

Federal judge backs Democrats, rules against SEP challenge to Michigan ballot access requirements during pandemic

By Kevin Reed
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In a blatantly undemocratic decision aimed at blocking the Socialist Equality Party (SEP) from the ballot, a federal judge in the Eastern District of Michigan rejected Joseph Kishore and Norissa Santa Cruz's legal challenge to Michigan's enforcement of a 30,000 physical signature ballot access requirement during the COVID-19 pandemic.

Republican-appointed Judge Sean F. Cox ruled in favor of the defendants, Michigan Democratic Governor Gretchen Whitmer, Secretary of State Jocelyn Benson and Director of the Michigan Bureau of Elections Jonathan Brater. The state argued that the SEP should have endangered its members and the public by physically collecting thousands of signatures, violating social distancing with tens of thousands of people during the pandemic.

The case, *Kishore v. Whitmer*, was filed June 18 by Kishore and Santa Cruz, the party's candidates for president and vice president. The lawsuit argues that the signature requirement is unenforceable and violates the constitutional rights of the candidates and Michigan's growing number of socialist-minded voters, who have a right to cast a meaningful vote this November.

Judge Cox's order is a legally threadbare, dishonest effort to cover up a blatant political objective: keeping Kishore and Santa Cruz off the ballot.

In denying the motion for a preliminary injunction, Cox ruled that Kishore and Santa Cruz had many "opportunities" to collect signatures even "during the limited time period wherein the Governor's Stay-at-Home Order precluded certain actions." He suggested that volunteers could go out in public and campaign door-to-door during the stay-at-home order,

despite the fact that this was illegal.

Even though gathering signatures would place volunteers and the public at risk of arrest and death, Cox ruled that "the burden [on constitutional rights] is not severe."

Cox blamed the SEP for not foreseeing the pandemic and not gathering signatures in the cold winter months of January and February. He ruled that the party should be collecting signatures now, just as coronavirus cases in Michigan are spiking and public health experts and Whitmer herself (a defendant in this case!) are warning that the state is at "high risk" for a renewed outbreak. Because the candidates were not "diligent," their rights had not been violated.

SEP candidate Joseph Kishore issued the following statement in response to Cox's ruling:

"I denounce this politically reactionary and corrupt decision, which is absurd on its face. The judge has sanctioned the argument of the state of Michigan that we should have risked the lives of our supporters and the public at large by gathering thousands of signatures amidst the coronavirus pandemic.

"To have engaged in such a campaign, the SEP would have been forced to violate its own political principles. Since the beginning of the pandemic, our party has denounced and opposed the reckless policies of the ruling class, which have sacrificed lives for profit. The consequences can now be seen in the surge of new cases throughout the country, including here in Michigan.

"The decision by the court underscores the undemocratic character of the whole electoral system, which is set up to block any opposition to the two capitalist parties, and specifically any socialist

opposition. Under conditions of a massive health care emergency and social crisis, it is all the more important to have alternative voices, but the ruling class is determined to prevent this at all costs.”

Cox issued his 26-page decision six days after hearing oral arguments by the lawyers from both sides: attorney Eric Lee representing Kishore and Santa Cruz, and Assistant Attorney General Heather Meingast representing the defendants.

During his exchange with Lee, it became very clear that Cox did not take Kishore and Santa Cruz’s health concerns seriously. Cox suggested that the SEP supporters should have gathered physical signatures in Detroit during the mass protests against the police murder of George Floyd, asking contemptuously, “Have you driven by Michigan Ave and 3rd St. in the past three weeks? That might be a place where they could get some signatures.”

Attorney Lee responded by asking how exactly the judge proposed volunteers gather signatures safely amid large crowds: “Should they hang a clipboard on a fishing wire, cast it off into the crowd, and hope that someone signs the petition, cloroxes it, and sends it back?”

While Cox referred to a “so-called risk of death,” Lee explained that the Constitution prohibits candidates from weighing “how many signatures a human life is worth.” If the plaintiffs attempted to gather physical signatures, either “They will die, or the public will be infected,” Lee said, explaining that abstaining from signature gathering was the only way to ensure Kishore and Santa Cruz were responsible for “zero infections and zero deaths.”

Moreover, Lee said, the lockdown order meant that gathering signatures was impossible, because the only place where there were significant gatherings of people was “in the ICU wards of Michigan’s hospitals.”

Meingast, representing Governor Whitmer, cynically argued that if the SEP was concerned about the coronavirus, it should have sent its signature gatherers to the rural Upper Peninsula to gather them.

Exposing the hypocrisy of the public position of the Democrats on the pandemic, Lee said, “I’m confused, because defendants [including Governor Whitmer] are saying it’s fine to interact with 100,000, 200,000 people” while also warning of the deadly dangers of the virus. “This seems to be an incredibly contradictory

and problematic statement.” He emphasized the immense dangers inherent in a physical signature campaign, stating, “it would be absolutely catastrophic for plaintiffs to try to speak to that many people.”

In other words, while Michigan Democratic Governor Whitmer has been publicly going on social media saying, “People are starting to drop their guard, and it’s very concerning,” her legal representatives have been arguing in court behind closed doors that socialists should be forced to sacrifice their lives and should be required to infect the public, ignoring Michigan’s social distancing guidelines, in order to assert their constitutional rights.

Judge Cox was appointed to the bench in the Eastern District of Michigan by President George W. Bush in 2004 and was approved by the Senate in June 2006. Prior to his time as a federal judge, he served from 1996 to 2006 as a judge of the Wayne County Circuit Court and prior to that he was a lawyer for the corporate law firm of Cummings, McCloy, Davis and Aho. He is the older brother of former Michigan Attorney General Mike Cox (2003-2011), who served under Democratic Governor Jennifer Granholm.

The decision on Wednesday by Judge Cox shows that, whatever the disagreements between the Democrats and Republicans over the pandemic, the two parties of the American capitalist class always come together against socialism and the political independence of the working class.

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