

MINUTES

PRESENT: Jesse R. Smart, Chairman
Patrick A. Brady, Member
John R. Keith, Member
William M. McGuffage, Member
Albert S. Porter, Member
Robert J. Walters, Member

ABSENT: Wanda L. Rednour Vice Chair
Bryan A. Schneider, Member

ALSO PRESENT: Daniel W. White, Executive Director
Dianne Felts, Director/Voting Systems and Standards
Steve Sandvoss, General Counsel
Mark Mossman, Director/Election Information
Darlene Gervase, Assistant to the Executive Director

Chairman Smart called the regular monthly meeting of the State Board of Elections to order shortly after 10:30 a.m., and opened the meeting by leading everyone in the Pledge of Allegiance. Five members were present. Mr. Keith held Vice Chairman Rednour's proxy and Chairman Smart held Mr. Schneider's proxy. Mr. Porter held Mr. McGuffage's proxy until his arrival at 10:50 a.m.

The Chairman presented the Minutes of the March 20 regular Board meeting. Mr. Keith moved to approve the minutes with 2 minor changes on page 6. Mr. Brady seconded the motion which passed unanimously.

Director White indicated that the Board was meeting on a Friday rather than a Monday to certify the results of the March 21, 2006 Primary Election. Three reports with regard to Election Day activities and testing were included in his report. Mr. White noted that representatives of Sequoia, Chicago and Cook County Board of Elections Commissioners were present to discuss some of the problems that arose at the General Primary Election. Lastly, a request from the Co-chairs of the 17th Congressional District was added to the Agenda under Item d. of the General Counsel's report.

Mr. White began his report with a positive Election Day report stating that many firsts were accomplished at the March 21 Primary: voters were allowed to vote early with no excuses; registration was extended to a later date; every precinct in Illinois had at least one accessible voting system; and in his career with the State Board of Elections, the word "punch card" was not mentioned in any election day report. He noted that the time frame to train employees, election judges and inform the public made it a very trying time for the state of Illinois, but that reports received from both Chicago and Springfield went well. Although problems were reported, Mark Mossman, Director of Election Information, reported that malfunctions with the equipment; problems with polling places opening late, wrong ballot styles, etc., occur at every election. Mr. White reminded the Board that a severe storm held down voter participation and noted that there were some problems unique to the new systems. The Director introduced Mr. Mossman, and commended him on his exceptional performance especially since his December 1 appointment coincided with the candidate filing period. Mr. Mossman advised the Board that Election Information staff attempted to contact all 110 election authorities since many jurisdictions were using electronic equipment for the first time and to assure election authorities that the board was available to provide assistance if requested or needed. Some of the concerns of the elections authorities were printer issues with the TSX touch screen; DRE's were not closed out; and that the SBE offices should remain open later the day before an election.

Mr. White acknowledged the dedication and excellent work by Dianne Felts, Director of Voting Systems and Standards, and her staff during testing and certification of voting systems. He asked her to summarize her pre-testing report and voting systems equipment problems. Ms. Felts acknowledged that no counting errors occurred and some systems needed to be replaced. She also explained that in a primary both parties, including the accessible systems for both parties, are tested which means that 24 tests were performed.

As to equipment problems, Director Felts reported that over 60% of the election jurisdictions had no problems on Election Day. VOSS staff called every jurisdiction after the Primary requesting information on equipment problems. The majority of problems dealt with printers or malfunctions. Other problems were: memory cards needed to be replaced; tabulators needed to be replaced; accessible equipment lost its calibration; judges had problems setting up and closing the polls; touch screen paper rolls needed to be changed and batteries were not working on some of the touch screen machines. She suggests a different approach regarding equipment failures on the site as one test lasted from 8:00 a.m. through midnight.

Ms. Felts was asked to comment on the Hart systems, Diebold 2000 standards, and the DRE TSX. She replied that there were no problems in Kane or Peoria counties, but that the city of Peoria encountered many problems. There were no problems with the Diebold systems as they had been certified with the 2000 standards; and although the ballots recast with the DRE TSX created another paper trail, that problem was solved.

Mr. White indicated that representatives from Sequoia Voting Systems, Lance Gough, Executive Director of the Chicago Board of Elections Commissioners and Cook County Board of Election Commissioners Director of Elections, Clem Balanoff, were present to review vote tabulating issues and discuss possible improvements for the November General Election.

Jack Blaine, President of Sequoia Voting Systems introduced Michelle Shafer, Larry Korb, Waldeep Singh, Daniel Allen, Paul Babic, as staff who accompanied him to the meeting. Mr. Blaine stated that the 19,000 new voting systems that were introduced into the precincts were accurate and fraud free. However, tabulation was a problem. He indicated that they will work with Chicago and Cook to retest the components, increase training and redevelop the user manuals. He thanked the Board for the opportunity to be present and address them.

Mr. Balanoff agreed with Mr. Blaine and added that the new voting systems were well received by the public and the election was conducted fairly and honestly. He stated that Cook County Clerk Orr intends to hire an outside technical expert to review equipment software, hardware, and programming. Mr. Balanoff added that no precincts will be sharing tabulation equipment at the November General Election. Further, he requested that grant money be ensured; testing and certification completed sooner; and to obtain more money to assure a seamless transition.

Lance Gough, Executive Director of the Chicago Board of Elections Commissioners, thanked the Board for their help; Dianne Felts and Rick Fulle for their tireless work during testing and certification; and Dan White for being accessible, addressing his questions, and help solving problems. Mr. Gough noted the changes that have occurred since his start with the Chicago Board in 1975. He noted that 14,000 people voted early and reported a positive experience. He assured the Board that he will work toward a flawless election in November for the sake of this Board, the Chicago Board and the voters of the city of Chicago.

Chairman Smart thanked everyone for their comments and honesty. He told Mr. Gough that as he watched the news that evening he noted that more problems occurred in the inner city, while the fringes did well. The Chairman asked if some of the problems might be due to lack of training or lack of personnel. Mr. Gough responded that over 900 precincts transmitted without a problem, but that problems occurred where precincts shared systems, he noted that every ballot was counted and counted accurately and assured the board that no precincts will share tabulators in November.

The Chairman stated that comments by Mr. Balanoff regarding more money were superfluous as the Board is bound by federal regulations that must be met by every election authority before the grant monies can be disbursed. He asked what the Board and its staff can do be to of assistance. Mr. Balanoff replied that Cook had to combine opti-scan and touch or they could have had all electronic system which would have made it easier. He also stated that they will be going back for certification and working on the touch screen and it will need to be recertified. Chairman Smart told Mr. Balanoff to get the information and equipment to Director Felts. Mr. Gough replied that Chicago is relying on the Board and staff for training and certification. Messrs Gough and Balanoff assured Mr. Brady that no tabulators will be shared in November so there will be no tabulating errors.

Mr. McGuffage asked if better training for the election judges would help and suggested extensively training one election judge in every precinct who would serve as a professional administrator.

Mr. Keith reminded Messrs. Gough and Balanoff that federal grants must be disbursed within 30 days of issuance or returned with an explanation to the Board. Further it was suggested that all election authorities be reminded of this federal guideline.

Mr. Brady reiterated his concern that secure cases were not used to hold the ballots. The Chairman anticipates that all of these problems would be corrected by November and thanked Lance Gough, Clem Balanoff, Mr. Blaine, and the Sequoia staff for offering comments and solutions to the problems that occurred.

The Executive Director presented the official canvass of results to the Board for their signatures and asked for a motion to certify the results. He stated only 24.84% of the registered voters voted in this gubernatorial nominating election, which is a record low turnout and noted that the weather may have been a contributing factor. Director White noted two items of significance, one that the Supreme Court found that denying ballot access to the judges who did not file their declarations of intent to be unconstitutional. Therefore, James M. Varga, Joan O'Brien and Carole Kamin Bellows, although not included in this certification, will be on the November ballot. The second item was the Board was ordered to certify the nominee winners for A, B, and C of the 19th sub circuit and A and B in the 22nd sub circuit. Mr. White also noted that 2 write in candidates are included in the certification, 1 judge in Jersey County and 1 regional School superintendent. Mr. Keith moved and Mr. Brady seconded a motion to certify the election results in accord with the official canvass presented to the Board by the Executive Director. The motion passed unanimously, the Board signed the canvass and returned the original to Mr. Mossman.

Mr. White offered an oral report of election related legislation as Legislative Liaison, Cris Cray, is in Springfield monitoring legislative action. He advised the Board that spring session was again extended and that the amendment to the Open Meetings Act that requires a quorum of Board members to be physically present at a Chicago or Springfield location was resurrected and may be brought for a vote. Mr. McGuffage asked for a summary of Senate Bill 1445 for all members prior to the May meeting.

The Director advised the Board of a meeting between newly appointed IVRS Coordinator, Kyle Thomas, IT Director Steve Flowers and Catalyst Consulting. Technical and non-technical issues, were discussed and a workable schedule was established. Mr. White also presented the first issue of the IVRS quarterly newsletter and thanked Kyle for its design and IT employee Carole Skaggs for her technical support. Member McGuffage suggested the newsletter be expanded to include election departments and to add Federal case law.

Director White stated that the SBE is one of the most popular in Illinois State government and during periods of peak interest visits number in the tens of thousands.

Mr. White reported that the Springfield office is being remodeled at no cost to the State of Illinois or the Board of Elections. New carpeting, painting, wall paper and remodeling of both kitchens are being performed. When the work is completed he intends to send a thank you to the landlords.

The fiscal status reports, Help Illinois Vote fund report and two year plan of staff activity were presented for informational purposes. Mr. White commented that the budget is in good shape to meet all fiscal responsibilities and continues to disburse HAVA fund in a timely manner. He also thanked the Board for bringing up the matter of election authorities holding onto the HAVA funds for more than 30 days.

General Counsel Steve Sandvoss began his report at approximately noon. He advised the board that proof of service was not received in the *Great Ideas! Promotions, Inc., v. Hill, Hoffman & Graft for Harper College Trustees*, 06CD001 complaint and that this matter has been continued until April 26. The hearing officer's report and the General Counsel's recommendation will be on the agenda for the May meeting, unless the parties wish to have it continued until the June meeting in Chicago.

Mr. Sandvoss presented new appeals of civil penalties for filing their semi-annual reports late. The hearing officer recommended the appeals be denied and the General Counsel agreed with all but two of the recommendations. Mr. Porter moved and Mr. McGuffage seconded a motion to adopt the recommendation of the hearing officer and general counsel and to deny the appeals in the following cases: *SBE v. Aurora Republican Women*, L1726, 06DS003; *SBE v. Citizens for Sue Klinkhamer*, L7721, 06DS029; *SBE v. Kurt James Eckhardt 28th Ward Republican Committee*, L9981, 05JS173; *SBE v. Citizens to Elect Janice Jones*, L10544, 06DS033; *SBE v. Batavia Township Republican Org.*, L11793, 06DS004; *SBE v. Wauconda First*, L11941, 06DS105; *SBE v. Care 114*, L12437, 06DS007; *SBE v. Democratic Party of the 49th Ward*, S6031, 06DS053; *SBE v. Warren Township Republican Organization*, S7838, 06DS103; *SBE v. Citizens Activated to Change Healthcare*, S8552, 05JS134; and *SBE v. Friends of John Valle*, S8851, 06DS057. The motion passed unanimously.

General Counsel Sandvoss presented a new appeal of civil penalties for filing a semi-annual report late in which he disagreed with the hearing officer and recommended that the Appeal be Granted. In the matter of *SBE v. Citizens for Jeff Werfel*, L12577, 06DS021, the committee's notarized testimony that the report was mailed at least 72 hours prior to the deadline. Although the postmark was illegible, Mr. Sandvoss gave the benefit of the doubt to the committee. Mr. Brady moved and Mr. McGuffage seconded a motion to adopt the General Counsel's recommendation and Grant the Appeal. Mr. Keith asked that a rule be drawn clarifying that a postmark or certification from the Post Office is required to be in compliance. Furthermore, certification of mailing will verify time and date of mailing. The motion passed 7-1 with Mr. Keith dissenting.

The Chairman called Mr. Eddy Garcia in the matter of *SBE v. Committee to Re-Elect Eddie Garcia*, S8840, 05JS134. Mr. Garcia thanked the Board for allowing him to be present, said that he did not comprehend the gravity of the matter and did not have the resources to research this matter. The hearing examiner recommended the appeal be denied and the previous penalty be reinstated resulting in a total penalty of \$1925. But, since the committee filed a final report, that the fine be abated if the committee remains inactive for a 2 year period. General Counsel Sandvoss agreed with the recommendation. Mr. Porter urged Mr. Garcia to contact the Board's office for assistance if he plans to run for office in the future and explained that the fine is abated if the committee remains inactive for 2 years from the date of his final report. Mr. Keith moved to adopt the recommendations of the Hearing Examiner and General Counsel. Mr. Porter seconded the motion which passed 6-2 with Mr. Walters and Chairman Smart dissenting.

Next on the General Counsel's report were complaints following closed hearing. Mr. Sandvoss asked that *William Darr, et al., v. Victor Santana and Citizens in Action*, 06CD002 be continued until the June meeting in Chicago. He added that the complaint in *Robinson v. Yarbrough*, 06CD004 was withdrawn.

The Chairman asked if the parties in *Stach v. Friends for John Wassinger*, 06CD005 would prefer to have the matter held in closed session. Both Nicolas Weiss, Treasurer for the respondent and Eric Stach, attorney for the complainant agreed to have the matter heard in open session. Mr. Stach began his testimony thanking Andy Nauman of the Board's Campaign Disclosure staff for his assistance with the electronic filing and that with Mr. Nauman's help the report satisfies the complaint. Mr. Keith moved that the matter was filed on justifiable grounds, but no further action is necessary. Mr. Keith advised the complainant that the board staff would review the revisions and any discrepancies would be handled internally. Mr. Brady seconded the motion which passed 8-0.

The Chairman called the matter of *Daley v. Remus* 06CD006. Mr. Michael Daley and Dennis Aukstik were present for the complainant and Frank Avila and Rich Remus for the respondent. All parties agreed to hear this matter in open session. Mr. Sandvoss summarized the complaint and agreed with the hearing examiner that the complaint was filed on justifiable grounds and a public hearing was recommended. Attorney Frank Avila had been contacted by Mr. Remus to represent him, but his Appearance has not yet been filed. After lengthy discussion by the parties, Mr. Keith moved to send the matter back to the hearing examiner, continue the closed preliminary hearing, and proceed accordingly regarding subpoenas. Mr. Brady seconded the motion which passed unanimously.

General Counsel Sandvoss summarized the enforcement of the Raffle Act proposed rule. No action was taken on the rule.

Mr. Sandvoss presented Assessments and Final Orders and Payments of civil penalties for informational purposes.

Suggested changes to the Absentee Voting Procedure rule were presented to the Board for their consideration. Mr. McGuffage moved and Mr. Walters seconded a motion to approve Section 207.150. The motion passed 8-0.

The General Counsel presented changes to proposed rules for Non Profit Organizations. Mr. Rupert Borgsmiller, Director of Campaign Disclosure and Mr. Sandvoss answered questions. After discussion, the rule was continued to the May board meeting.

Mr. Sandvoss presented a Request from the Democratic Committee Co-Chairs of the 17th Congressional District wherein they ask for an advisory opinion from the Board. The General Counsel reminded the Board that since 1987 official Advisory Opinions must come from the Attorney General. Mr. Keith moved to advise the parties in writing as soon as possible that the Board cannot render Advisory Opinions and to seek it elsewhere. Mr. McGuffage seconded the motion which carried unanimously.

There being no further business before the Board, Mr. Keith moved to recess to executive session to discuss closed preliminary matters, personnel and litigation. Because the withdrawal of the *Robinson v. Yarbrough*, 06CD004 complaint had been discussed in open session he moved to accept the withdrawal. Mr. McGuffage seconded the motion which passed 8-0. Mr. Brady seconded the motion to recess to executive session to discuss pending litigation. The Board recessed at 1:05 p.m. and returned to open session at 1:20 p.m.

Mr. Keith moved to confirm the actions taken in executive session and advise the Attorney General relative to the matter discussed in executive session. Mr. Brady seconded the motion which passed 8-0.

Mr. White informed the Board that the May 22, 2006 meeting, scheduled to begin at 10:30 a.m., will be held in the State Employees Retirement Building, 2102 South Veterans Parkway.

There being no further business before the Board, Chairman Smart called for adjournment at 1:25 p.m.

DATED: April 25, 2006

Respectfully submitted,

Daniel W. White, Executive Director

Darlene Gervase, Administrative Specialist II