1979

William C. Hoyles Et Al v. David S. Monson, Lieutenant Governor-Secretary of State : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT

OF THE STATE OF UTAH

WILLIAM C. HOYLE et al,	:	
Plaintiff-Respondents,	:	
-vs-	:	Case No. 16[illegible]
DAVID S. MONSON, Lieutenant Governor-Secretary of State	:	
Defendant-Appellant	:	

BRIEF OF APPELLANT

Appeal from a Declaratory Judgment [illegible] in the Third Judicial District Court, in and [illegible] Lake County, State of Utah, the Honorable [illegible] Conder, Judge presiding.

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IN THE SUPREME COURT

OF THE STATE OF UTAH

WILLIAM C. HOYLE et al,	:	
	:	
Plaintiff-Respondents,	:	
	:	Case No. 16133 16134
-vs-	:	
	:	
DAVID S. MONSON, Lieutenant Governor-Secretary of State	:	
	:	
Defendant-Appellant	:	
	:	

BRIEF OF APPELLANT

Appeal from a Declaratory Judgment and Order in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Dean E. Conder, Judge presiding.

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IN THE SUPREME COURT
OF THE STATE OF UTAH

WILLIAM C. HOYLE et al,

Plaintiffs-Respondents,

-vs-

DAVID S. MONSON, Lietenant Governor-Secretary of State,

Defendant-Appellant

CASE NO. 16133
16134

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Plaintiffs sought declaratory judgment (the actions being consolidated) to hold §20-3-14,[1] Utah Code Annotated, 1953 unconstitutional and to require the Defendant to place their names on the ballot for Congress as independent candidates since plaintiffs were impecunious and the statute requires payment of a filing fee which cannot be waived by Defendant.

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1. "Any candidate filing a nomination paper or acceptance .... . shall pay to the filing officer a fee for such filing. The fee to be paid shall be one-fourth of one percent of the total salary for the full term legally or customarily paid by such office.....but such fee shall not be less than $5.00, except filing for all present offices shall be $1.00. ....."

DISPOSITION IN THE LOWER COURT

The District Court held that §20-3-14, Utah Code Annotated, 1953, violated Article I, Section 4 of the Utah Constitution,[2] and ordered that plaintiffs-appellants names be printed on the ballot as independent candidates for Congress.

RELIEF SOUGHT ON APPEAL

Defendant-Appellant requests this Court to reverse the decision of the District Court and to declare §20-3-14, Utah Code Annotated, constitutional in view of the provisions of §20-7-20,[3] Utah Code Annotated 1953, as applied to these plaintiffs.

STATEMENT OF FACTS

Plaintiffs-Appellants are in all respects qualified to be independent candidates for election to the House of Representatives except that they did not pay filing fees at the time of filing nominating petitions with the Secretary of State. Mr. Hoyle had borrowed funds which were deposited with the Clerk of the Court pending decision of this case by agreement of counsel. Mr. Bangerter was unable to borrow any money. It was stipulated that each candidate was impecunious.

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2. ".....No property qualification shall be required of any person to vote, or hold office, except as provided in this constitution."
3. ".....The voter may also insert in writing.....the name of any person for whom he desires to vote..... "

ARGUMENT

POINT I

THAT SINCE THE UTAH ELECTION LAW, (§20-7-20, UTAH CODE ANNOTATED, 1953, PROVIDES THAT WRITE IN VOTES ARE COUNTED WITHOUT PAYMENT OF ANY FEE BY A CANDIDATE FOR OFFICE OR HIS SUPPORTERS, THE UTAH REQUIREMENT OF THE PAYMENT OF A FILING FEE BY A CANDIDATE WHO WISHES TO HAVE HIS NAME PRINTED ON THE BALLOT (§20-3-14, Utah Code Annotated, 1953) DOES NOT VIOLATE THE CONSTITUTION OF THE UNITED STATES.[4]

It is clear that §20-3-14, Utah Code Annotated, 1953, requires the payment of a filing fee by a candidate for public office who wishes to have his name placed on the ballot. It is equally clear that the Secretary of State has no statutory power to waive the requirement in any case, including cases in which a candidate is wholly without funds to pay the required fee, or who may be "impecunious", however the term may be defined. Under our state law, however, write-in votes are allowed and are counted without any requirement of payment of a fee by the person whose name is written in, by his supporters or by the voter, (§20-7-20, Utah Code Annotated, 1953).

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4. Amendment XIV
"....No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Lubin v. Panish, 415 U.S. 709, 39 L.Ed. 2d. 702, 94 S.Ct. 1315, decided by the Supreme Court of the United States on March 26, 1974, states as a federal constitutional requirement that while a state may properly impose a requirement that a candidate for public office pay a reasonable filing fee, it must provide for a reasonable alternative means of ballot access by a serious indigent candidate, otherwise there would be a denial of equal protection of the law required by the Fourteenth Amendment. The California law held to be unconstitutional had no way whatever for the candidate to get on the ballot without payment of a fee. If a write-in vote was to be counted, the candidate had to file a statement at least eight days prior to election and pay a filing fee, 39 L.Ed.2d, 702, 705.

In Bullock v. Carter, 405, U.S. 134, 31 L.Ed.2d 92, 92 S.Ct. 849 (1971) the Court had previously held the Texas law unconstitutional since payment of a high filing fee was the only way a candidate could gain a position on a party ticket. The Court held that the statutory alternative of filing a petition with the proper number of signatures without payment of a fee which would place the name of the candidate on the final ballot, was not a reasonable alternative to the fee payment since the candidate would not run as the candidate of his chosen party, and that in some parts of Texas the primary election may be more crucial than the general election.

These two cases represent what the Supreme Court of the United States has determined as the standards permitted with respect to filing fees-the fee must be reasonable-there must be ballot access for a serious but indigent candidate.

In this case, the concurring opinion in Lubin, by Justice Blackmun, in which Justice Rehnquist joined, is particularly important. "...I would regard a write-in procedure, free of fee, as an acceptable alternative. Prior to 1968 California allowed this.....But the prior fee requirement for the write-in candidate was incorporated into the State's Election Code in that year. .....it is that addition, by amendment, that serves to deny the petitioner the equal protection guaranteed to him by the Fourteenth Amendment. ....." 39 L.Ed.2d. 702, 712.

It is submitted that there are many state interests served by keeping a ballot within manageable proportions, and these interests are recognized in the opinions cited. In the case at bar the candidates sought to run as independent candidates. The party restrictions referred to in Bullock are not therefore applicable. The Lubin decision seems to imply that the California fee (which is apparently based on 2% of salary and is therefore more than the Utah fee) is not unreasonable in itself, since the petitioner was indigent and could pay no fee whatever, the issue is open. What is clear is only that payment of a fee may not be the exclusive method of ballot access.

In the absence of a definitive ruling, the write-in provisions of the Utah law must be deemed a legally and constitutionally permissible alternative.

POINT II

THAT SECTION 20-3-14, UTAH CODE ANNOTATED, 1953, BY REQUIRING A CANDIDATE TO PAY A FILING FEE DOES NOT IMPOSE A PROPERTY QUALIFICATION UPON A CANDIDATE FOR PUBLIC OFFICE IN VIOLATION OF ARTICLE I, SECTION 4 OF THE UTAH CONSTITUTION.

An examination of the Official Report of the Proceedings and Debates of the Constitutional Convention (Star Printing Co. 1898) shows that the major portion of the debates dealing with voter qualification dealt with woman's sufferage. By the time that our Constitution was adopted, and as reflected in the Enabling Act, universal adult male sufferage was already achieved and apparently taken for granted. The only things respecting the property qualifications for holding office or voting were respectively whether the statement that no property qualifications for office or voting belonged in Section 4 of Article I and, as demonstrated in the final choice of phrase in Section 4 and in Section 7 of Article IV[5] as adopted, which restricted voters to tax paying property owners in elections levying special taxes. The thinking of the members eemed to be that if a tax were to be levied, those who owned property

5. Article IV, Section 7. "Except in elections levying a spe[cial] tax or creating indebtedness, no property qualification sha[ll be] required for any person to vote or hold office."

upon which the tax was to be levied should decide whether or not a special tax purpose was worth the expenditure they were called upon to pay.

The source of the filing fee paid upon filing is not now, nor has it ever been a material item in determining a candidate's qualification.[6] If a candidate has any real support it would appear that the supporters could contribute the funds, and in fact this is one of the purposes of the fee-elimination of non-serious candidates.

There is no state requirement that a candidate for office own either real or personal property, nor is there any requirement that he file a financial statement, or do anything else to disclose his wealth or lack thereof to the public.

It requires only a general knowledge of American history to ascertain the reasons for constitutional provisions such as Article I, Section 4. The American people found out several hundred years ago that we do well to prevent any aristocracy from looking to our best interest whether this group is established on roal blood lines, or some principle of theology, or on possession of money, or property.

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6. "Qualified" means possessed of certain qualities or capacities. Knapp v. Post Printing, 111 Colo. 492, 144 P.2d 981,985, ".....a qualified voter... is .. a qualified elector who has met the additional requirement .....of payment of all taxes assessed against him...." Watson v. Sportenborg County Bd. of Ed. 141 S.C. 347, 139 S.E. 755.

It is not reasonable to believe that our Legislature would seek to pass an election law establishing wealth as a basic requirement for office in view of our political history as English Colonies. It may be argued that the effect of the law is to exclude a poor man from running for office, but it would be equally reasonable to conclude that the effect is to limit the ballot to serious candidates who have some realistic chance of election or at least to those who may have an impact on the public or upon other candidates to influence the position taken on one or more current political issues.

No test, particularly a property test has been imposed in violation of Article I, Section 4.[7]

The vast majority of states have upheld the imposition of reasonable filing fees against many constituional challenges. (See. Annotation 89, A.L.R.2d 864). The reasons for upholding the legality of the fees have been set out in Lubin v. Panish and in Bullock v. Carter. The United States Supreme Court has recognized in both of these decisions that a State has a legitimate interest in regulating the number of candidates on its ballots, in preventing the clogging of its election machinery, in avoiding voter confusion, and assuring that the office holder elected is the choice of a majority or a strong plurality of the voters.

7. Tygeson v. Magna Water Co., 119 U.274, 226 P2d 127.

It is respectfully submitted that the District Court misconstrued the purpose of our Constitutional provision of prohibiting a property or religious test for office.

CONCLUSION

While ballot access must be afforded in some manner to an indigent candidate and a state may not limit a ballot only to those persons who pay a filing fee with their own funds or with funds provided by their supporters, a state has a right and a duty to protect its ballot.

The means chosen by the State to achieve such protection, so long as the means are reasonable, are constitutional when a reasonable alternative, such as our write-in provisions, are available to a serious indigent candidate who seeks to run as an independent as did plaintiffs here.

Respectfully submitted,

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