US Supreme Court refuses to hear ballot access case brought by SEP

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The US Supreme Court on June 1 rejected a petition brought by the Socialist Equality Party's 2004 congressional candidate in Ohio challenging that state's discriminatory filing deadline for independent congressional candidates.

Despite the fundamental constitutional issues involved in the case, the Supreme Court, without any explanation, refused to hear *David Lawrence v. J. Kenneth Blackwell, Ohio Secretary of State*. For an appeal to be heard by the high court, only four of the nine justices need agree to consider the case.

Attorneys for David Lawrence, the SEP candidate for US Congress in the 1st District of Ohio, which includes Cincinnati, appealed the case to the nation's highest court after the US Court of Appeals for the Sixth Circuit upheld Ohio's March 1 deadline, which forces independent candidates to circulate nominating petitions during the winter months and before the Democrats and Republicans have held state primaries to choose their candidates.

A three-judge court of appeals panel ruled on *Lawrence v. Blackwell* on November 29, 2005. In issuing its decision, the appeals court panel—made up of two Bush appointees and one judge appointed by Clinton—actually claimed that third-party candidates would be given an "unfair advantage" over the two major parties if Ohio moved the deadline and gave independents more time to petition for ballot access.

Lawrence had collected the signatures of 2,660 voters, far more than the 1,695 required under state election laws. However, he collected the signatures after the prohibitively early filing deadline, intending to challenge the rule in court. The deadline—eight months before the general election—is one of the earliest for independent congressional candidates in the US.

On June 14, 2004, Lawrence and Yifat Shilo, a 1st CD voter, filed a lawsuit in US District Court challenging Ohio's March 1 filing deadline for independent candidates on constitutional grounds. At the time, Lawrence told the *World Socialist Web Site*, "The Ohio Legislature has retained the undemocratic early filing deadline on the books in order to safeguard the political monopoly of the two parties. It seeks to deny third parties a place on the ballot in order to stifle political discussion and ensure that political opponents of the war, the destruction of jobs and social inequality are not heard."

Lawrence's attorneys relied heavily on the 1983 US Supreme Court decision in *Anderson v. Celebrezze*, which overturned a similarly early filing deadline in Ohio for independent presidential candidates. At that time, the deadline for independent presidential candidates was 75 days earlier than the major party primary elections. The case established the fundamentally unfair character of setting a deadline before the two major parties selected their candidates, in particular because it eliminated the opportunity for voters to support another candidate or party if they disagreed with the ones nominated by the Democrats and Republicans.

Following the *Anderson* ruling, Ohio changed the filing deadline for independent presidential candidates to August 19—nearly half a year later than the March 1 deadline for independent congressional candidates. Ohio authorities refused to make an adjustment in the deadline for independent congressional candidates similar to that which they were compelled to make for independent presidential candidates.

Instead, they shifted the date of the major party primaries to March 2, thereby bringing the deadline for independent congressional candidates to within a day of the Democratic and Republican primaries.

The US District Court and later the US Court of Appeals ignored the constitutional issues raised by the Lawrence case and upheld the March 1 filing deadline. In doing so, they upheld the bogus claim by Ohio's Republican Secretary of State Kenneth Blackwell that that Ohio was providing "equal treatment" to independents because their deadline was around the same time that the major parties held their primaries.

In his brief to the US Supreme Court, Mark Brown, the Columbus, Ohio, attorney and Capital University law professor who represented Lawrence, answered this claim.

Blackwell, he said, argued that "electoral parity represents the natural order of things" and allowing candidates more time "would afford them an unjustified edge. It is indefensible and no reasonable court would demand it."

Brown pointed out that this claim of "equal treatment" had already been rejected by several US courts, including the Fourth Circuit Court of Appeals, which struck down South Carolina's rules in 1990, saying equal deadlines resulted in only "superficial 'equality.' " The two types of candidacies "are unequal in a way which makes the imposition upon them of equal burdens not equality of treatment," the Fourth Circuit ruled.

Similarly, the 11th Circuit Court of Appeals in 1991 struck down Alabama's April qualifying deadline for minor-party candidates, declaring, "No one can seriously contend that a deadline for filing a minor party and its candidate seven months prior to the election is required to advance legitimate state interests."

Brown told the *World Socialist Web Site*, "You can't compare the hurdles independents face with that of the major parties. There is no equal treatment. Most Democrats and Republicans automatically qualify for ballot status. They have special rules that don't apply to independents."

The attorney, who also represented independent presidential candidate Ralph Nader against Blackwell in 2004, said, "There is no reason to force candidates to declare by March. That is only to protect the two-party system. But you can't win relief in the state legislatures because the Democrats and Republicans control them. The state and federal courts don't have any empathy for outsiders either because the judges come from both parties.

"This deadline is designed to freeze our challenges to the two party system. Filing by March 1 puts an unfair disadvantage on independents because they have to gather thousands of signatures in the winter, much of it door-to-door because the shopping malls won't let you do it."

In addition to the attack on David Lawrence and efforts to keep Nader off the ballot in 2004, Blackwell coordinated the effort to exclude the SEP's presidential and vice presidential candidates, Bill Van Auken and Jim Lawrence, from the ballot, even after the party collected thousands of signatures and met all the legal requirements. Blackwell gained notoriety in that year's national election for threatening to restrict voting rights in Ohio and helping to deliver the state to George Bush. The former secretary of state is currently the Republican nominee for Ohio governor.

The US Supreme Court's refusal to review the Lawrence case is part and parcel of the court's reactionary attacks on voting rights over more than a decade, including its role in stopping the Florida recount in 2000 and handing the presidential election to George Bush.

According to Richard Winger, who publishes *Ballot Access News*, since 1992, when independent presidential candidate Ross Perot received millions of votes, the Supreme Court has continuously sought to restrict the rights of independent candidates and prevent voters from having any choices outside of the two-party system. "Every time we win in the lower courts," Winger said, "the Supreme Court reverses it on an appeal from the state. If we lose cases below, the Supreme Court justices refuse to hear our appeals."

Three lower-court cases expanding ballot access were struck down by the high court, Winger said, "including one that public TV stations had to invite all candidates to participate in debates."

The actions by the Supreme Court are part of a widespread effort to restrict ballot access and voting rights around the country. At both the federal and state level, new laws are being pushed to make it more difficult for voters to register, cast ballots and have their votes counted. These measures particularly target poor and working class voters.

This assault on the right to vote and the right of independent and third-party candidates to stand in elections is one of the sharpest expressions of the decay of American democracy. The entire political system is dominated by a wealthy elite whose interests are so diametrically opposed to those of the majority that it can no longer achieve its aims through democratic consensus, and instead must increasingly resort to authoritarian forms of rule.

The more the reactionary policies of war and attacks on the working class undermine the base of support for the two big-business parties, the more the Democrats and Republicans react with fear and hostility to any political challenge, in particular from socialists, who seek to articulate the interests and aspirations of working people. This underscores the importance of the political campaign being waged by the Socialist Equality Party in the 2006 elections to build a powerful political movement of the working class for a socialist alternative to the two-party system.