McLean v. Durham County Board of Elections
DAN W. McLEAN v. DURHAM COUNTY BOARD OF ELECTIONS DAN W. McLEAN v. DURHAM COUNTY BOARD OF ELECTIONS.

222 N.C. 6
Supreme Court of North Carolina
Decided September 23 1942

222 N.C. 8A. A. McDonald for plaintiff, appellant.

R. P. Reade for defendant, appellee.

Attorney-General McMullan and Assistant Attorney-General Patton for State Board of Elections, amicus curice.

* * *

¶1 While plaintiff challenges tbe correctness of the judgment of tbe court below on a number of grounds, tbe primary and decisive question presented is this: May a candidate for county office be nominated by bis political party in a manner other than tbat prescribed by tbe State Primary Law when such Primary Law is applicable ?

¶2 Our original Primary Law was adopted in 1915. Ch. 101, Public Laws 1915. Various sections thereof have since been amended. In 1929 tbe General Assembly made provision for tbe use of tbe Australian Ballot "in all elections and in all primaries held in North Carolina." Cb. 164, Public Laws 1929. This act also repealed certain sections of tbe 1915 Act and amended other sections. Tbe acts and tbe amendatory acts are all brought forward and codified in Micbie's unofficial North Carolina Code of 1939. For convenience and brevity tbe pertinent sections of tbat publication are cited.

¶3 Plaintiff not only asserts tbat tbe 1915 Act is unconstitutional but also tbat, in effect, it was repealed by tbe 1929 Act.

¶4 Repeals by implication are not favored. Bunch v. Comrs., 159 N. C., 335, 74 S. E., 1048; Discount Corp. v. Motor Co., 190 N. C., 157, 129 S. E., 414; S. v. Kelly, 186 N. C., 365, 119 S. E., 755; Story v. Comrs., 184 N. C., 336, 114 S. E., 493; Hammond v. Charlotte, 205 N. C., 469, 171 S. E., 612; and tbe presumption is always against implied repeal. S. v. Perkins, 141 N. C., 797. Statutes on tbe same subject are to be reconciled if this can be done by giving effect to tbe fair and reasonable 222 N.C. 9 intendment of both acts. Guilford County v. Estates Administration, Inc., 212 N. C., 653, 194 S. E., 295; or by reasonable construction of the statutes. S. v. Calcutt, 219 N. C., 545, 15 S. E. (2d), 9. Repeal by implication results only when the statutes are inconsistent, Kearney v. Vann, 154 N. C., 311, 70 S. E., 749; necessarily repugnant, Guilford County v. Estates Administration, Inc., supra; utterly irreconciliable, S. v. Epps, 213 N. C., 709, 197 S. E., 580; or wholly and irreconciliably repugnant, Kelly v. Hunsucker, 211 N. C., 153, 189 S. E., 664.

¶5 The Australian Ballot Law, ch. 164, Public Laws 1929, does not purport to supersede and replace the Primary Law, ch. 101, Public Laws 1915, but merely to write into the former law a progressive and desirable

improvement. It contains abundant internal evidence that no repeal, except as therein expressly provided, was intended. It is merely amenda-tory of and supplementary to the 1915 Act, providing for the Australian Ballot and regulating the use thereof.

¶6 Just as the concepts of the direct primary and the secret ballot are consistent, so we think, are the laws providing for these mechanics of elections when construed according to the accepted rules, of .statutory construction.

¶7 As the Australian Ballot Law did not repeal the Primary Law and as the two acts deal with the same subject matter, they must be construed in pari materia. Phillips v. Slaughter, 209 N. C., 543, 183 S. E., 897.

¶8 Plaintiff's contention that he is entitled to have his name printed on the official ballot is bottomed on the provisions of section 5, ch. 164, Public Laws 1929; Michie's, section 6055 (a. 5), which, in part, reads: "The ballots printed for use under the provisions of this chapter . . . shall contain the names of all candidates who have been put in nomination by any primary, convention, mass meeting, or other assembly of any political party in this State, or have duly filed notice of their independent candidacy." This language is substantially all-inclusive. Standing-alone and unrelated to any other section or provision of the Primary and Election Law it must be said to 'furnish a sound basis for plaintiff's contention. Are there other related provisions which so modify this language as to deny plaintiff his right to have his name appear on the official ballot?

¶9 The Primary Law, Michie's, section 6018, et seq., provides an exclusive method for the nomination of candidates for State and county offices. It regulates the nomination for State offices (1) by a political party; (2) of an independent candidate; and (3) to fill a vacancy caused by the death of a candidate. It is made applicable to nominations for county offices and provides that a candidate must file a notice of candidacy and sign a pledge to abide by the results of the primary. Sec. 6022, sec. 6034. He must likewise pay a filing fee equal to 1% of the annual 222 N.C. 10 salary of the office be seeks. Sec. 6023, sec. 6034. And "Only those who have filed notice of their candidacy and who shall have complied with the requirements of law applicable to candidates before primaries with respect to such primary election shall have their names printed on the official ballot of their respective parties." Sec. 6033.

¶10 Originally, the Primary Law excepted forty-nine counties. It has been so amended that now only three counties are excluded. In these excluded counties nominations may be made in convention, mass meeting or other assembly in accord with party rule and regulation. In making provision for official printed ballots it was necessary that the General Assembly bear this in mind and to use language sufficiently broad to assure ballots in each and every county. Hence, the wording of section 6055 (a 5).

¶11 When the provisions for primaries and elections as contained in the several acts of the Legislature are considered as one composite whole, it clearly appears that only those who have been legally nominated for county office under the law applicable to the county in which the nomination is made shall have their names appear on the official ballot. A candidate is not a nominee unless and until he has been put in

nomination as required by statute. Until he becomes a nominee in the required .manner he cannot claim the right to have his name printed on the official ballot.

¶12 Plaintiff failed to file notice of his candidacy or to sign the required pledge or to pay the necessary filing fee. Neither he nor his party could disregard or evade these positive requirements. Hence, he is not the nominee of any political party, within the meaning of the Primary Law, and is not entitled to the relief he seeks.

¶13 In no sense is the filing fee required by section 6023 and section 6034 a tax within the meaning of Art. II, sec. 14, or a local law as condemned by Art. II, sec. 29, of the Constitution of North Carolina. It is only one of the reasonable means adopted by the Legislature to regulate primary elections for the selection of candidates for public office and to prevent an indiscriminate scramble for office and the wholesale filing of petitions for nomination regardless of fitness or qualification.

¶14 While elections should be frequently held, Art. I, sec. 28, they must be conducted in an orderly manner. Nominations for office must be in accord with reasonable rules and regulations. The power and authority to control and regulate primaries and elections as they affect county and State offices rests exclusively in the legislative branch of the State Government, unaffected by any provisions of the Federal Constitution except the Fourteenth Amendment. Newberry v. U. S., 256 U. S., 232, 65 L. Ed., 913; U. S. v. Gradwell, 243 U. S., 476, 61 L. Ed., 857. So long as there is no unjust discrimination the State may, by exercising its inherent police power, suppress whatever evils may be incident to a 222 N.C. 11 primary or convention for tbe designation of candidates for election to public office. Newberry v. U. S., supra. Statutes prescribing reasonable rules and regulations to tbis end are constitutional. S. v. Cole, 156 N. C., 618. See also Socialist Party v. Uhl, 155 Cal., 776, 103 Pac., 181; Ex Parte, S. v. ex rel. Bragg, 197 So., 32; S. ex rel. Landis v. Carson, 154 So., 150; Koelsch v. Girard, 35 Pac. (2d), 816; S. v. Carrington, 190 N. W., 390; Whitney v. Skinner, 241 S. W, 350; Hamilton v. Davis, 217 S. W., 431.

¶15 We find nothing in any of tbe pertinent acts which conflicts with any provision either of the State or of the Federal Constitution. Their enactment was a valid exercise of legislative authority and deprives plaintiff of no constitutional right.

¶16 The judgment below is

¶17 Affirmed.