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NO. 93786-9

SUPREME COURT
OF THE STATE OF WASHINGTON

ANDREW PILLOUD,

Appellant,

v.

KING COUNTY REPUBLICAN CENTRAL COMMITTEE

and

LORI SOTELO,

County Chairman, King County Republican Central Committee,

Respondents.

BRIEF OF RESPONDENTS

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I. INTRODUCTION

RCW 29A.80.061's violation of the First Amendment is sufficient grounds to uphold the Superior Court. But that is not the statute's only constitutional defect. Its interference with internal party governance was a late amendment, slipped fifty pages deep into a bill relating to a "qualifying primary." The bill's regulation of internal party governance violated both the single subject and subject-in-title restrictions of Washington's Constitution. That constitutional defect is also sufficient to uphold the Superior Court.

That still does not exhaust the statute's constitutional defects. RCW 29A.80.061 carried forward the same violation of the Fourteenth Amendment as its original version. The statute creates one form of organization for the Republican Party in large counties and a different one for small. Petitioner, a Republican Precinct Committee Officer ("PCO"), is a successor to the parties who litigated the statute's validity fifty years ago. The Superior Court's 1967 order enjoining enforcement of the operationally-identical predecessor binds Petitioner, even if the constitutional defects were absent.

II. STATEMENT OF THE CASE

Petitioner sought a writ of mandamus to compel the King County Republican Central Committee ("KCRCC") to elect its legislative District

Chairmen, instead of the appointment and ratification processed adopted by its elected PCOs. It is the third time in 50 years disaffected activists have invoked the state statute to seek to override the governance structure adopted by the elected PCOs.

In 1967, Washington's legislature enacted the current statute's predecessor, codified then as RCW 29.42.070. It mandated election of District Chairmen only for the King County Republican and Democratic parties, based on the definition of "AA County." CP 26-27. Within days of the statute's effective date, competing actions were filed, one seeking a writ of mandamus to compel the calling of meetings to elect District Chairmen (as here) and the other seeking to enjoin the KCRCC from calling any meeting to elect District Chairmen. The parties to both cases included elected PCOs. CP 27.

Still today, not all Washington counties contain multiple legislative districts. Just as did its predecessor, RCW 29A.80.061 mandates one form of Republican Party for counties containing a single legislative district and a different one for county parties with multiple legislative districts. CP 91. In 1967, the King County Superior Court concluded that RCW 29.42.070 violated the 14th Amendment to the United States Constitution and article I, section 12 of the Washington State Constitution by imposing a different

structure and burdens on the KCRCC from the structure and burdens placed on the other county parties. CP 28-29.

KCRCC has always rejected the District Chairmen election system of RCW 29A.80.061 and its predecessors.¹ CP 61, 90. Legislative District Chairmen are important, subordinate officers of the county party, implementing its political plan. CP 90, 96-97. Electing legislative District Chairmen would splinter the county party, CP 59-60, and encourage factionalism. CP 94. Both impair the KCRCC's political goals and would make the organization less effective. CP 61, 94, 98. The appoint-and-ratify system promotes a unified party. CP 60, 95.

The system adopted by the KCRCC better enables it to withstand outside pressure and accomplish its political goals. CP 90-91. Elected District Chairmen also make the party more susceptible to control or improper influence over political decisions from candidates for the state legislature, who view their campaigns as the most important task for the party, even where allocating party resources may be unnecessary or ineffective. CP 59. Minority factions have promoted legislative District Chairmen elections to make it easier for them to capture part of the party's governance. CP 94.

¹ Until 1979, the County Chairman simply appointed legislative District Chairmen. In 1979, the KCRCC adopted its current appoint-and-ratify system. CP 58-59.

Proponents of elected District Chairmen have argued, as one of their main points, that state law requires the KCRCC to elect its district chairmen. CP 35, 97. The method of selecting district chairmen has been a recurring question during the KCRCC's bylaws debates for decades. CP 60-61, 90. The KCRCC uses the system the PCOs adopted in the Bylaws, notwithstanding RCW 29A.80.061 or its prior incarnations. CP 59-60, 97, 140.

In 1993, KCRCC's internal structure was again challenged in court, based on the 1993 version of RCW 29A.80.061. The King County Superior Court quashed that application for a writ of mandamus because the 1967 decision controlled the result. CP 64-65.

In 2014, proponents of elected District Chairmen again raised the issue at the biennial party organization meeting. The proposal was rejected by the elected PCOs by a 2-1 margin in a roll call vote. CP 90, 98. Section 11.1 of the bylaws retained the appoint-and-ratify system. CP 14.

Shortly thereafter, Petitioner brought his action for a writ of mandamus to compel the KCRCC to follow the statute rather than the bylaws adopted by the PCOs. The KCRCC sought to quash the writ, asserting that (1) Petitioner was barred from re-litigating claims brought by his predecessors in office; (2) the current statute also violated the

Fourteenth Amendment; (3) RCW 29A.80.061 violated the First Amendment; and (4) RCW 29A.80.061 was adopted in violation of the subject-in-title and single subject provisions of Washington's Constitution. The Attorney General was notified of the constitutional challenges to the statute. CP 39, 112, 130.

The King County Superior Court originally held that Petitioner, an elected successor to the PCOs in the original action, was barred from re-litigating compelled election of District Chairmen by KCRCC, based on the 1967 decision. The Court of Appeals reversed, remanding for further proceedings.² On remand, the Superior Court determined that RCW 29A.80.061 violated the First Amendment, based on the U.S. Supreme Court decision in *Eu v. San Francisco County Democratic Central Committee*, 479 U.S. 214, 222, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989). The court did not reach the state constitutional claims.

III. SUMMARY OF ARGUMENT

The Superior Court should be affirmed on its adopted rationale that RCW 29A.80.061 violates the core First Amendment right of political association by substituting the state legislature's judgment for the King

² Case No. 73303-6-1, March 14, 2016, as amended by Order dated May 20, 2016. CP 68. By order dated May 20, 2016, the Court of Appeals struck footnote 2 of the opinion. See Appendix A. The footnote remained in the copy of the opinion transmitted to the Superior Court.

County Republican Party's on how best to organize its internal affairs. The *Eu* decision is controlling.

The Superior Court should also be affirmed based on its original decision in this case, that Petitioner is a successor to the PCOs who litigated the current statute's predecessor and is bound by the 1967 order. CP 71.

RCW 29A.80.061 is unconstitutional under the Fourteenth Amendment by creating different political structures for single legislative district counties from multiple district counties, as a matter of its operation.

The statute is also void under Washington's constitution, because it violates both prongs of article II, section 19. It was an undisclosed subject and a prohibited second subject in ESB 6453.

IV. ARGUMENT

A. The First Amendment bars state interference with the Republican Party's internal governance unless the State demonstrates a compelling interest that is narrowly tailored. The State has no interest in whether Republican PCOs elect or ratify appointed legislative District Chairmen.

"[A] political party's 'determination of the structure which best allows it to pursue its political goals, is protected by the Constitution.' ... Freedom of association also encompasses a political party's decisions about the identity of, and the process for electing its leaders." *Eu v. San*

Francisco Cty. Democratic Cent. Comm., 479 U.S. 214, 229, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989) (citations omitted). The elected Republican PCOs in King County have consistently rejected the balkanized county party organization that RCW 29A.80.061 would impose. KCRCC has opted for an “appoint-and-ratify” system for selecting legislative district chairmen. CP 14, 59, 90, 94.

In *Eu*, the Supreme Court subjected to strict scrutiny³ and then invalidated a variety of state mandates on how California’s political parties were to be organized, including identifying who would serve on state and county committees, limiting the chairmanship to one term only, and alternating the chairmanship between Northern and Southern California. The statute also established the time and place of party meetings. Like California’s statute, RCW 29A.80.061 directly interferes in the internal organization of the KCRCC by requiring it to elect District Chairmen, contrary to how KCRCC has decided best serves its needs. Like California’s statute, RCW 29A.80.061 directs the geographic nature of the party organization. State law cannot impose a particular geographic organization on the Republican Party. *Eu*, 489 U.S. at 230 (“By requiring parties to establish official governing bodies at the county level, California

³ 489 U.S. at 222.

prevents the political parties from governing themselves with the structure they think best.”). Neither the state nor a dissatisfied party activist under color of state law may impose independent legislative district organizations on KCRCC instead of the unified, county-wide focus adopted by the party.⁴

Both this Court and the U.S. Supreme Court reject the assertion (Pet. Br. at 14) that RCW 29A.80.061 must be presumed constitutional.

We reject appellant's contention that a legislative enactment challenged as being violative of First Amendment freedoms is entitled to a presumption of constitutionality. Although we will presume a statute challenged as an improper exercise of the state's police power to be valid, any legislative restraint imposed upon a First Amendment freedom “comes into court bearing a heavy presumption *against* its constitutionality.”

State v. Conifer Enterprises, Inc., 82 Wn.2d 94, 99, 508 P.2d 149 (1973)(quoting *Fine Arts Guild v. City of Seattle*, 74 Wn.2d 503, 506, 445 P.2d 602 (1968)); accord *State v. Homan*, 181 Wn.2d 102, 111 n.7, 330 P.3d 182 (2014).

In *Eu*, California had to prove its statutes served a compelling interest and were narrowly tailored. California’s statutes governing the

⁴ The Supreme Court dismissed, as irrelevant, its earlier decision in *Marchioro v. Chaney*, 442 U.S. 191, 99 S. Ct. 2243, 60 L. Ed. 2d 816 (1979) on the basis that the party members had not claimed that the statutory requirements placed by Washington law had impermissibly burdened First Amendment rights. Here the party has explicitly, repeatedly rejected the structure that RCW 29A.80.061 would impose. As in *Eu*, statutory restrictions on a party's right to organize its internal affairs violate the First Amendment right to associate for political purposes.

make-up of internal party organizations “directly implicate the associational rights of political parties and their members.” *Eu*, 479 U.S. at 229. “Because the challenged laws burden the associational rights of political parties and their members, the question is whether they serve a compelling state interest.” *Eu*, 479 U.S. at 231.

While a state has a compelling interest in preserving the integrity of its election process, neither RCW 29A.80.061 nor California’s party regulations affect election integrity.

[T]he State has not shown that its regulation of internal party governance is necessary to the integrity of the electoral process. Instead, it contends that the challenged laws serve a compelling “interest in the ‘democratic management of the political party’s internal affairs.’ ” This, however, is not a case where intervention is necessary to prevent the derogation of the civil rights of party adherents. Moreover, as we have observed, the State has no interest in “protect[ing] the integrity of the Party against the Party itself.” . . . [A] State cannot substitute its judgment for that of the party as to the desirability of a particular internal party structure, any more than it can tell a party that its proposed communication to party members is unwise.

Eu, 489 U.S. at 232-33 (internal citations omitted). From the outset, Petitioner’s objection has been to the internal administration of the KCRCC, not election integrity. His grounds for the Writ were:

that the orderly administration of the affairs of the King County Republican Central Committee will be frustrated if the Respondents are not directed to call meetings for the purpose of electing district chairmen as required by law.

CP 4.

Petitioner's later-asserted compelling state interest, that "[t]he state has a compelling interest in ensuring the county central committee does not impose control or improper influence over the legislative district committee," Pet. Br. at 15, is exactly the kind of "interest" found illegitimate in *Eu*.

Petitioner's campaign finance justification is likewise misplaced. Washington's campaign finance laws treat county and legislative district party organizations as a *unity* for contribution limits. RCW 42.17A.405(4)(b). Appointment and ratification of legislative district chairmen poses no risk of avoidance of campaign contribution limits.

Before the Superior Court, Petitioner asserted that the county party exercised improper influence over the legislative districts. CP 104-105, 108. This is merely another invitation for the Court to "protect the party from itself." The county chairman "is the chief executive officer of the Central Committee, and as such is responsible for Republican Party activities in King County." CP 11. Her decisions over the Party are the proper conduct of her office under the party bylaws.

The State's refusal to defend the statute before the Court of Appeals evidences the absence of a compelling interest. RCW 43.10.030(1) ("The attorney general shall . . . [a]pppear for and represent the state before the supreme court or the court of appeals in all cases in

which the state is interested.”). The Attorney General, despite repeated notice, has declined to defend RCW 29A.80.061.

Petitioner relies heavily on the statute’s express language. But its language is beside the point. Unless Petitioner proves that RCW 29A.80.061 serves a compelling state interest and is narrowly tailored to serve that interest, it cannot be applied to the KCRCC.

B. The last-minute addition of a provision governing post-general election, internal activities of the Republican Party was not disclosed in the title of ESB 6453 and is also a prohibited second subject.

Article II, section 19 of Washington’s Constitution mandates that “[n]o bill shall embrace more than one subject, and that shall be expressed in the title.” This provision contains two independent checks against legislative abuse: (1) no bill shall embrace more than one subject (single-subject rule) and (2) no bill shall have a subject which is not expressed in the title (subject-in-title rule). *State ex rel. Citizens Against Tolls v. Murphy*, 151 Wn.2d 226, 249, 88 P.3d 375 (2004). Statutory provisions are unconstitutional if they violate either requirement.

An act violates the single-subject rule if it has a general title and its provisions lack rational unity or if it has a restrictive title and contains provisions not fairly within the scope of that title. *City of Burien v. Kiga*, 144 Wn.2d 819, 825-26, 31 P.3d 659 (2001) (rational unity); *State v.*

Broadaway, 133 Wn.2d 118, 127, 942 P.2d 363 (1997); *State ex rel. Wash. Toll Bridge Auth. v. Yelle*, 32 Wn.2d 13, 26, 200 P.2d 467 (1948) (provisions not within scope of title). An act violates the subject-in-title rule if the legislative title's plain language does not indicate bill's scope and purpose to an inquiring mind or it does not give notice to parties whose rights and liabilities are affected by the legislation. *Patrice v. Murphy*, 136 Wn.2d 845, 853-54, 966 P.2d at 1275 (1998). ESB 6453, adopted as Chapter 271, laws of 2004 violated both rules.

ESB 6453's title is "An Act Relating to a qualifying primary." That title gives no clue that buried nearly fifty pages deep are provisions unconnected to primary elections, but which, instead, mandate the internal structure and governance of some major party organizations in the state.⁵ Selection of party legislative district leaders long after the general election does not fit within this Court's definition of a "qualifying primary." "[T]he common and ordinary meaning of the term 'qualifying primary' is an election in which the list of potential candidates for an office is reduced or refined and certain candidates are chosen to advance to the later general election." *Wash. State Grange v. Locke*, 153 Wn.2d 475, 496, 105 P.3d 9 (2005).

⁵ Not even the final bill report, detailing its provisions and the governor's partial veto, make any reference to the party organization provisions of the law. CP 50-51.

RCW 29A.80.061, added as a late amendment to ESB 6453, deals with events long after the August primary election (and also the general election). County Party organization meetings occur after general election results are certified and may be held as late as the second Saturday in January. RCW 29A.80.030. The PCOs who would vote in district chairman elections under RCW 29A.80.061 do not take office until December of the election year. RCW 29A.80.031. The district chairman elections under RCW 29A.80.061 occur “[w]ithin forty-five days after the statewide general election in even-numbered years.” RCW 29A.80.061 has no relation to a “qualifying primary.” Voters do not participate in the post-election party organization process; elected PCOs do. Whether those elected PCOs opt for a system of appointed and ratified legislative district chairmen, or elected district chairmen, has no relation to qualifying candidates for the general election.

This Court’s decision in *Locke* does not inoculate the legislation from further review. The Court addressed narrowly-focused questions relating to primary elections:

This court granted review to determine whether ESB 6453 or the final legislation, either because of the governor's veto or due to flaws in the legislative enactment process, violated *article III, section 12* (governor's veto powers), *article II, section 19* (single subject and subject in title rules), or *article II, section 38* (limitation on amendments) of the Washington Constitution.

153 Wn.2d at 479; *see also id.* at n.5. Whether RCW 29A.80.061's inclusion in the legislation violates the subject-in-title or single subject limitation was not presented. Under RAP 13.7(b), an appellate court generally reviews only the questions presented on appeal. Whether RCW 29A.80.061 was within the scope of ESB 6453 or adequately disclosed in the bill's title was not adjudicated in *Locke*.

C. The Superior Court's decisions in 1967 and 1993 that RCW 29A.80.061's predecessors, which established a different class of county political party for King County from that of other counties, violated the 14th Amendment bar the legislature's most recent overreach as well.

In the 1967 ruling striking down the first version of the district chairman election statute for violating the Fourteenth Amendment, the Superior Court explained, "[t]hen we would have one type of political party in King County, and another type of political party in all the rest of the legislative districts and counties in the state." CP 28-29. RCW 29A.80.061 is materially indistinct from the 1967 and 1993 versions of the statute. RCW 29A.80.061 still creates different structures for the Republican Party in Washington. The court may take judicial notice that not all Washington counties contain multiple legislative districts. Parties in counties with multiple legislative districts would have diffused

decision-making, based at the legislative district level, whereas smaller counties would still have centralized decision-making.

It is immaterial whether the disparate treatment was accomplished by singling out “AA counties” or phrasing the disparate directive to require “separate meetings of all elected precinct committee officers in each legislative district.” *Compare* former RCW 29.42.070 *with* RCW 29A.80.061. Only counties with more than one legislative district will have distinct district-level organizations.

D. Petitioner, successor to those who brought the 1967 challenge, cannot re-litigate the same issue.

In 1967 the identical claim, brought by other PCOs, was litigated and resolved on the merits. A litigant is entitled to “one but not more than one fair adjudication of his or her claim.” *Lejeune v. Clallam County*, 64 Wn. App. 257, 266, 823 P.2d 1144 (1992). Under Washington law, Petitioner is deemed to have been a party to the prior action. A party is “one who appears and participates” or “one whose interests are properly placed before the court.” *Id.* at 267 (internal quotation marks and citations omitted).

Collateral estoppel also applies. All four elements are present. First, the issue decided in the previous action must be identical with the issue posed in the later one. Second, there must have been a final

judgment on the merits in the first action. Third, the party to be barred must have been a party or be in privity with a party to the prior action. Fourth, application of the doctrine must not work an injustice on the party to be barred. *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d. 165 (1983).

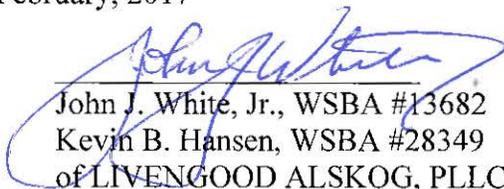
The issue presented is the same as the 1967 case-compelled election of District Chairmen. The 1967 judgment regarding District Chairmen elections is final. Petitioner is identically-situated, a member of the category of persons whose rights were adjudicated in the 1967 proceedings, and bound. Petitioner points to no injustice.

The prior determination that the predecessors of RCW 29A.80.061 violated the Fourteenth Amendment and the privileges and immunities clause of Washington's Constitution bind Petitioner and bar the remedy sought.

V. CONCLUSION

RCW 29A.80.061 is a re-animated, zombie statute. The Court should lay it to rest once and for all and affirm the Superior Court.

DATED this 13th day of February, 2017



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DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on February 13th, 2017, I caused service of the foregoing to the following counsel of record:

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Dated: February 13, 2017



Lee Wilson

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

ANDREW PILLOUD,)
)
Appellant,)
)
v.)
)
KING COUNTY REPUBLICAN)
CENTRAL COMMITTEE; LORI)
SOTELO, County Chairman, King)
County Republican Central Committee,)
)
Respondents.)

No. 73303-6-1

ORDER DENYING MOTION
FOR RECONSIDERATION
AND AMENDING OPINION

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STATE OF WASHINGTON
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The respondent King County Republican Central Committee filed a motion for reconsideration of the opinion filed on March 14, 2016. The panel has determined the motion should be denied but the opinion amended to delete footnote 2 on page 3. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied. The opinion of this court in the above-entitled case filed March 14, 2016 shall be amended as follows:

Footnote 2 on page 3 shall be deleted. All subsequent footnotes shall be renumbered accordingly.

The remainder of this opinion shall remain the same.

Dated this 20th day of May, 2016.





