection should be stricken because an appendix identifying line by line objections was not included. The hearing officer recommended overruling the objection. He did not find the four petition sheets at issue were inconsistent or not uniform enough to constitute fraud or be confusing to signers. Further, that the objector did not meet the burden to prove pattern of fraud with the signatures, as they may have signed both in 2007 and 2009. The hearing officer concluded that the objection should be overruled, and the portion of the motion to strike and dismiss dealing with the merits of the objection should be granted and the part that alleged did not include an appendix or recapitulation sheet specifically identifying objections should be denied as this case was not challenging specific signatures. Mr. Sandvoss concurred with the recommendations. The attorneys reiterated their cases to the Board and Chairman Schneider thanked them for their concise and forceful advocacy of all the litigants. Member Brady moved to deny the recommendation of the hearing officer and General Counsel and grant the objections. Member Smart seconded the motion. Member Keith said that he would vote in opposition to this motion as the Board appoints hearing officers to take testimony and determine credibility of the witnesses and that credibility was found by the hearing officer. Member Brady amended his motion to reject the recommendation of the hearing officer and the General Counsel and accept the recommendation of the General Counsel to deny that portion of the motion to strike relating to the appendix recapitulation sheet. Member Smart agreed to the amendment. The motion failed 4-4. Chairman Schneider explained that he voted contrary to the recommendation of the hearing officer and General Counsel because he read the record to suggest that all witnesses presenting their testimony were credible and on that basis, all of the credible testimony taken in its totality, he thinks there is a pattern of fraud. Member Brady adopted the rationale articulated by Chairman Schneider. Member Keith moved to grant in part and deny in part the motion to strike and dismiss in accordance with the recommendation of the General Counsel and the recommendation of the hearing officer and deny the objection and adoption of the recommendation of the hearing officer and General Counsel. Member Porter seconded the motion which failed by 4-4 vote with Members Brady, Smart, Walters and Chairman Schneider voting no.

Chairman Schneider called 4(e) *Roth v. Dabney*, 09SOEB519. This challenge was to the validity of signatures, the General Counsel said. The total number submitted was 6,634, and 5,693 were objected to. The Candidate filed a dispositive motion to strike the objection as the objector did not state with specificity each objection he is making and the reason why. Candidate believes this objection was a "shotgun" objection and is a violation of 10-8. The objector was represented by Sally Saltzberg and Michael Kreloff and Joshua Karsh. Attorney for the candidate, Dan Johnson-Weinberger, was present in the Springfield office. Mr. Sandvoss continued that after the records exam, enough of objected signatures were sustained to render the candidate below the minimum necessary to appear on the ballot. He concurred with that recommendation and added that he recommended the Board deny the motion to strike and dismiss. He added that the candidate was 1,858 signatures below the 5,000 minimum. Attorney for both parties spoke to the merits of their cases. After questions and discussion, Member McGuffage moved to deny the motion to strike and sustain the objection and Member Smart seconded the motion which passed 8-0 by roll call vote. The motion is adopted and the candidate's name will not be printed on the ballot.

The General Counsel continued with 4(f), *Josifovic v. Dabney*, 09SOEBGP530, another objection against Corey Dabney, Democratic candidate for U.S. Senate. Mr. Richard Means represented the objector and Mr. Dan Johnson-Weinberger was present in Springfield for the candidate. The objection alleged that the nominating papers contain an insufficient number of valid signatures. A records exam revealed that the candidate was found to have 5,197 valid signatures and was over the 5,000 minimum. The hearing officer recommended the

objection be overruled. However, unless the previous objection goes up on appeal and the Board's decision is overruled, this may be moot. But to maintain a complete record, he concurred with the recommendation of the hearing officer as to this particular objection. Member Brady moved to accept the recommendation of the hearing officer and general counsel and overrule the objection. Member Smart seconded the motion which passed 8-0 by roll call vote; the motion was adopted and the objection in this case was overruled.

The Chairman indicated no further action was necessary in 4(h) *Lipsman v. Boyd* and 4(i) *Clark v. Boyd* as the Board has accepted the candidate's withdrawal and the withdrawal is irrevocable. To clarify the record the Chairman asked if anyone represented the parties. Mr. Means, represented objector Clark and Mr. Kreloff represented objector Lipsman. They agreed no further action was required.

Chairman Schneider made a change to page 4 of the November 17th minutes, changing the word "officers" to "offices" and Member Smart moved to approve the submitted minutes as amended from the State Officers Electoral Board meeting of Tuesday, November 17th. Member Brady seconded the motion which passed by 8 ayes in unison.

Mr. Sandvoss concluded his report with a list of objections that were withdrawn. They are: *Emami v. Krislov*, 09SOEBGP520; *Svitak v. Krishnamoorthi*, 09SOEBGP517; *Juarez v. Boland*, 09SOEBGP527; and *Nybo v. Manzo*, 09SOEBGP503. It was agreed that this matter would be taken up at the State Board of Elections' meeting.

Member Smart moved that the State Officers Electoral Board adjourn until Thursday, December 17th at 9:30 a.m. or call of the chair, whichever comes first. Member Porter seconded the motion which passed by 8 ayes in unison.

The meeting adjourned at 4:42 p.m.

DATED: December 28, 2009

Respectfully submitted,

Daniel W. White, Executive Director

Darlene Gervase, Administrative Assistant II