

Elections

2024 Democratic Presidential Preference Primary Ballot – Mandamus Relief Granted

Phillips v. Wisconsin Elections Comm’n, 2024 WI 8 (filed Feb. 2, 2024)

HOLDING: The Wisconsin Presidential Preference Selection Committee failed to exercise the discretion required of it by statute when it chose the candidates to be placed on the 2024 Democratic presidential preference primary ballot.

SUMMARY: The Wisconsin Supreme Court was asked to exercise its original jurisdiction to 1) review the decision of the Wisconsin Presidential Preference Selection Committee and 2) issue a writ of mandamus directing the Wisconsin Elections Commission to place the name of Dean Phillips on the 2024 Democratic presidential preference primary ballot.

In a per curiam decision, the court concluded that this matter is *publici juris* and that it should exercise its original jurisdiction (see ¶ 1). It further concluded that the 2024 selection committee failed to demonstrate that it exercised discretion in applying the standard codified in Wis. Stat. section 8.12(1)(b) to Phillips and it directed that Phillips’ name be placed on the Democratic presidential preference ballot as a candidate for the office of president of the United States (*id.*).

The selection committee includes the chairs of the political parties (or their designees), political party representatives, and an additional member chosen by the other

members to serve as the committee’s chair. The committee has one task: to determine which candidates have candidacies that are “generally advocated or recognized in the national news media throughout the United States” (the media advocacy or recognition standard). See Wis. Stat. § 8.12 (1)(b). The committee is granted discretion in determining whether a particular candidacy meets that standard, but the committee is statutorily required to perform that analysis (see ¶ 2). If it determines that a candidacy meets that standard, the committee “shall place” that candidate’s name on the primary ballot.

This case involves U.S. Representative Dean Phillips (Minnesota), who is a declared candidate for the Democratic Party’s nomination for the 2024 presidential election. In December 2023, Phillips’ campaign advised the Democratic Party of Wisconsin of his desire to appear on the presidential preference primary ballot. One month later, the selection committee met. At this meeting, which lasted just over five minutes, the chairs of the Democratic Party of Wisconsin and the Republican Party of Wisconsin listed the names of the candidates that their respective parties sought to have listed on the primary ballot. The chair of the Democratic Party of Wisconsin listed only the name of Joseph Biden to be placed on the ballot. Without any discussion, the committee unanimously adopted a motion to place the names submitted by the party chairs on the ballot (see ¶ 4). Phillips thereafter filed a petition for leave to commence this original action.

In this opinion, the court relied on

McCarthy v. Elections Board, 166 Wis. 2d 481, 480 N.W.2d 241 (1992), to conclude that Phillips is entitled to the relief sought. “As in *McCarthy*, we determine only whether the Selection Committee erroneously exercised its discretion. We find that here, as was the case in *McCarthy*, ‘there is no evidence’ that the Selection Committee’s decision not to certify the subject candidate’s name for ballot placement ‘was based on the Selection Committee’s having properly applied the statutory standard of media advocacy or recognition’ to the candidate’s candidacy. *McCarthy* makes clear that the Selection Committee’s consideration of this statutory standard is not to be a pro forma or perfunctory exercise, but one that involves a consideration and weighing of the facts at hand as to ‘all candidates.’ That did not occur here” (¶ 9) (citation omitted).

The court rejected the respondents’ laches defense (see ¶ 10) and it was similarly unpersuaded by their arguments that Phillips lacks standing to bring this action or that the only relief available to him was his statutorily authorized opportunity to submit to the Elections Commission a petition for ballot placement together with 8,000 signatures pursuant to Wis. Stat. section 8.12(1)(c) (see ¶ 11).

Under ordinary circumstances, the court would remand this matter to the selection committee with directions for it to properly exercise its discretion. However, because there is now insufficient time to permit such a remand, the court directed that Phillips’ name be placed on the primary ballot (see ¶ 12). **WL**

STATE BAR OF WISCONSIN

Membership has its benefits.

Only State Bar of Wisconsin members can purchase legal forms from the PINNACLE® **Fillable Forms Bank** and two document assembly programs. These comprehensive libraries contain essential legal forms for eight practice areas. Subscribe to an individual library, a document assembly program, or to the full bank to get access to 1,300+ forms.





Visit

www.marketplace.wisbar.org/forms

to learn more.





BLINKA **HAMMER**
 In this column, Prof. Daniel D. Blinka and Prof. Thomas J. Hammer summarize all decisions of the Wisconsin Supreme Court (except those involving lawyer or judicial discipline).

Want faster access to Wisconsin Supreme Court and Court of Appeals decisions? Get weekly updates on the previous week’s supreme court and court of appeals decisions. Subscribe to CaseLaw Express, a benefit of your membership, delivered to your inbox every Monday.

Prof. Daniel D. Blinka, U.W. 1978, is a professor of law at Marquette University Law School, Milwaukee. daniel.blinka@marquette.edu

Prof. Thomas J. Hammer, Marquette 1975, is an emeritus professor of law and the former director of clinical education at Marquette University Law School, Milwaukee. thomas.hammer@marquette.edu