

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Erik Patrick Wells v. State of West Virginia ex rel. Charles T. Miller

Wells v. Miller · No. No. 16-0779 · Decided September 22, 2016

SUMMARY

This document is a dissenting opinion by Justice Davis in a West Virginia Supreme Court of Appeals proceeding concerning Erik Patrick Wells's eligibility to appear on the 2016 general-election ballot as an independent candidate for Kanawha County Clerk. The dissent argues that Wells satisfied the requirements of West Virginia Code §§ 3-5-23 and 3-5-24, was not required to file a certificate of announcement under § 3-5-7, and was constitutionally entitled to ballot access. The dissent criticizes the majority for imposing additional affiliation and filing requirements not expressly stated in the election statutes.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Davis, Justice
JURISDICTION	West Virginia
DECIDED	September 22, 2016
DOCKET	No. 16-0779
DISPOSITION	other
PROCEDURAL POSTURE	Dissent from the majority's decision concerning Wells's eligibility and ballot access as an independent candidate for Kanawha County Clerk in the November 2016 general election.
PRECEDENTIAL VALUE	dissenting opinion; nonbinding
PARTIES	Erik Patrick Wells v. State of West Virginia ex rel. Charles T. Miller, Prosecuting Attorney

TOPICS

ballot access election law first amendment free speech statutory interpretation

PRACTICE AREAS

election law constitutional law statutory interpretation ballot access

QUESTIONS PRESENTED

1. Whether a registered member of a recognized political party may run as an independent or unaffiliated candidate under West Virginia Code § 3-5-23.
2. Whether an independent or third-party candidate nominated through the certificate process must file a certificate of announcement under West Virginia Code § 3-5-7.
3. Whether the specific filing requirements and deadline in West Virginia Code §§ 3-5-23 and 3-5-24 control over the general certificate-of-announcement requirements in § 3-5-7.
4. Whether an independent candidate who satisfies the statutory nominating requirements and obtains the required signatures is entitled to have his name placed on the general-election ballot.

KEY QUOTATIONS

“It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” (at 2)

“All candidates nominated by the signing of the certificates shall have their names placed on the official ballot as candidates, as if otherwise nominated under the provisions of this chapter.” (at 16)

“Individuals, be they candidates for political office or voters for such candidates, are constitutionally guaranteed the right to associate with others who share their beliefs.” (at 18)

FACTUAL BACKGROUND

Erik Patrick Wells sought to appear on the November 2016 general-election ballot as an independent candidate for Clerk of Kanawha County. Although he was a registered member of the Democratic Party, he asserted that he was running independently and not as the Democratic Party's candidate. He was nominated through the statutory certificate process and obtained the required signatures, but his candidacy was rejected because he did not complete the party-affiliation portion of a certificate of announcement.

PROCEDURAL HISTORY

Wells sought to run as an independent candidate for Kanawha County Clerk after being nominated through the certificate process for independent and third-party candidates. The circuit court rejected his candidacy based on his failure to comply with certificate-of-announcement requirements, including the party-affiliation disclosure. The dissent states that the majority upheld that result and concluded that Wells was not a proper candidate for the ballot.

DISPOSITION

other

CASES CITED

- NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460, 78 S. Ct. 1163, 1171, 2 L. Ed. 2d 1488 (1958)

- NAACP v. Button, 371 U.S. 415, 430, 83 S. Ct. 328, 336, 9 L. Ed. 2d 405 (1963)
- Bates v. Little Rock, 361 U.S. 516, 522-523, 80 S. Ct. 412, 416-417, 4 L. Ed. 2d 480 (1960)
- Elrod v. Burns, 427 U.S. 347, 357, 96 S. Ct. 2673, 2681, 49 L. Ed. 2d 547 (1976)
- Kusper v. Pontikes, 414 U.S. 51, 57, 94 S. Ct. 303, 307, 38 L. Ed. 2d 260 (1973)
- Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 214, 107 S. Ct. 544, 548, 93 L. Ed. 2d 514 (1986)
- Democratic Party of United States v. Wisconsin ex rel. La Follette, 450 U.S. 107, 122, 101 S. Ct. 1010, 1019, 67 L. Ed. 2d 82 (1981)
- Ripon Society, Inc. v. National Republican Party, 173 U.S. App. D.C. 350, 384, 525 F.2d 567, 601 (1975)
- Eu v. San Francisco County Democratic Central Committee, 489 U.S. 214, 224, 109 S. Ct. 1013, 1020-21, 103 L. Ed. 2d 271 (1989)
- George v. Board of Ballot Commissioners, 79 W. Va. 213, 90 S.E. 550 (1916)
- Timmons v. Twin Cities Area New Party, 520 U.S. 351, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997)
- Storer v. Brown, 415 U.S. 724, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974)
- Hall v. Baylous, 109 W. Va. 1, 153 S.E. 293 (1930)
- Banker v. Banker, 196 W. Va. 535, 546-47, 474 S.E.2d 465, 476-77 (1996)
- West Virginia Health Care Cost Review Authority v. Boone Memorial Hospital, 196 W. Va. 326, 472 S.E.2d 411 (1996)
- Write-In Pritt Campaign v. Hechler, 191 W. Va. 677, 681, 447 S.E.2d 612, 616 (1994)
- West Virginia Libertarian Party v. Manchin, 165 W. Va. 206, 222, 270 S.E.2d 634, 644 (1980)
- State ex rel. Browne v. Hechler, 197 W. Va. 612, 476 S.E.2d 559 (1996)
- Anderson v. Celebrezze, 460 U.S. 780, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983)
- Clements v. Fashing, 457 U.S. 957, 964, 102 S. Ct. 2836, 2844, 73 L. Ed. 2d 508 (1982)
- Lubin v. Panish, 415 U.S. 709, 716, 94 S. Ct. 1315, 1320, 39 L. Ed. 2d 702 (1974)
- Illinois Elections Board v. Socialist Workers Party, 440 U.S. 173, 186, 99 S. Ct. 983, 991, 59 L. Ed. 2d 230 (1979)
- Sweezy v. New Hampshire, 345 U.S. 234, 250-251, 77 S. Ct. 1203, 1211-1212, 1 L. Ed. 2d 1311 (1957)
- New York Times Co. v. Sullivan, 376 U.S. 254, 270, 84 S. Ct. 710, 720, 11 L. Ed. 2d 686 (1964)
- State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars, 144 W. Va. 137, 107 S.E.2d 353 (1959)
- Nelson v. West Virginia Public Employees Insurance Board, 171 W. Va. 445, 300 S.E.2d 86 (1982)
- Daily Gazette Co. v. Caryl, 181 W. Va. 42, 45, 380 S.E.2d 209, 212 (1989)
- United Mine Workers of America by Trumka v. Kingdon, 174 W. Va. 330, 325 S.E.2d 120 (1984)