

Ninth Circuit Court of Appeals refuses to hear Socialist Equality Party candidates' appeal in California ballot access case until after ballots are printed

By Shuvu Batta
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The 9th Circuit Court of Appeals has denied the Socialist Equality Party's (SEP) appeal to expedite its appeal before the circuit, known as the most liberal in the US. In response, the party's candidates, Joseph Kishore and Norissa Santa Cruz, filed another motion to overturn the denial, which was also rejected yesterday in a one sentence decision that addressed none of their constitutional arguments.

The decision denying the candidates' request for a quick briefing schedule was made by Chief Judge Sidney R. Thomas (appointed by Democrat Bill Clinton) and Circuit Judges Mary M. Schroeder (appointed by Democrat Jimmy Carter) and Consuelo Callahan (appointed by Republican George W. Bush). The ruling and subsequent delay means that Kishore and Santa Cruz will be unable to have their names printed on the ballots without having the chance to have the court address the merits of their appeal.

The decision is the latest development in Kishore and Santa Cruz's lawsuit against the State of California. The candidates challenged the state's decision to enforce its ballot access requirement, which requires third party candidates to collect over 200,000 physical signatures in the middle of a pandemic which has claimed over 155,000 lives. In California, petitioning for ballot access opens up in April and closes by August, leaving third party candidates about 5 months to accomplish this task—5 months marked by a state lockdown and an increasing death rate.

The SEP initially filed the lawsuit against Democratic Governor Gavin Newsom and Secretary of State Alex Padilla a month prior, on June 30th.

On July 12th, the Attorney General for California responded on behalf of Newsom and Padilla, arguing that if the Socialist Equality Party won their lawsuit it would cause “an unmanageable and overcrowded ballot for the November presidential general election that would cause voter confusion and frustration of the democratic process.” The SEP refuted this argument three days later, pointing out that it was California state officials “who are frustrating the democratic process—by insisting on the enforcement of ballot access requirements that are effectively impossible for Plaintiffs to comply with without endangering the safety and lives of their supporters and the public at large.”

On July 20th, District Judge Dolly M. Gee, nominated by former President Democrat Barack Obama, ruled against Kishore and Santa Cruz. She claimed that the SEP's candidates could have avoided the “understandable” risks of the virus by simply using face coverings and social distancing in gathering signatures from 200,000 people.

The attorneys for the SEP contested this decision, appealing to the 9th Circuit Court of Appeals. Alongside this appeal, a motion was made to expedite the case so that the appeal could be heard before the state of California printed its ballots in mid-August.

On July 27th the Court of Appeals denied the motion to expedite. Kishore and Santa Cruz filed a separate motion asking the court to reconsider this blatant denial of their democratic rights. On August 5th the Ninth Circuit denied the Socialist Equality Party's motion to reverse this decision without addressing any of the

arguments Kishore and Santa Cruz’s attorneys raised in their legal filings.

The attorneys for Kishore and Santa Cruz also filed an opening brief outlining the history of the case, summarizing the arguments of the defendants, and arguing for the right to ballot access.

The brief explained that Kishore and Santa Cruz launched their campaign in January but were prevented from gathering signatures by the pandemic and the State’s measures to combat it. The Socialist Equality Party has a long, rich political history in California, the brief noted, arguing that there are less-than-lethal ways of testing whether the candidates can establish enough support to merit ballot access. The SEP’s past candidates for Governor, Senate, and Congress won tens of thousands of votes, the brief explained.

In response to Gee’s claims that wearing of masks and social distancing would suffice to protect signers and SEP volunteers from COVID-19, the SEP highlighted the testimony of veteran SEP campaigner Kimie Saito, who explained that under normal conditions, in a full day’s work she can collect 30-40 signatures per hour, but that it is not possible to implement social distancing in the collection of signatures under present conditions. Placing campaigners and supporters in this situation means in effect that the state is enforcing a policy which would be homicidal in its outcome.

The district court had further claimed that “social media” could be used to gather the signatures, which is in effect almost impossible to achieve. This process requires each signer to be contacted by a stranger over the phone or internet, that a document be mailed or printed at home, that a mobile notary be hired, and that the document be mailed to the campaigner for submission to the state. In San Francisco, mobile notary fees range from \$55 to \$115 per signature. At a hypothetical average rate of \$100 per notarized signature, the cost of notarizing nearly 200,000 signatures would be on the order of \$20 million, not including postage to and from the nominator.

The court had also accused the SEP of “unexplained delays” in the signature gathering period, alleging they waited too long to file the lawsuit. The attorneys noted that this period coincided with the “stay-at-home” order implemented by the California Governor, further noting the disastrous effects of reopening starting July

13th, with over 529,000 infected and almost 10,000 dead.

Citing the *William v. Rhodes* Supreme Court Case of 1968, the attorneys noted that by barring Kishore and Santa-Cruz from the ballot, especially at a time when, according to a Gallup poll, over 49 percent of young voters have a positive view of socialism, the court is effectively placing “burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.”

Responding to the state’s arguments that adding socialist candidates will lead to “voter confusion,” the candidates’ appeal brief explained: “Placing these socialist candidates with their distinct program on the ballot will inform rather than confuse voters as to important issues, including those who otherwise might not vote. The fact that sample ballots are mailed to voters prior to election day further diminishes any concern about voter confusion, since voters will have an opportunity to research the candidates and their platforms in advance. There is no realistic threat that these avowedly socialist candidates will be confused with the other party candidates.”

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