

SEP candidates file brief replying to Governor Whitmer in Michigan ballot access appeal

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The Socialist Equality Party (SEP) submitted a reply brief on Monday in response to arguments submitted last Thursday to the Sixth Circuit Court of Appeals by Michigan Democratic Party Governor Gretchen Whitmer and other state officials against the SEP candidates' ballot access lawsuit.

In their brief, the SEP candidates—Joseph Kishore for US President and Norissa Santa Cruz for US Vice President—powerfully reiterate the position they have advanced consistently since filing their Michigan lawsuit on June 19: The state's ballot access rule that candidates must collect thousands of physical signatures during the pandemic is unconstitutional because it forces SEP members and supporters to violate their political principles, endangers their own and the public's health, and denies socialists the right to cast a meaningful vote.

Kishore and Santa Cruz submitted their appeal brief on July 23 following a ruling by Judge Sean Cox of the US District Court for the Eastern District of Michigan in favor of Whitmer, Secretary of State Jocelyn Benson and Director of the Michigan Bureau of Elections Jonathan Brater two weeks earlier.

The reply brief begins by taking up the claim by both the Michigan government officials and Judge Cox that the SEP candidates did not exercise "reasonable diligence" to get on the ballot because they abstained from gathering thousands of physical signatures during the raging coronavirus pandemic.

Kishore and Santa Cruz argue that the district court's use of the concept of "diligence" is "Kafkaesque and dangerous" because, if they had proceeded to collect signatures during the pandemic, it would have been illegal and would have contributed "to the spread of the

deadly infection and encouraged noncompliance" with Whitmer's stay-at-home orders and the advice of public health officials.

Flipping the court's concept around, the SEP candidates state that "reasonable diligence" is "precisely the opposite of what the district court suggested," and actually means that the SEP was correct to have encouraged "supporters to stay at home to the extent possible, to comply with state and local emergency directives, and to protect the health and lives of their families and the public."

The SEP brief states that the party's "forbearance from signature gathering only bolsters and does not detract from a finding that they were diligent" and that this truth is, in fact, conceded by Whitmer and Judge Cox who characterize the SEP's conduct as "good," "conscientious," "understandable" and "certainly respectable" in their own order and filings.

The reply addresses Whitmer's new argument on appeal that the SEP should have been prompted by right-ring demonstrators in the Michigan state capital of Lansing to begin collecting signatures during the pandemic. The Whitmer administration wrote in their brief that the gathering of far-right militias "effectively demonstrated that First Amendment activities were not precluded by the governor's orders," and that the SEP therefore should have thereby been prompted to launch a signature-gathering campaign.

The SEP candidates' brief demonstrates that this is a 180-degree change from Whitmer's position when the main Lansing demonstration took place. The brief cites Whitmer's comments on the anti-lockdown protest, which she said "is not appropriate in a global pandemic, but it's certainly not an exercise of

democratic principles where we have free speech... I ask that everyone who has a platform uses it to call on people to observe the best practices promulgated by the CDC and to stop encouraging this behavior.”

Whitmer also said, “I respect peoples’ right to dissent, but that does not extend to endangering other people’s lives.” However, when it comes to keeping the SEP candidates off the Michigan ballot, Whitmer argues in court that the protest was “free speech” and that the SEP was obligated to follow their lead in order to establish that they acted diligently.

This “night and day contrast” between Whitmer’s public pronouncements and her positions in litigation “points to the practical political reality underlying this litigation,” Kishore and Santa Cruz’s brief explains, adding: “Michigan is a key battleground of the 2020 presidential elections.”

Whitmer is a national campaign co-chairperson for presumptive Democratic nominee Joe Biden, the brief notes, while “In 2016, the Democratic Party lost the state of Michigan by 10,700 votes, a margin such that that an independent, leftwing candidate could impact the outcome. This supports an inference that legitimate or compelling state interests are not driving Appellees’ opposition to this action, but partisan political aims.”

The brief also points out that the state dishonestly provided incorrect information to the Kishore and Santa Cruz campaign in May, telling a campaign volunteer in a series of phone discussions that the signature requirement was 30,000, when in reality a federal court had struck that requirement down as unconstitutional the previous December.

This dishonest state action was intended to dissuade independent left-wing candidates from even attempting to gain ballot access. Only after Kishore and Santa Cruz filed this lawsuit did the government acknowledge that the prior standard had been struck down. The candidates’ brief explained that the government is not allowed to dishonestly hide from citizens that its own laws violate the constitution.

In its concluding section, the SEP candidates argue that the Sixth Circuit Court of Appeals should protect the “basic democratic and constitutional rights in connection with the upcoming elections by reversing the decision of the district court” and that the SEP is “entitled either to an order placing them directly on the ballot” or an order that “Michigan state officials

provide them with a means of accessing the ballot that they can exercise safely and with reasonable diligence before the printing of ballots begins.”

Commenting on the reply brief, SEP presidential candidate Joseph Kishore said: “We denounce the antidemocratic ballot access requirement that we should gather thousands of signatures amidst an expanding pandemic. The latest drive to block us from getting on the ballot in Michigan is part of the broader effort by the Democrats and Republicans to exclude and suppress all opposition to the homicidal policies of the ruling class.

“The legal arguments being advanced by Governor Whitmer that we should have gathered signatures in violation of her stay-at-home orders and that we should have followed the lead of the far-right militia protesters who took over the state Capitol building in Lansing in April, shows that the primary objective is to keep the SEP off the ballot.

“Our election campaign is toward the development of the class struggle, as workers enter into opposition to the back-to-work and back-to-school efforts and the drive to force the working class to pay with their lives in order to pump out profits for the financial oligarchy.”

The governor opposed Kishore and Santa Cruz’s attorney’s request for oral arguments in order to attract as little attention to this case as possible. The Court previously stated that it will reach a decision before the beginning of September.



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