SEP takes ballot access fight to Ohio appeals court

Jerry White
24 September 2004

The Socialist Equality Party has filed suit in the 10th District Court of Appeals in Franklin County, Ohio, to overturn the decision by Secretary of State Kenneth Blackwell to bar its presidential and vice-presidential candidates, Bill Van Auken and Jim Lawrence, from the November 2 ballot.

A complaint, filed Monday, calls on the state court to order Blackwell to certify and place the SEP candidates on the ballot because his actions violated their constitutional rights, including the right to due process. It specifically notes the "series of unreasonable procedural obstacles that impede a fair review of the initial determination of the Secretary of State disallowing over 4,000 of the 7,983 signatures" on SEP nominating petitions.

On September 8 the Secretary of State's office ruled that the SEP had failed to submit the required 5,000 valid signatures to gain ballot access. This decision only came to light when a SEP representative telephoned the Secretary of State's office on September 9. He was told the state office had no procedure to review signatures disqualified by county boards of election. The spokesperson for Blackwell added, however, that the SEP would be granted a review as a "favor" from the Secretary of State, but the party would only have six days to gather the evidence needed to refute the county electoral boards' findings.

Despite the substantial obstacles involved in getting voter registration information from many of Ohio's 40 counties and reviewing the nearly 4,200 disqualified signatures, the SEP presented its initial results to the Secretary of State on September 15. They showed a widespread pattern of arbitrary disqualifications of registered voters by county electoral boards, particularly in the largest urban counties controlled by the Democratic Party.

These and subsequent results filed with the Secretary of State showed that at least 1,420 of the 4,172 disqualified signatures—or 34 percent—belonged to registered voters, bringing the party's signature total to 5,231, well above the minimum requirement. The signatures of hundreds of legally registered voters had simply been discarded because they had written their names in not fully cursive writing or they had used an initial for their first name or for some other trivial reason. More than 1,000 were rejected because voters had moved from the addresses listed with the county electoral board.

The Secretary of State's office has still not made an official decision on the SEP petitions. It is evident from the schedule established by the Secretary of State that the office has no intention of allowing its decision to be seriously reviewed. Officials have already stated they are sending out ballots—without the names of Van Auken and Lawrence included—to be printed.

In an effort to stop this travesty the SEP sought a temporary restraining order against Blackwell from a federal judge. On September 17, however, US Judge Gregory Frost—a recent Bush appointee—rejected the request, noting without criticism that Ohio had no legal provisions affording candidates ruled off the ballot the right to appeal. Frost also suggested that the proper venue for the SEP to seek relief was in the state court system.

The new legal appeal, filed on behalf of the SEP candidates by Cincinnati civil rights attorney Robert B. Newman, seeks what is called mandamus action from the Ohio appellate court. Such an action is used when state laws have established no specific remedy to prevent a gross failure of justice. The appeal calls on the state court to order the Secretary of State to put the SEP candidates on the ballot.

Responding to the appeal Attorney General Jim Petro simply restated that county electoral boards had not validated 5,000 signatures so therefore the SEP candidates should not be on the ballot. Without responding to any of

the evidence presented from the examination of the disqualified signatures, Petro simply asserted that the lawsuit should be thrown out because the SEP had "failed to prove the Board of Elections have improperly invalidated signatures" or had engaged in "fraud, corruption, abuse of discretion or clear disregard for applicable law."

In a memorandum filed today in state court, Robert Newman points to the fundamental democratic issues at stake, including the right to vote and equal ballot access, and presents a series of legal precedents that weigh in favor of the SEP candidates.

Newman begins by arguing that the burden is on the Secretary of State to prove that the nominating petitions were not in compliance with electoral requirements. He cites the recent Florida Supreme Court decision placing Ralph Nader on the ballot, where the justices ruled that "it follows that when the State imposes a burden upon access to the ballot, the burden must be clearly delineated. Thus, any doubt as to the meaning of statutory terms should be resolved broadly in favor of ballot access."

The attorney argues that every signature ruled "Not Registered at Address" should be included, noting that registration information given to the SEP was, in many cases, outdated. "[N]o local Board can attest that any signatory did not change his or her registration after the last date appearing on these registration rolls," he says. Furthermore the mobility rate of the US population and First Amendment considerations make unconstitutional any requirements that a signature be counted only if the address on the petition is the same address appearing on registration records.

According to the US Census, 16 percent of the entire US population moved between March 1999 and March 2000. While specific mobility figures were not readily available for Ohio, one study done in the Columbus, Ohio, school district showed 35 percent of the students in the state capital changed schools each year. This address requirement, therefore, had the effect of disenfranchising those who moved most, the poorest sections of the working class as well as college students.

Newman also cited the September 20 Maryland Court of Appeals decision putting Ralph Nader on the ballot, which rejected the address requirement as unconstitutional, as well as other rulings, including a 2002 case in Pennsylvania that even challenged the requirement that petition signers be registered voters at all.

Summing up, Newman said the Voting Rights Act contains language that protects printed signatures, slight errors in addresses and the like. It says "no person acting under color of law shall deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration or other act requisite to voting..." The same logic, Newman writes, should be applied to the signing of petitions.

The brief concludes with the following:

"The Socialist Equality party is a small political party that seeks to get on the presidential ballot.... Its messages are different. For example, it opposes the War in Iraq, and calls for an American withdrawal. The First Amendment gives special protection and solicitude to these messengers. On the other hand, the political reality is that the majority parties have expressed great fear of the minor parties and have actively sought to deny the minor parties access to the ballot. The parties to many of the cases pending in the Country today are major parties seeking to deny access to various minor parties...

"Signatures without middle initials, signatures that appear more printed than cursive, voter registration address requirements, and similar pretexts of disqualification must be viewed against this historical record, and the promise of the First Amendment that '[T]he 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 ... rank among our most precious freedoms' [*Williams v. Rhodes*].

"There were 7,983 who signed nominating petitions here. These citizens want to hear these candidates in the course of this very important presidential campaign. There are among the 7,983, many who will consider voting for these candidates...

"There being no evidence that any one of the 7,983 signers of [these] petitions are not qualified voters, all signatures must be counted."

A hearing before a three-member panel of appellate judges is scheduled for the morning of Wednesday, September 29, in Columbus.