

SEP candidates Joseph Kishore and Norissa Santa Cruz respond to California state officials in ballot access lawsuit

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On Wednesday, the Socialist Equality Party's candidates for United States president and vice-president, Joseph Kishore and Norissa Santa Cruz, filed a set of legal documents responding comprehensively to the arguments made by California Democratic Governor Gavin Newsom and Secretary of State Alex Padilla.

The SEP's lawsuit was filed on June 30 in federal court in California against Newsom and Padilla, challenging the state's continued enforcement of a requirement that candidates gather 200,000 physical signatures between April and August in order to gain access to the November statewide ballot.

The lawsuit argues that this requirement is "effectively impossible" to meet "in light of the ongoing global COVID-19 pandemic and the state's countermeasures to it."

The SEP candidates, who are the plaintiffs in the lawsuit, argue that had their supporters attempted to publicly petition to obtain signatures for ballot access, they would have severely jeopardized not only their own health and lives, but those of the public as well.

The SEP candidates are arguing that since California refuses to provide any practical way for them to participate in the elections, in violation of their democratic and constitutional rights, the judge should order their names placed directly onto the November ballot.

On July 12, the California attorney general's office, which represents Newsom and Padilla, filed its opposition to the SEP candidates' request.

In their opposition papers Newsom and Padilla, who are the defendants in the lawsuit, acknowledged these signature requirements and declared their intention to enforce them. They further asserted that if the SEP candidates prevailed in their lawsuit, the result would be "an unmanageable and overcrowded ballot for the November presidential general election" and would cause "frustration of the democratic process," "voter confusion" and "irreparable harm" to "the public interest."

Newsom and Padilla argued that the SEP candidates "could have begun signature gathering no later than May 1, 2020;" that the SEP candidates had "14 weeks out of the 15-week period to collect signatures in person;" and that they could have deployed "66 signature gatherers, working five days a week for 15 weeks, to obtain the requisite number of signatures."

In their July 15 reply brief, the SEP's candidates refuted the arguments of the state officials point by point.

In response to the state's argument that their request for ballot access would cause "frustration of the democratic process," the SEP candidates pointed out that it was California state officials "who are

frustrating the democratic process—by insisting on the enforcement of ballot access requirements that are effectively impossible for Plaintiffs to comply with without endangering the safety and lives of their supporters and the public at large."

Replying to arguments that gathering the signatures is not "impossible," the candidates explained that under California law, the circulators of the nomination papers are required to swear under oath that they personally physically witnessed the signature of each and every one of the registered voters required to sign the petition, who are called "nominators."

"This necessarily means the circulators must be in close physical proximity to each and every one of the nominators in order to observe them signing and certify under oath that they have done so."

"The cold fact," the SEP candidates stated, is that "circulators would have to physically approach a multiple of 200,000 individuals to obtain the sufficient number of signatures. On top of that, there is a vastly reduced pool of potential signers under present conditions, given that large numbers of people rightly fear contracting COVID-19 from contact with others."

These conditions do render it "effectively impossible" to comply with the state's signature requirements, they argued.

"This state of affairs," they continued, "cannot pass constitutional muster, especially given that a presidential election is at stake." Citing legal precedents, the SEP candidates explained that federal district judge Dolly M. Gee would be well within her power to order the candidates directly onto the ballot, and that she must do so if "core democratic and constitutional rights are to be given any substantial effect."

Newsom and Padilla are claiming that California's requirements are "generally applicable, evenhanded, politically neutral, and protect the reliability and integrity of the election process."

Kishore and Santa Cruz responded: "Suppose a state were to impose new requirements for marriage licenses. According to these new requirements, registered Democrats and Republicans can order their marriage licenses by submitting a simple form. However, registered independents are required to run through a mine field in order to obtain a marriage license. Such requirements would not be upheld as 'generally applicable,' 'evenhanded,' or 'politically neutral.'"

"Defendants' ballot access requirements for independent presidential candidates, which do not apply to Democrats or Republicans, would require Plaintiffs and their supporters to run through the equivalent of a mine field, risking serious illness and death," they continued. "Whatever interests the state may have in

avoiding ballot ‘clutter’ and “voter confusion,” these interests cannot be served by requiring independent candidates and their supporters to engage in activity that would involve substantial risk to human life.”

Newsom and Padilla pointed to “other electioneering efforts” that supposedly “have carried on” during the pandemic, including the gathering of signatures for various ballot initiatives. Kishore and Santa Cruz exposed these arguments as “misleading,” since based on their investigations, the signature-gathering for those initiatives began and was substantially completed in the months before the pandemic.

As to the allegation that Kishore and Santa Cruz should use “social media” to campaign for signatures, they responded by pointing out that they “have been waging a campaign for years against censorship on these platforms,” submitting evidence of numerous instances of censorship of the *World Socialist Web Site* on social media.

“For this reason,” they argued, the exercise of “core democratic and constitutional rights should not be made contingent on the whims and caprices of the private owners of the social media platforms.”

As to the state’s argument that they should have mailed the nomination papers to 200,000 individual voters, who could then use “mobile notaries” to complete the forms and send them back, Kishore and Santa Cruz responded by pointing out that at an average rate of \$100 per signature for a mobile notary, the cost of notarizing nearly 200,000 signatures would be on the order of \$20 million, not including postage to and from voters signing the petition.

They argued that “the financial burden of such a proposal reveals the tenuous if not preposterous character of Defendants’ position.”

Kishore and Santa Cruz presented evidence that they “belong to a well-ordered and professional party that could deploy dozens of signature-gatherers throughout the state on any given day.” They are ready to satisfy any of the state’s ballot access requirements besides the signature requirements, and they have the required 55 electors in the state pledged to serve in the Electoral College.

In response to accusations that they had not been “diligent,” Kishore and Santa Cruz presented evidence that they launched their campaign in January and had held meetings throughout the state in March, “working early and diligently to build support for their campaign.” In addition, they expected to “conduct their campaign not only with their existing supporters as of January 2020, but with supporters that they would win over in the course of the campaign.”

Ballot access expert Richard Winger submitted a supplemental declaration in support of Kishore and Santa Cruz, which was critical of the extremely high total number of signatures required in California, pointing out that in the state of Colorado, “an independent candidate can demonstrate the requisite degree of voter support by gathering physical signatures *or* by paying a \$1,000 filing fee.”

“Plaintiffs Kishore and Santa Cruz are far from frivolous candidates,” the reply brief states, pointing to the long history of the SEP and its forerunner, the Workers League, in California. Declarations filed by supporters of Kishore and Santa Cruz provided evidence of the “political ideas that have won them support among teachers, health care workers, students, and other sections of the state’s population.”

In a supplemental declaration filed together with the reply brief, Santa Cruz, a resident of California, called the state’s policy “pure insanity.”

“For my part,” Santa Cruz declared, “I would not be able to live with myself if, as a result of my decision, one of my supporters were to contract the virus and perish. I am appalled at the suggestion that we should have sent our supporters out to face a deadly virus when we

could not ensure their safety. No responsible person in my position would have done so.”

“It is not just a question of the circulators, who must be careful of themselves and of their families, but of the threat posed to the whole public,” the reply brief continues. “Each rendezvous would be a lethal game of chance. Since vastly more people would have to be contacted than would ultimately sign, any attempt to comply with the state’s requirements would be virtually certain to result directly in more cases of the virus, frustrating the valiant efforts of health care workers to contain the disease and treat the many victims. Indeed, the Plaintiffs are campaigning on criticisms of the official countermeasures to the pandemic as inadequate; the state would have them violate their deeply-held political convictions by forcing them to play a role in spreading the disease.”

The reply brief concludes: “California will not be harmed by allowing Plaintiffs to exercise their constitutional rights. The requested relief is indeed extraordinary, but the conditions are extraordinary.”

“Nothing prevented the state from implementing, in response to the pandemic, an alternative procedure for ballot access. Instead, state officials in California sat on their hands for months and refused to change an administrative requirement that had become effectively impossible to fulfill. Since California refuses to provide a way for Plaintiffs to access the ballot, in violation of Plaintiffs’ core democratic and constitutional rights, Plaintiffs have no choice but to petition this Court to grant the relief they request.”

The lawsuit is pending in the United States District Court for the Central District of California. The hearing, at which both sides will present arguments and answer questions from the judge, is scheduled for July 20, 2020.

A case filed by the SEP candidates against state officials in Michigan, which likewise challenges the state’s requirement that the SEP gather signatures during the pandemic in order to appear on the ballot, is currently on appeal to the federal Sixth Circuit Court of Appeals.



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