

SEP files appeal to Federal Sixth Circuit Court in Michigan ballot access case

By Kevin Reed
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On Thursday, the Socialist Equality Party (SEP) appealed the July 8 decision of Judge Sean F. Cox of the Eastern District Court of Michigan denying the party's lawsuit against the state's ballot access requirements during the coronavirus pandemic.

In their comprehensive 64-page opening brief to the US Court of Appeals for the Sixth Circuit, candidates Joseph Kishore for US President and Norissa Santa Cruz for US Vice President put forward a powerful argument that Cox's ruling is wrong and should be overturned. Cox agreed with Democratic Governor Gretchen Whitmer's argument that the SEP should have collected signatures on nominating petitions throughout the pandemic in Michigan.

There are thirteen circuit courts in the US. The Sixth Circuit Court of Appeals has 28 judges and covers the states of Michigan, Ohio, Kentucky and Tennessee. The Sixth Circuit Court sits in Cincinnati, Ohio.

The SEP candidates originally filed their lawsuit in federal court in Detroit on June 19 against Governor Whitmer, Secretary of State Jocelyn Benson and Director of the Michigan Bureau of Elections Jonathan Brater, calling the physical signature-gathering requirement impossible. The lawsuit alleged the requirement left "socialist voters like Plaintiffs and their supporters, who for reasons of political principle are unable to vote for non-socialist candidates, unable to vote at all."

The defendants responded to the lawsuit on June 29 and argued that the SEP and its supporters should have been collecting signatures during the pandemic as well as during the state of emergency declaration and "stay-at-home" orders by Governor Whitmer that began on March 10, 2020. Ten days later, the Republican-appointed Judge Cox issued his ruling on July 8, essentially endorsing the arguments made by the Democratic Party defendants.

In the introduction to the appeal brief, the SEP candidates state that any attempt to collect signatures of voters under the unique circumstances of the pandemic "would have constituted a grave risk to the health and lives of their supporters" and that "Michigan's ballot access laws operate

as an unconstitutional restriction on their core democratic rights and an effective bar to their participation in the November elections."

Asserting the core democratic rights at stake in the case, the appeal states, "Unless this Court intervenes, these core democratic and constitutional rights of Kishore and Santa Cruz and their supporters will be violated, as their campaign will be effectively excluded from the ballot in a critical election year."

The introduction further states that Judge Cox's decision "effectively ignores this requirement by glossing over the dangers posed by the COVID-19 pandemic, thereby downplaying the risk to Kishore and Santa Cruz and their supporters." The significant health risks of petitioning during the pandemic are then elaborated in a description of the devastating impact of the coronavirus on the Michigan population with 6,300 deaths and over 75,000 positive cases since the crisis began.

The appeal brief states that Michigan's ballot access requirement combined with the pandemic and the ongoing stay-at-home order "severely burden the Appellants' First and Fourteenth Amendment rights as candidates and as voters." The SEP candidates state that the appeals court should impose an injunction on the Michigan government officials and Kishore and Santa Cruz should be placed on the ballot or provided "with a procedure for gaining access that does not involve a risk of death or serious illness."

The SEP brief presents a detailed review of the election campaign from the initial announcement of Kishore and Santa Cruz as the party's candidates on January 21, 2020 through to the cancellation of all campaign activities in early March due to the pandemic. The SEP "decided to suspend all subsequent public events, including future plans for ballot gathering initiatives, in order to protect volunteers, staff and the public at large from spreading the coronavirus," the brief states.

The appeal quotes several statements by Governor Whitmer that directly contradict the position being argued in court that the SEP should be collecting signatures to be

placed on the ballot. One of these was a press conference on July 9, where the Governor focused on the increasing spread of the virus in Michigan during June and July, saying, “If we let our guard down, we could see a rapid increase in cases and deaths here in Michigan. ... We’ve got to all work together to protect one another.”

The appeal brief also reviews in detail the history of the SEP (and its predecessor the Workers League) in Michigan, including the relocation of the party’s center to Southeast Michigan in 1978, the large readership in Michigan of the *World Socialist Web Site*, the numerous elections in which the organization has achieved statewide ballot access going back to the 1984 presidential elections and many other campaigns and initiatives of the party in Detroit and surrounding areas over the past three decades.

The candidates noted the growing support for the SEP over the years and argue that, had they “been able to run a ballot drive statewide this year, the total number of required signatures was certainly well within their reach, especially in light of a rapid leftward shift in the population and the growing popularity of socialism.”

Specifically addressing Judge Cox’s ruling, the SEP appeal points to the significant fact that the Eastern District Court of Michigan took no interest and failed to even mention either “the virus’ death toll or to the rapid spread of the disease throughout the state,” or the objective risk of death to the SEP members, “their supporters, and the general public, referencing only ‘health’ concerns.”

In one particularly notable section, in exposing the absurdity of the state’s arguments for petitioning during the pandemic, the brief describes a hypothetical interaction between an SEP campaigner collecting signatures and a Michigan voter. After the campaigner asks for a signature explaining that Joseph Kishore is running for president to warn the working class about the dangers of the coronavirus pandemic, the voter asks, “If you care so much about my safety, why are standing so close to me and spreading your droplets all over me?”

After the campaigner explains that the SEP has to gather 12,000 signatures to get Kishore on the ballot, the Michigan voter says, “So you are willing to sacrifice my health and the health of tens of thousands of others just to get your own candidate on the ballot? I will not vote for someone so selfish. If you think socialists are better than the two parties, why don’t I see any Democrat or Republican candidate violating social distancing by shoving a clipboard in my face?”

In summarizing its argument before the Sixth Circuit Court of Appeals, the brief states that the review of the past six months shows that the SEP was “forced to abstain from signature gathering because doing so would have caused

death and alienated their supporters. The U.S. Constitution protects them from ‘deciding’ between exercising their rights and saving their lives and the lives of their supporters and voters.”

A major argument made in both recent rulings against the party’s lawsuits in Michigan and California is that by refusing to petition during the pandemic, the SEP lacked “diligence.” This argument is dealt with in some length in the appeals brief by turning the whole issue around and stating, “no reasonably diligent candidates can or would comply with Michigan’s requirements under conditions of the coronavirus pandemic” and that the SEP, in fact, exercised “reasonable diligence,” by “conscientiously abstaining from signature gathering during the pandemic.”

In summing up, the appeal returns to the topic of “diligence,” stating that the Michigan government officials are telling the SEP “that the only way they can exercise their fundamental rights is to violate the law, violate their principles and risk their lives and the lives of their potential supporters in the public.” However, the candidates state that there is nothing reasonable about the state’s definition of “reasonable diligence,” “especially when the Democratic and Republican parties are allowed to hold their nominating conventions virtually in August, without any health risk to their candidates or supporters.”

With this argument, the SEP is making clear that the ruling against the Michigan ballot access lawsuit is fundamentally to keep socialists and working-class candidates off the ballot for President of the United States and protect the two-party monopoly of the capitalist class under conditions of rapidly growing interest in and support for socialism.

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