1979

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

Utah Supreme Court

IN THE SUPREME COURT
OF THE STATE OF UTAH

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

BRIEF OF RESPONDENT

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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AUTHORITIES CITED

STATEMENT OF THE NATURE OF CASE

This is an appeal from a Third District Court decision finding the statute providing for filing fees for candidates for public office unconstitutional because it denied Equal Protection of the Law and has the effect of making a property requirement to be a candidate for public office.

DISPOSITION IN THE LOWER COURT

Judge Dean E. Conder, Third District Court, held §20-3-14 Utah Code Annotated to be unconstitutional under Article I, Section 4 of the Utah Constitution and ordered that the appellants (William Hoyle and Bruce Bangeter) names be placed on the ballot.

RELIEF SOUGHT ON APPEAL

Respondents seek to have the Lower Court Judgment upheld.

STATEMENTS OF FACTS

The parties Stipulated to the qualification of William Hoyle and Bruce Bangeter to be candidates for U. S. Congress from Utah except for the payment of a filing fee. The respondent Hoyle had paid the filing fee into the Court pending the resolution of the issues in this case. Bruce Bangeter filed an Affidavit of Impe-

cuniosity which was rejected by the appellent in as much as there was no statutory provision to waive the filing fee based on impecuniosity.

The parties furthermore stipultated that for the purposes of this case, the respondents were impecunious in as much as there were no standards by which to measure that status.

ARGUMENT

I

IN AS MUCH A UTAH LAW PROVIDES FOR NO PROCEDURE TO BE NAMED AS A CANDIDATE ON A BALLOT FOR PUBLIC OFFICE WITHOUT PAYING A FILING FEE, THERE IS A PROPERTY REQUIREMENT TO RUN FOR OFFICE AS PROHIBITED BY ARTICLE I SECTION 4 AND ARTICLE IV, SECTION 7 OF THE UTAH CONSTITUTION AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. THEREFORE, SECTION 20-3-14 UTAH CODE ANNOTATED IS UNCONSTITUTIONAL.

Article I, Section 4 and Article IV, Section 7 of the Constitution of the State of Utah each prohibit a property requirement for voting or holding political office.

Article I, Section 4 states:

".... No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution." Respondent has found no exceptions (since Article

IV, Section 7 was amended, a point not acknowledged by appellants brief,) in Utah's Constitution. The Fourteenth Amendment provides that no State shall pass any laws that denies "... to any person within its jurisdiction the equal protection of the laws."

The challenged statute violates all of the cited constitutional provisions. Section 20-3-14 Utah Code Annotated states:

> Any candidate filing a nomination paper or acceptance as provided in this act shall pay to the filing officer a fee for such filing. The fee to be paid shall be one fourth of one per cent of the total salary for the full term legally or customarily paid by such office to the person holding the same, but such fee shall not be less than $5.00, except filings for all precinct offices shall be $1.00. No filing fees shall in any event be returned to the candidate.

Regardless of Point II of appellants brief, the Utah Legislature has required that a candidate for the offices recieving the least amount of compensation have at least property in the value of one dollar. If a person desires to run for the United States Senate, he must have property in an amount close to Eight Hundred Dollars ($800.00). This discrimination was one issue presented to, but not decided, by the District Court. Never-the-less, if the inability of a person to pay a filing fee prevents a person from being a candidate for office, there is a property requirement "to hold office."

In 1966 the United States Supreme Court in the case of Harper v. Virginia State Board of Elections 383 U. S. 663, 16 L. ed 2d 169, 86 S. Ct. 1079 (1966) declared it to be a denial of Equal Protection of the law for the State of Virginia to charge a poll tax before exercising the right to vote by its citizens. The stated as follows:

> We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Votes qualifications have no relation to wealth nor to paying or not paying this or any other tax. id., 16 L. Ed 2d at p. 172

Furthermore, the amount, regardless how small is not acceptable.

> We say the same whether the citizen, otherwise qualified to vote, has $1.50 in his pocket or nothing at all, pays the fee or fails to pay it. The prinicple that denies the State the right to dilute a citizen's vote on account of his economic status or other such factors by analogy bars a system which excludes those unable to pay a fee to vote or who fail to pay. id., 16 L. Ed 2d at p. 173

That case set the standard which prohibited economic requirements restricting access to the ballot.

In Kraner v. Union Free School District 395 U. S. 621, 23L. Ed 2d 583, 89 S Ct. 1886 (1969). The Court struck down a voter

qualification which restricted voters in such elections to, among other things, "Property owners or leasers of taxable real property" in the School Board District. The Court required the State of New York to show a "Compelling State interest" why the discrimination was necessary. That same standard has not been met by the State of Utah here.

The Court in the case of Bullock v. Carter 405 U. S. 134, 31 L. Ed 2d 92, 92 S. Ct. 849, (1972) in striking down a Texas law which exacted filing fees from candidates for public office, which amounts were set by the Political parties, and included some relationship to the expected emoluments of the office. The statute placed the financing burden of primary elections on the political parties and, in most instances, the primary election was determinative of the final election.

The Bullock Court was concerned with the burden on candidates rather than on the right to vote directly. But upon deciding that any restrictions on the access of a candidate to the ballot, the voters rights were restricted in some degree.

> Unlike a filing-fee requirement that most candidates could be expected to fulfill form their own resources or at least through modest contribution,s the very size of the fees imposed under the Texas system gives it a patently exclusionary character. Many potential office seekers lacking both personal wealth and affluent bakers are in every practical sense precluded from seeking the

> nomination of thier chosen party, no matter how qualified they might be, and no matter how broad or enthusiastic their popular support. The effect of this exclusionary mechanism on voters is neither incidental nor remote. Not only are voters substantially limited in their choice of candidates, but also there is the obvious likelihood that this limitation would fall more heavily on the less affluent segment of the community, whose favorites may be unable to pay the large costs required by the Texas system. Id. 31 L. Ed 2d At p. 100.

The Court found that since the exhorbitant filing fees in that state affected voters choices. The standards of Harper v. Virginia Board of Elections, supra. and Kramer v. Union Free School District, supra. must be met by the state in upholding discrimimatory laws. That is,

> Because the Texas filing-fee scheme has a real and apreciable impact on the exercise of the franchise, and because this impact is related to the resources of the voters supporting a particular candidate. Bullock, 31 L. Ed 2d at p. 100.

Finally, in the case of Lubin v. Panish 415 U. S. 709, 39 L. Ed. 2d 702, 94 S. Ct. 1315 (1974). The Court struck down a California law that had no provision for indigent candidates having access to the ballot. The Court specifically rejected the rationale advanced by the State of Utah. While recognizing that preventing "laundry list ballots" as being a legitimate

State interest, that reason did not meet the strict scrutiny required to limit ballot access. The Court stated:

> This legitimate state interest, however, must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity. The interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties or both and it is this broad interest that must be weighed in the balance. The right of party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters. Id. 39 L. Ed 2d at p. 708.

Futhermore, the appellants agrument regarding control of the ballot ws not pursuasive to the Lubin Court.

> A large filing feem may serve the legitimate function of keeping ballots manageable but, standing alone, it is not a certain test of whether the candidacy is serious or spurious. A wealthy candidate with not the remotest chance of election may secure a place on the ballot by writing a check. Merchants and other entrepreneurs have been known to run for public office simply to make their names known to the public. We have also noted that prohibitive filing fees, such as those in Bullock can effectively exclude serious candidates. Conversely, if the filing fee is more moderate, as here, impecunious but serious candidates may be prevented from running. Id. at p. 709.

Consequently, the rationale advanced by the appellant in our case will not meet Federal Constitutional Standards. Surely, Utah should be desirous of encouraging the broadening of the voting oppotunities of its citizens rather than making them more restrictive.

The State of Utah has advanced no original argument to show that the deficiencies of 20-3-14 Utah Code Annotated are excusable under the cited U. S. Supreme Court cases. The agrument that there is equality between write in candidates and those with names printed on the ballot is specious and petty. The concepts of equal time in the press, simple news coverage and the problem of name identification are all realities where a write-in candidate would be at a disadvantage.

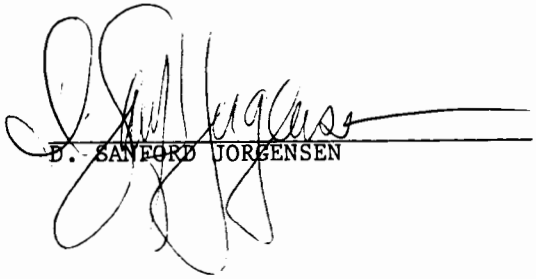
Most importantly, the State of Utah has advanced no argument upon which this Court could conclude that the exclusion of an impecunious provision is based on a rational need. In fact, they have made no attempt whatever to rationalize the deficiency in the Statute. They, not the respondents, must show this Court that the District Court errored in its "close Scrutiny of the Law" or that it wrongfully concluded the omission was "reasonably necessary for the accomplishment of a legitimate State objective". They have not done so.

Nothing respondent advances here suggests a filing fee,

where it is legitimatly based, and the potential candidate can so pay, is prohibited.

CONCLUSION

Seciton 20-3-14 Utah Code Annotated denies Equal Protection of the Laws as required by the Fourteenth amendment to the United States constitution and places a property requirement on holding office as prohibited by Article I, Section 4 and Article IV, Section 7 of the Utah Constitution. And there is no legitimate state objective that is rationally based which is fulfilled by the deficiency.



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HAND DELIVERY CERTIFICATE

I do hereby certify that a copy of the foregoing Brief was hand delivered to Robert B. Hansen at the Attorney's General Office, State Capitol Building, Salt Lake Ctiy, Utah 8414, on this _____ day of April, 1979.