

[NRS 293.485](#), subsection 1, would find that the Nevada Constitution and Statutes violate the 14th Amendment to the U.S. Constitution.

CONCLUSION

The mandate of the U.S. Supreme Court is clear. The Nevada durational residency requirement violates the 14th Amendment to the U.S. Constitution. We therefore advise your office to allow all persons to register to vote if they attempt to register within the time established by [NRS 293.560](#) for the close of registration. We would also note that the provisions of [NRS 298.090](#) to [298.240](#) regarding “new residents” voting in presidential elections would not longer be applicable.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By MICHAEL L. MELNER, *Deputy Attorney General*

86 Effect of a Change of Party Registration on a Candidacy in a Primary Election—[NRS 293.176](#) forbids a person from being a candidate for a party’s nomination in a primary election when he has changed his party registration since September 1 prior to the closing filing date for such election. But [NRS 293.176](#) does not apply to a new resident who delays changing party registration beyond the permissible date by reason of the 6-month residency requirement of [NRS 293.485](#).

CARSON CITY, July 10, 1972

THE HONORABLE DARREL H. DREYER, 5309 Masters Avenue, Las Vegas, Nevada 89109

DEAR MR. DREYER:

You have requested this office for a clarification of [NRS 293.176](#) as it may apply to the following facts which have come to your attention:

FACTS

In June 1971, a California resident, a registered Republican in that state, moved to Nevada. He waited the 6 months required by Article 2, Section 1 of the Nevada Constitution and by [NRS 293.485](#) for residency before registering as a voter in Nevada. In December 1971, after the 6-month period ended, he registered in Nevada as a Democrat. He now wishes to contend for the Democratic Party nomination for an elective state office in the September 5, 1972 primary election.

[NRS 293.176](#) provides, however, that:

No person may be a candidate for a party nomination in any primary election if he has changed the designation of his political party affiliation on an official affidavit of registration in the State of Nevada or in any other state since September 1 prior to the closing filing date for such election.

The person involved here obviously changed his party registration after the effective September 1 date, but was compelled by [NRS 293.485](#) to wait until after September 1 to do so.

QUESTION

Does [NRS 293.176](#) prohibit this person from filing for the Democratic Party nomination for an elective office in the September 5, 1972 primary election?

ANALYSIS

By reason of the right to vote, guaranteed by the State Constitution, every qualified person has the right to be a candidate for public office. *Preisler v. St. Louis*, 322 S.W.2d 748 (Mo. 1959); *Roberts v. Cleveland*, 48 N.M. 226, 149 P.2d 120 (1944). But one does not necessarily have the right to be a candidate of a particular political party. *Francis v. Sturgill*, 163 Ky. 650, 174 S.W. 753 (1915); 25 Am.Jur.2d Elections § 174.

A general election encompasses the basic rights of suffrage and participation in the political process. A citizen has a constitutionally protected right to participate equally with other citizens in such elections. *Dunn v. Blumstein*, No. 70-13 (U.S. Supreme Court, March 21, 1972). A primary election is in a different category. A primary election deals with the efforts of particular political parties or groupings to select and nominate candidates to represent them in the general election. At one time such nominations were subject simply to the whim and vagaries of each party or group. In order to prevent abuses, to insure that a fair choice was being offered voters, and to bring order and regularity to the nominating process, many states, including Nevada, enacted legislation to regulate the nominating process by creating the primary election. *Riter v. Duglass*, [32 Nev. 400](#), 109 P. 444 (1910).

Despite the imposition of the State in this matter, primary elections are designed solely to help particular political parties or groupings select their candidates. It is, therefore, the general view that the legislature of a state may, without violating state or federal constitutional prohibitions, impose reasonable requirements designed to insure that the person listed as a party. *Ray v. Blair*, 343 U.S. 214 (1952); *Riter v. Douglass*, supra; *Roberts v. Cleveland*, supra; 25 Am.Jur.2d Elections § 178.

Among these requirements, there may be imposed a test of the sincerity and substantiality of declared party affiliations. To determine the substantiality of party affiliation, to foster the legitimate interest of party loyalty, and to prevent opportunists from party-jumping at will, the Legislature may require not only that a party nominee be a member of that party at the time of the primary (to be evidenced by voter registration) but also that he has been a party member for a certain period of time. Thus, in *Roberts v. Cleveland*, supra, a New Mexico statute requiring a party nominee to be a member of that party for a year prior to the call for the primary election was upheld on this basis. A 2-year registration requirement of party affiliation was upheld in *Crowells v. Petersen*, 118 So.2d 539 (Fla. 1960). And a 3-month registration requirement of party affiliation was upheld in *Foote v. Hite*, 179 Cal.App.2d 762, 4 Cal.Rptr. 101 (1960).

The Nevada Legislature, therefore, had a legitimate and proper interest in enacting [NRS 293.176](#), namely, to insure the sincerity and substantiality of declared party affiliation. A person, desiring to be his declared party's nominee, must comply with this statute. The right to be a candidate in a primary for the nomination by a party is created by statute and can be exercised only upon the conditions prescribed. 25 Am.Jur.2d Elections § 174.

But what effect does the operation of Nevada's 6-month residency requirement prior to registering as a voter have on this statute? Assuming that this new resident wished to change his party affiliation by voter registration upon moving to Nevada, he was prevented from doing so in time for the September 1 deadline required by [NRS 293.176](#) by operation of [NRS 293.485](#).

This office is aware of the United States Supreme Court's decision in *Dunn v. Blumstein*, supra, declaring a state's durational residency requirement of 1 year and a county's durational residency requirement of 3 months unconstitutional as a denial of equal protection of the laws. This office believes, however, that for the purposes of this particular opinion it is not necessary to consider the effect of the U.S. Supreme Court's decision on [NRS 293.485](#). The new resident in the instant matter did not contest the

validity of [NRS 293.485](#). He treated it as valid and acted accordingly, waiting 6 months to establish residency before registering to vote. Therefore, laying aside consideration of Blumstein, supra, and this office's recent opinion on the unconstitutionality of Nevada's voter residency law, both this office and the new resident involved treat this statute as being valid for the particular purposes of this opinion.

Thus, there exist two statutes, both valid, which conflict with each other. By reason of [NRS 293.176](#) the new resident had to change his party registration prior to September 1, 1971, to run in the primary election but, by reason of [NRS 293.485](#), he could not register to vote in Nevada prior to December 1971. Because of the peculiar time circumstances involved when this person transferred residence from California to Nevada, [NRS 293.176](#) is unenforceable with regard to the new resident. An election law may be incapable of enforcement because of the inconsistency of its provisions. People ex rel. Hoyne v. Sweitzer, 266 Ill. 459, 107 N.E. 902 (1915). In this matter, since one of two inconsistent election laws has been observed faithfully, i.e. [NRS 293.485](#), the other, [NRS 293.176](#), cannot be enforced.

In this respect [NRS 293.485](#) is the most important of the two. No one can contend for a party's nomination in the primary unless he is registered as a member of that party. [NRS 293.177](#). One registers as a member of a party by registering to vote. One registers to vote by means of the criteria named in [NRS 293.485](#). In order to be a candidate at all, the new resident had to follow the procedures of [NRS 293.485](#) permitting him to register to vote. Having followed those procedures, he cannot be denied participation in the primary election by reason of a factual situation which makes another election law inconsistent, and therefore unenforceable, with a prior, heretofore valid, election law.

Therefore, it is the opinion of this office that the new resident in this matter cannot be denied the right to participate in the Democratic primary election on September 5, 1972. This result would appear to be further urged by consideration of [NRS 293.127](#):

This Title shall be liberally construed to the end that all electors shall have an opportunity to participate in elections and that the real will of the electors may not be defeated by an informality or by failure substantially to comply with the provision of this Title with respect to the giving of any notice or the conducting of an election or certifying the results thereof.

CONCLUSION

The Legislature has a legitimate interest in proving the sincerity and substantiality of party affiliation by requiring prospective party nominees in primary elections to be registered members of their parties for a particular length of time. Failure to comply with the time limit for change of party registration required in [NRS 293.176](#) will result in prohibiting a person from contending for his declared party's nomination in the primary.

However, where, because of a peculiar factual situation, a person is compelled to delay his change of party affiliation beyond the permissible date due to the registration requirements of [NRS 293.485](#), [NRS 293.176](#) is unenforceable as being inconsistent with a prior, valid and indispensable election statute.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By JAMES H. THOMPSON, *Chief Deputy Attorney General*

87 Lease-Purchase Agreements—Lease-purchase agreements permitted by [NRS 612.227](#) are included in the debt limitation provision of the State