

In the Supreme Court of the State of Alaska

State of Alaska,)
)
 Appellant,)
 v.)
)
 Alaska Democratic Party,)
)
 Appellee.)

Supreme Court No. **S-16875**

Order

Affirming Judgment
of the Superior Court

Date of Order: **4/4/2018**

Trial Court Case No. **1JU-17-00563CI**

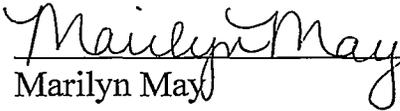
Before: Stowers, Chief Justice, Winfree, Maassen, Bolger
and Carney, Justices.

We recognize the parties’ need for early notice of the resolution of this expedited appeal in light of the upcoming primary election and the June 1, 2018 date for candidacy declarations. Accordingly, having considered the parties’ briefing and the oral arguments, the superior court’s judgment is **AFFIRMED**. An opinion explaining our decision will be issued at a later date.

Entered at the direction of the court.

Stowers, Chief Justice, dubitante.

Clerk of the Appellate Courts



Marilyn May

Stowers, Chief Justice, dubitante.¹

Alaska’s election code requires all primary candidates to be registered voters with the political party whose primary they run in: a party affiliation rule.²

The Alaska Democratic Party is a recognized political party with over 75,000 members. The Party changed its internal rules in May 2016 to allow individuals who are not members of the Party but who are “Undeclared” or “Non Partisan” registered voters to participate in the Party’s primary election as Party candidates without having to become a Party member. The Party petitioned the State Division of Elections to allow such candidates to participate in Party primary elections; the Division of Elections denied that request because it conflicted with AS 15.25.030(a)(16).

The Party filed suit against the State of Alaska in the superior court seeking a declaratory judgment that AS 15.25.030(a)(16) unconstitutionally interfered with the Party’s associational rights under the Alaska and United States Constitutions; the Party also sought a permanent injunction enjoining the Division of Elections from enforcing this statutory provision. The superior court granted the Party’s motion for summary

¹ *Dubitante*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“Doubting. This term was usu[ally] placed in a law report next to a judge’s name, indicating that the judge doubted a legal point but was unwilling to state that it was wrong.”).

² AS 15.25.030(a)(16) (“Declaration of candidacy. (a) A member of a political party who seeks to become a candidate of the party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath . . . and must state in substance . . . (16) that the candidate is registered to vote as a member of the political party whose nomination is being sought.”).

judgment and denied the State's cross-motion. The State appealed and filed an unopposed motion requesting this court to expedite the appeal. The State explained in its motion that the statutory deadline for a candidate to file a declaration for candidacy to run in a political party primary or to file nominating papers in order to seek nomination by petition is June 1, 2018³ and asked this court to issue its decision by May 1, 2018. We granted the unopposed motion in part and set an expedited briefing schedule. We held oral argument on March 29, 2018. The court today issues its order affirming the superior court's decision and explaining that a written opinion would be issued at a later date.

By virtue of the court's Order affirming the superior court, the supreme court necessarily agrees that AS 15.25.030(a)(16) unconstitutionally interferes with the Party's rights of association.

This court's constitutional inquiry is governed by *State, Division of Elections v. Green Party of Alaska (Green Party I)*:

When an election law is challenged the court must first determine whether the claimant has in fact asserted a constitutionally protected right. If so [we] must then assess "the character and magnitude of the asserted injury to the rights." Next [we] weigh "the precise interests put forward by the state as justifications for the burden imposed by its rule." Finally, [we] judge the fit between the challenged legislation and the state's interests in order to determine "the extent to which those interests make it necessary to burden the plaintiff's rights." This is a flexible test: as the burden on constitutionally protected rights becomes more severe, the

³ AS 15.25.040(a); AS 15.25.150.

government interest must be more compelling and the fit between the challenged legislation and the state's interest must be closer.^[4]

I question whether the Party has an associational right that is protected by the Alaska Constitution under the circumstances of this case. The Party asserts that the party affiliation rule severely burdens its right to associate with independent candidates through its primary election, and that the burden is magnified by Alaska's majority of independent voters. It argues the burden is severe because the rule "usurps the Party's determination of its associational boundaries in the basic function of selecting its candidates."

The State argues that the party affiliation rule intrudes minimally, if at all, on the Party's associational rights. It asserts the party affiliation rule does not restrict ballot access because it neither prevents a candidate from running for office nor "shrinks the universe of candidates" from which voters may choose. The State points to the ease of party registration in Alaska, and the Party's other means of association, such as endorsement, to show that there is no substantial burden.

I am inclined to believe that Alaska's party affiliation rule does not substantially burden the Party's right.

The State makes a number of arguments that the minimal burden that the party affiliation rule places on associational rights is justified by several important State interests: the rule helps ensure that support for the candidate is a fair proxy for support

⁴ 118 P.3d 1054, 1061 (Alaska 2005) (quoting *O'Callaghan v. State*, 914 P.2d 1250, 1254 (Alaska 1996)).

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for the Party, and visa versa; the rule helps protect against voter confusion and deception from unclear ballots and inconsistent party labels; the rule helps safeguard the stability of the political system by protecting the integrity of the different routes to the ballot and the meaning of party label

I am inclined to conclude that the party affiliation rule's minimal burden on the Party is justified by the State's reasonable interests.

Having said all of this, it is premature to draft a dissenting opinion; I remain willing to consider the majority's analysis when it is fleshed out in a written opinion. Suffice it to say that I am presently unconvinced with the court's conclusion that the party affiliation statute is unconstitutional. Thus, for now, I doubt.

cc: Supreme Court Justices
Judge Pallenberg

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