SEP submits emergency application to the US Supreme Court in Michigan ballot access case

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1 September 2020

On Monday, the Socialist Equality Party (SEP) appealed to the Supreme Court of the United States to overturn a ruling by the Sixth Circuit Court of Appeals denying the party's claim that Michigan's ballot access laws are unconstitutional as applied during the coronavirus pandemic.

The SEP candidates—Joseph Kishore for president and Norissa Santa Cruz for vice president—submitted what is known as an "Emergency Application for Writ of Injunction" to Associate Justice Sonia Sotomayor, the member of the Supreme Court who is assigned the Sixth Circuit Court of Appeals and is responsible for reviewing and ruling on appeals within the circuit.

The SEP originally filed its lawsuit, *Kishore v. Whitmer*, on June 18 in the US District Court for the Eastern District of Michigan against Michigan Governor Gretchen Whitmer and other state officials responsible for ballot access procedures in the state.

During the past two-and-a-half months, the SEP has consistently argued that the social distancing requirements of the coronavirus pandemic have made gathering thousands of physical signatures from registered voters to place Kishore and Santa Cruz on the November ballot an impossibility and therefore unconstitutional. To do so, the party has maintained, would be a grave threat to the health and lives of both supporters and the voting public.

Furthermore, the SEP has demonstrated that the lower courts' decisions rejecting the lawsuit—without ever addressing any of the fundamental arguments—are in violation of the constitutional rights of the candidates, party members and supporters who are being denied the right to vote for a socialist candidate in the US presidential elections in 2020.

In his July 8 decision on the original lawsuit, Federal District Judge Sean F. Cox—an appointee of Republican President George W. Bush—endorsed the arguments of the Michigan Democratic Party officials that the SEP should have been gathering signatures throughout the pandemic. As the case was developing, it became clear that neither Judge Cox nor the governor—contrary to public statements Whitmer made during her stay-at-home executive orders in March, April and May—took the SEP's health concerns seriously. During oral arguments, Judge Cox referred to a "so-called risk of death," precisely when tens of thousands of people were testing positive and thousands were dying from COVID-19 across Michigan.

In an Aug. 24 decision, Judge John K. Bush—an appointee of President Trump—issued the ruling of the Sixth Circuit Court of Appeals. The decision was a boilerplate response to the SEP arguments that also backed up the positions of the Michigan Democrats. Further demonstrating that the goal of the legal arguments was to keep the SEP off the ballot, Judge Bush advanced the reactionary position that the state's ballot access laws were needed to avoid "ballot overcrowding, frivolous candidates, and voter confusion."

In the opening section of its application to the US Supreme Court, the SEP requests that Justice Sotomayor, "grant Applicants' emergency writ to enjoin Respondents from printing the November 2020 Michigan ballots without the names of Kishore and Santa Cruz on them, delay the printing of ballots until this matter can be litigated in this Court, or issue such other orders as may be necessary or appropriate to protect the Applicants' rights."

The emergency application addresses the spurious assertion by Sixth Circuit Judge Bush that the SEP did not exercise "diligence" in signature gathering. The brief states that the SEP "did not abstain from gathering

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signatures because they did not feel like it or because they lacked the ability to do so under normal conditions, but because they refused to risk the lives of their supporters and the public in order to comply with Michigan's procedural requirements for ballot access. They should be commended, and not penalized, for their conscientiousness."

Responding specifically to Judge Bush's claims about "voter confusion," the SEP application states that placing Kishore and Santa Cruz on the ballot "by definition threatens no confusion, given the clear demarcation of their socialist program from the rest of the field." Allowing the SEP on the ballot "is in the public interest because it gives the voters of Michigan a chance to support candidates who promote policies in closer alignment with their own views," the brief explains.

This argument has been made by the SEP since the initial filing in June and points directly to the political reasons for the repeated attack on the fundamental democratic rights of voters contained in the rulings so far in *Kishore v. Whitmer*. Socialism is rapidly growing in popularity in the US. A 2018 Gallup poll found that fewer than half of young people aged 18–29 have a positive view of capitalism, while more than half have a positive view of socialism.

If Justice Sotomayor refuses to grant the party's application for an injunction, it would only show workers and young people that the courts are not impartial and, in the end, represent the interests of the banks, corporations and billionaire oligarchs who own and control the economic and political levers of power in capitalist society.

With social tensions intensifying and the mass struggles of the working class and young people expanding amid the coronavirus pandemic and state violence against protesters, there is a fear within all factions of the political and judicial system that the revolutionary program of the SEP will be embraced in a manner that is unprecedented in US history.

The SEP's emergency application is the first time that the Trotskyist movement has appealed to the US Supreme Court since World War II. On Dec. 8, 1941—one day after the Japanese attack on Pearl Harbor—18 members of the Socialist Workers Party (SWP) were sentenced to prison for sedition and conspiracy to overthrow the US government in violation of the Smith Act.

The SWP fought the convictions in the US courts all the way to the Supreme Court and, on Nov. 22, 1943, the high court refused to hear the appeal. One month later, the 18 defendants surrendered themselves to federal authorities and began their 12 to 16 month sentences.

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