



Office of the Secretary of State
State Capitol
Charleston, West Virginia 25305

Mac Warner

Secretary of State
State of West Virginia

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February 29, 2024



Re: Response to Request for Reasonable Accommodations to West Virginia
State Law Regulating Procedure for Gaining General Election Ballot
Access as Independent Candidate for U.S. President

Mr. Tyler:

The Office of the West Virginia Secretary of State writes in response to your letter dated January 28, 2024, postmarked February 21, 2024, and received February 26, 2024, which requests the Secretary to provide reasonable accommodations to the West Virginia laws regulating (1) the procedure for gaining ballot access as a person unaffiliated with a recognized political party, and (2) the filing fee. This request is justified generally based upon the assertion that you are “a disabled US citizen” and “the Equal protection [sic] clause of the 14th amendment to the U.S. Constitution[.]” For the following reasons, neither request may be granted by the Secretary.

The Americans with Disabilities Act, as reinforced and refined through several amendments and as interpreted by numerous judicial opinions, does generally require reasonable accommodations for persons with disabilities in certain contexts. However, that duty is bound by, in part, analysis of the hardship on the requested entity, and whether such hardship would be undue.

Here, you request the following:

[T]hat an exception be made for any and all physical requirements for ballot access in the 2024 general election as an independent presidential candidate. Physical requirements including without limitation to: collecting, providing, and submitting signatures, and any other requirements imposed by the State (“REQUESTEE”) for ballot access in the 2024 general election.”

Requirements for general election ballot access in West Virginia are statutory. See W. Va. Code § 3-5-23. The Secretary of State’s role in effectuating the provisions of that statute is ministerial,

and the Secretary has no authority to grant waivers or reduce statutory requirements. Such actions by the Secretary, absent constitutional or legislative authority, would be ultra vires. Your request, therefore, must be respectfully denied, as the Secretary of State has no authority to agree or prescribe alternatives to the requirements for gaining ballot access in a general election in West Virginia, including those “physical requirements” noted in your request.

You additionally request that all filing fees be waived. The Secretary is again without statutory authority to grant any waiver or prescribe alternatives to the statutory requirement, which is set forth in W. Va. Code § 3-5-8.

However, W. Va. Code § 3-5-8a does permit candidates to submit an in-lieu-of-filing-fee petition. The process is detailed in that statute, which summarily requires an affidavit of financial hardship and requires a candidate to submit four (4) signatures of valid registered voters for every one (1) dollar of the filing fee.

Be advised, however, that the statute expressly provides, “[s]ignatures obtained on an in-lieu-of-filing-fee petition **shall not be counted toward the number of voters required to sign a nomination certificate** in accordance with section twenty-three of this article.” W. Va. Code § 3-5-8a. Therefore, you must gather two (2) sets of signatures to obtain the filing fee waiver: (1) signature petition signatures for ballot access, and (2) in-lieu-of-filing-fee petition signatures for the fee waiver.

In conclusion, absent a judicial finding to the contrary, the Secretary of State is without authority to grant the relief you requested because the undue hardship exception under the ADA does not operate to require government bodies to violate state law in order to provide reasonable accommodations.

Sincerely,

David P. Cook
General Counsel

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