Anderson v. Babb

John B. ANDERSON, Independents for Anderson Party of North Carolina, Phillip A. Diehl, Gerald Eisenstat, Appellees, v. R. Kenneth BABB, Sidney Barnwell, Shirley M. Herring, Ruth T. Samashko, John L. Stickley, Alex K. Brock, Appellants.

632 F.2d 300 (1980)
No. 80-1590.
United States Court of Appeals, Fourth Circuit.
Argued September 8, 1980.
Decided September 19, 1980.

Walter E. Dellinger, School of Law, Duke University, Durham, N. C. (James Wallace, Jr., Deputy Atty. Gen. for Legal Affairs, North Carolina Dept. of Justice, Raleigh, N. C., on brief), for appellants.

Herbert L. Hyde, Asheville, N. C., David F. Kirby, Kirby & Wallace, Ronald D. Eastman, Cadwalader, Wickersham & Taft, Washington, D. C., on brief, for intervenors.

George T. Frampton, Jr., Washington, D. C. (Mitchell Rogovin, Vicki C. Jackson, Ellen M. Semonoff, Rogovin, Stern & Huge, Washington, D. C., Jonathan Harkavy, Smith, Patterson, Follin, Curtis, James & Harkavy, Greensboro, N. C., on brief), for appellees.

Before HAYNSWORTH, Chief Judge, WINTER and PHILLIPS, Circuit Judges.

* * *

PER CURIAM:

¶1 On this appeal the Democratic National Committee (DNC) as an intervening defendant[1] challenges the district court's determination that the plaintiff John B. Anderson (Anderson) "did not participate in the presidential primary election in North Carolina" within the meaning of N.C.Gen.Stat. § 163-213.6, and that he is, therefore, entitled to have his name placed on the November 4, 1980 general election ballot as the presidential candidate of the political party, Independents for Anderson Party of North Carolina. Faced as it was with the cryptic wording of N.C.Gen.Stat. § 163-213.6 and the conflicting interpretations that had been placed upon that statute by the North Carolina State Board of Elections and its Executive Secretary—Director, we conclude that it was proper for the district court, exercising its pendent jurisdiction, to make its own interpretation of that statute. Concluding further that the district

court's ensuing interpretation of the statute was, as a matter of law, a valid one, we affirm its injunctive decree directing that Anderson's name be placed on the general election ballot.

¶2

¶3 I

The factual background, essentially as recited by the district court in its memorandum opinion, is as follows. At its 1971 session the General Assembly of North Carolina enacted Article 18A of Chapter 163 of the General Statutes entitled "Presidential Preference Primary Act," which provides for a primary election in which the voters of North Carolina are given an opportunity "to express their preference for the person to be the presidential candidate of their 632 F.2d 303 political party," the election to be held on the Tuesday after the first Monday in May of the year in which presidential elections are held. N.C.Gen.Stat. § 163-213.4 provides in pertinent part that the State Board of Elections shall convene on Tuesday following the first Monday in February preceding "the presidential preference primary election" and at that time nominate as presidential primary candidates all candidates affiliated with a political party recognized pursuant to other provisions of the election laws. N.C.Gen.Stat. § 163-213.6, the provision of the Presidential Preference Primary Act that is in controversy here, reads as follows:

¶4

¶5 § 163-213.6. Notification to candidates.—The State Board of Elections shall forthwith contact each person who has been nominated by the Board or by petition and notify him in writing that, upon his written request, to be filed with the Board within 15 days of the notice to him by the Board, his name will be printed as a candidate of a specified political party on the North Carolina presidential preference primary ballot. A candidate who participates in the North Carolina presidential preference primary of a particular party shall have his name placed on the general election ballot only as a nominee of that political party. The board shall send a copy of the "Presidential Preference Primary Act" to each candidate with the notice specified above.

Acting pursuant to this statute, the Board on February 6, 1980 notified Anderson that he had been nominated as a candidate for the Republican presidential primary to be held in North Carolina on May 6, 1980. In a letter dated February 12, 1980, Anderson notified the Board that he accepted the nomination.

¶6

On April 24, 1980, Anderson publicly announced his intention to withdraw his name as a candidate for the Republican presidential nomination and to pursue an independent candidacy for the office of

President of the United States. This announcement was widely publicized in the news media of North Carolina and throughout the nation. On that same day, Anderson mailed a notarized notice of withdrawal of his candidacy as a Republican presidential candidate to the Board and specifically revoked his previous acceptance of the Board's nomination. He requested that his name be removed from the ballot for the primary election to be held on May 6, 1980, but his letter was not received by the Board until April 30, 1980, at which time the ballots had already been printed and distributed.

¶7

Between the date of his acceptance of the Board's nomination on February 12, 1980 and his withdrawal as a candidate on the Republican ticket on April 24, 1980, Anderson's campaign efforts in North Carolina were minimal. He made no visits to the state, opened no campaign offices and set up no campaign apparatus. A total of $2,411.30 was expended in North Carolina by the Anderson campaign to reimburse expenses incurred "to determine the political climate in North Carolina with respect to Anderson's candidacy."

¶8

Following his withdrawal from the primary election campaign on April 24, 1980, Anderson was faced with two options as to methods of having his name placed on the November general election ballot in North Carolina: he could have collected signatures on a petition from registered voters of ten percent of the number of votes cast in the last gubernatorial election, or he could have set up a new political party. Had he chosen the petition route, it would have been necessary for Anderson to produce over 166,000 signatures by April 25, 1980, one day after he had announced his candidacy as an independent, a practical impossibility. Anderson therefore chose the new party route.

¶9

There followed a series of discussions between Anderson's attorneys and the Executive Secretary-Director of the State Board of Elections concerning procedures to be followed for establishing a new political party and nominating Anderson for President as the nominee of that party. A hand-delivered letter by Anderson's attorneys to the Executive Secretary-Director of the Board dated May 5, 1980, stating counsel's understanding of the manner in which 632 F.2d 304 the Board interprets and applies the law pertaining to the formation of new political parties in North Carolina, was endorsed by Alex K. Brock, the Executive Secretary-Director of the Board, in a statement appended to the end of the letter providing that "I agree that the interpretations of North Carolina law set forth above are accurate." Included in the letter was a paragraph reading as follows:

¶10

¶11 The fact that a person's name appears on the North Carolina primary as a nominee for the office of President does preclude such person from having his name placed on the general election ballot as the nominee of a new political party for the same office in the same year.

Following the words "does" in the quoted paragraph, however, there appears an asterisk referring to a handwritten notation at the bottom of the letter, apparently made by Mr. Brock, which reads:

¶12

¶13 * Not in the case of John Anderson inasmuch as he "revoked" his nomination in the N. C. Primary prior to the date of the primary election. (S) AKB

As stated before, when the Board received Anderson's letter withdrawing his candidacy and requesting that his name be removed from the primary ballot, the ballots had already been printed, and on the day of the election Anderson's name remained on the ballot. In fact, absentee ballots containing his name had been distributed by the Board beginning on March 7, 1980, and in the May 6 election Anderson received 8,542 votes, which represented 5.07 percent of the votes cast in the Republican presidential preference primary. This figure included some absentee ballots.

¶14

On June 17, 1980, the Board of Elections approved the petition filed on behalf of Anderson to organize a new political party to be known as "Independents for Anderson Party of North Carolina" and certified the party to submit its nominees selected by convention provided the nominees were otherwise qualified under the laws and Constitution of North Carolina. Pursuant to this action of the Board, the party held its convention and in apt time certified the name of John B. Anderson as its candidate for President of the United States.

¶15

On July 29, 1980, the Board held a public hearing, at which both Anderson and the DNC were represented by counsel, to determine the validity of Anderson's placement on the November general election ballot as the presidential candidate of the Independents for Anderson Party of North Carolina. In addition to the foregoing facts, the Board found that Anderson "did participate in the North Carolina presidential preference primary within the meaning of G.S. 163-213.6." It therefore concluded that, while the Independents for Anderson Party of North Carolina was a bona fide political party in North Carolina, Anderson was not qualified to represent that party as its presidential candidate in the November general election.

¶16

Anderson, the Independents for Anderson Party of North Carolina and several Anderson supporters immediately instituted suit against the Board in the United States District Court for the Eastern District of North Carolina. In this suit seeking injunctive and declaratory relief filed pursuant to 42 U.S.C. § 1983, they alleged violations of their rights under the first, fifth and fourteenth amendments of the United States Constitution. They contended that, under the Board's interpretation, N.C.Gen.Stat. § 163-213.6 was unconstitutional as applied to Anderson because it deprived Anderson of his first amendment right to run for public office and because it violated the fundamental rights of Anderson's supporters to nominate and vote for the candidate of their choice. In the alternative they argued that the Board had misinterpreted the statute. After a hearing on August 12, 1980, the district court granted the DNC's motion to intervene and issued a temporary restraining order preventing the Board from printing the general election ballots without Anderson's name.

¶17

After a subsequent hearing on cross-motions for summary judgment, the district court found that the reference in N.C.Gen.Stat. § 163-213.6 to a "candidate who participates in the North Carolina presidential 632 F.2d 305 preference primary" was intended to include only those candidates who willfully, intentionally or knowingly took part in the primary election itself. It therefore concluded that, because Anderson had "revoked" his nomination as a Republican presidential candidate prior to the date of the North Carolina primary election, his name could not be barred from placement on the general election ballot by virtue of N.C.Gen.Stat. § 163-213.6.

¶18

Although the DNC has raised a number of procedural and substantive issues, its appeal resolves itself ultimately into two questions. First, was it proper for the district court to make its own interpretation of N.C.Gen.Stat. § 163-213.6? Second, if so, is the construction that resulted a valid one?

¶19

¶20

II

In order for a federal court not sitting in diversity to respond to a question of local law, that question must be so entwined with a substantial federal claim "that the entire action before the court comprises but one constitutional `case.'" United Mine Workers v. Gibbs, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1965). Although the insubstantiality of federal claims may be demonstrated by previous decisions that foreclose the subject and leave no room for controversy, Levering & Garrigues Co. v. Morrin, 289 U.S. 103, 105-06, 53 S.Ct. 549, 550, 77 L.Ed. 1062 (1933), the Supreme Court has emphasized that to have this foreclosing effect the prior decisions must "inescapably render

the claims frivolous," Goosby v. Osser, 409 U.S. 512, 518, 93 S.Ct. 854, 858, 35 L.Ed.2d 36 (1972). The DNC has contended, both on this appeal and in the court below, that the decision of the Supreme Court in Storer v. Brown, 415 U.S. 724, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974), renders N.C.Gen.Stat. § 163-213.6 unquestionably constitutional within any reasonably possible interpretation. While we agree that the "disaffiliation" provision upheld in Storer was, in general terms, more restrictive than the "sore loser" provision before the district court in the present action, we do not believe that constitutional controversy is thereby foreclosed. It is not entirely clear whether the Supreme Court's statements with respect to California's direct party primary for congressional office would apply with equal force to North Carolina's presidential preference primary.[2] Moreover, as the Court noted in Storer,
¶21

¶22 632 F.2d 306 Decision in this context, as in others, is very much a "matter of degree," very much a matter of "consider[ing] the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." What the result of this process will be in any specific case may be very difficult to predict with great assurance.

Id. at 730, 94 S.Ct. at 1279 (citations omitted). We must therefore regard the constitutional challenge to North Carolina's "sore loser" provision as not rendered "wholly insubstantial" by the decision in Storer.
¶23

Assuming the existence of a substantial federal claim, the instant action would seem to fall very much in the mold of Siler v. Louisville & Nashville R. R., 213 U.S. 175, 29 S.Ct. 451, 53 L.Ed. 753 (1909). In Siler the Supreme Court held that, in the absence of a ruling from the state's highest court, a federal court may, pursuant to its pendent jurisdiction, ignore the decision of a state administrative agency and make its own ruling on the proper interpretation of a state statute. Id. at 193-94, 29 S.Ct. at 455-56. Of course Erie R. R. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), decided after Siler, now clearly mandates that a federal court look further than a state's highest court for guidance as to the proper construction of a state statute. Indeed, there may be circumstances in which a federal court would be bound by the administrative interpretation of a state agency. We need not now describe those circumstances, however, for it is clear that they were not approached in the present action. Faced with the utter ambiguity of the statutory language, the conflicting opinions of the Board and its own Executive Secretary-Director, and the time constraints imposed by an imminent election, we conclude that the district court had the power and

indeed no choice but to attempt its own construction of N.C.Gen.Stat. § 163-213.6.[3]

¶24

¶25

III

Having concluded that it was proper for the district court to make its own interpretation of North Carolina's "sore loser" provision, we turn now to the question whether that interpretation was a valid one. It should first be noted that N.C.Gen.Stat. § 163-213.6 is a statute that begs for judicial construction or legislative clarification. Not only is its wording subject to a wide variety of interpretations and its administrative construction conflicting, it is accompanied by little in the way of legislative history.[4]

¶26

 Despite this virtual absence of guidance, the district court's determination must still be reviewed for its adherence to two principles of statutory construction. The first of these is the canon that where, as here, neither legislative history nor administrative interpretation sheds clear light on the meaning of an ambiguous statute, a court is bound only to render a decision that is reasonable in light of the overall policy of the legislation under consideration and the commonly accepted meaning of the words used in the statute. See Hassett v. Welch, 303 U.S. 303, 58 S.Ct. 559, 82 L.Ed. 858 (1938) (by implication). Applying this principle to the construction of N.C.Gen.Stat. § 163-213.6, we conclude that the district court might reasonably have interpreted the critical phrase "participates in the North Carolina presidential preference primary" as meaning (1) notifying the Board, as required by the statute, of one's desire to have one's name placed on the primary ballot,[5] (2) actively seeking election in the primary election itself,[6] or (3) engaging in other activity falling somewhere between those two extremes.[7]

¶27

This basic range of choice was rightly influenced, however, by the second principle by which the district court properly felt itself constrained in construing North Carolina's "sore loser" statute. That principle is the constitutional commonplace that a court should avoid, if possible, that construction of a statute that would result in its constitutional invalidation. Lynch v. Overholser, 369 U.S. 705, 710-11, 82 S.Ct. 1063, 1067, 8 L.Ed.2d 211 (1962); Blasecki v. City of Durham, 456 F.2d 87, 93 (4th Cir.1972). See also Siler v. Louisville & Nashville R. R., 213 U.S. at 193, 29 S.Ct. at 455, 53 L.Ed. 753. As we have already noted, it is not entirely clear that N.C.Gen.Stat. § 163-213.6, as construed by the Board, would fall within the pale of constitutional validity delineated by

Storer. We need not further speculate on that question, however, inasmuch as it is obvious that, because decisions on the constitutionality of election statutes are often a "matter of degree," Dunn v. Blumstein, 405 U.S. 330, 348, 92 S.Ct. 995, 1005, 31 L.Ed.2d 274 (1972), the relatively less restrictive interpretation of N.C.Gen.Stat. § 163-213.6 made by the district court is that one of the three basic possibilities most likely to withstand constitutional scrutiny. Moreover, it must be remembered that, while a state undoubtedly has a significant interest "in avoiding confusion, deception, and even frustration of the democratic process at the general election," Jenness v. Fortson, 403 U.S. 431, 442, 91 S.Ct. 1970, 1976, 29 L.Ed.2d 554 (1971), it is under a duty to use the least restrictive means necessary to effectuate that interest,

632 F.2d 309 Storer v. Brown, 415 U.S. at 760-61, 94 S.Ct. at 1293-94 (Brennan, J., dissenting).

¶28

Within these principles of statutory construction we therefore conclude that the district court's interpretation was a proper and valid one. The court's resulting conclusion that under this construction of the state statute and on the undisputed facts Anderson had not participated in the presidential preference primary is manifestly without error, so that the constitutional questions presented are not necessary to decision and Anderson is entitled to the relief sought in this action.

¶29

AFFIRMED.

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