

# SEP challenges Ohio petition deadline in US District Court

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David Lawrence, the Socialist Equality Party candidate for the US House of Representatives from Ohio's 1st Congressional District, demanded the overturning of the state's discriminatory deadline for independent congressional candidates to file their nominating petitions in testimony before a US District Court judge on August 3.

The SEP filed a federal lawsuit in Cincinnati on June 14 charging that the early filing deadline—March 1, eight months before the general election—placed an unconstitutional burden on third-party candidates. Lawrence, who is represented by Robert B. Newman and Stephen Felson, two prominent civil liberties attorney in Cincinnati, is seeking an injunction to prohibit the enforcement of the early deadline and compel state officials to accept his petitions.

Election officials in Hamilton County on June 4 refused to accept petitions submitted by Lawrence and his supporters. The petitions bore more than 2,500 signatures, well over the minimum of 1,695 required by state election laws.

The Hamilton County Board of Elections and Ohio Secretary of State Kenneth Blackwell are named as defendants in Lawrence's lawsuit.

In their "Motion for Preliminary and Permanent Injunction," Lawrence's lawyers cited several legal precedents to overturn the deadline, including the US Supreme Court's 1983 ruling in the *Anderson v. Celebrezze* case, which struck down Ohio's early filing date for independent presidential candidates. That ruling changed the filing deadline for president to August 19, which is 171 days later than the filing deadline for independent candidates for congress, which state officials refused to change.

In the two decades since the *Anderson* ruling, the motion further noted, several states, including Alabama, South Carolina, Kentucky, Nevada and Utah, had overturned unreasonably early filing deadlines for independent candidates seeking a number of offices.

The attorneys representing Lawrence made several key arguments before Judge Susan J. Dlott. The first was that the state was unfairly demanding that independent candidates

file petitions before the Democrats and Republicans had chosen their candidates. "The most critical impact of having the filing deadline a day before the primary election for the major parties," the motion stated, "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 and disaffected Democrats will remain disaffected or sit out the election or cast a write-in ballot."

The attorneys further argued that the Supreme Court in the *Anderson* ruling had recognized that when "primary campaigns are far in the future and the election itself even more remote," the early filing deadline "burdens the signature-gathering efforts of independents." This was because "volunteers are more difficult to recruit and retain, media publicity and campaign contributions are more difficult to secure, and voters are less interested in the campaign."

In his remarks to the court, attorney Robert B. Newman argued that any filing date so far in advance of the general election "closes the debate before an audience even arises." He said the "focus of the voters on the election has not jelled and independents are forced to get nominating petitions before events develop."

He noted that the Supreme Court justices in the *Anderson* case wrote: "In election campaigns...the candidates and the issues simply do not remain static over time. Various candidates rise and fall in popularity; domestic and international developments bring new issues to center stage and may affect voters' assessments... Such developments will certainly affect the strategies of candidates who have already entered the race; they may also create opportunities for new candidates... Yet Ohio's filing deadline prevents persons who wish to be independent candidates from...creating new political coalitions of Ohio voters...at any time after mid-to-late March... If the State's filing deadline were later in the year, a newly-emergent independent candidate could serve as the focal point for a

grouping of Ohio voters who decide, after mid-March, that they are dissatisfied with the choices within the two major parties.”

To substantiate these arguments, Newman called as a witness Richard Winger, an expert on ballot access laws, who reviewed several historical events that occurred late in an election year, and then became determining factors in the outcome of elections.

As an example, Winger cited the Kansas-Nebraska Act, which was passed by the US Congress in May of 1854. “The people’s outrage over the concession to pro-slavery forces,” he said, “led directly to the formation of the Republican Party on July 6, 1854 nationally, and on July 13 in Ohio.” If the current deadline were in place in Ohio in 1854, the Republicans would not have been allowed to run in the elections, Winger pointed out, and the pro-slavery Democrats would have been able to retain control of the Ohio delegation in the US House of Representatives. Instead, the Republicans took all 21 seats, which had previously been held by 12 Democrats and 9 Whigs.

Winger cited other examples of crucial events taking place late in an electoral year, such as Theodore Roosevelt’s decision to launch his independent “Bull Moose” presidential campaign in 1912; the passage of the 1930 Smoot-Hawley tariff, which precipitated the Great Depression; the Brown vs. Board of Education ruling in 1954; and the 1974 grand jury indictment of Nixon advisor John Ehrlichman.

Winger noted that in 1912 Ohio’s filing deadline was 30 days before the November election. The year after Roosevelt’s independent campaign, the deadline was moved to 60 days before the general election. By 1947, state officials had moved it to 90 days before the election.

“Then, in 1951, the year after an independent congressional candidate was elected,” Winger said, “the deadline was changed from 90 days before the general election to 90 days before the primary elections—that is, from August to February!” At the same time, the signature requirement was changed from 1 percent of the number of people who voted in the previous election to 7 percent. In 1968, Winger said, “the high number of signatures was ruled unconstitutional, but not the deadline.”

Robert B. Newman then questioned David Lawrence on the impact of the deadline on the SEP campaign. Lawrence explained that his decision to run for Congress was influenced by the world political situation, and, above all, the fact that “working people had no voice to oppose the war and fight for their most basic interests, such as decent jobs, education and health care.”

He noted how quickly political events had developed in the weeks and months after the March 1 deadline, including

the uprising in Iraq, the revelations of US torture at the Abu Ghraib prison, and the further exposure of the Bush administration’s lies about Iraqi weapons of mass destruction.

Once the SEP began petitioning, Lawrence said, workers and students in Cincinnati expressed overwhelming sentiment against the war and readily signed petitions for the SEP. An important motivation was the realization by ever-larger numbers of people that Kerry was just as committed as Bush to the occupation of Iraq.

If the unfair deadline was upheld, Lawrence said, it would have the effect of “abridging the rights not only of the 2,600 people who signed SEP petitions, but thousands of others who are searching for a candidate to oppose the war and defend their rights.”

A battery of lawyers were present to defend state election officials, including three who represented the secretary of state and two who represented the Hamilton County Board of Elections. However, they were unable to present any substantial arguments to show that moving the deadline would cause irreparable harm to the voting process. In their cross-examination of Lawrence, their only point was that Lawrence had knowingly filed his petitions after the deadline. One attorney suggested he had done so to avoid being challenged, since the deadline for the Democrats and Republicans to file objections against his nominating petitions was May 29.

Lawrence replied that the SEP was well aware of the original deadline but had decided to petition nevertheless, because it wanted to challenge the unfair restrictions imposed by the state officials and provide a political voice for working people. He noted that the SEP did not officially decide to run a slate of congressional candidates until the party’s public conference, which was held in Ann Arbor, Michigan two weeks after the March 1 filing deadline in Ohio.

In his concluding remarks, attorney Newman said the early filing deadline “prevents the right of voters and candidates to address what occurs during the political season.” The First Amendment of the US Constitution, he said, “asks us to have an extended debate on political issues—this can’t be closed off before an audience arises.”

US District Judge Dlott is expected to render her ruling early next week.



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