

Motion to dismiss Illinois Democrats' challenge to SEP candidate

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The attorney representing Tom Mackaman—the Socialist Equality Party's candidate for state representative in Illinois—filed a motion before the Champaign County Electoral Board Wednesday demanding the dismissal of the fraudulent objection filed by the Democratic Party to throw out the signatures of hundreds of legally registered voters who signed Mackaman's nominating petitions and remove him from the ballot.

The "Motion to Strike and Dismiss" was written by Andrew Spiegel, one of the leading ballot access lawyers in the state of Illinois. Currently the general counsel of the Libertarian Party of Illinois, he also represents independent presidential candidate Ralph Nader, whose nominating petitions are also being challenged by the Illinois Democrats.

On July 6 the county electoral board ordered a line-by-line check of the more than 1,000 signatures challenged by the Democrats in Mackaman's case. The board is scheduled to make its final determination at a hearing on July 27.

The motion submitted by Spiegel charges that the Objector's Petition filed by Geraldine Parr, a vice-chair of the Champaign County Democratic Party, was a "bad-faith submission, replete with prohibited shotgun objections and prepared ... without any good faith examination of the Voter registration records of the voters in Champaign County." Under the rules of the State Board of Elections, Spiegel writes, the electoral board in Champaign County should not "tolerate objections that have been filed in bad faith."

Moreover, the motion states, Parr's objection was prepared, and is now being litigated before the board, by "state employees at taxpayers' expense in violation of both the Election Code and the recently enacted State Employees Ethics in Government Act." The two state employees who originally viewed and copied the SEP petitions—Elizabeth Brown and Brendan Hostetler—are employees of the House Democratic staff, the latter working directly for House Speaker Michael Madigan. A third state employee, Kristen Bauer, who has been coordinating the obstructive conduct of the Democratic petition "checkers," is the legislative aide of State Representative Naomi Jakobsson, the Democratic incumbent being challenged by Tom Mackaman.

The motion makes an analysis of the web of deceptions included in the original objection filed by Parr. It starts with the Democratic official's false claim that the minimum number of signatures required for Thomas Mackaman to appear on the general election ballot is 1,409, when the minimum number is actually 1,325—the

equivalent of 5 percent of the votes cast in the previous general election in the 103rd District. "Certainly a seasoned political operative such as Parr could have easily determined the number of votes cast in the last election ... and then performed a simple mathematical calculation to reach the correct number," the motion states.

Even if one was willing to accept that Parr might have made a mistake, the motion suggests, "her bad faith is further demonstrated in paragraphs 5 through 12 of her Petition, thereby leaving no doubt that she intentionally tried to boost the minimum number of signatures in paragraph 4."

Spiegel makes an analysis of the specific type of objections filed by Parr to illustrate their frivolous character. First are the objections based on the claim that the signers are "not registered at the address shown on petition." Although the Democrats objected to about 1,000 signatures on this basis, the motion states, a review of the Champaign County voter registration records would have revealed that at least 464 of the voters objected to had the same address on both the nominating petition and on their voter's registration card. "Therefore, Parr and her minions could not have actually reviewed those records and made good faith objections to at least 464 of those voters," the motion states.

There were 982 signatures *not objected to* by the Democrats out of the 2,003 originally submitted by the SEP. If the 464 clearly valid voters objected to by the Democrats are added the total number of valid signatures, the number rises to 1,446, well beyond the minimum signature requirement.

If Parr's bad faith was not apparent from her objections to these perfectly valid signatures, the motion states, it was established beyond all reasonable doubt by the obstructionist methods used by Democratic Party "observers" during the initial records examination by the County Clerk's office, where they continued to object to valid signatures even in the face of perfect matches. (See WSWs article, "A travesty of democracy in Illinois: Democrats conspire against voters in bid to remove SEP from ballot").

Among the most blatant examples of this was when "they persisted to objecting to one name, the name of the candidate himself—Thomas Mackaman—who was not only registered at the address shown, but also whose exact same name and address appears on each of the 105 nominating petitions."

Another occurred when the name of the examiner from the County Clerk's Office was discovered as one of the voters who

signed Mackaman's petitions. "Even though the person at issue was sitting right there, even though the person verified his or her address and signatures, the Parr watcher persisted in their objection to that voter," the motion states.

The initial records examination was turned into a "farce" by the Democrats' abuse of the process. This was underscored by the fact that Democratic observers were given printed instructions to object to everything, even when the records being examined clearly showed there was no continuing basis for the objection.

The SEP attorney argues that the entire objection was filed in such bad faith that Illinois Supreme Court Rule 137 sanctions should be imposed against Parr. Under the law, penalties such as the imposition of costs, expenses and attorney fees can be brought against a party which makes a legal claim or advances a legal theory without a good faith examination of its factual basis.

"Clearly, access to the ballot is a substantial right that should not be lightly denied. *Sullivan vs. County Officers Electoral Bd of Du Page County*, 225 Ill. App. 3rd 691 (2nd Dist., 1992). Yet the Objector asks this Board to do that very thing by filing her Objector's Petition that is so lacking in merit as to warrant the imposition of extraordinary sanctions in addition to dismissal of the petition."

The concluding section of the motion is based on the illicit use of state employees by the Democratic Party: "The preparation of the Objector's Petition and the ongoing litigation of those objections, has been and is being done by at least three state employees—Kristen Bauer, Elizabeth Brown and Brendan Hostetler—at taxpayers' expense and in violation of the Election Interference Act. The Election Interference Act prohibits the use of public funds to be appropriated for political or campaign purposes to any candidate or political organization; criminal penalties are imposed for violating this Act. Election Code at 10 ILCS 5/9-25.1.

"Arguably the conduct of Parr and her mentors in this scheme—Michael Madigan and the Illinois Democratic Party—also violates the Code's prohibitions against *prevention of voting or candidate support* (10 ILCS 5/29-4), *deprivation of Constitutional Rights* (10 ILCS 5/29-17), and *conspiracy to prevent vote* (10 ILCS 5/29-18)."

The motion argues that while the determination of whether there is any criminal liability to be imposed is up to a higher body, the dismissal of the Democrats' objection is "the appropriate relief to be granted to Mackaman" by the Champaign County Electoral Board for these violations.

The motion further notes that the *State Officials and Employees Ethics Act*, 5 ILCS 430/5-15, prohibits state employees from engaging in prohibited political activity while on state time. "To the extent that state employees were engaged in the preparation of the Parr petition and to the extent state employees are engaged in the records examination and in other aspects of the litigation of the Parr petition, they are violating the *State Officials and Employees Ethics Act* if they are doing so on state time."

The motion notes that Mackaman has already asked the Inspector General to investigate these serious and substantial allegations (See WSWs article, "SEP candidate demands investigation: Letter to Illinois Inspector General from Tom Mackaman"). Nevertheless, the attorney argues that the

Champaign County Electoral Board "has the authority to, and should immediately issue subpoenas to require the appearance of Parr herself as well as Kristen Bauer, Elizabeth Brown and Brendan Hostetler and every other state employee who worked on, or who is working on this matter, and to require them to produce all time and payroll records so the determination can be made as to whether they have engaged in prohibited political activity at taxpayers' expense."

In conclusion, the Motion to Strike and Dismiss the Objector's Petition calls on the county electoral board to issue an order granting Thomas Mackaman and the Socialist Equality Party the following relief:

- a. issuing subpoenas to require the appearance of Parr and every other state employee who worked on, or who is working on this matter and to require them to produce all time and payroll records so the determination can be made as to whether they have engaged in prohibited political activity at taxpayers' expense;
- b. finding that the Objector's Petition is frivolous and has been filed and litigated in bad faith;
- c. and awarding Rule 137 sanctions to the Candidate;
- d. striking and dismissing the Objector's Petition and ordering Parr to pay all costs, expenses and attorneys' fees incurred by the Candidate in the defense of this matter;
- e. declaring that the name of Thomas Mackaman shall be printed on the ballot for the November 2, 2004 General Election in the 103rd Representative District;
- f. granting the Candidate such other and further relief as the Board deems appropriate in these circumstances.

The SEP urges readers of the WSWs and all those who defend democratic rights to call on the Champaign County Electoral Board to throw out the objection by the Democratic Party and place Tom Mackaman on the ballot. Please send all emails to: mail@champaigncountyclerk.com

Please send copies of emails to the *World Socialist Web Site* at editor@wsws.org.

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