

SEP congressional candidate launches lawsuit against early filing date in Ohio

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Attorneys for David Lawrence, the Socialist Equality Party candidate for US representative in Ohio's First Congressional District (Cincinnati), filed a lawsuit in federal court on June 14 challenging the state's unfair filing deadline for independent candidates for US Congress.

Citing the official deadline of March 1, 2004, the director of the Hamilton County Board of Elections refused to accept nominating petitions submitted by Lawrence and his supporters on June 4. The petitions bore 2,632 signatures, well above the 1,695 required for Lawrence to attain ballot status.

The lawsuit, filed in Cincinnati, claims that the filing deadline—eight months before the November 2 general election and one of the earliest in the US—is a special impediment to independent candidates and effectively keeps them off the ballot. The current deadline requires independent candidates to circulate their nominating petitions weeks before the March 2 primaries of the Democrats and Republicans in Ohio, and months before the major parties have officially selected their own presidential candidates at national party conventions.

Lawrence, who is represented by Robert B. Newman and Stephen Felson, two prominent civil liberties attorneys in Cincinnati, is seeking an injunction from the US District Court for the Southern District of Ohio to overturn the filing deadline on constitutional grounds, and to compel the Board of Elections to accept his nominating petitions and place his name on the ballot for the November election.

In their legal brief, the attorneys argue that the current filing deadline violates Lawrence's right of access to the ballot and therefore contravenes the First and Fourteenth Amendments to the US Constitution. They maintain, in particular, that the prohibitively early filing deadline violates Lawrence's right of association under the First Amendment, which includes his right to seek the support

of voters for his political views.

The lawsuit also names as plaintiffs two Hamilton County voters who wish to vote for a socialist candidate. These plaintiffs, the brief argues, are "being denied the right to vote for a candidate of [their] choice" and thus being denied their rights under the First Amendment of the US Constitution. The voters "seek to have on the ballot a Socialist candidate to represent political viewpoints that are not espoused by the majority party candidates, and who will widen the political dialogue during the course of the campaign." The brief goes on to say that excluding Lawrence from the ballot limits voters' "ballot choices and abilities to participate in wider political discourse."

According to the legal complaint, "The most critical impact of having the filing deadline a day before the primary election for the major parties is that independent voters and voters who may become independent voters do not know who the major party candidates will be in the general election and are robbed of the opportunity to oppose these candidates once they are identified. Disaffected Republicans or disaffected Democrats will remain disaffected or sit out the election or cast a write-in ballot."

The defendants in the case are Ohio Secretary of State Kenneth Blackwell, the Board of Elections of Hamilton County, and the individual members of the board. The case is expected to come before a federal judge for a hearing within 30 days.

There are strong legal precedents in favor of overturning the March 1 deadline. The state of Ohio was previously compelled to change the deadline for independent presidential candidates to August 19, after the US Supreme Court in the 1983 *Anderson vs. Celebrezze* case ruled that the previous March 20 deadline placed an "unconstitutional burden" on new or small parties and their supporters.

This is the second time the early filing date for congressional races has been the subject of a federal lawsuit in Cincinnati. In 1984, US Senior District Judge David Porter declared Ohio's deadline of February 23 unconstitutional and in violation of an independent candidate's right to have free access to the ballot. The case was argued by attorney Robert B. Newman on behalf of a congressional candidate from the Socialist Workers Party, who was then granted ballot status.

In blatant disregard of the spirit of the ruling, however, the Ohio state legislature pushed the deadline back by a mere six days. The action was designed to maintain the restrictions against independent candidates and accommodate the Democrats and Republicans, whose Ohio primaries were later moved to March 2.

The legislature, no doubt expecting another challenge to the early filing date, rehashed the same arguments that had been explicitly rejected in the rulings by the US Supreme Court and Judge Porter. The main justification of the Democratic and Republican legislators was that the early deadline encouraged "political stability" and helped provide the electorate with an "understandable ballot." They also made the absurd claim that the deadline "enhanced voter education" because an independent candidate who qualified for the ballot at a later date would be unknown.

In an opinion written for the 5-4 majority in the 1983 *Anderson* case, concerning independent presidential candidates, Supreme Court Justice John Paul Stevens ridiculed this argument, saying modern communications and widespread literacy made it "unrealistic to suggest that it takes more than seven months to inform the electorate about the qualifications of a particular candidate simply because he lacks a partisan label."

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The Court acknowledged that over the course of several months after March 1, domestic and international political developments could sharply alter the political landscape and affect the popularity of various candidates. The early deadline for independent candidates prevented them from "creating new political coalitions of Ohio voters...at any time after mid-to-late March," the Court ruled.

While the Supreme Court justices explicitly recognized the legitimacy of restrictions that helped maintain the "stability" of the two-party system—a system that has long defended the economic and political interests of the ruling elite—the majority of justices nevertheless ruled that these restrictions had to be weighed against the burdens they

placed on constitutionally protected liberties.

The Court also noted that "because the interests of minor parties and independent candidates are not well represented in state legislatures, the risk that the First Amendment rights of those groups will be ignored in legislative decision-making may warrant more careful judicial scrutiny."

Citing the 1983 *Anderson* case, several federal courts have rejected the claim that a filing deadline for independent candidates coinciding with that of the major parties guarantees "equal treatment" for independent candidates. The same deadline, ruled a federal judge in New Jersey, is only "superficial equality," because independent candidates do not have the same financial resources and organizational structures as the major parties to overcome the burden imposed by the deadline. "Here again," the court declared, "the two types of candidates are unequal in a way which makes imposition upon them of equal burdens no equality of treatment."

The lawsuit filed June 14 on behalf of the SEP candidate, which cites these legal precedents, also notes that in the wake of the *Anderson* ruling, the lower federal courts have routinely struck down unreasonably early petition deadline statutes for independent candidates, including in such states as Alabama, South Carolina, Kentucky, Nevada and Utah.

Concluding their legal argument, the lawyers representing Lawrence write: "[T]he public interest will be served if this Court grants a preliminary injunction, for it will ensure obedience to the Constitution, and it will permit the residents of this State to exercise their First Amendment right to vote for candidates who represent their views or to run for office as an alternative political party candidate."



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