Ohio appeals court upholds exclusion of SEP candidates

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Ohio's 10th District Court of Appeals on Monday upheld the decision of the secretary of state to exclude Socialist Equality Party presidential and vice presidential candidates, Bill Van Auken and Jim Lawrence, from the November 2 ballot.

A three-judge panel—made up of two Republicans and one Democrat—rejected the SEP candidates' legal motion, known as a writ of mandamus, to order Ohio Secretary of State Kenneth Blackwell to void his previous decision and place them on the ballot.

The court ruling is a blow against the democratic right of third-party and independent candidates to participate in elections, and the right of voters to cast their ballots for candidates of their choosing. It effectively disenfranchises more than 8,000 Ohio voters who signed nominating petitions to place Van Auken and Lawrence on the ballot in the state.

It bolsters the efforts of the two major parties and the American ruling elite as a whole to further restrict the electoral process and maintain a two-party system that is incapable of addressing the needs and concerns of working people. These efforts have been stepped up this election year to bar candidates who oppose the war in Iraq. The SEP is a particular target because it advances a socialist program that challenges the stranglehold of the American financial oligarchy over the social and political life of the country.

The ruling follows last week's decision by the Ohio secretary of state to remove independent presidential candidate Ralph Nader from the ballot. Its essence is to uphold arbitrary requirements and procedures that place a prohibitive burden on candidates who oppose the two-party system.

The court acknowledged that the SEP had demonstrated that Ohio election officials were guilty of "abuse of discretion" in disqualifying hundreds of valid signatures on Van Auken's and Lawrence's nominating petitions. It also conceded that many valid signatures were rejected because county election boards maintained outdated registration rolls. Nevertheless, the court upheld the decision of the secretary of state to disqualify more than half of the signatures submitted by the SEP and, on this basis, claim the party had failed to meet the ballot requirement of 5,000 signatures of registered voters.

The Democratic Party has taken the lead nationally and in Ohio to bar socialist and antiwar candidates from the ballot, in a coercive attempt to convince voters that the only means of opposing Bush is to vote for Democratic candidate John Kerry. However, the anti-democratic attack on alternative candidates and on the right to vote is a bipartisan effort.

Monday's court ruling coincides with sweeping measures by Secretary of State Blackwell—a leading member of Bush's reelection campaign in Ohio—to block the participation of tens of thousands of new voters who have registered in record numbers over the last several weeks. Like his Republican counterpart in the 2000 election in Florida, Katherine Harris, Blackwell has imposed a series of obstacles to reduce new voter participation. At one point he ordered county election boards to reject registration cards not printed on heavy-stock paper—a measure that he was compelled to rescind after it provoked an uproar not only in Ohio, but nationally.

He remains adamant, however, that provisional ballots cast by voters will not be counted if they are registered at polling stations different from those to which the voters were assigned. This arbitrary requirement will overwhelmingly affect poor and working class voters, as well as those who are seeking to vote for the first time.

The appellate judges' ruling ignored the constitutional issues raised in the legal action submitted by Cincinnati civil rights attorney, Robert B. Newman, on behalf of the SEP candidates. Newman argued that Blackwell's refusal to review, let alone overturn, the decision of county election boards to disqualify the signatures of hundreds of legally registered voters had violated the candidates' First and Fourteenth Amendment rights.

Local election boards wrongly threw out virtually every signature that had been printed rather than written in cursive, as well as those with an initial or diminutive form of the first name. Hundreds of other signatures were rejected because the adjoining addresses did not match voter records that had not been updated.

The SEP lawsuit challenged the constitutionality of the address requirement, pointing out that it not only discriminated against those with high mobility rates—mainly the poorest sections of the working class and college students—but was struck down as unconstitutional last month by the Court of Appeals of Maryland in a case involving Nader.

The Ohio court skirted these substantive issues of voting rights and due process. Instead, it issued a crass defense of existing state laws and regulations that block equal access to the ballot.

For example, the judges noted without criticism that while Ohio had a statutory mechanism for individuals to challenge a candidate's nominating petition that had been found valid, it provided no remedy for candidates whose petitions had been disallowed by the state to challenge the official decision.

A preliminary examination by the SEP showed that 1,420 out of the 4,172 disqualified signatures were those of legally registered voters. If these were added to the signatures certified as valid by the county election boards, the SEP would surpass the 5,000-signature requirement for ballot status.

The secretary of state refused to examine these findings and, in effect, asserted that his decision to disqualify the SEP candidates was

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not subject to review. The court upheld this travesty as legitimate, saying that neither the lack of adequate time to challenge the secretary of state's decision nor the absence of a specific review process constituted "a deprivation of due process."

The court acknowledged that the SEP was within its rights to file a writ of mandamus with the state appeals court because no other legal remedy existed. However, the judges said the only way Van Auken and Lawrence could prevail was to prove the election authorities' decision had resulted from "fraud, corruption, abuse of discretion or clear disregard of applicable law."

The judges then conceded that the election boards were indeed guilty of "abuse of discretion" in wrongly disqualifying hundreds of signatures that had been printed or contained minor deviations from the signatures as they appeared on computerized registration rolls. They acknowledged that the SEP was "therefore correct in asserting that boards of elections' blanket disqualification of printed signatures when reviewing petitions would be an abuse of discretion, as would disqualification for the other individual variations cited."

But having accepted a key aspect of the SEP's complaint against the election boards and Secretary of State Blackwell, the court disingenuously claimed the authorities as a whole acted within the law. "The local boards do not abuse their discretion in rejecting signatures as a result of strictly applying this statutory requirement," it ruled.

The court marshaled the most specious arguments in response to the fact—which it did not dispute—that the county boards' registration rolls were badly outdated, leading potentially to the wrongful rejection of hundreds of signatures of newly-registered voters. The judges asserted it was wrong for the SEP to "extrapolate that a four- to eight-week delay" in updating voter information "implies a certain rate of improperly invalidated signatures." They concluded, "In the absence of the necessary petitions and rolls to support [the SEP's] contentions, we are reluctant to undertake such a venturesome extrapolation from purely statistical evidence of uncertain origin regarding the rates at which voters change their addresses."

The judges further declared: "While we accept [the SEP candidates'] assertion that the local boards may have abused their discretion without reference to voter registration cards, the evidence in that regard does not generate a sufficient number of 'recovered' signatures to meet the statutory minimum..."

In effect, the court ruled that the SEP was obliged to prove that outdated registration rolls resulted in the disqualification of a sufficient number of legally registered voters to make the difference between reaching the 5,000-signature requirement and failing to do so. This, however, is a classic "Catch 22," since the outdated state of the registration rolls makes it impossible to establish such definitive proof.

That the Ohio county boards have been swamped by new registrations—arriving at a rate far higher than anticipated—is well documented. Reports have appeared in newspapers across the country describing an upsurge in voter registration, particularly among young and new voters, and especially in working class areas. Ohio, perhaps the single most hotly contested of the "battleground" states, has seen a particularly large influx of new registrations.

According to a new lawsuit filed this week by attorneys for Nader, Lucas County (Toledo) had a backlog of some 12,000 voter registration applications on September 2. The legal action, aimed at forcing the state to update its rolls and re-examine Nader's disqualified signatures, claims that as many as 100,000 voter registration applications had not been processed throughout the state when election boards initially reviewed his petitions.

One political fact emerges from the court's ruling: a guiding principle of the American ruling elite, its major parties and its courts is the exclusion, through means fair or foul, of the broad masses of people from any genuine input into government policy, and the suppression of all challenges to the two-party system.

Responding to Monday's appeals court ruling, Jim Lawrence, the SEP's vice presidential candidate, said, "This was not unexpected in a two-party dictatorship. Working people have to understand how far the government has gone in stripping them of their democratic rights, including the right to vote.

"Thousands of workers signed our petitions, including in my hometown of Dayton. They are the ones being disenfranchised, including those people who were most enlightened about the true state of affairs and want to see someone fight the two big business parties. If you combine the number of people who signed the SEP petitions and the Nader petitions, that's more than 20,000 people who do not have the right to vote for someone they wanted on the ballot.

"Now Blackwell is attempting to recreate Florida in Ohio. There are record numbers of 18-year-olds registering and they have no interest in sacrificing their lives in a criminal war. You must assume they are for the most part going to vote against the Bush administration.

"The Democrats may holler about Blackwell suppressing votes, but they are not overly concerned. The last thing they want is a massive influx of workers and young people into political life. They might want to use these new voters to win the election, but they know that these people are going to come into a conflict with Kerry, if he wins, over the war and the terrible social conditions. To the Democratic Party, preventing working people from having a political alternative to the two parties of US imperialism is far more important than winning an election.

"The Clinton impeachment, the stolen 2000 election, the wars in Afghanistan and Iraq, the Patriot Act—all this points to ever more pronounced moves toward authoritarian rule. The right to vote and other basic democratic rights will be defended—and can only be defended—through the building of our party as a mass party of the working class."

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