Judge orders election board to certify Illinois SEP candidate

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A Sangamon County Circuit Court judge on Tuesday ordered the Illinois State Board of Elections (SBE) to amend its list of certified candidates to include the name of Joe Parnarauskis, the Socialist Equality Party's candidate for State Senate in the 52nd Legislative District. Judge Patrick Kelley gave the election board until Thursday, September 21, at 2 p.m., to certify the SEP candidate or face being held in contempt of court. The judge also ordered election authorities in Champaign and Vermilion counties, as well as the city of Danville, not to print ballots until the election board complied with the judge's ruling and certified Parnarauskis.

The ruling was a blow to the Illinois Democratic Party machine, which has mounted a three-month campaign, involving high-level attorneys, to exclude the SEP from the ballot. Responding to the ruling, SEP candidate Joe Parnarauskis said, "Judge Kelley's decision has once again vindicated the position of the SEP, which has met every legal requirement to be placed on the ballot. We hope this will end the long saga of obstructing democratic rights, but at the same time, we fully expect the Democrats will continue their bad-faith efforts against us. We call on voters in the district to demand the right to vote for a candidate of their choice. If they want a candidate that fights for the working class against the two parties of war and big business, they should support my campaign and vote for me in November."

Four Democratic commissioners on the eight-man election board have repeatedly blocked Parnarauskis's certification. On August 31, the Democrats rejected the recommendation of the board's own hearing examiner and legal counsel, who concluded that Parnarauskis should be put on the ballot because he had met the minimum signature requirement. At the same time, however, the Democrats failed to get a majority of the board to sustain the objection to the SEP petitions brought by their party, based on a frivolous technicality about the appearance of the SEP petitions.

Having failed to remove Parnarauskis from the ballot, the Democrats sought to achieve the same aim by blocking his certification until local election authorities printed their ballots. Knowing that Parnarauskis's name would not be included if he had not been certified by the board, the Democrats continued to deadlock the vote.

Last week Andrew Spiegel, the attorney representing the SEP, requested that Judge Kelley issue a writ of mandamus, or court edict, ordering the board to carry out its statutory duty to certify all qualified candidates. In his ruling, Kelley found that the board "did not sustain the objection" because five votes are required to do so. The board's failure to uphold the objection, he ruled, constitutes a "final action on the issue in favor of the Plaintiff."

"Under the Robert's Rules of Order," Kelley said, in the Springfield, Illinois courtroom, "without a majority the motion did not carry. It was denied. It then became a ministerial act for the board to certify the candidate. Otherwise you have the potential for mischief in the certification process." The judge added, "If you can block a candidate simply with four members of one party voting against certification, what would stop the Republicans from filing an objection—bogus or not—to keep a Democrat, like [US Senator] Barack Obama, off the ballot?"

In his motion for summary judgment, SEP attorney Spiegel pointed to the undemocratic measures used by both major parties to keep third parties and independent candidates off the ballot. "In perhaps one of the greatest understatements in its history," Spiegel wrote, "the US Supreme Court recently observed that the State may not 'be a wholly independent arbiter,' in ballot access matters as it is controlled by the political parties in power, 'which presumably have an incentive to shape the rules of the electoral game to their own benefit.'

"The current dilemma the Plaintiff finds himself in," Spiegel concluded, "is the direct result of the rules established by the political parties in power in the General Assembly."

During the court proceedings, Matt Bilinsky represented the election board. Bilinsky works for Illinois Attorney General Lisa Madigan, the daughter of one of the most

powerful Democrats in the state, state House Speaker Michael Madigan. Courtney Nottage represented the Democratic objectors. Nottage is the former counsel for the second most powerful state Democrat, state Senate President Emil Jones. In the manner of their arguments, the two attorneys only confirmed the points Spiegel made about the undemocratic methods used to exclude third parties.

Bilinsky and Nottage argued that the 4-4 tie on the board could not be construed as a "final act" and that the board should be given more time to decide on validity of the objections against the SEP candidate. Bilinsky insisted that the judge had no jurisdiction to intervene and that the board had to "vote and revote and revote" until it got a majority. Nottage claimed there was "ample time" for the board to deliberate and decide, knowing full well that ballots were already being prepared without the SEP candidate's name on them. He went on to say that the election board had once waited to make a decision on a statewide slate of candidates until mid-October, less than a month before an election.

In response, Spiegel said it was outrageous that the Democratic attorney referred to the above-mentioned case, noting that it involved the tossing out of the Libertarian Party's statewide slate in 1998. At the time, the Republican election board members, using a top Democratic law firm, removed the candidates from the ballot, even though they had previously ruled that the party had collected well above the 25,000 minimum signature requirement. This involved imposing sanctions on petition circulators who the board deemed had collected invalid signatures, and in this way throwing out an additional 4,000 valid signatures, in order to remove their candidates from the ballot.

The reason the ruling was delayed until mid-October, Spiegel said, was because the filing deadline for third party signatures was in August. Shortly after this case the board moved the filing deadline to June 26, Spiegel said, chiefly because the board wanted to eliminate the opportunity of third parties to petition during the summer months when large numbers of people participated in outdoor activities, such as fairs and festivals.

Spiegel concluded: "The Democrats and Republicans have established the election code and all the restrictions against third parties. They can't come to some kind of agreement between each other and our candidate has been left in a twilight zone of not being removed from the ballot, but not being certified. This is needed by local election authorities to place him on the ballot. There is a presumption of ballot access in the Election Code and we request that you give the board until 5 p.m. tonight to certify. Military and absentee ballots are being prepared and if they do not have Joe Parnarauskis's name they will be unconstitutional."

Despite the judge's ruling, the attorney representing the Democrats made it clear they will continue their legal obstruction. Nottage indicated the Democrats might appeal the case to the Illinois Supreme Court and seek a stay of the judge's order before it is implemented on Thursday afternoon. He requested that Kelley stay his own order until an appeal was heard, but this was denied. The Democrats have previously said they will seek a judicial review if the board certifies the SEP candidate, in hopes they can convince a judge to uphold objections to the SEP nominating petitions that have already been rejected by the board.

The day before Kelley's ruling, the US Court of Appeals for the Seventh Circuit ruled that the Illinois ballot restrictions on independent candidates were unconstitutional. In an opinion that reversed the ruling of a Democratic judge against 2004 independent state Senate candidate David Lee, the court ruled, "In combination, the ballot access requirements for independent legislative candidates in Illinois ... operate to unconstitutionally burden the freedom of political association guaranteed by the First and Fourteenth Amendments." Citing the early filing deadlines and high petition requirements, the court said, "Ballot access barriers this high—they are the most restrictive in the nation and have effectively eliminated independent legislative candidates from the Illinois political scene for a quarter of a century—are not sustainable based on the state's asserted interest in deterring party splintering, factionalism, and frivolous candidacies."

Responding to Judge Kelley's ruling, attorney Andrew Spiegel said, "With the recent decisions in favor of ballot access in the US Sixth and Seventh Circuit Courts of Appeals and with this decision in the circuit court of Sangamon County, perhaps the message is getting through that we would have greater voter participation if the voters had a true choice on the ballot, instead of voting for the lesser of two evils."