

1972

Human Rights Party, An Unincorporated Association, and Jeffrey Montague v. Clyde L. Miller, Secretary of State : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

HUMAN RIGHTS PARTY,
an unincorporated association, and
JEFFREY MONTAGUE,

Plaintiffs-Appellants,

vs.

CLYDE L. MILLER,
Secretary of State,

Defendant-Respondent.

Case No.

~~12774~~

12972

BRIEF OF RESPONDENT

Appeal from Judgment in the Third District Court

in and for Salt Lake County.

The Honorable Stewart M. Hanson presiding

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BRIEF OF RESPONDENT

NATURE OF THE CASE

This is an appeal from an equitable decision of the lower court, denying plaintiff-appellants' application for an extraordinary writ compelling the defendant Secretary of State to certify the Human Rights Party as a political party for the next ensuing election.

DISPOSITION IN THE LOWER COURT

After a hearing on May 8, 1972, the plaintiff-appellants' application for extraordinary relief was denied by the Honorable Stewart M. Hanson. An amended Findings of Fact and Conclusions of Law resulted from a hearing on June 7, 1972, reaffirming the denial of extraordinary relief and determining that the signature

distribution requirement of Section 20-3-2, U.C.A. (1953), was "not void by reason of the equal protection clauses of the State and Federal constitutions."

RELIEF SOUGHT ON APPEAL

The respondent seeks a ruling of this Court, sustaining the judgment of the lower court as being within its sound discretion and in accordance with law.

STATEMENT OF FACTS

Respondent accepts as substantially correct the Statement of Facts as it appears in the appellants' brief, except for the few matters hereinafter stated by way of amendment or clarification.

While the party organizers submitted over 800 signatures, the required certification of signatures by clerks of the various counties showed only 501 of the signers to be registered voters as required by the statute. Plaintiff-appellants stipulated that they could have complied with the ten-county, ten-signature requirement had they made the effort.

ARGUMENT

POINT I

PLAINTIFFS HAVE NO STANDING TO CHALLENGE THE CONSTITUTIONALITY OF THE SUBJECT STATUTES.

It is not evident from reading the court's opinion that the defendants in *Moore v. Ogilvie* 394 U.S. 814 89 S. Ct. 1493, 23 L. Ed. 1(1969), raised the question of standing. However, Justice Stewart in his dissent stated, "There is absolutely no indication in the record that appellants could not, if they had made the effort, have easily satisfied Illinois' fifty-county, two hundred signature requirement". (Supra at 820, 821). Here, however, the state official defendant has raised the issue of plaintiff's standing and on that point the stipulation of the parties states: "Petitioners could have

obtained sufficient additional signatures to qualify as an independent party under the aforesaid law if they have endeavored to do so after learning that the members living in those counties who signed the petition were not qualified to sign it" (paragraph 14 on page 4 of the Stipulation).

POINT II

THIS CASE CAN, AND SHOULD, BE DECIDED UPON NONCONSTITUTIONAL GROUNDS.

The case involving the same issues filed by the party plaintiff in the state court was decided upon a nonconstitutional basis, namely that the plaintiffs there did not have standing to challenge the subject statute because they did not make the effort referred to in Point II above (*Human Rights Party and Montague v. Miller*, Salt Lake County No. 205449).

Another nonconstitutional basis on which the state court might decide this case would be on the basis that obtaining nine qualified signatures in the 10th county was substantial compliance with the law in question. Such a contention under somewhat similar facts was successful in the case of *O'Donnell v. Ryan*, 243 N.Y.S. 2d 885, affirmed in 13 N.Y. 2d 885.

Although no case sufficiently identical on its facts has been found to be dispositive on the instant case, the principle that cases will not be decided on constitutional grounds unless it is unavoidable is well established. Professor Antleau wrote on this point in *Modern Constitutional Law*, (Vol. 2), as follows:

Sec. 15:33: The United States Supreme Court has often announced that it will not decide constitutional issues unless doing so is unavoidable. *Rosenberg v. Fleuti* (1963) 374 U.S. 449, 10 L. Ed. 2d 1000, 83 S. Ct. 1804. It said, for instance, in 1952: "This Court will not pass upon the constitutionality of an act of Congress . . . unless such adjudication is unavoidable" *United States v. Hayman* (1952) 342 U.S. 205, 96 L. Ed. 232, 244, 72 S. Ct. 263. The same judicial

abstinence customarily prevails with reference to acts of the state legislatures, as well as to executive decisions and procedures at trial. "Constitutional adjudication should where possible be avoided," says the court. *NAACP v. Alabama* (1958) 357 US 449, 2L Ed 2d 1488, 1497, 78 S Ct 1163.

The Supreme Court avoids constitutional issues frequently by deciding cases on nonconstitutional grounds, rather than on the claims of unconstitutionality. *Communist Party of United States v. Subversive Activities Control Board* (1956) 351 US 115, 100 L Ed 1003, 76 S Ct 663. For example, in 1948, the court decided that judicial enforcement of racially restrictive covenants in the District of Columbia violated national public policy, rather than the Fifth Amendment. Said the court: "It is a well settled principle that this court will not decide constitutional questions where other grounds are available and dispositive of the issues of the case." *Hurd v. Hodge* (1948) 334 US 24, 92 L Ed 1187, 68 S Ct 847. The supreme Court will, if possible, decide cases on nonconstitutional grounds even when such grounds were not raised by the parties. *Neese v. Southern R. Co.* (1955) 350 US 77, 100 L Ed 60, 76 S Ct 131.

Another way the Supreme Court avoids constitutional adjudication is by giving a construction to legislative acts that will avoid doubts as to their constitutionality. Where a statute is susceptible of multiple constructions, the court will give the statute that construction which avoids determining that it is unconstitutional. *United States v. CIO* (1948) 335 US 106, 92 L Ed 1849, 68 S Ct 1349; *Schneider v. Smith* (1968) 390 US 17, 19 L Ed 2d 799, 88 S Ct 682; *United States v. Rumely* (1953) 345 US 41, 97 L Ed 770, 73 S Ct 543; *United v. Witkovich* (1957) 353 US 194, 1 L Ed 2d 765, 77 S Ct 779. In 1936, Justice Brandeis remarked:

"When the validity of an act of the Congress is drawn in question, and even, if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a

latter grounds, however, have not figured significantly in cases raised in this area and are not relevant to this inquiry. The only case depending on First Amendment support is *Williams v. Rhodes*, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968), which overturned Ohio's new party requirement because of its excessive burden on new parties. However, the cases of *Moore v. Ogilvie*, 394 U.S. 814, 89 S. Ct. 1493, 23 L. Ed. 2d 1 (1969) and *Jenness v. Fortson*, 403 U.S. 431, 91 S. Ct. 1970 (1971), respectively ignore or dismiss First Amendment challenges to signature requirements for new parties. Utah's requirement is less burdensome than those in *Moore* and *Jenness*. It also is free of other harsh requirements imposed by Ohio, which were invalidated in *Williams*. The First Amendment claim is not well taken. Essentially, plaintiffs' case must rise or fall with their equal protection logic.

In order to determine which equal protection test or measure to apply, a determination must first be made as to what specific rights are involved. The problem is that the specific rights here involved are not clearly defined. "The rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical correlative effect on voters," *Bullock v. Carter*, 92 S. Ct. 849, 856 (1972). The same may be said of the rights of political parties, that those rights "do not lend themselves to neat separation" from the closely analogous rights of voters and candidates. Therefore, there is the dual problem of identifying which rights are directly involved and also what are the distinctions and perimeters of those rights. There appear to be three distinct groups of election rights potentially involved. They are: the right to vote; the right to seek (run for) public office, and the right of political organizations to gain ballot recognition as a political "party."

Only one of the enumerated rights, i.e. the right to vote, is denominated a "fundamental right." *Harper v. Virginia Board of Education*, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966), *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964). The other two rights, i.e. the right of candidates to run for office and the right of an organized group of voters to obtain a ballot position,

while recognized as serious and important, have never been held to be "fundamental." Since the recognition of a right as "fundamental" requires the application of the "compelling state interest" test to determine its constitutionality, the interrelation between the right to vote and party qualifying requirements is significant. Since *Moore v. Ogilvie*, Supra, which struck down an Illinois distributional signature requirement for new parties, used the "one man, one vote" logic from *Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962) and *Reynolds* to justify that decision, it thereby concomitantly involves the right to vote. The extent to which the rights of voters were pivotal in *Moore* is not clear, and Justice Douglas, writing for the majority, at no point invokes the "fundamental right-compelling state interest" test, which would be expected if the court considered it a voting right infringement. It remains therefore, to consider which test should be applied and what the result of that application ought to be.

The court, in *Williams v. Rhodes*, supra, in a case striking down Ohio's party qualification requirement of a 15% voter petition, neither applied nor established a rigid standard, but rather noted:

'In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.'" Supra at 29.

This case-by-case approach sanctioned in *Williams* illuminates the failure of *Moore* to identify one single test to be applied. *Moore* is evidence of the *Williams* notion of individual scrutiny leading to an appropriate equal protection test. Not only does this suggest that the "compelling state interest" test is inappropriate in this species of election cases, but the court in February of this year appears to have created a new equal protection test in *Bullock v. Carter*, supra, a case striking down a Texas filing fee requirement for candidates. Therefore, an application of the *Bullock* standard to Sec. 20-3-2(g)(2) follows, prefaced by a discussion of the "one man, one vote" principle as applied in *Moore*.

Justice Douglas in writing for the majority in *Moore* analogized to the "one man, one vote" standards of the apportionment cases. *Moore* was the first such application of "one man, one vote" principles in a non-representation area and it is not yet certain what specific standards are imparted by that analogy. Neither the language of that decision nor any subsequent application has defined the numerical standards to be applied. Eliminating all other possible interpretations of the import of that analogy by logic, the Court's intention was most likely either that the standards of the apportionment cases be exactly transplanted into the area of party qualification requirements or that the "one man, one vote" standards established in the area of reapportionment be generally and reasonably applied relative to this unique and different area.

The *Moore* court intimates that an opposite holding would be "out of line with our recent apportionment cases," indicating at least some relationship to those "one man, one vote" standards. However, the concluding sentences of Justice Douglas' opinion reveal the basis of the standard. "This law thus discriminates against the residents of the populous counties of the State in favor of rural sections. It, therefore, lacks the *equality* to which the exercise of political rights is entitled under the *Fourteenth Amendment*." (emphasis added) *Moore v. Ogilvie, supra*, at 819. The meaning of equal protection clause of the Fourteenth Amendment in any given circumstance has always reflected the peculiar rights involved. Hence, when Justice Douglas submerged the analogue of the "one man, one vote" principles of apportionment cases in the "equality" standards of the Fourteenth Amendment, the resulting standard differs from the strict "one man, one vote" measure of the apportionment cases. *Moore* produces an equal protection standard given additional definition by the "one man, one vote" principles of the apportionment cases. Logically, as you expand the application of a standard by analogy, its limits necessarily expand and take the shape of the modified subject. That is, when the object of a defining standard changes, the definitional limits of that standard change accordingly. The principles represented by the "one man, one vote" language in *Moore* should therefore be defined in light of this less fundamental election activity, i.e. qualifying

petitions, and constructed liberally. That does not dissipate the "one man, one vote" analogy, but rather is in keeping with the nature of the election activity it measures. The application of stricter standards in apportionment cases in which voters are unequally represented is deserved. But here, where the issue is a distributional petition requirement for party recognition, where neither "votes" nor "voters" are directly involved, the standards should be more liberally construed in a way judiciously proportional to the rights involved, and in keeping with whatever equal protection test is appropriate.

The "logic gap" created by the use of the analogy of the apportionment cases to a case involving a party qualification requirement is adequately bridged by the language in *Moore*. However, the need for liberal construction of "one man, one vote" principles is illustrated by the distinctions between the two analogues.

First, in apportionment cases, the questioned distribution is fixed and the inequality is certain. In those cases, there cannot exist equality of representation until a statutory change occurs. Such is not the case with Utah's signature distribution requirement, which can in many different instances be found to be constitutionally satisfactory. It is not certain that the distribution of signatures resultant from the particular schematic design of the party's signature drive will be violative of the "equality" demanded by the *Fourteenth Amendment* and, as will be demonstrated below, it is more common to find a rough equality.

Second, the reapportionment cases, specifically *Baker* and *Reynolds*, involve the under and over-representation of groups of voters. However, in these party qualification, voter-petition statutes, in Justice Stewart's words neither "votes" nor "voters" are involved. That is not to say that a party qualification requirement is not related to voting rights, but neither *Moore* nor this case involve voting rights or other rights denominated fundamental. Rather, the Utah statute regulates activities *preparatory* to the election--important but not fundamental.

Third, in the apportionment cases, *every* voter in a

particular geographical unit has his vote effected. When an apportionment scheme is violative of constitutional standards, a certain group (or groups) of voters are under-represented and the remaining voters, are over-represented. However, in the party qualification requirement embodied in Sec. 20-3-2(g)(2), only the very *few* registered voters are directly effected who sign the petitions. Hence, it cannot be determined until after the party organization has identified supporters willing and qualified to sign the petition whether there is a violation of the "equality" principles of the *Fourteenth Amendment*. The freedom a potential party has in determining the distribution of its 500 signatures suspends any judgment on the equality of signature worth until the distribution can be individually appraised. To prove Constitutional inequality, inequality must exist. Since only 501 registered voters signed the petition (one more than the requisite number), no group of qualified supporters are shown to have been denied equal protection rights by virtue of the distribution requirement. Plaintiffs have not demonstrated any violation of the principles of the equal protection clause here.

Justice Douglas, in the *Moore* case, cites *Gray v. Sanders*, 372 U.S. 368, as illustrative of the application of the equal protection standards of the Fourteenth Amendment to "one man, one vote" cases. Therefore, the value ratio (disparity) of votes in *Gray* sheds some light on the comparative ratios here. In *Gray*, the value ratio of votes between under and over-represented geographical units ranged from 8 to 1 to 14 to 1. That disparity clearly violates the notions of "equality" in the Fourteenth Amendment. As well, the discrepancy in the *Gray* case is from five to nine times as high as the ratios in this case. The differences between the disfavored Illinois requirement and the present Utah requirement are also substantial in terms of a "one man, one vote" analysis. (See Appendix I for statistical analysis.) By determining *optimum* signature distribution among the requisite number of counties and then contrasting the statistical value of a signature in the least populous county with the statistical value of a signature in the middle and greater populated counties, it is possible to determine a value ratio reflecting the variation from a strict "one man, one vote" measure. In Illinois, the ratio of signature value between the least populous county required by the statute

(the fiftieth most populated county) and the more populous counties commonly indicates a ratio of about 3.8 to 1. That is, a signature of a registered voter in the fiftieth most populated county in Illinois has 3.8 times as much impact (value) as that of a registered voter in one of the more populous counties. In Utah, on the other hand, using the signature value of the tenth most populated county, the ratio is approximately 1.6 to 1. Moreover, in Utah if the party movement is essentially based in one of the large counties, a nearly equal "one man, one vote" ratio exists between the first and tenth counties. (For example, if Salt Lake County provided 410 of the requisite 500 signatures, the value of a signature in Salt Lake County would be essentially equivalent to the value of a signature in the tenth most populated county.) It is clear that the variance in the Utah statute is very much less than that of the abolished Illinois requirement or any other disfavored statute. The question remains whether the disproportion of the Utah requirement is sufficient of itself to justify its judicial exclusion. Where "one man, one vote" principles are liberally applied, as here in a petition situation, a 1.6 to 1 ratio is within reason. Since it is probable that the main focus of a political organizational movement in Utah will be in one or two of the more populous counties as in this case, the fact that a mathematical equality results in such a situation is additional justification for the subject statute. Therefore, while Utah's voter petition requirement for party recognition is capable of some disparity in signature value between lesser and greater populated counties, its substantial difference from the Illinois formula and the frequent equality in typical new party development satisfy the "one man, one vote" principles of *Moore*.

The Utah requirement is therefore not inherently violative of the "equality" required by the Fourteenth Amendment. Nor have plaintiffs demonstrated here that Utah's requirement has constitutionally impermissible unequal impact on different groups of registered voters. It is important for the court to establish standards appropriate to the rights and state interests involved. Justice Holmes warned against rigidity in standards in this area, when he pointed out that, it "is important for this court to avoid extracting from

the very general language of the Fourteenth Amendment a system of delusive exactness...." *Louisville & Nashville R. Co. v. Barber Asphalt Co.*, 197 U.S. 430, 434 25 S. Ct. 466, 49 L. Ed. 819 (1904) (Holmes, J.). Imposing numerical standards which would invalidate Utah's requirement would not be in keeping with the spirit and principle of the equal protection clause and would extend the "one man, one vote" analogy to a logical absurdity.

The "one man, one vote" standard was only part of the analysis which the court went through in *Moore*, and it remains to ascertain which equal protection test ought to apply. *Moore* did not find all voter petition distribution requirements unconstitutional per se. Therefore, to strike down the Utah requirement without consideration of its reasonableness or the "reasonable necessity" of the requirement to the accomplishment of legitimate state interests would be an unwarranted extension of the *Moore* holding. Moreover, since *Moore* did not pronounce the right of political parties to ballot position "fundamental," the "fundamental right-compelling state interest" test is inappropriate. Contrary to plaintiffs' suggestion in the original hearing before the single judge court, *Williams v. Rhodes* does not stand for the application of the "compelling state interest" test in this equal protection area. Rather, *Williams* holds that when the burden placed on ballot recognition of new parties is so great as to seriously restrict the First Amendment rights of free association, then a "compelling state interest" test applies. But *Williams* does not apply that test to the equal protection issues raised, instead suggesting the case-by-case scrutiny pointed out above. Even if a "compelling state interest" test were to be applied, Sec. 20-3-2(g)(2) would not automatically be invalidated, as there are several recent election cases recognizing "compelling state interests." *Bendiger v. Ogilvie*, 335 F. Supp. 572 (1971), *Jackson v. Ogilvie*, 325 F. Supp. 864 (1971).

While the "fundamental right-compelling state interest" test is neither requisite nor appropriate for the disposition of this case, the traditional "rational relationship" test is weak and also ill-suited for the protection of the

important rights here in question. To circumvent the dilemma of deciding between these two polarized and rigidified tests and to avoid the uncertainty of awaiting a definition of rights as fundamental, the Supreme Court recently established a *new test* for the evaluation and safeguard of equal protection rights. Speaking for a unanimous court, Chief Justice Burger, in *Bullock v. Carter*, struck down a Texas filing fee requirement system, creating and using a "reasonable necessity" test. This test, as applied to Sec. 20-3-2(g)(2) is essentially three-phase: is the distributional requirement reasonable, are there legitimate state interests involved, and is the distributional requirement reasonably necessary for the accomplishment of the state interests. This test provides the courts with a flexible, practical and realistic method of evaluating both individual rights and state interests. An analysis of Sec. 20-3-2(g)(2) under this "reasonable necessity" test is dispositive of the constitutional validity and function of the Utah requirement.

In considering the reasonableness of the Utah requirement (500 signatures of registered voters including at least ten registered voters from each of ten counties) a comparison with similar requirements of other states has considerable merit. There are two integral parts of the distributional requirement: the number of signatures required and the requisite distribution of signatures. A high signature quota sans distributional requirement is no more reasonable than a low signature requirement with a minimal distributional qualification. The Illinois distribution requirement invalidated in *Moore* required 25,000 signatures with at least 200 signatures each from 50 of the 103 counties. On a *proportional* basis, the Illinois signature requirement is five times as high as Utah's and the per county requirement is nearly eight times as high. In the Ohio case of *Williams v. Rhodes*, 15% of the total vote for governor in the previous election was the numerical requirement for a new party petition. The Ohio requirement was invalidated on several grounds, particularly the violation of equal protection rights, since the existing parties needed to poll only 10% in the preceeding election. It appears that in *Williams* the court implicitly ruled that a 15% signature requirement, coupled with a number of other harsh requirements, was too great a burden on First Amendment and equal protection rights.

However, in *Jenness v. Fortson*, 403 U.S. 431, 91 S. Ct. 1770, 29 L. Ed. 2d 554 (1971), the court found a 5% signature requirement for new parties neither violative of equal protection nor First Amendment rights. In a footnote, the *Williams* court pointed out that 42 of the states, including Utah, have a 1% or smaller voter petition requirement for new parties, and *none* of these state statutes have been judicially overturned.

From the comparative posture above, one moves to a closer scrutiny of the Utah requirement itself. To obtain a position on the ballot, an aspiring party must secure the signatures of 500 registered voters with a minimum of ten signatures from ten different counties. For an existing party to remain on the ballot, it must "poll for any of its candidates equivalent to two per cent of this total vote cast for all representatives in Congress." Sec. 20-3-2(g)(1), U.C.A. 1953. This would amount in 1972, to 7,462 votes (or signatures). An embryo political party in Utah is faced with significantly less stringent ballot requirements than an established party, amounting to a voter-count differential of 6,962 (7,462 less the 500 now required).

In weighing the reasonableness of the Utah requirement, a pragmatic view is essential. Neither the number of counties (10 of 27) nor the number of signatures per county (10) required by Utah statute can be considered burdensome. Rather, the numerical qualifications are so minimal as to be almost non-existent. The question more nearly appropriate is why Utah would impose such minimal requirements in the first place, since they require so little to be met. The reasons for the minimal distributional requirement, created by the 1969 amendment to Sec. 20-3-2(g)(2), are the prevention of voter confusion, administrative efficiency, prevention of the waste of public monies, the protection of the integrity of the election process, and the minimal ratification of political movements to state voters, more fully discussed below.

Another consideration is the framework within which Utah can constitutionally establish new party qualifications. It would be constitutionally permissible for the legislature to change the voter petition requirement for new parties upward

as high as 5%, under the *Jenness* holding, amounting to 18,645 signatures. It is obvious that a 5% signature requirement, or even one of 2%, is a greater burden on a fledgling party than is the 500 signature, ten-county ten-signature requirement presently status in Utah. Therefore, Sec. 20-3-2(g)(2) is neither equivalent to those distributional schemes struck down by various courts nor is it unreasonably arbitrary in and of itself. It is an attempt by the legislature to establish a minimum level or standard of activity justifying ballot recognition. That the legislature has opted for a requirement of significantly fewer signatures plus the minimal distributional requirement is evidence of thoughtful and less burdensome alternative to a high signature requirement.

The second phase of the *Bullock* test is the legitimacy of the state interests involved. There is a logical presumption in a legislative act, increasing with the chronological proximity of enactment, that the legislature is acknowledging and articulating a specific state interest. The presumption is not conclusive but is at least evidence that the legislature believed there were legitimate state interests represented. That Sec. 20-3-2(g)(2) was amended in 1969 to include the ten-county ten-vote requirement indicates that this qualification is not an anachronistic vestige of less progressive time, but rather a recent modification reflecting a legislative attempt to improve the party qualification requirement.

Essentially, the state interests represented by the distributional requirement focus around the preservation of the integrity of the election process. "There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot--the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election." *Jenness v. Fortson*, *supra*, at 442. The facets of the state interest are therefore preclusion of voter confusion, administrative efficiency, public awareness of new political movements, and the prevention of the waste of public monies. Courts have recognized state interests in regulating elections, imposing minimum requirements for candidates and parties to obtain ballot positions, controlling the size of ballots, and in keeping frivolous or fraudulent

candidates and parties off the ballot. See *Jenness v. Fortson*, supra, *Wetherington v. Adams*, 309 F. Supp. 318 (1970), *Fowler v. Adams*, 315 F. Supp. 592 (1970), *Bodner v. Gray*, 129 So. 2d 419, 89 A.L.R. 2d 860 (1961), *New Mexico v. Fiorina*, 40 L.W. 2713 (1972). As well, the state has an interest in requiring a "party" to give minimal "notice" to more than a local area of the state. This is not the "state-wide" support notion which *Moore* seemed to discount as a valid interest. The Utah statute requires neither "state-wide" participation nor "support" in the full sense of the word. Ten signatures in ten counties is more nearly a "good faith" requirement of effort than a demonstration of "state-wide support." The objective is not to have 90 supporters in nine counties other than the central county, but to have more than a one-county focus.

This distinction between the single county focus and a state-wide focus can be seen in two ways. First, if a party is interested in nominating candidates for offices within a one-county scope, the alternative of filing as independent candidates under Sec. 20-3-38, U.C.A. 1953, is provided. Under this provision, independent candidates can give a five word description of their position, and all the candidates identifying with this cause could list themselves as the "Human Rights Coalition" and advertise accordingly. Therefore, an independent candidate representing a particular ideology and constituency can obtain a ballot position with 300 signatures, 200 less than an independent party. Second, if a party with local focus desires to nominate a candidate for a state-wide or national office, the legislature has mandated that that party extend their operations to at least nine other counties to merit the benefits which accompany recognition as a party (the opportunity of securing ballot representation for the subsequent election and the right to nominate candidates without submitting voter petitions for each). These two benefits given to qualified independent parties by the state are the only rationale for a group seeking recognition as a party rather than pursuing the independent candidate process. By running candidates under the independent candidate procedure rather than as an independent party, a group would lose no rights or other benefits. While the party identification would appear in different places (above the candidate's name for parties and

below the candidate's name for independent candidates), the ability to advertise for the party collectively, to prepare a platform and have common positions, to associate and participate in the election as a group, and as a public vehicle for political ideas, in short, every activity essential to a political party would be available to the party nominating candidates through Sec. 20-3-38, U.C.A. 1953. To earn ballot recognition as a "party," a potential party must "notify" a smattering of people in a scattering of counties and demonstrate good faith by making party efforts beyond a local activity. Therefore, the state has an interest in maintaining the proper utilization of the different procedures for independents to gain ballot position--those of local concentration using the independent candidate process (Sec. 20-3-38) and those of state-wide concern using the independent party process (Sec. 20-3-2(g)(2)). The resulting design comports with the goals of voter understanding and awareness and efficient administration. It should be noted that such legislative alternatives for independent candidates was not available under the Illinois statutory scheme invalidated in *Moore*.

The motion of minimal "notice" to voters throughout the state through the ten-county ten-signature requirement is crucial to the state interests. Without minimum notice to voters outside of the local focus of the party, neither support nor opposition can be mustered. While support from voters throughout the state is an obvious consequence of the requirement, a more important objective is the notification, at least to a small degree, of those who would want to oppose the success of the emerging party and its candidates. This right of opposition congenital to the election process of necessity requires early notification. While notice of a party's candidates will eventually reach all communities, the early opposition citizens might wish to initiate would be effectively undercut by the ability of a party to quietly, even privately, organize through completely local procedures. The requirements reflect the policy (expressed by the sponsor of the 1969 amendment to Sec. 20-3-2(g)(2)) that a party ought to merit "party" standing, ought to do more than "holding one meeting." The whole notion of "party" pragmatically connotes the sort of operations minimally required under Sec. 20-3-2(g)(2) and

the interests of citizens, both those supporting and opposed, are protected by minimal notification requirements.

The final phase of the *Bullock* test is that Sec. 20-3-2(g)(2) "must be closely scrutinized and found *reasonably necessary* to the accomplishment of legitimate state objectives in order to pass constitutional muster." *Bullock v. Carter*, supra, at 856. In this balancing, weighing test, the statute and state interests are relatively balanced. A statutory requirement which is arbitrary or rigid requires a showing of stronger state interests (ultimately up to a showing of a "compelling state interest") and a less burdensome qualification can be justified by a weaker state interest. Under this test of "reasonable necessity", the state need not show a "compelling state interest", but only a legitimate interest sufficient to justify the minimal requirements of Sec. 20-3-2(g)(2). Both the reasonableness of the Utah requirement and the existence and validity of the State interests involved are plotted above. Since distributional requirements are not unconstitutional per se, the burden on this court is to decide whether any such requirement with a distributional provision of "kinder" proportions than Sec. 20-3-2(g)(2). Moreover, the court must also decide whether "distribution" is the evil, or whether, viewing the statute "as a whole," it unreasonably or arbitrarily or unequally prevents new parties from securing ballot positions. A mechanistic approach without regard for the purposes and needs of Utah's election system would be injurious and self-defeating. The alternative to Utah's present system is a higher signature requirement which could constitutionally be vastly more burdensome. The present qualifying procedure is not only reasonable, but is also reasonably necessary to accomplish the important state interests involved.

CONCLUSION

Therefore, the respondent respectfully urges the Court to sustain the lower court's ruling and uphold the constitutionality of the distributional signature requirement of Section 20-3-2 U.C.A. (1953) on the basis of the "reasonable necessity" test of the equal protection clause.

UTAH

COUNTY	POP.	POPULATION	%	OPTIMAL	NET VAL.	VALUE	VALUE
RANKING				NO. OF	OF SINGLE	RATIO	
				SIGNA.	SIGNA.	TO #10	
Salt Lake	1	458,607	48.0	236	.000515	1:1.53	
Utah	2	137,776	14.4	71	.000515	1:1.53	
Weber	3	126,278	13.2	65	.000515	1:1.53	
Davis	4	99,028	10.4	51	.000515	1:1.53	
Cache	5	42,331	4.4	22	.000519	1:1.52	
Box Elder	6	28,129	2.9	14	.000498	1:1.58	
Tooele	7	21,545	2.3	11	.000511	1:1.58	
Carbon	8	15,647	1.6	10	.000639	1:1.23	
Washington	9	13,669	1.4	10	.000732	1:1.08	
Uintah	10	12,684	1.3	10	.000789	1:1	

ILLINOIS

	POPULATION	%	OPTIMAL	NET VAL.	VALUE	VALUE
			NO. OF	OF SINGLE	RATIO	
			SIGNA.	SIGNA.	TO #10	
1	5,492,369	52.9	11344	.002065	1:3.80	
2	491,882	4.7	1016	.002065	1:3.80	
3	382,638	3.6	790	.002064	1:3.80	
4	285,176	2.7	589	.002065	1:3.80	
5	251,005	2.4	519	.002067	1:3.80	
6	250,934	2.4	519	.002068	1:3.80	
7	249,498	2.4	515	.002064	1:3.81	
8	246,623	2.3	509	.002063	1:3.81	
9	195,318	1.8	404	.002068	1:3;80	
10	166,734	1.6	344	.002063	1:3.81	
11	163,281	1.5	337	.002063	1:3.81	
12	161,335	1.5	333	.002064	1:3.81	
13	125,010	1.2	258	.002063	1:3.81	
14	118,649	1.1	245	.002064	1:3.81	
15	111,555	1.1	230	.002061	1:3.81	
16	111,409	1.1	230	.002064	1:3.81	
17	104,389	1.	216	.002069	1:3.799	
18	97,250	.9	201	.002066	1:3.80	
19	97,045	.9	201	.002071	1:3.795	
20	71,654	.7	200	.002791	1:2.81	
21	70,861	.7	200	.002822	1:2.785	
22	62,877	.6	200	.003180	1:2.472	
23	61,280	.6	200	.003263	1:2.409	