

Ninth Circuit Court of Appeals refuses to hear Socialist Equality Party candidates' appeal in California voting rights case until after ballots are printed

Shuvu Batta
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A panel of three judges on the Ninth Circuit Court of Appeals has denied a request by the Socialist Equality Party's candidates Joseph Kishore and Norissa Santa Cruz for their appeal to be heard before ballots are printed in California.

On July 27, a panel of three Ninth Circuit judges issued a decision that reads, in its entirety: "In light of the late date of the appeal, it cannot be calendared for resolution prior to August 26, 2020. The previously established briefing schedule remains in effect." The "previously established briefing schedule" will result in the case being heard after ballots are already printed.

In response, candidates filed an emergency motion for reconsideration. This motion was denied yesterday, August 5, in a one-sentence decision that states only that the motion was "denied," without giving any reasons.

The decisions denying the candidates' requests for an expedited schedule were made by Chief Judge Sidney R. Thomas (appointed by Democrat Bill Clinton) and Circuit Judges Mary M. Schroeder (appointed by Democrat Jimmy Carter) and Consuelo Callahan (appointed by Republican George W. Bush).

The ruling means that that the clock will effectively run out on the SEP candidates' case. The ballots will be printed without the SEP candidates' names on them before the Ninth Circuit judges will make any decision on the candidates' right to have their names printed on the ballots.

In the SEP candidates' lawsuit against California Governor Gavin Newsom and California Secretary of State Alex Padilla, the candidates challenged the state's decision to enforce its ballot access requirements, which require independent candidates to collect nearly 200,000 physical signatures in order to appear on the ballot, in the middle of the raging pandemic.

In California, petitioning for ballot access opens up in April and closes by August, leaving independent candidates 15 weeks to accomplish this task—15 weeks in 2020 that were marked by

a state lockdown and a a deadly infection spreading out of control.

The SEP initially filed the lawsuit on June 30. On July 12, the Attorney General for California responded on behalf of Newsom and Padilla, arguing that if the Socialist Equality Party candidates won their lawsuit it would cause "an unmanageable and overcrowded ballot for the November presidential general election that would cause voter confusion and frustration of the democratic process."

The SEP candidates replied to this argument three days later, pointing 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."

On July 20, District Judge Dolly M. Gee, nominated by former president Barack Obama, ruled against Kishore and Santa Cruz. She claimed that the SEP's candidates could have avoided the "understandable" risks of the virus, among other methods, by simply using face coverings and social distancing and gathering signatures in front of grocery stores.

The attorneys for the SEP contested this decision, appealing to the Ninth Circuit Court of Appeals. Alongside this appeal, a motion was made to expedite the case so that the appeal could be heard before the state of California printed its ballots on August 28.

On July 31, the attorneys for Kishore and Santa Cruz also filed an opening brief outlining the history of the case, pointing to the fundamental democratic and constitutional rights involved, and arguing for the right to ballot access.

The brief explained that Kishore and Santa Cruz launched their campaign in January but were prevented from gathering signatures by the pandemic and the state's measures to combat it. The brief detailed the SEP's long, rich political history in California, and argued that there are less-than-lethal ways of testing whether the candidates can establish enough support to

merit ballot access. The SEP's past candidates in the state have won tens of thousands of votes, the brief explained.

In response to Judge Gee's claims that wearing of masks and social distancing would suffice to protect signers and SEP volunteers from COVID-19, the SEP candidates highlighted the uncontradicted testimony of a veteran SEP campaigner, who explained that it is not possible to safely collect signatures under present conditions. Placing campaigners and supporters in this situation means in effect that the state is requiring the people to risk serious illness or death as a condition for exercising the basic right to vote and participate in elections.

Judge Gee had further claimed that "social media" could be used to gather the signatures, but the SEP candidates submitted uncontroverted evidence in court that the SEP has been struggling for years against censorship on these platforms.

"The private technology monopolies claim that. .. speech can be censored on these platforms without regard for First Amendment protections," the SEP candidates argued. "For this reason, the exercise of [the SEP candidates'] core democratic and constitutional rights cannot be outsourced to the private social media platforms and made subject to the whims and caprices of the private owners of these platforms."

Gathering signatures "remotely," as suggested by the state of California, would require each signer to be contacted by a stranger over the phone or internet, that a document be mailed or printed at home, that a mobile notary be hired, and that the document be mailed to the campaigner for submission to the state. In San Francisco, mobile notary fees range from \$55 to \$115 per signature. At a hypothetical average rate of \$100 per notarized signature, the cost of notarizing nearly 200,000 signatures would be on the order of \$20 million, not including postage to and from the person signing the petition.

Judge Gee had also accused the SEP candidates of "unexplained delays" in bringing the lawsuit. The candidates established that they had prosecuted the lawsuit with all possible diligence and speed, and if they had brought it any earlier, they would have confronted arguments that the state would soon re-open and plenty of time remained in the signature-gathering period.

Responding to the state's arguments that adding socialist candidates will lead to "voter confusion," the candidates' appeal brief explained: "Placing these socialist candidates with their distinct program on the ballot will inform rather than confuse voters as to important issues, including those who otherwise might not vote. The fact that sample ballots are mailed to voters prior to election day further diminishes any concern about voter confusion, since voters will have an opportunity to research the candidates and their platforms in advance. There is no realistic threat that these avowedly socialist candidates will be confused with the other party candidates."

The SEP candidates argued that by excluding them from the ballot, especially at a time when, according to a recent Gallup

poll, over 49 percent of young voters have a positive view of socialism, the state is effectively placing "burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively."

In their emergency motion for reconsideration, the SEP candidates responded to the Ninth Circuit judges' accusation that the appeal was filed on a "late date," pointing to the fact that the appeal was filed only one day after the decision by Judge Gee. The period within which to file an appeal is 30 days.

Also regarding the supposed "late date" of the appeal, the SEP pointed to a case in 2016, during the last presidential election cycle, where the Ninth Circuit had expedited an appeal in a voting rights case that was filed in mid-October. In contrast, the SEP's appeal was made in July.

According to the records of that case, the notice of appeal was filed on October 15, 2016, an emergency motion was filed on October 18, 2016 to expedite the appeal, and on October 19, 2016, the motion was granted. "The parties were directed to file simultaneous merits briefs by October 24, 2016, and the appeal was argued orally on October 26, 2016."

On this basis, the SEP candidates explained that "that there remains sufficient time to decide the relatively straightforward legal issue involved in this appeal no later than August 28, 2020."

"Expediting appeals in ballot access and voting rights cases is necessary to secure the fundamental democratic and constitutional rights involved, since the elections timetable will early always be faster than the ordinary speed with which appeals are resolved," the candidates stated.

"If this case is decided after ballots are printed on August 28, 2020," then the SEP candidates "will be left without a remedy for violations of those rights."



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