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SUPREME COURT
OF THE STATE OF WASHINGTON

ANDREW PILLOUD,
Appellant,

vs.

KING COUNTY REPUBLICAN CENTRAL COMMITTEE

and

LORI SOTELO,
County Chairman, King County Republican Central Committee,

Respondents.

BRIEF OF APPELLANT

Andrew Pilloud
Appellant, Pro Se.

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I. Introduction

In 2014 Petitioner Andrew Pilloud took office as a Republican Precinct Committee Officer in King County. As holder of that office, RCW 29A.80.061 entitles Pilloud to take part in electing a Republican legislative district chair in his legislative district. With full knowledge of the statute, the Respondent King County Republican Central Committee adopted bylaws in conflict with the statute. Pilloud exhausted all paths of appeal within the party. Lacking a plain, speedy and adequate remedy in the ordinary course of law, Pilloud filed an Application Writ of Mandamus with the King County Superior Court in 2015. The court has twice now denied the application, most recently on the grounds that the statute is unconstitutional under the First Amendment to the United States Constitution. Appellant Pilloud seeks Direct Review of this decision entered on October 27, 2016 under RAP 4.2.

II. Assignments of Error

The Superior Court erroneously held that *Eu v. San Francisco County Democratic Central Committee* 489 U.S. 214 (1989) governs, rendering RCW 29A.80.061 unconstitutional under the First Amendment to the United States Constitution.

Issues Pertaining to Assignment of Error

1. Does RCW 29A.80.061 call for the election of a district chair to a committee of the county central committee or to an independent legislative district committee?
2. Does a statute calling for the election of a district chair impose an impermissible burden on the party?
3. Does a statute calling for the election of a district chair serve a compelling state interest?

III. Statement of the Case

On January 20, 2015, Pilloud filed an Application for Alternative Writ of Mandamus in the Superior Court. CP1-36 Pilloud was a Republican precinct committee officer. CP2 He requested that the court order the King County Republican Central Committee and its Chair Lori Sotelo, the Respondents, to hold elections of district chairs. CP1 Statute requires that legislative district chairs be elected by precinct committee officers of each legislative district through elections be called by the County Chair. RCW 29A.80.061 CP71

The Respondents admitted to the allegations that they were violating state law. CP41 They argued that the claim was barred by collateral estoppel, res judicata and that the statute was unconstitutional under the United States Constitution and the Washington State Constitution. CP42, Notice was provided to the Attorney General CP37-39, who declined to intervene. CP100 The Superior Court quashed Pilloud's application for a writ of mandamus. CP64-65 The Court of Appeals found the present statute to be materially different from its predecessor. CP70 The court held that Pilloud is not bound by res judicata or collateral estoppel and recommended for resolution of the statute's constitutionality. CP67,72

On remand, all parties moved for Summary Judgment on the Writ and Declaratory Ruling on the Constitutionality of RCW 29A.80.061.

CP75,104 The Court ruled in favor of the Respondents, found the statute unconstitutional, and quashed the application for writ. CP127-129 In an oral ruling, the Superior Court found that *Eu v. San Francisco County Democratic Central Committee* governs the outcome and renders the statute unconstitutional under the First Amendment to the United States Constitution. RP26-27

“Cases where the validity of all or any portion of a statute... is drawn into question on the grounds of repugnancy to the Constitution of the United States... shall be appealed directly to the supreme court.” RCW 2.06.030(c) Thus this case now finds itself before the Supreme Court for direct review. CP121

The court may take judicial notice that a general election has occurred and terms of both Petitioner Pilloud and Respondent Sotelo lapsed shortly after this appeal was filed, rendering the specific set of facts moot. The Court grants review to moot cases where the matter is "capable of repetition, yet evading review," which requires "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same

complaining party would be subjected to the same action again.”

Weinstein v. Bradford, 423 U.S. 147 (1975). The initial petition in this case was filed almost immediately after the term began, yet review is still ongoing. CP1 Conflict over this statute and its predecessors has been ongoing for over a quarter century. CP59 The Petitioner and Respondents find themselves in a substantially similar conflict in the new term.

IV. Argument

1. RCW 29A.80.061 calls for the election of a district chair to an independent legislative district committee.

Construction of a statute is a question of law reviewed de novo under the error of law standard. *State v. Wentz*, 149 Wn.2d 342 (2003) RCW 29A.80.061 follows:

Legislative district chair—Election—Term—Removal.

Within forty-five days after the statewide general election in even-numbered years, the county chair of each major political party shall call separate meetings of all elected precinct committee officers in each legislative district for the purpose of electing a legislative district chair in such district. The district chair shall hold office until the next legislative district reorganizational meeting two years later, or until a successor is elected.

The legislative district chair may be removed only by the majority vote of the elected precinct committee officers in the chair's district.

The statute in question is plain in calling for the election of a legislative district chair, CP71 defining the electors, term, and how the election is to be conducted. Chapter 29A.80 RCW has two similar sections that describe the state committee RCW 29A.80.020 and county central committee RCW 29A.80.030. Full text in appendix. These statutes form those committees, describe their membership, and prescribe the procedures for the election of leadership. However, the statute on the legislative district chair is silent on the nature of the office held by the

legislative district chair. "If the meaning of the language is ambiguous or unclear, this line of cases directs that examining the statute as a whole, or a statutory scheme as a whole, is then appropriate as part of the inquiry into what the Legislature intended." *Ecology v. Campbell & Gwinn, L.L.C* 146 Wn.2d 1 (2002)

There are several reasonable interpretations of this statute: that the statutory legislative district chair serves no committee, serves as a member of the county central committee, RP14 or serves as the chair of the legislative district committee. RP19

A chair that serves no committee has no purpose in being elected. "A reading that produces absurd results must be avoided because it will not be presumed that the legislature intended absurd results." *State v. Wentz*, 149 Wash.2d 342 (2003) This is an absurd result and should be discarded.

The unambiguous language of the statute requires the county chair to call the election. CP71 This could imply that the legislative district chair serves as part of the county central committee, but this is not required by the statute. The doctrine of constitutional doubt requires the court to "construe statutes to avoid constitutional doubt." *Utter v. Building Industry Association of Washington*, 182 Wn.2d 398 (2015) "A statute must be construed, if fairly possible, so as to avoid not only the conclusion

that it is unconstitutional but also grave doubts upon that score."

Almendarez-Torres v. United States, 523 U.S. 224 (1998) (quoting *United States v. Jin Fuey Moy*, 241 U.S. 394 (1916)) If the legislative district chair held a statutory position within the county central committee the statute may impose a burden on the county central committee. RP13 This construction does not render the statute unconstitutional but does place grave doubts its constitutionality under the First Amendment to the United States Constitution. RP17

The statute also indicates that the "district chair shall hold office until the next legislative district reorganizational meeting" implying that the act of electing the district chair occurs at the legislative district reorganizational meeting. The county and state chairs are elected at their respective committee reorganizational meetings so it would be a reasonable conclusion that the legislative district chair is elected to the legislative district committee. The state committee, county central committee, and legislative district committee are each a "bona fide political party" under RCW 42.17A.005(6). Full text in appendix. The legislature has defined a legislative district committee in one statute, called for the election of a legislative district chair in another. The only logical construction would be that the legislature intended the legislative

district chair serve as the chair of the independent legislative district committee it created.

2. The statute does not impose a burden on the county central committee.

RCW 29A.80.061 requires that a statutory legislative district chair be elected but does not confer critical authority on the chair or preclude the county committee from also nominating a separate chair. All of the decisions which respondents claim should not be made by a statute are made not because of anything in the statute, but because of delegations of authority by the committee itself. There can be no complaint that the party's right to govern itself has been substantially burdened by statute when the source of the complaint is the party's own decision to confer critical authority on the chair. *Marchioro v. Chaney* 442 U.S. 191 (1979) All authority granted to the legislative district chair within the county central committee was granted under the bylaws adopted by the committee. This is clearly similar to *Marchioro* and contrary to the circumstances in the *Eu* case where "it is state law, not a political party's charter, that places the state central committees at a party's helm and, in particular, assigns the statutorily mandated committee responsibility for conducting the party's campaigns." *Eu v. San Francisco County*

Democratic Central Committee 489 U.S. 214 (1989) The committee's decision to appoint chairs does not free the county chairman from the statutory duty to call an election for a legislative district chair.

The party has failed to show that the “laws directly burden the associational rights of a party and its members by limiting the party's discretion in how to organize itself, conduct its affairs, and select its leaders.” *Eu v. San Francisco County Democratic Central Committee* 489 U.S. 214 (1989) As the statute does not impose a burden the strict standard in *Eu* does not apply. “A statute is presumed constitutional and will not be invalidated unless it is proved to be unconstitutional beyond a reasonable doubt. The burden of proving that a statute is unconstitutional is on the party making the challenge.” *Brower v. State* 137 Wn.2d 44 (1998)

3. The statute serves a compelling interest in preserving the integrity of its election process.

“Under the resulting Engrossed Senate Bill, primary elections would not function as a procedure to determine the nominees of political parties, but would instead qualify candidates for the general election ballot. E.S.B. 6453, § 1(2)” *Washington State Grange v. Locke*, 153 Wn.2d 481 (2005) The bill most recently enacting the statute calling for legislative district chairs was replacing a system where voters nominated a major party's

candidates with a system where voters merely qualify candidates for the general election. The effect of the bill is to leave the power to nominate candidates solely with the political parties. To enable a “bona fide political party” to support its nominated candidates the legislature enabled the party to make contributions to a candidate in excess of ordinary limits. RCW 42.17A.405 The legislative district committee and county central committee are each a “bona fide political party”. RCW 42.17A.005(6) The state has a compelling interest in ensuring the county central committee does not impose control or improper influence over the legislative district committee. This influence would enable the county central committee to exceed campaign finance limits by directing the activities of the legislative district organizations, which are subject to their own separate limits. Campaign contribution limits have been upheld as a “primary weapons against the reality or appearance of improper influence.” *Buckley v. Valeo*, 424 U.S. 58 (1976).

V. Conclusion

Based on any one of the three strikes presented in the foregoing argument this court should overturn the ruling of the Superior Court that RCW 29.80.061 is unconstitutional under the First Amendment to the United States Constitution. The court should overturn the order of summary judgment and declaratory judgment, find the statute constitutional, order the writ granted, and remand to the superior court for further proceedings.

Respectfully submitted on January 12, 2016,



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VI. Appendix

RCW 29A.80.020

State committee.

The state committee of each major political party consists of one committeeman and one committeewoman from each county elected by the county central committee at its organization meeting. It must have a chair and vice chair of opposite sexes. This committee shall meet during January of each odd-numbered year for the purpose of organization at a time and place designated by a notice mailed at least one week before the date of the meeting to all new state committeemen and committeewomen by the authorized officers of the retiring committee. At its organizational meeting it shall elect its chair and vice chair, and such officers as its bylaws may provide, and adopt bylaws, rules, and regulations. It may:

- (1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention designates. The manner, number, and procedure for selection of state convention delegates is subject to the committee's rules and regulations duly adopted;
- (2) Provide for the election of delegates to national conventions;
- (3) Provide for the nomination of presidential electors; and
- (4) Perform all functions inherent in such an organization.

Notwithstanding any provision of this chapter, the committee may not adopt rules governing the conduct of the actual proceedings at a party state convention.

RCW 29A.80.030

County central committee—Organization meetings.

The county central committee of each major political party consists of the precinct committee officers of the party from the several voting precincts of the county. Following each state general election held in even-numbered years, this committee shall meet for the purpose of organization at an easily accessible location within the county, subsequent to the certification of precinct committee officers by the county auditor and no later than the second Saturday of the following January. The authorized officers of the retiring committee shall cause notice of the time and place of the meeting to be mailed to each precinct committee officer at least seventy-two hours before the date of the meeting.

At its organization meeting, the county central committee shall elect a chair and vice chair of opposite sexes.

RCW 42.17A.005(6)

(6) "Bona fide political party" means:

(a) An organization that has been recognized as a minor political party by the secretary of state;

(b) The governing body of the state organization of a major political party, as defined in RCW 29A.04.086, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

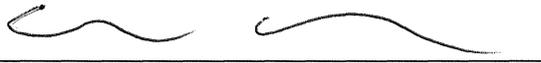
CERTIFICATE OF SERVICE

I certify (or declare) under penalty of perjury under the laws of the State of Washington that on the 12th day of January 2017, I caused a true and correct copy of the foregoing BRIEF OF APPELLANT to be served on the following in the manner indicated below:

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