

1979

William C. Hoyles Et Al v. David S. Monson,
Lieutenant Governor-Secretary of State :
Memorandum of Additional Authorities

Utah Supreme Court

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OCT - 9 1979

IN THE SUPREME COURT OF THE STATE OF UTAH Clerk, Supreme Court, Utah

WILLIAM C. HOYLE , et al.,
 Plaintiff-Respondents,

vs.

DAVID S. MONSON, Lieutenant
 Governor-Secretary of State,
 Defendant-Appellant.

MEMORANDUM OF ADDITIONAL
 AUTHORITIES

Case Nos. 16133
 16134

Pursuant to Rule 75(p)(3) of the Utah Rules of Civil Procedure, respondents, through their substituted counsel, respectfully submit the following additional authorities in support of their position, for the assistance of the Court.

It is well-established that the right to vote is a "fundamental right", and that any state infringement of that right will be "strictly scrutinized" for a "compelling state interest". Harper v. Virginia Board of Education, 383 U.S. 663 (1966); Kramer v. Union Free School District, 395 U.S. 621 (1969). The right to be a candidate for office is intimately connected with the right to vote, and is also a "fundamental right". It derives its status not only from the Fourteenth Amendment "right of qualified voters, regardless of their political persuasion, to cast their votes effectively", but also from the First Amendment "right of individuals to associate for the advancement of political

beliefs." Williams v. Rhodes, 393 U.S. 23, 30 (1968). Accordingly, the courts in the following cases dealing with ballot access claims have held candidacy rights to be fundamental, thus requiring strict scrutiny of the challenged election restrictions: Duncantell v. City of Houston, 333 F. Supp. 973 (S.D. Tex. 1971); Gonzales v. City of Sinton, 319 F. Supp. 189 (S.D. Tex. 1970); Socialist Labor Party v. Rhodes, 318 F. Supp. 1262 (S.D. Ohio 1970); aff'd sub nom., Sweetenham v. Gilligan, 409 U.S. 942 (1972); Thomas v. Mims, 317 F. Supp. 179 (S.D. Ala. 1970); Socialist Workers Party v. Rockefeller, 314 F. Supp. 984 (S.D.N.Y. 1970), aff'd 400 U.S. 806 (1970); Jenness v. Little, 306 F. Supp. 925 (N.D. Ga. 1969), appeal dismissed, 397 U.S. 94 (1970); Mancuso v. Taft, 476 F.2d 187 (1st Cir. 1973); Minielly v. State, 242 Ore. 490, 411 P.2d 69 (1966). See also, Bullock v. Carter, 405 U.S. 134 (1972), discussed in respondent's main brief, which, although ambiguous in parts, appears to conduct its analysis under the "close scrutiny" standard.

In addition to Lubin v. Panish, 415 U.S. 709 (1974), the following cases, dealing specifically with challenges to candidate filing fee requirements, hold that filing fee statutes providing no reasonable alternative method of gaining access to the ballot are unconstitutional under equal protection concepts: Harper v. Vance, 342 F. Supp. 136 (N.D. Ala. 1972); Stoner v. Forston,

359 F. Supp. 579 (N.D. Ga. 1972); Dillon v. Fiorina, 340 F. Supp. 729 (D. N.M. 1972); Jenness v. Little, supra; Thomas v. Mims, supra; Duncantell v. City of Houston, supra; Socialist Workers Party v. Welch, 334 F. Supp. 179 (S.D. Tex. 1971); Johnston v. Luna, 338 F. Supp. 355 (N.D. Tex. 1972); Brown v. North Carolina State Board of Elections, 394 F. Supp. 359 (W.D.N.C. 1975); Fair v. Taylor, 359 F. Supp. 304 (M.D. Fla. 1973); Knoll v. Davidson, 12 Cal. 3d 335, 116 Cal. Rptr. 97, 525 P.2d 1273 (1974).

Respondent submits the State must show not only that the imposition of the filing fees under § 20-3-14 is necessary to the State's interest in restricting candidate access (Bullock v. Carter, supra), but also that the alternative of allowing write-in votes under § 20-7-20 is a reasonable alternative. The State has not even attempted to make such a showing, and the provision for write-in voting is clearly not a reasonable alternative to name placement on the ballot. The courts in Socialist Workers Party v. Welch, supra, Jenness v. Little, supra, and Carter v. Dies, 321 F. Supp. 1358 (N.D. Tex. 1970), aff'd, Bullock v. Carter, supra, all specifically rejected such a write-in alternative as constitutionally acceptable. In addition, three commentators on the validity of candidate filing fees have concluded that a mandatory filing fee provision, such as in § 20-3-14, coupled only with a write-in procedure, is unconstitutional. See, Comment,

The Constitutionality of Qualifying Fees for Political Candidates, 120 Univ. of Pa. L. Rev. 109 (1971); Note, The Constitutionality of Candidate Filing Fees, 70 Mich. L. Rev. 558 (1972); Jardine, Ballot Access Rights: The Constitutional Status of the Right to Run for Office, 1974 Utah L. Rev. 290. The rationale is clear: a write-in candidate is inherently and obviously prejudiced by the absence of his name on the ballot, as opposed to candidates whose names do appear thereon. Thus, the write-in alternative to paying a fee for name placement on the ballot does not remove the discrimination against the indigent candidate--it in effect continues it. A write-in alternative can never, as a simple matter of fairness, be constitutionally sufficient to justify a filing fee scheme such as § 20-3-14:

To force a candidate to rely on write-ins is to burden him with disability. It makes it more difficult for him to get elected, and for the voters to elect him. Williams v. Rhodes, 393 U.S. 23, 37 (1968) (separate opinion of Douglas, J.).

As stated by one commentator:

. . . [B]ecause a write-in candidate's name does not appear on the ballot, it stretches the word to call this provision a viable "alternative" to name placement. The state simply provides no alternative, in the sense of a sufficient substitute, when it gives the fee-paying candidate a place on the ballot and gives the candidate who does not pay the fee nothing but the promise to count his votes. Comment, The Constitutionality of Qualifying Fees for Political Candidates, supra, at 130-131.

Agreeing with the above authorities, the United States

Supreme Court in Lubin v. Panish, supra, specifically recognized the constitutional insufficiency of an alternative write-in procedure such as exists in the Utah statute:

It is suggested that a write-in procedure, under [the election code], without a filing fee would be an adequate alternative to California's present filing-fee requirement. The realities of the electoral process, however, strongly suggest that "access" via write-in votes falls far short of access in terms of having the name of the candidate on the ballot. It would allow an affluent candidate to put his name before the voters on the ballot by paying a filing fee while the indigent, relegated to the write-in provision, would be forced to rest his chances solely upon those voters who would remember his name and take the affirmative step of writing it on the ballot. That disparity would, itself, give rise to constitutional questions and, although we need not decide the issue, the intimation that a write-in provision without the filing fee required by [the election code] would constitute "an acceptable alternative" appears dubious at best. Id. at 720.

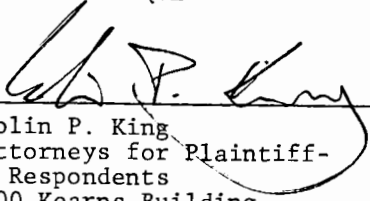
Respondent respectfully submits that the above additional authorities compel the conclusion the district court was correct in concluding § 20-3-14 is unconstitutional. The statute, in effect, sells name placement on the ballot, which is tantamount to selling the only real chance to become an officeholder; this discrimination by the State against respondents and others unable to pay the filing fees cannot be tolerated.

DATED this 8th day of October, 1979.

Respectfully submitted,

BERMAN & GIAUQUE

By


Colin P. King
Attorneys for Plaintiff-
Respondents
500 Kearns Building
Salt Lake City, Utah 84101
Telephone: (801) 533-8383

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of
the foregoing MEMORANDUM OF ADDITIONAL AUTHORITIES were hand-
delivered to the following this 9th day of October, 1979:

Joseph P. McCarthy
ASSISTANT ATTORNEY GENERAL
236 State Capitol
Salt Lake City, Utah 84114
Attorneys for Appellants

