

## Allowing an Independent Gubernatorial Candidate to Name a Replacement Running Mate

*Myers v. Gant (Lawrence L. Piersol, D.S.D. 4:14-cv-4121)*

An independent candidate for governor challenged South Dakota’s allowing a major-party candidate—but not an independent candidate—to name a substitute candidate for lieutenant governor. The district judge ruled the proscription unconstitutional and issued a preliminary injunction in the candidate’s favor.

*Subject:* Getting on the ballot. *Topics:* Getting on the ballot; attorney fees.

On August 4, 2014, an independent candidate for governor of South Dakota filed a federal complaint in the District of South Dakota challenging the secretary of state’s denial of the candidate’s naming a replacement candidate for lieutenant governor following the original lieutenant governor’s withdrawal from the race.<sup>1</sup> The complaint alleged that it was unfair to deny an independent gubernatorial candidate’s certifying a replacement candidate for lieutenant governor but allow a party candidate’s doing so, until August 12.<sup>2</sup> The lieutenant governor’s name “was not required to and did not appear on the [plaintiff’s] nominating petition.”<sup>3</sup>

On the day that the complaint was filed, Judge Lawrence L. Piersol ordered the clerk of court to electronically serve the complaint on the defendant secretary of state and on South Dakota’s attorney general.<sup>4</sup> Two days later, the candidate filed a motion for a preliminary injunction putting his choice for lieutenant governor on the ballot.<sup>5</sup> Judge Piersol set the case for hearing on August 11.<sup>6</sup> To accommodate a scheduling conflict, the parties consented to a postponement of the hearing until August 18.<sup>7</sup> The candidate amended his complaint on August 14.<sup>8</sup>

At the hearing, Judge Piersol ordered the candidate’s substitute lieutenant governor candidate placed on the ballot.<sup>9</sup>

South Dakota’s statutory scheme excluding [the plaintiff’s] true running mate from the general election ballot restricts the ability of [the plaintiff] and his supporters to choose a lieutenant governor candidate, to place the candidate on the ballot, and to vote for that candidate in the election. It is a severe burden on the associational rights of [the plaintiff] and South Dakota voters. This burden is magnified by the discriminatory effect of the scheme

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1. Complaint, *Myers v. Gant*, No. 4:14-cv-4121 (D.S.D. Aug. 4, 2014), D.E. 1.

2. *Id.*; see *Myers v. Gant*, 49 F. Supp. 3d 658, 662 (D.S.D. 2014).

3. *Myers*, 49 F. Supp. 3d at 661.

4. Order, *Myers*, No. 4:14-cv-4121 (D.S.D. Aug. 4, 2014), D.E. 5.

5. Motion, *id.* (Aug. 6, 2014), D.E. 9.

6. Order, *id.* (Aug. 7, 2014), D.E. 11.

7. Order, *id.* (Aug. 8, 2014), D.E. 18.

8. Amended Complaint, *id.* (Aug. 14, 2014), D.E. 25.

9. Order, *id.* (Aug. 18, 2014), D.E. 27; Minutes, *id.* (Aug. 18, 2014), D.E. 26.

on non-party candidates. Thus, the State must show an interest of compelling importance to justify the heavy burden of meeting strict scrutiny analysis.

...  
... Because the State has not shown that a compelling state interest is advanced by restricting the ability of non-party candidates such as [the plaintiff] from replacing a running mate, the law violates the Constitution.<sup>10</sup>

In the election, the plaintiff received 4% of the vote.<sup>11</sup>

On May 27, 2015, Judge Piersol awarded the plaintiff \$10,265.95 in attorney fees and costs.<sup>12</sup>

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10. *Myers v. Gant*, 49 F. Supp. 3d 658, 667–68 (D.S.D. 2014).

11. See *Final Election Results*, Sioux Falls Argus Leader, Nov. 6, 2014, at A5.

12. Opinion, *Myers*, No. 4:14-cv-4121 (D.S.D. May 27, 2015), D.E. 35, 2015 WL 3419403.