Clark v. Meyland

Blake C. CLARK v. A. L. MEYLAND, Chairman Guilford County Board of Elections, Fred M. Upchurch and Arthur Utley, Members of The Guilford County Board of Elections, and Margaret Schecter, Secretary of the Guilford County Board of Elections.

134 S.E.2d 168 (1964)

Supreme Court of North Carolina.

January 19, 1964.

William L. Osteen, J. Halbert Conoly, Charles E. Dameron, III, Jordan J. Frassineti, Greensboro, for plaintiff appellant.

Durwood S. Jones, Greensboro, for defendant appellees.

T. W. Bruton, Atty. Gen., James F. Bullock, Asst. Atty. Gen., amicus curiae.

* * *

HIGGINS, Justice.

In this case the plaintiff, a registered Democrat, sought to change his party affiliation and to qualify himself to vote in the Republican Primary. The election officials, as a condition precedent to the change, demanded that he take the oath prescribed by G.S. § 163-50, as follows:

"I, , do solemnly swear (or affirm) that I desire in good faith to change my party affiliation from the party to the party, and that such change of affiliation be made on the party registration books, and I further solemnly swear (or affirm) that I will support the nominees of the party to which I am now changing my affiliation in the next election and the said party nominees thereafter until I shall, in good faith, change my party affiliation in the manner provided by law, so help me God." (emphasis added)

The plaintiff refused to take that part of the oath above underscored. The election officials refused to make the requested transfer. The case presents this question: Did the General Assembly act within its competence in requiring, as a condition of the party transfer, that the plaintiff make oath in the manner set forth in the statute? The plain wording of the oath obligated the plaintiff to support the nominees of the Republican Party "in the next general election and the said party nominees thereafter until I shall, in good faith, change my party **[134 S.E.2d 170]** affiliation in the manner provided by law." For additional emphasis to this in futuro commitment, the Legislature by G.S. § 163-197, provided that any person shall be guilty of a felony who knowingly swears falsely with respect to any matter pertaining to any primary or election.

The true intent and purpose of the primary laws are stated in States' Rights Democratic Party v. State Board of Elections, 229 N.C. 179, 49 S.E.2d 379: "But they (primary laws) do not undertake to deprive the voter of complete liberty of conscience or conduct in the future in the event he rightly or wrongly comes to the conclusion subsequent to the primary that it is no longer desirable for him to support the candidates of the party in whose primary he has voted. Besides, the legislature has expressly declared that nothing contained in the laws governing primary elections `shall be construed to prevent any elector from casting at the general election a free and untrammeled ballot for the candidate or candidates of his choice.' G.S. 163-126." The court held illegal rules of the State Board of Elections disqualifying those registered to vote in the primary from filing a petition for a new party.

Many of the cases in other states hold that obligation to support the nominees of the primary imposes a moral obligation which is already implicit in the very act of taking part in the primary. "(T)he primary voter, with or without the statute, incurred a moral obligation binding on his honor." The court concluded that the obligation was no greater with than without the oath. "The voter's conduct must be determined largely by his own peculiar sense of propriety and of right. It is for such reasons that the courts do not undertake to compel performance of the obligation." Westerman v. Mims, 111 Tex. 29, 227 S.W. 178; Ray v. Garner, 257 Ala. 168, 57 So.2d 824; Chapman v. King, 154 F.2d 460 (5th Ct. denied), 327 U.S. 800, 66 S.Ct. 905, 90 L. Ed. 1025; State ex rel. Labauve v. Michel, 121 La. 374, 46 So. 430.

Without the binding commitment to support the "next" and the "thereafter" candidates of the party, the remaining parts of the oath would seem to furnish adequate means by which to determine good faith membership in the party and to prevent raids by one party into the ranks of the other in primary nominations. Any elector who offers sufficient proof of his intent, in good faith, to change his party affiliation cannot be required to bind himself by an oath, the violation of which, if not sufficient to brand him as a felon, would certainly be sufficient to operate as a deterrent to his exercising a free choice among available candidates at the election—even by casting a write-in ballot. His membership in his party and his

right to participate in its primary may not be denied because he refuses to take an oath to vote in a manner which violates the constitutional provision that elections shall be free. Article I, Sec. 10, Constitution of North Carolina.

When a member of either party desires to change his party affiliation, the good faith of the change is a proper subject of inquiry and challenge. Without the objectionable part of the oath, ample provision is made by which the officials may strike from the registration books the names of those who are not in good faith members of the party. The oath to support future candidates violates the principle of freedom of conscience. It denies a free ballot— one that is cast according to the dictates of the voter's judgment. We must hold that the Legislature is without power to shackle a voter's conscience by requiring the objectionable part of the oath as a price to pay for his right to participate in his party's primary.

The oath as prescribed by G.S. § 163-50 is divisible. It stands, but with the objectionable part eliminated. Banks v. City of Raleigh, 220 N.C. 35, 16 S.E.2d 413. And, as stated in Starbuck v. Town of Havelock, 252 N.C. 176, 113 S.E.2d 278, "We apply to this Act the law so frequently declared with respect to partially invalid **[134 S.E.2d 171]** legislative acts." Citing Constantian v. Anson County, 244 N.C. 221, 93 S.E. 2d 163; Commissioners v. Boring, 175 N.C. 105, 95 S. E. 43; Smith v. Wilkins, 164 N.C. 135, 80 S.E. 168.

No doubt, the authorities, upon a new application, will permit the plaintiff to change his party affiliation without requiring that part of the oath herein declared to be invalid.

The judgment of the Superior Court of Guilford County is

Reversed.