The Burger Court Opinion Writing Database

Illinois Board of Elections v. Socialist Workers Party

440 U.S. 173 (1979)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 1, 1979

Dear Thurgood:

Re: 77-1248 Illinois State Bd. of Elections v. Socialist Workers Party

As of now please show me concurring in the judgment.

Regards,

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 19, 1978

RE: No. 77-1248 Illinois State Board of Elections v. Socialist Workers Party et al.

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 19, 1978

Re: 77-1248 - Illinois Elections Board v. Socialist Workers Party

Dear Thurgood:

I shall await the concurring opinion.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

(4)

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 18, 1979

Re: No. 77-1248 - Illinois Elections Bd. v. Socialist Workers Party

Dear Thurgood:

I am glad to join your opinion for the Court.

Sincerely,

P.S.

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

(2)

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 26, 1978

Re: No. 77-1248 - Illinois State Board of Elections v. Socialist Workers Party

Dear Thurgood,

Please join me.

Sincerely yours,

Mr. Justice Marshall

Copies to the Conference

2, 3, 6, 10, 11, 12, 14

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: 18 DEC 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1248

Illinois State Board of Elections, Appellant, *v.* Socialist Workers Party et al. | On Appeal from the United States Court of Appeals for the Seventh Circuit.

[January —, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Under the Illinois Election Code, new political parties and independent candidates must obtain the signatures of 25,000 qualified voters in order to appear on the ballot in statewide elections.[1] However, a different standard applies in elections

[1] Under Ill. Rev. Stat., ch. 46, § 10-2 (Supp. 1978),

"A political party which, at the last general election for State and county officers, polled for its candidate for Governor more than 5% of the entire vote cast for Governor, is hereby declared to be an 'established political party' as to the State and as to any district or political subdivision thereof.

"A political party which, at the last election in any congressional district, legislative district, county, township, school district, park district, municipality or other district or political subdivision of the State, polled more than 5% of the entire vote cast within such congressional district, legislative district, county, township, school district, park district, municipality, or political subdivision of the State, where such district, political subdivision or municipality, as the case may be, has voted as a unit for the election of officers to serve the respective territorial area of such district, political subdivision or municipality, is hereby declared to be an 'established political party' within the meaning of this Article as to such district, political subdivision, or muncipality."

A *new* political party is one that has not met these requirements.

Individuals desiring to form a new political party throughout the State must file with the State Board of Elections a petition that, *inter alia*, is "signed by not less than 25,000 voters." In *Communist Party of Illinois*

PP 2, 3, 6, 7, 10, 11, 12, 14

1 JAN 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1248

Illinois State Board of Elections, Appellant, *v.* Socialist Workers Party et al. } On Appeal from the United States Court of Appeals for the Seventh Circuit.

[January —, 1979]

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p. 14

2 FEB 1979

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–1248

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 27, 1978

Re: No. 77-1248 - Illinois State Board of Elections
v. Socialist Workers Party

Dear Thurgood:

For now, I, too, shall await the concurring opinion.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1248

Illinois State Board of Elections, Appellant, *v.* Socialist Workers Party et al. | On Appeal from the United States Court of Appeals for the Seventh Circuit.

[January —, 1979]

MR. JUSTICE BLACKMUN, concurring.

Although I join the Court's opinion and its strict scrutiny approach for election cases, I add these comments to record purposefully, and perhaps somewhat belatedly, my unrelieved discomfort with what seems to be a continuing tendency in this Court to use as tests such easy phrases as "compelling state interest" and "least drastic [or restrictive] means." See, *ante,* pp. 10, 11, and 12. I have never been able fully to appreciate just what a "compelling state interest" is. If it means "convincingly controlling," or "incapable of being overcome" upon any balancing process, then, of course, the test merely announces an inevitable result, and the test is no test at all. And, for me, "least drastic means" is a slippery slope and also the signal of the result the Court has chosen to reach. A judge would be unimaginative indeed if he could not come up with something a little less "drastic" or a little less "restrictive" in almost any situation, and thereby enable himself to vote to strike legislation down. This is reminiscent of the Court's indulgence, a few decades ago, in substantive due process in the economic area as a means of nullification.

I feel, therefore, and have always felt, that these phrases are really not very helpful for constitutional analysis. They are too convenient and result-oriented, and I must endeavor to disassociate myself from them. Apart from their use, however, the result the Court reaches here is the correct one. It is with these reservations that I join the Court's opinion.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 4, 1979

No. 77-1248 Illinois State Board of Elections
v. Socialist Workers Party

Dear Thurgood:

I find that I have not been in touch with you about your opinion, and regret this long delay.

Although I probably will join your opinion, and certainly agree with the result, the proper analysis in this case always has troubled me. Accordingly, I have been waiting to see Bill Rehnquist's circulation.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

(3)

January 18, 1979

77-1248 Illinois Bd. of Elections v.
Socialist Workers Party

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 18, 1978

Re: No. 77-1248 Illinois State Board of Elections v. Socialist Workers Party

Dear Thurgood:

In due course -- I hope soon -- I will circulate an opinion concurring in the judgment reached in your opinion in this case, saying in effect that while the statute may well at one time have been constitutional, after the decision of this Court in Moore v. Ogilvie, 394 U.S. 814 (1969), declaring unconstitutional one section of it, and the decision of the Court of Appeals for the Seventh Circuit in Communist Party of Illinois v. State Board of Elections, 518 F. 2d 517 (1975), declaring another section unconstitutional, it is demonstrably irrational in its present dismembered form.

Sincerely,

Mr. Justice Marshall

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: 17 JAN 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1248

Illinois State Board of Elections, Appellant, *v.* Socialist Workers Party et al. | On Appeal from the United States Court of Appeals for the Seventh Circuit.

[January —, 1979]

MR. JUSTICE REHNQUIST, concurring in the judgment.

I concur in the judgment of the Court, but I cannot join its opinion: It employs an elaborate analysis where a very simple one would suffice. The disparity between the state and city signature requirements does not make sense and this Court is intimately familiar with the reasons why.

In 1968, Illinois had a coherent set of petition requirements for obtaining a place on the ballot. In order to appear on the ballot in a county or city election, it was necessary for independent candidates and new political parties to obtain voter signatures equal in number to 5% of the voters who voted in the political subdivision at the last general election. Requirements for statewide office put greater emphasis on geographical balance: Independent candidates and new political parties needed 25,000 signatures, and at least 200 signatures had to be obtained from each of 50 counties within the State. Thus a candidate for statewide office at that time could get on the ballot with fewer signatures than the candidate for office in Cook County, but he was also subject to special restrictions. It was reasonable for Illinois to conclude that this scheme best vindicated its interest in "protect[ing] the integrity of its political processes from frivolous or fraudulent candidacies." *Bullock* v. *Carter*, 405 U. S. 134, 145 (1972). Cook County is not Illinois, and all the State asked was that candidates and political parties interested in

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: 19 JAN 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1248

Illinois State Board of Elections, Appellant, *v.* Socialist Workers Party et al. | On Appeal from the United States Court of Appeals for the Seventh Circuit.

[January —, 1979]

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P. 2

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

3rd DRAFT

30 JAN 1979

SUPREME COURT OF THE UNITED STATES

No. 77-1248

Illinois State Board of Elections, Appellant, *v.* Socialist Workers Party et al. | On Appeal from the United States Court of Appeals for the Seventh Circuit.

[January —, 1979]

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: JAN 8

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1248

Illinois State Board of Elections, Appellant, *v.* Socialist Workers Party et al. | On Appeal from the United States Court of Appeals for the Seventh Circuit.

[January —, 1979]

MR. JUSTICE STEVENS, concurring in the judgment.

Placing additional names on a ballot adds to the cost of conducting elections and tends to confuse voters. The State therefore has a valid interest in limiting access to the ballot to serious candidates. If that interest is adequately served by a 25,000 signature requirement in a statewide election, however, Illinois must at least offer some reasoned explanation for imposing a larger requirement in a smaller election. It has come forward with no such explanation.

Nonetheless, I am not sure that the disparity evidences a violation of the Equal Protection Clause. The constitutional requirement that Illinois govern impartially would be implicated by a rule that discriminates, for example, between Socialists and Republicans or between Catholics and Protestants. But I question whether it has any application to rules prescribing different qualifications for different political offices. Rather than deciding that question, I would simply hold that the interference with access to the ballot caused by nothing more rational than a malfunction of the legislative process has deprived appellants of their liberty without the "due process of lawmaking" that the Fourteenth Amendment requires. Cf. *Delaware Tribal Business Committee* v. *Weeks*, 430 U. S. 73, 98 (STEVENS, J., dissenting).

For these reasons I concur in the Court's judgment and in Parts I, II, and IV of its opinion.

Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: JAN 3 1979

Recirculated: JAN 17 79

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1248

Illinois State Board of Elections, Appellant, *v.* Socialist Workers Party et al. | On Appeal from the United States Court of Appeals for the Seventh Circuit.

[January —, 1979]

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For these reasons I concur in the Court's judgment and in Parts I, II, and IV of its opinion.

*/ As MR. JUSTICE REHNQUIST points out, ante, during the period prior to 1969 when Moore v. Ogilvie, 394 U.S. 814, was decided, Illinois imposed an additional requirement in statewide elections. For the past decade, however, Illinois has relied on the 25,000 signature requirement--and nothing else--to limit access to the ballot in statewide elections.

Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

3rd DRAFT

Recirculated: JAN 23 79

SUPREME COURT OF THE UNITED STATES

No. 77-1248

Illinois State Board of Elections, Appellant, *v.* Socialist Workers Party et al. | On Appeal from the United States Court of Appeals for the Seventh Circuit.

[January —, 1979]

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Nonetheless, I am not sure that the disparity evidences a violation of the Equal Protection Clause. The constitutional requirement that Illinois govern impartially would be implicated by a rule that discriminates, for example, between Socialists and Republicans or between Catholics and Protestants. But I question whether it has any application to rules prescribing different qualifications for different political offices. Rather than deciding that question, I would simply hold that legislation imposing a significant interference with access to the ballot must rest on a rational predicate. This legislative remnant is without any such support. It is either a product of a malfunction of the legislative process or merely a by-product of this Court's decision in *Moore* v. *Ogilvie*, 394 U. S. 814, see *ante*, at 2, REHNQUIST, J., concurring. In either event, I believe it has deprived appellants of their liberty without the "due process of lawmaking" that the Fourteenth