

1940

James F. Forest, Marguerite H. Forest, Hyrum
James Woolman, David Douglas, Jr., and William
Mathrus v. E. E. Monson : Brief of Petitioners

Utah Supreme Court

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D. H. Oliver; Attorney for Petitioners;

Recommended Citation

Brief of Appellant, *Forest et al v. Monson*, No. 6307 (Utah Supreme Court, 1940).

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

JAMES F. FOREST, MARGUER-
ITE H. FOREST, HYRUM
JAMES WOOLMAN, DAVID
DOUGLAS, JR., and WILLIAM
MATHRUS,

Petitioners,

vs.

E. E. MONSON,

Respondent.

Case No.
6307

BRIEF OF PETITIONERS

D. H. OLIVER,

Attorney for Petitioners.

FILED
OCT 7 1940

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STATEMENT

This is an action brought by the petitioners to compel the respondent to accept and file their certificate of nomination for public offices in the State of Utah;

To sustain the Writ, petitioners rely on the following proposition of law:

I.

THE "COMMUNIST PARTY OF UTAH" IS NOT A
"POLITICAL PARTY" AS DEFINED BY THE
ELECTION LAWS OF UTAH.

Chapter 29, Section 3, Paragraph G, Laws of Utah, 1939.

ARGUMENT

On September 17, 1940, the respondent wrote petitioners a letter stating in part as follows:

"You will note from the Attorney General's

letter that it is his opinion that this certificate should have been filed prior to the Primary election held September 3, 1940, and cannot be filed at this late date.

The "Independent Nominating Certificate" of the "Communist Party of Utah" will not be accepted for filing and will not be certified by this office to the various County Clerks to appear on the ballot at the General Election, to be held on November 5th, 1940."

We are particularly concerned with two sections of the Election Laws of this state, to-wit: Chapter 29, Section 3, Paragraph "G" 1 and 2; and Section 45, Chapter 37 of said Act.

Paragraph "G" of Section 3, Chapter 29, defines a "Political Party" as follows:

"(1) Any organization of electors which, under a common name or designation at the last preceding November election, polled for any of its candidates equivalent to two per cent of the total vote cast for all representatives in Congress.

"(2) Any organization of electors whose organization did not participate in the last preceding November election or whose organization polled for any of its candidates in the preceding November election a total vote equivalent to less than two per cent of the total vote cast for all representatives in Congress, which under a common name or designation, shall file with the Secretary of State for offices for which the electors of the entire state or a sub-division thereof greater than a county are entitled to vote a petition signed by qualified electors equal in number to at least five hundred qualified electors. * * * Said petition shall declare that signers endorse the doctrines of the party or group, the name of which

shall be stated, and that they desire to participate and nominate officers by a state convention of all the members of the party who wish to participate in such convention. * * *”

It is a well recognized principle of law that what constitutes a “political party” is different in each state, and depends upon the statutory definition of the term “political party” in each state.

Taking the Utah definition of a “political party,” it becomes quite obvious, that the “Communist Party” is not a “political party” because—one, it did not poll two per cent of the total vote cast for all representatives in Congress in the last preceding November election, and—two, it did not file prior to the primaries, a petition which would make it a “political party” under Utah law. Let us assume that the “Communist Party” had filed a petition containing 500 signatures prior to the primaries in conformity with the above quoted section, thereby qualifying the “Communist Party” as a “political party,” and that thereafter this “political party” nominated its candidate at a state convention. Query—Would the “Communist Party” then have become a “political party” for all time in Utah? The answer is obviously, “No.” Thus under these very same definitions, if the party did not poll two per cent of the total vote cast for all representatives in Congress in the State of Utah, in the elections to be held on November 5th, 1940, then the “Communist Party” would again not be a “political party” under Utah law, and would again have to file petitions two years hence once again for recognition as a “political party.”

Now, to go on to Section 45 of the Act. This is the

section under which the "Communist Party of Utah" filed its certificate of nomination this year of candidates for presidential elector and governor. It is a section which deals with nomination of independent candidates. The reason for the rejection of this certificate by the respondent is based on an opinion of the Attorney General that the "Communist Party" is a "political party," and that therefore, the candidates are not independent candidates, so that the filing was not in accordance with law. The basis of this ruling is that the certificate states that the signers selected the term "Communist Party of Utah" as the political principle under which these independent candidates are to appear on the ballot. Section 45 states, that the certificate shall designate, instead of the party, the political or other name which the signers shall select, "provided that no name of any political party *as defined in this act* shall be used in whole or in part for this purpose." This language does not define what constitutes a political or other name. All it says is, that a political or other name shall not be the same as that of any political party as defined in this act. The certificate signers chose the name "Communist Party of Utah" as the political or other name. The name "Communist Party of Utah" is clearly not the same in whole or in part as that of any political party *as defined in the act* because as previously pointed out, the "Communist Party" clearly does not fall within the definition of a "political party" in the Utah Statutes.

The Attorney General, in his opinion, stated, that he "Communist Party" is a well-known political party, and that the candidates named are the same persons who

ire nominees on the national Communist Party slate. But the national Communist Party is not a recognized political party within the definition of the Utah Act. Therefore, although the "Communist Party" may be a well-known political party, it is not a "political party" within the meaning of the Utah law, so that it can be used as a political name for independent nominations.

The Attorney General also argues that if independent candidates may use party names in this manner, then a group of men can file as independent candidates under the name of the Democratic Party of Utah, or the Republican Party of Utah, and could nominate themselves along with the national nominees of the Republican and Democratic parties. But obviously, this is not true because both the Republican and Democratic parties are recognized political parties in the State of Utah, since according to the figures of election returns from the State of Utah, both of these political parties polled over two per cent of the total vote cast for all representatives in Congress in the State of Utah in the last congressional elections in Utah. Therefore, both of these parties are "political parties" within the specific definition of that term contained in Section Three above quoted. Therefore, if a group of candidates were to file as independents and choose as a political name "Democratic" or "Republican Party of Utah," such a petition would be clearly contrary to law in that the petition would have used the name of a political party as defined in the Act, and thereby the petition would be invalidated on its face. Again, repeat, the specific argument that the "Communist party" is not a "political party" within the definition contained in the Utah law; therefore, the term "Communist

nist Party of Utah" is a political or other name within the meaning of Section 45, and the Secretary of State, being a ministerial officer, must carry out the language of the law and certify the nominations made of independent candidates under the political name "Communist Party of Utah."

I appreciate the fact that there is considerable confusion, turmoil and hysteria about "Communism" in the United States today. I also more or less appreciate the efforts of Martin Dies in trying to stamp out subversive elements in the United States, but I cannot appreciate his effort in attempting to take all laws into his own hands and deal with people in all parts of the country according to the dictates of his own will. I am not in a position to say whether his attack on "Communism" is well-founded or ill-founded, but I can say that by the same token that all Negroes are not bad people because one happens to run afoul of the law, neither are all "Communists" bad because some have been found to be law-breakers, and until such time as "Communism" shall be adjudged by competent authorities to be illegal, whole groups of people should not be condemned in their privileges as citizens of America, simply because they use the name "Communists."

Back to the merits of this cause, I have been unable to find any authorities directly in point. This seems to be a new situation developed very recently during the campaign of the Dies Committee in Washington, D. C. Several States have undertaken to deny the "Communists" a place on their ballot for this fall's election, but the denials all seem to be based on the use of fraud in

obtaining the necessary signatures for the petition, and therefore, would not furnish a precedent or give any help in arriving at the proper decision in this case, for the reason, that in the present case there is no issue about the validity of the signatures or the petition itself.

THEREFORE, I respectfully submit that the Writ should be granted, and the petitioners given the right to appear on the ballot in Utah for the November election.

Respectfully submitted,

D. H. OLIVER,

Attorney for Petitioners.