

## Reversing a State Supreme Court's Retroactive Application of a Very Early Ballot Qualification Deadline

*Daly v. Tennant*

*(Robert C. Chambers, S.D. W. Va. 3:16-cv-8981)*

A state's secretary of state interpreted a state supreme court's opinion to retroactively apply an early ballot qualification deadline for independent and unrecognized-party candidates. Two candidates disqualified by the ruling filed a federal complaint, and the district judge granted the candidates a preliminary injunction against the ruling. The plaintiffs were awarded \$34,234.81 in attorney fees and costs.

*Subject:* Getting on the ballot. *Topics:* Getting on the ballot; matters for state courts; intervention; attorney fees.

On September 15, 2016, West Virginia's supreme court of appeals issued an opinion that was interpreted by West Virginia's secretary of state as meaning that a revision to West Virginia's election statutes required independent and unrecognized-party candidates for office to have qualified for the November 8 ballot on January 30.<sup>1</sup>

The Socialist Equality Party's nominee for a seat in West Virginia's house of delegates and the Constitution Party's nominee for President filed a federal complaint in the Southern District of West Virginia on September 19 against West Virginia's secretary of state challenging the constitutionality of the state court's retroactive change of the qualification deadline from August 1 to January 30.<sup>2</sup> On the following day, the candidates filed an emergency motion for a temporary restraining order.<sup>3</sup>

Judge Robert C. Chambers set the case for hearing on the afternoon of September 22, ordering the secretary to respond to the candidates' motion by September 21.<sup>4</sup> On September 21, an independent candidate for Putnam County Commission filed a motion to intervene as an additional plaintiff,<sup>5</sup> and

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1. *Wells v. West Virginia ex rel. Miller*, 237 W. Va. 731, 791 S.E. 2d 361 (2016); *id.*, 791 S.E.2d at 368 ("Whether this was the intention of the Legislature in making the 2015 amendments to the statute is not for this Court to speculate . . ."); *see id.* 791 S.E.2d at 382 (dissenting opinion by Justice Davis) ("the majority's opinion effectively imposes two conflicting sets of filing deadlines upon independent candidates"); *see also* Phil Kabler, *Court Quashes Wells' Bid*, Charleston Gazette-Mail, Sept. 13, 2016, at 1A; Phil Kabler, *Court Releases Opinion on Wells*, Charleston Gazette-Mail, Sept. 16, 2016, at 1C; Phil Kabler, *In Light of High Court's Ruling, Counties Mull Candidates' Fates*, Charleston Gazette-Mail, Sept. 13, 2016, at 1A.

2. Complaint, *Daly v. Tennant*, No. 3:16-cv-8981 (S.D. W. Va. Sept. 19, 2016), D.E. 1; *see* Kate White, *Candidates Say They Still Belong on Ballot in Nov.*, Charleston Gazette-Mail, Sept. 21, 2016, at 1C.

3. Temporary Restraining Order Motion, *Daly*, No. 3:16-cv-8981 (S.D. W. Va. Sept. 20, 2016), D.E. 3.

4. Order, *id.* (Sept. 20, 2016), D.E. 6.

5. Intervention Motion, *id.* (Sept. 21, 2016), D.E. 7.

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Judge Chambers granted the motion that same day.<sup>6</sup> The ACLU moved to participate as an amicus curiae,<sup>7</sup> and Judge Chambers granted that motion on the following day.<sup>8</sup> Judge Chambers also ordered the Putnam County Clerk joined as a defendant.<sup>9</sup>

Following the September 22 hearing, Judge Chambers issued a preliminary injunction in the candidates' favor.<sup>10</sup>

[The January deadline] unmistakably places a substantial burden on and discriminates against those candidates and voters whose political preferences lie outside the existing political parties. The January deadline deprives these candidates from knowing the political climate of the major parties and what issues will come to the forefront during campaigns.<sup>11</sup>

On January 24, 2017, Judge Chambers converted the preliminary injunction into a permanent injunction against the statutory filing deadline.<sup>12</sup> He awarded the plaintiffs \$34,234.81 in attorney fees and costs on May 16.<sup>13</sup>

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6. Intervention Order, *id.* (Sept. 21, 2016), D.E. 9.

7. Amicus Curiae Motion, *id.* (Sept. 21, 2016), D.E. 13.

8. Amicus Curiae Order, *id.* (Sept. 22, 2016), D.E. 15.

9. Joinder Order, *id.* (Sept. 22, 2016), D.E. 14.

10. *See* Kate White, *US Judge Blocks Candidate Removals*, Charleston Gazette-Mail, Sept. 23, 2016, at 1A.

11. *Daly v. Tennant*, 216 F. Supp. 3d 699, 706 (S.D. W. Va. 2016); *see* Order, *Daly*, No. 3:16-cv-8981 (S.D. W. Va. Sept. 22, 2016), D.E. 20.

12. Order, *Daly*, No. 3:16-cv-8981 (S.D. W. Va. Jan. 24, 2017), D.E. 26.

13. Order, *id.* (May 16, 2017), D.E. 33 (noting that the defendants did not respond to or oppose the fee motion).