

SEP presents evidence of voter disenfranchisement in Ohio ballot case

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The Tenth District Court of Appeals in Ohio held a hearing in Columbus September 29 to take arguments in the case of Van Auken vs. Kenneth Blackwell, the legal action brought by the Socialist Equality Party against Ohio Secretary of State Kenneth Blackwell. Cincinnati civil rights attorney Robert B. Newman presented a powerful case for the state appellate court to overturn the secretary of state and place the SEP presidential and vice-presidential candidates, Bill Van Auken and Jim Lawrence, on the November 2 ballot.

On September 8 Blackwell ruled the SEP had not submitted the requisite 5,000 valid signatures to gain ballot status because county electoral boards had disqualified more than half of the nearly 8,000 signatures on SEP nominating petitions.

During last week's hearing Newman argued that the electoral boards had carried out the "summary disqualification" of hundreds of legally-registered voter. This action and the refusal of the secretary of state to seriously review, let alone overturn, groundless disqualifications violated the First and Fourteenth Amendments of the US Constitution, the attorney stated. [See: "Ohio appeals court hears Socialist Equality Party ballot access case"]

As of the time of this writing the three-member panel of appellate judges has still not issued its ruling.

A preliminary examination by the SEP of the disqualified signatures showed at least 1,420 of the 4,172—or 34 percent—belonged to registered voters. As part of his arguments Newman submitted an affidavit by Jerome White, a SEP election campaign organizer, which provided details of how the party collected petitions for Van Auken and Lawrence and the results of its examination of the disqualified signatures.

Below we post the affidavit.

1. Bill Van Auken and Jim Lawrence, the presidential and vice-presidential candidates of the Socialist Equality have been certified for ballot status in New Jersey, Iowa, Minnesota, Colorado and the state of Washington. SEP candidates for US Congress have also been certified in Maine and Michigan.

2. In July a challenge to the petitions of an SEP state legislative candidate in Illinois was withdrawn after an examination by the Champaign County Electoral Board showed that more than half of the signatures challenged by a leading member of the Champaign County Democratic Party were, in fact, valid.

3. Supporters of Van Auken and Lawrence petitioned in Ohio from July 7 to August 16, collecting 7,983 signatures, which were filed with the Secretary of State on August 18. The majority of signatures were gathered in six urban areas—Cleveland, Dayton, Cincinnati, Columbus, Toledo and Warren.

4. Those who gathered signatures for Van Auken and Lawrence were not paid petition circulators concerned only with gathering as many signatures as possible. They were politically-committed volunteers who explained the policies of the SEP while petitioning. Furthermore, given the challenge to the SEP in Illinois and the series of challenges to other

third-party candidates, such as Ralph Nader, our circulators were particularly conscientious in their approach to gathering signatures.

5. Circulators were instructed to ask all potential signers if they were registered to vote before they accepted a signature. Circulators also instructed signers to provide the address where they were currently registered to vote. This instruction is also written on the petition that signers should "use address on file with Board of Elections."

6. We have every reason to believe the voter registration information the SEP was given is out-of-date and contains erroneous information. In Montgomery County, for example, where officials disqualified 684 out of 1,255 signatures the registration rolls initially given to the SEP were last updated in early July, shortly after the SEP petition drive began. A more current version was not prepared by the count electoral board until September 13. It is uncertain therefore how many counties were operating with out-of-date information when they examined our petitions.

7. It is noteworthy that in none of the Secretary of State's instructions to the county electoral boards on checking petitions are there any specific directives to update voter registration rolls before beginning the process.

8. Tens of thousands of voters who registered during the well-publicized registration drives after these dates would be considered unregistered for the purposes of the petition check. The same would be true for voters who re-registered at a new address or, for instance, after changing their last names if they got married.

9. According to the report by the US House of Representatives, Judiciary Committee entitled, "How to make a million votes disappear: electoral sleight of hand in the 2000 Presidential election," as many as 10,000 votes in Cuyahoga and Montgomery counties alone went uncounted during the last presidential election. [p. 88 August 20, 2001 report prepared for Rep. John Conyers by the Democratic Investigative Staff House Committee on the Judiciary]. The report concluded that many uncounted votes throughout the US were due to incorrect voting rolls, including "haphazard purges of voter rolls and sluggish procedures for processing registration cards." [Ibid p. 118].

10. We believe a significant number of valid signatures were disqualified because county electoral boards were using incorrect information, including out-of-date registration data, as well as misspellings and wrong numbers introduced by county electoral board employees when the data was entered into their registration rolls. These errors make it more likely that the signature of a registered voter will be ruled invalid.

11. Even with this inaccurate data SEP petition-checkers were able to establish that at least 1,420 of the 4,172 disqualified signatures—or 34 percent—belonged to legally-registered voters. This included 356 who were registered but whose signatures were rejected as "not genuine" because they were printed, as well as another 553 voters who were registered at different addresses.

12. If one were for the moment to leave aside these signatures whose validity is being challenged by the Secretary of State, we discovered

additionally that the county boards simply lopped off another 413 signatures, without the slightest, even pseudo-legal, justification at all. In many cases all our petition checkers had to do to find a perfectly valid signature, that had been, for example marked ILL (for illegible) or NR (for Not Registered), was to carry out a diligent search, using an address if a name could not be fully read or vice versa. Queries were also done with partial names or addresses.

13. Several signatures were recovered because petition checkers looked at all available voter information, including maiden names and middle initials, or simply determined what a logical derivative of a voter's name might be. For instance, Tim Venetti—who was disqualified as “Not Registered”—was listed on the voter rolls as Antimo Venetti. [Trumbull County voter #23348, petition sheet #122766, Line 6]

14. There are literally hundreds of such examples, including:

- * An Asian-American voter in the Cleveland suburb of N. Olmsted, signed the petition as Xiong Fuqin, but was marked as not registered because his name according to the voting rolls is Fuqin Xiong. [Petition #220749, Line 13]

- * Chris Hansen, a voter in suburban South Euclid, was marked as not registered because she used the diminutive form of her first name in signing the petition, rather than writing out “Christine” in full. [Petition #22076, Line 2]

- * Mrs. E. Ledyard of Cleveland Heights was marked as “Not Genuine” because she is registered as Earnestine. [Petition #220757, Line 18] Scores of similar names were eliminated because signers abbreviated their first name.

- * Santonia McCoy-Williamson in Trumbull County was marked as “Not Registered” because she is listed in the county registration rolls as Santonia Williamson. [Petition # 122765, Line 20]

- * Emory Brady in Dayton abbreviated her street name to fit it in the address column. Because he wrote “German” instead of “Germantown” he was marked “Not Registered” [Petition #220953, Line #1]

- * Lisa Hayes of Columbus was listed as “invalid” because the registration roll had her listed at 31 N. Jones Ave, instead of 35 N. Jones Ave. [Petition #220819, Line 12]

- * Jason LaMay in Columbus was listed as “Not Registered at Address” because the county board has his address listed as 60 East 9th Ave, instead of 60 West 9th Ave. [Petition #220831]

15. It is evident that the county boards—equipped with far more powerful search engines and other means to verify signatures than what was available to us—did not carry out the same thorough search we did. Nor were they instructed by the Secretary of State, the chief election officer in the state, to make every effort to validate signatures. On the contrary the directive on “Independent Nominating Petitions” sent out by Kenneth Blackwell (#2004-29) on August 20, 2004 to county electoral boards concerns itself solely with how to disqualify signatures or whole petitions.

It also appears that county electoral boards simply eliminated every printed signature without checking the actual registration card. In many cases the code PR or PRT or “Print” was placed by the side of a printed signature, a code that is not included in the Secretary of States list of such codes to signify reasons to disqualify a signature. The Attorney General argues because “relators have failed to submit any evidence whatsoever showing that the disqualified voters had actually partially signed their voter cards, they cannot prevail that the Secretary of State or the Board of Elections abused their discretion or acted with a clear disregard for Ohio law when disallowing those signatures.” But the SEP petition-checkers had no access to registration cards that contained the voters' actual signatures. The county electoral boards did have access to this information. Once again, however, they received no specific instructions from the Secretary of State to carefully compare how voters signed the petition and their registration cards.

16. On September 9, 2004 we called the Secretary of State to inquire of

the status of our petitions. In this phone call we learned of the disqualifications of our petitions. We were not officially informed of this by letter until September 15, one hour before the deadline. In the phone call we were told that the Secretary of State in conjunction with a review panel would review any written material that we submitted. The submission had to be made by 5 p.m. on September 15, 2004. We met that deadline and submitted evidence indicating that we meet the statutory minimum number of signatures. Our federal court case was filed on September 15, 2004 and we attempted to file this action on September 17, but just missed the 5 p.m. closing time in the Clerk's office. We filed here the following Monday.

17. Our circulators went to areas where we received sympathy for our views. In many cases these were working class and lower-income areas in urban areas, as well as college campuses. Unlike residents of affluent areas the signers more frequently change addresses. The same was true for college students. Therefore the wholesale disqualification of those who changed addresses discriminates against lower-income and minority voters.

18. According to the US Census Bureau, 43.4 million people in the US—or 16 percent of the population—moved between March 1999 and March 2000. Over half of these moves were made within the same county; 20 percent were made within the same state. The movers were disproportionately young, nonwhite and poor. (Demos, “Expanding the Vote: The Practice and Promise of Election Day Registration,” p. 5)

19. While specific mobility rates for Ohio voters were not readily available, one measure that may give an indication of this figure is the number of school children who switch from one school to another during the school year. Again this is disproportionate to urban, low-income areas. According to the May 24, 2003 *Columbus Dispatch* article, “Transient students are education dilemma,” by William L. Bainbridge, Ph.D., “Columbus not only has the highest poverty rate in central Ohio, it has the area's highest mobility rate. One of the interim project reports has documented evidence that in school year 2001-02, the mobility rate for elementary schools in the Columbus district was a whopping 33.5 percent, while the Ohio average was 8.1 percent. This figure, called a ‘churning count,’ is the total number of school admissions and withdrawals divided by school population as of Oct. 1. In layman's terms, this means that, on average, one in three students in the Columbus Public Schools changes schools each year.”

20. The registration rate in the counties where we did the bulk of our petitioning is 80 percent or higher, according to current registration figures. Yet county electoral boards consistently disqualified 50 percent or more of the signatures from these counties, with the blessing of the Secretary of State.

21. The Socialist Equality Party worked diligently to comply with every requirement set by the Secretary of State in the gathering and filing of our signatures and other documentation on time.

22. It is clear to us, however, that our diligence, fairness and accuracy were met with a determined effort to disqualify signatures at every turn. Rather than reviewing the signatures objectively in order to ascertain the actual level of support the SEP candidates had, the county boards and the Secretary of State arbitrarily eliminated hundreds and hundreds of signatures.

23. The SEP is in a representative capacity on behalf of those who want to see political our candidates on the ballot. Nearly 8,000 people expressed this desire and 15-20 electoral boards and the Secretary of State's office—dominated by the two major parties—are trying to thwart their intent.



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