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

Utah Supreme Court

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**In the Supreme Court
of the
State of Utah**

JAMES F. FOREST, MARGUERITE
H. FOREST, HYRUM JAMES
WOOLMAN, DAVID DOUGLAS,
JR., and WILLIAM MATHRUS,

Petitioners,

vs.

E. E. MONSON,

Respondent.

Case No.
6307

BRIEF OF RESPONDENT

This action is brought to compel the Secretary of State to file petitioners' certificate of nomination, and to certify the candidates thereon to the various county clerks. The petition contains some five or six hundred names, and is filed under our laws relating to independent candidates. The national nominees of the Communist Party for President and Vice-President are

named in the petition as candidates for President and Vice-President of the United States; four presidential electors are also named along with a candidate for the Governor. Upon the advice of the Attorney General, the Secretary of State refused to file the certificate, and notified the petitioners to that effect. The filing was refused principally upon the ground that the petitioners may not file as independent candidates in the manner set out in their certificate of nomination.

Respondent filed an answer to the petition wherein he set out that the Communist Party was a well-known political organization or party, and had participated in both State and National elections; that in the last November election it did not poll two per cent of the votes, or it did not participate in the election at all, and that in truth and in fact the petitioners were attempting to file as a political party under the provisions of law relating to independent candidates.

The questions involved call for an interpretation of Chapter 37, Laws of Utah, 1939, known as our Direct Primary Law. Section 3 of this Chapter, among other things, defines a political party in the following words:

“(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 subdivision 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. * * *''

It will be seen from the above quotation that an organization of electors which polled two per cent or more of the vote cast at the last November election is qualified to participate in an election without going through the formality of holding a convention. It is well known that there are political organizations such as the Communists or Socialists who usually participate in elections but who do not poll as much as two per cent of the vote. In order to take care of these organizations and permit them to get on the November ballot, the Legislature prescribed that any such organization or political party which failed to poll two per cent of the vote may be placed on the ballot by filing its petition and holding a convention as outlined in the sections above quoted, or any organization of voters which did not participate in the last November election, may also get on the ballot as a political party by filing its petition and holding a convention as above outlined.

The record will show that the Communist Party did not participate in the last November election. No one,

however, will question the fact that the Communist Party is a political organization, and as such, it could have had a place on the November ballot had it filed its petition before the first Primary election, and held its convention as above outlined. It will be seen, therefore, that the Legislature has made it possible for all political organizations and political parties to get on the November ballot providing they comply with our law as outlined above.

Under the provisions of Section 45 of Chapter 37, Laws of Utah, 1939, the Legislature has made it possible for independent candidates to have their names printed on the ballot. This Section reads in part as follows:

“Candidates for public office who do not wish to affiliate with a political party as defined in this act may be nominated otherwise than by a direct primary election in the manner following:

“A certificate of nomination shall be prepared which shall contain the name or names of any candidate or candidates for the office or offices to be filled, their several post-office addresses, if any, their several residences, and, if in a city or town, the street number of residence and place of business, if any, and shall designate in not more than five words, 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. * * *”

The Court will note that the Legislature in speaking of independent candidates used the words "who do not wish to affiliate with a political party as defined in this act." One type of political party is defined in the act as an organization of electors who did not participate in the last November election. If the writer remembers correctly the Communist Party did not participate in the last November election in this State, but it has participated in the elections of this State and is a well known political organization. The court will observe that "no name of any political party, as defined in this act, shall be used, in whole or in part, for this purpose." If these petitioners had adopted the name of "Communist Party" no one would contend, we feel, that they were not a political organization and must comply with the laws relating to political parties in order to get on the November ballot. To take away the political color and to appear as independents they adopted the name of Communist Party of Utah.

We have been unable to find any court decisions which we feel would assist the court in the determination of this question. To us it seems clear that the petitioners are attempting to get on the ballot as a political party instead of independent candidates, and that having not filed their certificate with the Secretary of State prior to September 3rd, they are too late, and that the Secretary of State was justified in refusing to file their certificate of nomination and to certify it to the county clerks.

As a part of our brief, we herewith submit a copy of the opinion rendered by the Attorney General relating to this matter.

OFFICE OF THE ATTORNEY GENERAL
STATE CAPITOL
SALT LAKE CITY, UTAH

September 16, 1940

Hon. E. E. Monson
Secretary of State
Building

Dear Dr. Monson :

You have submitted to me two nominating certificates which were left in your office for filing, and you have requested my opinion as to whether or not the names submitted for public office in these certificates should be placed upon the November ballot. One of these certificates is presented under the name of "Communist Party of Utah". It names for President of the United States, Earl Browder of New York, and for Vice-President, James W. Ford of Newark, New Jersey, both of whom are the nominees of the Communist Party for President and Vice-President of the United States. The certificate also names four residents of the State of Utah as presidential electors and names Mr. James F. Forest as candidate for Governor. The other certificate is presented under the name of "Socialist Party" with an emblem to be printed above the names of the candidates as follows: "A globe with two hands clasped across it." This certificate names as President of the United States,

Norman Thomas, and as Vice-President, Maynard C. Krueger. It also names four residents of the State as presidential electors. Each of the certificates above mentioned is supported by names of several hundred residents of the State of Utah.

Undoubtedly these certificates have been presented under Section 45, Chapter 37, Laws of Utah, 1939, which relates to independent candidates. If under our law they can be classified as independent candidates, then they are in proper form and should be received by you and certified to the various county clerks. On the other hand, if they are to be classified as political parties, then they should have been filed prior to the primary election, and may not be filed at this time.

Chapter 37, *supra*, defines "political parties" as:

"(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 subdivision 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 further provided that such petition shall be filed prior to the day of the regular primary election.

These provisions of law provide a means whereby political parties who did not participate in the last November election, or who polled less than two per cent of the vote cast, may qualify themselves to get on the November ballot by filing a petition prior to the primary election and holding a convention. Neither the “Communist Party of Utah”, nor the “Socialist Party” filed such a petition or held a convention, but they are attempting to get on the ballot as independent candidates.

Section 45 of Chapter 37, supra, relates to independent candidates, and among other things provides:

“Candidates for public office who do not wish to affiliate with a political party as defined in this act may be nominated otherwise than by a direct primary election in the manner following:

“A certificate of nomination shall be prepared which shall contain the name or names of any candidate or candidates for the office or offices to be filled, their several post-office addresses, if any, their several residences, and, if in a city or town, the street number of residence and place of business, if any, and shall designate in not more than five words, 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. * * *”

Other provisions of the act provide that the certificate of independent candidates shall be filed with the proper officers not more than sixty days or less than thirty days before the November election.

You will note that independent candidates are those who do not desire to affiliate with a political party, and you will further note that the law specifically provides that no name of any political party shall be used in whole or in part by independent candidates.

The Socialist and Communist Parties are well known political parties. One group of these independent candidates uses the name “Socialist Party” and the other the name of “Communist Party of Utah”. Furthermore independent candidates must not be affiliated with political parties. How can it be said that these independent candidates are not affiliated with the Communist or the Socialist Party when they nominate as their candidates the same persons who are nominees on the National Socialist and Communist

Parties. If independent candidates may use party names in this manner, then a group of men could 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. The law will not permit this, and for that reason, among others, it specified that independent groups may not use the name of a political party or any part thereof. For the reasons above stated it is my opinion that these certificates of nomination in their present form should not be received by you or certified to be put on the November ballot.

Very truly yours,

JOSEPH CHEZ,
Attorney General

By S. D. HUFFAKER
Deputy Atty. General

8:nk

Respectfully submitted,

JOSEPH CHEZ,
Attorney General

S. D. HUFFAKER,
Assistant Attorney General

Attorneys for Respondent.