

SEP candidate Naomi Spencer denounces “decertification” by West Virginia Secretary of State

Naomi Spencer – SEP candidate for West Virginia House District 16
19 September 2016

The Socialist Equality Party’s candidate for West Virginia House of Delegates District 16, Naomi Spencer, was informed by the West Virginia Secretary of State late last week that her name is being removed from the ballot. Spencer is currently pursuing legal action to reverse this decision and have her name restored. She issued the following statement.

At 6:50 p.m. on Friday, September 16, I received an email from the West Virginia Secretary of State’s assistant counsel Timothy Leach informing me that the state was “decertifying” my candidacy for House of Delegates and removing my name from the ballot. This decision was made despite the fact that our campaign completed all requirements outlined by the Secretary of State and its web site, and I had been approved to appear on the ballot as a candidate of the Socialist Equality Party.

The move to strike me from the ballot is a violation of my constitutional rights and those of other candidates being removed. It violates the constitutional rights of the hundreds of voters who signed my petitions, and the rights of all West Virginians who want an alternative to the Democratic and Republican parties.

This action, which affects numerous independent campaigns around the state, follows a ruling earlier last week in the state Supreme Court of Appeals that barred Erik Wells from appearing on the ballot as an independent candidate. On September 12, the Supreme Court of Appeals upheld a Kanawha Circuit Court ruling barring Wells from running on the grounds that he was still registered as a Democrat and had no right to seek office as an independent.

In its full opinion released on September 15, the court

went further. The majority opinion stated that Wells along with other independent candidates were disqualified for the ballot if they did not file a “certificate of announcement” of their candidacy before the last Saturday in January of the election year. This requirement—spelled out in West Virginia Code 3-5-7, relevant to candidates in major parties facing primary election races—is the grounds now being used to strip me of my ballot status.

Previous court rulings held that the language containing the January deadline only applied to candidates in primary races, not the general election. In any case, to retroactively remove candidates from the ballot who *completed all requirements as outlined by the state itself* is outrageous.

On the Secretary of State’s web site, the published deadline applying to independent and unaffiliated candidates is August 1, when petitions must be filed. One can find no mention of the January 30 filing deadline, nor even a reference to the Code 3-5-7 cited by the court ruling, in any of the material for independent candidates. Instead, the SOS lists “Your first step” for candidates as obtaining official credentials from the county clerk’s office. The SOS resources for “no party candidates” cite only West Virginia Code 3-5-23 and 3-5-24, which likewise say nothing of a January deadline.

Moreover, according to legal expert Richard Winger, who publishes *Ballot Access News*, “a January filing deadline for independent or minor party presidential candidates is clearly unconstitutional.” Winger notes that the US Fourth District Court, whose jurisdiction includes West Virginia, previously struck down a March filing deadline in Maryland for independent

presidential candidates. The US Supreme Court and 55 court opinions around the country have struck down similar early deadlines for independent candidates.

In its ruling, the West Virginia Supreme Court of Appeals declares that the state's election law "seeks to prevent candidates from engaging in chicanery regarding their political affiliations, if any, designed to inure entirely to their individual political benefit and mislead the electorate."

The only "chicanery" at work here is the retroactive application of a new interpretation of election law upon candidates who met all published requirements for ballot status and were certified to run.



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