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Washington's Ballot Restriction for Minor Party Candidates: When is a Primary Not a Primary?

by Emily Calhoun

Ralph Munro

v.

Socialist Workers Party
(Docket No. 85-656)

Argued October 7, 1986

All states prescribe the circumstances under which candidates for political office may be placed on a general election ballot. Typically, major party candidates are nominated through a primary process, while minor party or independent candidates are nominated by petition. Nominees automatically qualify to be placed on the general election ballot. In the state of Washington, minor party candidates qualify for placement on the general election ballot only if they are both nominated by petition and secure at least one per cent of the total vote cast in a blanket primary election in which declared major party candidates also participate.

The constitutional issues raised in this case have implications for legislative attempts to protect both the rights of voters unaffiliated with major political parties and the rights of political parties wishing to preserve a meaningful opportunity to attract voters to their candidates.

ISSUE

The narrow issue on which all parties focus in this case is the constitutionality of Washington's requirement that a minor party candidate for statewide office receive at least one per cent of the total vote cast in the blanket primary to qualify for placement on the general election ballot. The arguments do not, however, view the one per cent requirement in isolation from other aspects of the qualifying process.

FACTS

Prior to 1977, minor party candidates in Washington did not participate in a primary election. A single candidate for a given statewide office was nominated through a "convention" process that required the candidate to secure signatures of at least 100 registered voters in support of the nomination. Once nominated, the minor

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party candidate automatically qualified to be placed on the general election ballot.

In 1977, the Washington legislature modified its election code. A minor party candidate is still nominated through the "convention" (or petition) process. A person may become a major party candidate through a process of self-declaration. Neither a major nor a minor party nominee will be placed on the general election ballot, however, unless he or she also participates in a blanket primary election and receives at least one per cent of the total vote cast.

In 1983, the Socialist Workers Party nominated Dean Peoples as its candidate in a special election for the United States Senate. Peoples was nominated by securing the signatures of the required number of registered voters at a "convention" held at the corner of Third and Pike Streets, in Seattle.

Thirty-two other persons declared their candidacy as either Republican or Democratic contenders for the same Senate seat. Among them were a retired grocery store assistant manager, a retired logger, a pipefitter, an unemployed machinist, a steelworker and a carpenter. The thirty-two declared major party candidates were placed on the blanket primary ballot along with Peoples.

In the primary election, Peoples received only 596 votes out of the 681,690 votes that were cast. Thus, Peoples did not qualify as a candidate for the general election. He shared the fate that has been suffered by all but one of the minor party nominees who have run for statewide office in Washington since the 1977 change in the election code.

Peoples promptly joined the Socialist Workers Party and two registered voters in filing a complaint in the United States District Court. They asked the court to declare the one per cent primary vote requirement unconstitutional as applied to minor party candidates for statewide office.

The district court granted summary judgment for the state of Washington. It held, among other things, that a state has a legitimate interest in requiring a showing of a modicum of support from any candidate who seeks access to a general election ballot. It also stated that the 1977 election law actually benefits minor party voters. On appeal, the Court of Appeals for the Ninth Circuit (765 F.2d 1417 (1985)) disagreed with the district court. It held that the one per cent requirement was unconstitutional as applied to statewide elections.

BACKGROUND AND SIGNIFICANCE

Federal courts have frequently been asked to review the constitutionality of statutes that prescribe how a candidate may qualify to participate in a general election. Limitations on qualifying schemes are rooted in the First and Fourteenth Amendments of the Constitution of the United States. These amendments protect against impermissible infringements of the right to vote and impermissible burdens on rights of political association.

Prior ballot access controversies arose because minor party candidates, unable to show the statutorily-required support among registered voters, were effectively barred from any participation in the election process. The Washington qualifying scheme is unique in that a minor party candidate's failure to secure one per cent of the vote cast in the blanket primary does not entirely exclude the candidate from participating in the election process. Under Washington statute, for example, Peoples needed to secure only 178 signatures to have an opportunity to compete against major party candidates in a blanket primary election.

There are two ways of looking at this unique aspect of the Washington scheme. One might argue that the blanket primary, to which minor party candidates have virtually guaranteed access, is like a general election. Voters neither have to be affiliated with any particular party to vote (as in a closed primary election) nor are they confined to voting only for candidates of a single political party (as in an open primary election). Minor party candidates compete against candidates from all other parties. Thus, the challenged one per cent requirement does not exclude minor party candidates from the election process. Voters do have a choice of candidates in the blanket primary and there is no unconstitutional burden on rights of political association.

Alternatively, one might argue that the general election is the only election in which major parties have a single candidate for each office with a focused set of issues against which a minor party candidate can compete. It is, therefore, the only election in which voters have a meaningful choice. In the blanket primary, a single minor party candidate must successfully compete against an array of candidates from the major parties for one per cent of the vote to secure a place on the meaningful, general election ballot. Thus, the exclusive effect of the one per cent requirement is constitutionally offensive.

A major element of the debate in *Munro v. Socialist Workers Party* is whether a minor party candidate's participation in the blanket primary is a constitutionally adequate substitute for participation in the general election, given the exclusive impact of the one per cent requirement. The outcome of the debate turns on re-

solving two issues: 1) whether the rights of individual voters are burdened by the process, in light of the relative advantages and disadvantages of the blanket primary to the individual voter, and 2) whether the associational rights of minor parties are burdened, in light of their allegedly inferior competitive position against major party candidates in the blanket primary election.

Election schemes that protect the rights of individual voters do not necessarily provide corresponding protection to the rights of associations of voters—political parties. Thus, as states increasingly experiment with novel ways of ensuring an open primary process, they may jeopardize constitutional rights of political association. *Munro* may provide a clue as to how the Supreme Court will view legislative innovation in this area.

The issues in *Munro v. Socialist Workers Party* should be compared with those raised in *Tashjian v. Republican Party of Connecticut* also analyzed in this issue of *Preview*.

ARGUMENTS

For Ralph Munro, Secretary of State of Washington (Counsel of Record, Kenneth O. Eikenberry, Temple of Justice, Olympia, WA 98504; telephone (206) 753-4556)

1. The state has an interest in regulating access to the ballot by candidates without a modicum of support to prevent voter confusion.
2. Washington's system does not impair any constitutionally-protected interests, because it gives minor party candidates virtually guaranteed access to the blanket primary.
3. Washington's two-step election process is less restrictive than other systems previously validated by the Supreme Court.

For the Socialist Workers Party (Counsel of Record, Daniel Hoyt Smith, 2200 Smith Tower, Seattle, WA 98104; telephone (206) 682-1948)

1. The combined effect of Washington's laws has substantially barred minor party candidates from participating in general elections for statewide office.
2. Strict scrutiny of the Washington statute is required.
3. Washington's laws are more restrictive than other statutory schemes for ballot access; the state has not adopted the least restrictive means of protecting its interests.

AMICUS BRIEFS

In Support of the Socialist Workers Party

The American Civil Liberties Union Foundation, American Civil Liberties Union of Washington Foundation and National Lawyers Guild, jointly; the Libertarian Party of Washington