

Wisconsin officials reverse decision and recommend SEP candidates be placed on ballot

Our reporter
16 August 2012

One week after informing the Socialist Equality Party that its candidates would not be on the ballot because of a “fatal flaw” on its nominating petitions, Wisconsin election officials are now recommending that presidential candidate Jerry White and his running mate Phyllis Scherrer be placed on the ballot for the November 6 election.

The change in position follows an aggressive political and legal campaign by the SEP, including an appeal for its supporters in the US and internationally to send protest letters to the offices of the Government Accountability Board (GAB) demanding that it overturn its initial position.

In an August 14 letter to White, GAB election specialist David Buerger wrote “Upon further review of your nomination papers and concerns you raised about the impact of a 2004 order by the Wisconsin Supreme Court, Government Accountability Board staff have decided to reverse our prior recommendation and approve your nomination papers despite previously identified flaws regarding the residency of your presidential electors in the 3rd and 5th Congressional Districts.”

A final decision on ballot access will be made by board members of the GAB at its next scheduled meeting on August 28. The GAB is made up of six retired judges appointed by former Democratic Governor Jim Doyle and his Republican successor Scott Walker. According to its web site, the GAB is committed to “ensuring that Wisconsin elections are administered through open, fair and impartial procedures that guarantee that the vote of each individual counts, and that the will of the electorate prevails.”

On August 3, the SEP had submitted the signatures of more than 3,200 state residents—well above the 2,000 required by the state—to put its candidates on the ballot. In

its initial recommendation, the Elections Division staff of the GAB cited a technicality on the SEP nominating petitions to disqualify all of the signatures. According to an August 8 letter from Buerger, the petitions were rejected because two of the ten presidential electors printed on each sheet did not reside in the congressional districts listed.

Unlike many other states, Wisconsin requires nominating petitions to list one presidential elector from each of the state’s eight congressional districts plus two at-large electors who would vote in the US Electoral College (itself a thoroughly undemocratic body) if the SEP candidates won the majority of the vote.

Further complicating matters, the boundary lines of the congressional districts had recently been changed by the Republican state legislature, but these changes were under appeal before the US Supreme Court until June 18, 2012, only 13 days before the petitioning period for “third party” candidates began. Virtually all of the available information on the Internet, including federal congressional district maps, indicated the SEP presidential electors were listed in the correct districts.

Although the GAB staff acknowledged that the “flaw” had been due to the confusion caused by redistricting, Buerger initially said staff members were recommending that the SEP candidates be kept off the ballot on the grounds the party had not prepared the nominating petitions in accordance with Wisconsin electoral statutes.

The SEP rejected this argument as specious and explained that the election authorities were carrying out a politically motivated attack. By disenfranchising the thousands of voters who signed the SEP petitions, the election authorities were seeking to bar socialist candidates from the ballot and block any challenge to the big business parties and their candidates, Barack Obama

and Mitt Romney.

The groundless character of the election officials' claims was underscored by the fact that the Wisconsin Supreme Court had already ruled against state Democrats who had used the same residency requirements in a failed attempt to keep independent presidential candidate Ralph Nader off the ballot in 2004.

In the 2004 case, the state Supreme Court overturned a lower court ruling and upheld the position of State Elections Board—the predecessor of the GAB—which argued that residency requirements should not be mandatory for presidential electors who represent the entire state not just single districts.

In addition to mounting a public campaign, the SEP enlisted the services of a Madison, Wisconsin law firm that specialized in ballot access law and agreed to joint legal action with the Green Party's presidential candidate, Jill Stein, who was also being kept off the ballot on the exact same grounds.

In his August 14 letter to White, election specialist David Buerger wrote, “[A]fter consultation with the Board’s Director and General Counsel as well as the Board Chair, staff acknowledges that the residency requirements of Wisconsin Statute 8.20(2)(d) had been deemed to be directory by the Wisconsin Supreme Court in *State of Wisconsin ex el. Ralph Nader and Peter Camejo v. Circuit Court for Dane County, et al*, No. 04-2559-W. While this order was not a precedential decision by the Wisconsin Supreme Court, staff acknowledges that the former State Elections Board applied the same rationale to approve the nomination papers of Candidate Ralph Nader in 2004. In addition, staff recognizes that litigation involving your nomination papers would likely produce a similar result to the Wisconsin Supreme Court’s 2004 order.”

In the 2004 case, the state supreme court ruled that the residency requirements for presidential electors were “directory” not mandatory. According to its legal definition this means, “A provision in a statute, rule of procedure, or the like, that is a mere direction or instruction of no obligatory force and involves no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed.”

By acknowledging this, the GAB staff has conceded that it has no legal grounds to disqualify the SEP petitions. “Accordingly, staff now recommends approval of your nomination papers on condition that two other presidential electors are identified by name and address to

replace those who are not residents of the correct congressional district as indicated in our letter of August 8, 2012. Please submit this information to our office no later than August 27, 2012...”

Buerger held out the possibility that the full GAB board would decide not to follow the recommendation of the legal staff. However, the GAB is essentially acknowledging a mistake in its previous efforts. For the full board to reverse the decision would be legally indefensible and transparently politically motivated.

In a statement to the *World Socialist Web Site*, SEP candidate Jerry White thanked all of those who have written into the GAB. He urged supporters to continue sending emails calling on the GAB to carry out the decision recommended by its own staff.

“The reversal of the staff’s decision is significant,” White said. “It was only possible because of the determination of workers and young people who oppose the political monopoly of the two big business parties and want to see candidates on the ballot that represent the interests of the working class, not the corporate and financial elite. I urge you to continue to send your emails and letters calling on the GAB to follow its staff recommendation and put Phyllis Scherrer and me on the ballot when it meets on August 28. I also call on our supporters and all defenders of democratic rights to send donations to help cover our legal expenses for this battle and to make our campaign known as widely as possible.”

To donate to the SEP election campaign, click here.

Send all e-mails to:

Government Accountability Board: gab@wi.gov

David Buerger: david.buerger@wi.gov

Please send copies to: 2012@socialequality.com

Letters can be mailed to:

Wisconsin Government Accountability Board

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To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact