# Ohio appeals court hears Socialist Equality Party ballot access case

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An attorney representing Socialist Equality Party presidential and vice-presidential candidates Bill Van Auken and Jim Lawrence presented a powerful case Wednesday before the 10th District Court of Appeals in Ohio arguing that the court should overrule the secretary of state and place the SEP candidates on the November 2 ballot.

On September 8, Secretary of State Kenneth Blackwell ruled that the SEP candidates were not qualified because county electoral boards had disqualified 4,172 of the 7,983 signatures submitted on SEP nominating petitions. The legal requirement for obtaining ballot status is 5,000 signatures.

The hearing before the state appeals court occurred the day after Blackwell's office decided to exclude independent presidential candidate Ralph Nader, whose supporters had submitted nearly 15,000 signatures. Blackwell reversed his initial decision to place Nader on the ballot after Democratic Party lawyers, including a current law partner of former independent counsel Kenneth Starr, charged Nader's petition circulators with "massive fraud." Nader's name will be removed or effaced on the November 2 ballot and a note will be sent to absentee voters, who have already received their ballots, that a vote for Nader will not be counted.

Aside from the intrinsically anti-democratic character of the decision to bar Nader, who received 118,000 votes in Ohio when he ran as the Green Party presidential candidate in 2000, the last-minute order to remove his name from already-printed ballots exposes the fraudulent nature of claims that "it is too late" to alter the ballot decisions of the secretary of state, and that such a change would place an impossible burden on election officials. It is evidently not "too late" to exclude third-party or independent candidates, but only to include them.

Arguing Wednesday before a three-member panel of appellate judges, Cincinnati civil liberties attorney Robert B. Newman said local electoral boards had made a cursory examination of the signatures submitted by the SEP and carried out "summary disqualifications" of hundreds of legally registered voters. Newman said the disenfranchisement of voters and refusal of the secretary of state to seriously review, let alone overturn, these groundless disqualifications violated the First and Fourteenth Amendments of the US Constitution.

The attorney referred to a preliminary examination of the disallowed signatures by the SEP, which showed that at least 1,420 of the rejected names—or 34 percent—were, in fact, valid. This included 356 signatures of registered voters that were rejected as "not genuine" because they were printed rather than written in cursive form, and another 413 that were discarded for no discernable reason at all. Another 553 voters' signatures were rejected because the signers had moved from the addresses listed with the county electoral boards.

Newman said the SEP had presented factual evidence that the petitions contained at least 5,280 valid signatures, well above the 5,000 required for ballot status. Since the secretary of state's office did not, and could not, present any evidence to the contrary, "this should conclude this case," he said.

The appellate judges—two Republicans and one Democrat—responded. Judge William Klatt, a recent appointee of Republican Governor Robert Taft, asserted that the signatures recovered by the SEP examiners were invalid according to state law, reiterating the secretary of state's position that printed signatures and those of voters registered at different addresses should be excluded.

Newman answered that the SEP had, in fact, found hundreds of registered voters that the boards simply claimed they could not find. He said these disqualifications violated the Ohio election code and the US Constitution.

Judge Peggy Bryant, the only Democrat, asked what the electoral boards should have done differently. Newman responded, "They should have done what our petition examiners did—seriously examine the registration rolls and apply the rule of reason." Instead, he said, they failed to even examine the actual registration cards and simply relied on printouts of registration rolls that were out of date and filled with mistakes.

Newman said the "perfect match" argument defied the "rule of reason" and demonstrated the arbitrary character of the disqualifications. He said if the governor had signed the petition "Bob Taft," but was listed as Robert Taft, the boards would have disqualified him. This was the pretext they used to discard the signatures of people who used an initial or diminutive form of their first names. The attorney said the electoral boards and the secretary of state were misinterpreting state election laws to disqualify legitimate voters.

When Judge Klatt argued that the SEP wanted to include signatures of voters who lived at different addresses than those listed with the county electoral boards, Newman said it was impossible to say where a voter was registered because the county boards had failed to update their lists, although tens of thousands of new voters had registered during the period when the SEP conducted its petition drive.

The attorney insisted that 8,000 people had signed the petitions, stating that the information they provided was true. "There must be some presumption of the validity of signatures if the right to vote is to be preserved," he said.

Newman outlined how the secretary of state had violated the due process rights of the SEP candidates. He explained that after the petitions had been disallowed, Blackwell's office gave the SEP only six days to present evidence to oppose his decision. "The secretary of state said there would be a process to review this evidence. There is no process. To this day the secretary of state has not answered the questions."

In response, Klatt said that in order to win the case, Newman would have to prove the "absolute right to prevail," and not simply present problems with the "reasonableness of the law."

In his argument before the court, Richard Coglianese, the attorney representing the secretary of state, made a series of damning admissions that pointed to the political bias underlying the exclusion of the SEP candidates and the disenfranchisement of voters who signed petitions to place them on the ballot.

Judge Bryant challenged his argument that signatures with wrong addresses were invalid by pointing out that the registration rolls were outdated. “Didn’t you get newer addresses entered into your system?” she asked.

Coglianese answered, “Were they the most updated? The secretary of state doesn’t know that each of the electoral boards have the most updated information. But Bill Van Auken has the burden of proof on him. He is obligated to present evidence that each signature is correct.”

This assertion is absurd, given that the secretary of state—the chief election officer in Ohio—and the county boards have access to the information required to provide such proof and the SEP does not.

Coglianese concluded by outlining the secretary of state’s basic position—that the state should be the gatekeeper of the ballot and employ every means possible to exclude third-party candidates. Referring to the previous day’s decision to bar Nader from the ballot, Coglianese asked, “Do we blindly accept that these signatures are valid, or do we give deference to the electoral boards that they did a correct job?”

The following exchange then occurred:

Judge Bryant: Could Bill Van Auken protest your decision?

Coglianese: No.

Bryant: What is his remedy?

Coglianese: This case. We heard evidence [the findings of the SEP examiners] but nowhere in the Ohio code is there a process to challenge a disqualification. The secretary of state accepted the evidence. I do not know whether the secretary of state has made his determination.

Bryant: As a practical matter, how would an aggrieved party carry out the extremely difficult task of proving the validity of their signatures?

Coglianese: The legislation has given us an election schedule. The 2004 elections are already taking place. Five thousand signatures is not a heavy burden.

These statements underscored the bogus character of Blackwell’s so-called review, and make it clear that the authorities’ position is that the secretary of state’s decisions are not subject to review or challenge.

Coglianese all but acknowledged that the secretary of state had failed to seriously consider the evidence presented by the SEP to challenge the decision to bar its candidates from the ballot. Nevertheless, he said the SEP’s case should be thrown out because the party had not immediately filed a legal action with the state appeals court when it learned that it had been denied ballot status.

In fact, the SEP only learned that its candidates had been disqualified when a representative of the party telephoned the state election office on September 9. Lawrence, the SEP vice presidential candidate, who resides in Dayton, Ohio, first received official notice that he had been barred from the ballot in a letter postmarked September 14 and delivered September 15—the day set by Blackwell as the deadline for the party to submit evidence challenging his ruling.

The party undertook an intensive and arduous review of the disqualified signatures, which, because of the prohibitive time frame, could only be of a preliminary nature, and submitted its evidence on September 15.

The SEP did not wait, however, to challenge Blackwell’s ruling in court. On September 15, it filed suit in federal court to have the decision overturned, but the federal judge ruled against the SEP on September 17. The party moved quickly to oppose Blackwell’s ruling in state court, filing its complaint with the 10th District Court of Appeals on September 20.

Newman summed up by saying it was incumbent on the local boards to check all the registration information available and that the secretary of state had not instructed them to do so. Moreover, Ohio law required only that petition-signers be “qualified” voters, and not that they meet a whole series of unconstitutional hurdles, including address requirements. He said the SEP petition circulators had approached their work conscientiously, asking every signer if he or she was a registered voter, and therefore “you must give them the solicitude that the Constitution gives people the right to vote, and place their candidates on the ballot.”

A decision by the appellate judges is expected as early as Thursday.

The blatantly undemocratic methods used by Blackwell against the SEP are part and parcel of his efforts to disenfranchise new voters who are registering in record numbers in Ohio. Blackwell—a Republican—is playing a role similar to that of Katherine Harris, the former Florida secretary of state who obstructed the counting of votes during the 2000 presidential election.

Earlier this month, Blackwell issued a directive to county electoral boards that voter registration cards should not be processed unless they were printed on “white, uncoated paper of not less than 80-pound text weight”—a heavy cardboard-like paper. Critics say this order, issued less than a month before Ohio’s new voter registration deadline, would result in confusion and could prevent tens of thousands of would-be voters from participating in the general election.

Blackwell, who claimed this type of paper was needed to keep postal machines from shredding the cards, was forced to retract his order after it became public. Nevertheless, at least two counties say they are not processing underweight cards, per Blackwell’s directive.

Ohio Democrats have filed a federal lawsuit this week over Blackwell’s order to deny provisional ballots for people who show up at the wrong polling place. The secretary of state has instructed election officials to issue provisional ballots only to those who are in the correct polling location. Federal law gives voters the right to obtain a provisional ballot and have it counted if they mistakenly go to the wrong precinct.

At a press conference prior to the court hearing, SEP vice presidential candidate Jim Lawrence summed up the significance of the party’s fight for ballot status. “The two major parties don’t want opponents on the ballot,” he said. “The SEP calls for the immediate withdrawal of troops from Iraq, the prosecution of Bush & Co. for war crimes, and a reorganization of the economy to meet the needs of working people, not the wealthy. Neither party can tolerate such a message reaching voters.

“If this were a democracy, it would be based on inclusion, not exclusion.

“The State of Ohio has a huge staff. If they were interested in democratic rights and determining the intent of the voters to express themselves, they would have found that we had more than enough signatures to be on the ballot. But instead, they want to keep working people from having a voice and leave us with four multi-millionaires to choose from.

“No matter what the outcome of this court’s decision, the SEP will continue to fight for the working class to build its own political party and advance its own socialist alternative to the Democratic and Republican parties’ policies of war, attacks on democratic rights, and social inequality.”