

SEP candidate files motion for restraining order against West Virginia Secretary of State

Our reporter
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On September 20, Naomi Spencer, the Socialist Equality Party's candidate for West Virginia House of Delegates in District 16, filed an emergency motion for a temporary restraining order against Natalie Tennant, the Secretary of State.

The restraining order request is aimed at halting the distribution of absentee ballots, scheduled for Friday, September 23, which will exclude the names of independent candidates who have been "decertified."

The motion was filed in the federal District Court for the Southern District of West Virginia, Huntington Division. Chief US District Judge Robert Chambers ordered Secretary of State Tennant to file a response to the motion Wednesday. A hearing is scheduled for Thursday at 1:00 p.m.

The motion follows a lawsuit filed Monday seeking Spencer's restoration to the ballot, along with co-plaintiff Darrell Castle of the Constitution Party and other independent candidates who have been removed after being certified to run in the November 8 election.

Spencer is one of 17 candidates who were stripped of their ballot status after meeting all the requirements for independent and minor party candidates on the grounds that they had not met a "certificate of announcement" deadline of January 30 previously relevant only to candidates of parties holding primary elections.

The brief in support of the emergency motion explains, "Until last Friday [September 16], the filing deadline for independent candidates wishing to appear on the November ballot was August 1, 2016. Then, late on Friday evening, the Secretary of State notified the Plaintiffs and other independent candidates that the deadline had moved back in time to January. Because none of the Plaintiffs had met a deadline that no one knew existed, they and at least 15 other independent candidates will be removed from the ballot unless this

Court intervenes."

Both the new deadline and its retroactive application to independent candidates are "patently unconstitutional and strike at the heart of representative democracy," the brief states.

The brief notes that because the decertified candidates had previously attained ballot status, the ballots "have already been printed *with* the Plaintiffs' names on them, but the Secretary of State plans to obscure their names with a sticker." With the absentee ballots slated to be sent out Friday, the motion requests an injunction by Thursday.

The brief also notes that until last week, the ballot access process for independent candidates consisted of filing a nominating petition, a notice of candidacy, and paying a filing fee by August 1. "The Secretary of State described the process, including the August deadline, on her website." The page describing these steps has since been taken down, but Spencer's motion includes copies of the earlier version. "At no time prior to the filing of this action did the Secretary's website mention a January deadline for independent candidates," the brief states.

January 30, the new filing deadline imposed by the Secretary of State following a decision by the West Virginia Supreme Court of Appeals, comes 102 days before the May 10 primary election and fully 284 days before the general election. "It would be the earliest presidential deadline in the country by far," the brief points out, noting that of all the states only Texas, on May 8, has a deadline before June for presidential candidates.

Numerous courts, including the US Supreme Court, have ruled that deadlines more than 75 days before a primary "impose heavy constitutional burdens." Early deadlines cause harm to candidates and voters, because

they compel them to make premature decisions and preclude an independent run based on a response to changing political situations in the months before an election.

Voters are harmed by the deadlines because the exclusion of independent candidates leaves only the choice between major party candidates. “The public interest in this case is clear,” the brief states. “The requested injunction will ensure that the citizens of West Virginia have an opportunity to vote for candidates of their choice. Without it, voter choices will be limited. The public undoubtedly has a vital interest in a broad selection of candidates as well as the conduct of free, fair, and constitutional elections.”



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