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Oklahoma Supreme Court Cases

LAWHORN v. ZIRIAX

2012 OK 78

Case Number: **111026**

Decided: 09/13/2012

As Corrected: September 14, 2012

THE SUPREME COURT OF THE STATE OF OKLAHOMA

Cite as: 2012 OK 78, __ P.3d __

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

REX LAWHORN, State Chairman of the Americans Elect Party of Oklahoma; TROY BRADLEY, SANDRA J. HORN, TRACY A. HURSH, ANTHONY PAPILLION, LLOYD V. HURSH, III, JIMMY L. BAKER, EPHRAIM Z. KNIGHT, Presidential Electors of the Americans Elect Party of Oklahoma; GARY JOHNSON, and JAMES P. GRAY, Candidates For President and Vice President of the United States, respectively, Petitioners,

v.

PAUL ZIRIAX, Secretary of the Oklahoma State Election Board; STEVE CURRY, Chairman on the Oklahoma State Election Board; DIANA SPURLOCK, Member of the Oklahoma State Election Board; JERRY BUCHANAN, Alternate Member of the Oklahoma State Election Board, Respondents.

CORRECTED ORDER

¶1 Petitioners request that this Court assume original jurisdiction and issue a writ of mandamus compelling Respondents to place the names of Petitioners Troy Bradley, Sandra J. Horn, Tracy A. Hursh, Anthony Papillion, Lloyd V. Hursh, III, Jimmy L. Baker, and Ephriam Z. Knight on the Oklahoma ballot as Presidential Electors along with the names of Gary Johnson of New Mexico as a candidate for President of the United States and James P. Gray of California as a candidate for Vice President of the United States as nominees of the American's Elect Party in Oklahoma for the November 6, 2012, General Election. Petitioners also seek an order temporarily enjoining the respondent Oklahoma State Election Board from printing ballots for the November 6, 2012, General Election. Original jurisdiction is assumed. Petitioners' request for a writ of mandamus and temporary injunction is denied for the following reasons:

¶2 Art. II, Sec. 1, Clause 2 of the United States Constitution, gives State Legislatures the authority to regulate who is placed on the state ballot. Bush v. Palm Beach County Canvassing Bd., 531 U.S. 70, 76, 121 S.Ct. 471, 148 L.Ed.2d 366 (2000); See, Storer v. Brown, 415 U.S. 724, 730, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974); McClendon v. Slater, 1976 OK 112, ¶5, 554 P.2d 774. This provision grants extensive power to the state to pass laws regulating the selection of electors. Williams v. Rhodes, 393 U.S. 23,28-29, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968). The Oklahoma State Legislature has chosen to regulate the election process and recognition of political parties in general through the enactment of 26 O.S. 2011 §§1-101 et seq., and the Presidential Ballot through 26 O.S. 2011 §§10-101 et seq., which govern the nomination, requirements for, and placement on the ballot of, Presidential Electors.

¶3 The Americans Elect party was formed in Washington, DC, where it elected officers and adopted rules and bylaws. The party's Vice Chairman filed Notice of its desire to seek recognition in Oklahoma on October 3, 2011. With submissions filed by its officers in Washington, D.C., Americans

Elect obtained recognition in Oklahoma by complying with the requirements of 26 O.S. 2011 §1-108, which governs the formation and recognition of new political parties within the state.

¶4 Petitioners were never authorized to act on behalf of Americans Elect, the national party recognized by the Oklahoma Board of Elections pursuant to 26 O.S. 2011 §1-108. The Americans Elect Party provided the Oklahoma Election Board with copies of its bylaws, Pre-Election Convention Rules and Post-Election Convention Rules, and a Trademark Registration. Article 7 of the Bylaws required that the formation of any state-based chapters or committees of the Americans Elect needed to be authorized by the Board of Directors. No state-based chapter in Oklahoma was ever authorized. Articles 8 and 9 of the Bylaws limit who can bind the party and direct its activities, and preclude the selection of Presidential Electors by a local subdivision of the Party, even if one were to exist.

¶5 Because Petitioners were not authorized by Americans Elect to act on its behalf, they are unable to satisfy the requirements of the statutory provisions governing the selection of Presidential Electors in Oklahoma set out in 26 O.S. 2011 §10-101. The statute requires that nominees for Presidential Electors of any recognized political party must be selected at a statewide convention of their party in a manner determined by their party and certified by the party's chairman to the Secretary of the State Election Board between 180 days and 90 days before the date of the General Election for which they will appear on the ballot. Title 26 O.S. 2011 §10-101. The Americans Elect party recognized in the State of Oklahoma pursuant to 26 O.S. 2011 §1-108 decided not to run any candidates for President or Vice President in 2012, and on August 6, 2012, notified the Oklahoma Election Board that the party was terminating by resolution of the Board of Directors. Petitioners attempt to step into the shoes of Americans Elect after the fact does not satisfy the requirements of 26 O.S. 2011 §1-108 because Petitioners are not themselves, nor are they representatives of, a recognized political party in Oklahoma.

¶6 Petitioners' nominees for Presidential Electors are unable to satisfy the oath requirement provided for in 26 O.S. 2011 §10-102. The statute requires they swear an oath stating that, if elected, they will cast their ballots for the persons nominated by the national convention of their party. Title 26 O.S. 2011 §10-102. Americans Elect dissolved as a national political party as of August 6, 2012, after informing the Oklahoma Election Board that it would not be nominating candidates for President and Vice President for the November, 2012, election. Thus, any potential nominees for Presidential Elector chosen by Petitioners will be unable to fulfill the requirements of 26 O.S. 2011 §10-102 and cannot be placed on the November, 2012, ballot.

¶7 Because the petitioners have not shown that they are entitled to extraordinary relief and a likelihood of success on the merits, the petition for a temporary injunction must be denied. While this court recognizes the importance of choice and ballot access in elections, the law does not permit unauthorized groups to usurp the status of recognized political parties simply because those parties chose not to run candidates or chose to disband. If Petitioners wish to become a recognized political party in Oklahoma, then they are required to go through the formation and recognition process detailed in 26 O.S. 2011 §1-108.

¶8 Original jurisdiction is assumed. Petitioners' request for a writ of mandamus is denied. Petitioners' request that this Court temporarily enjoin the respondent Oklahoma State Election Board from printing ballots for the November 6, 2012, General Election is denied.

¶9 DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 13TH DAY OF SEPTEMBER, 2012.

/S/CHIEF JUSTICE

ALL JUSTICES CONCUR.

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Cite	Name	Level
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Oklahoma Supreme Court Cases		
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<u>1976 OK 112, 554 P.2d 774,</u>	<u>McCLENDON v. SLATER</u>	Discussed
Title 26. Elections		
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<u>26 O.S. 1-108,</u>	<u>Formation of New Political Parties</u>	Discussed at Length
<u>26 O.S. 1-101,</u>	<u>General Elections</u>	Cited
<u>26 O.S. 10-101,</u>	<u>Nomination of Presidential Electors - Certification</u>	Discussed at Length
<u>26 O.S. 10-102,</u>	<u>Oath for Presidential Electors</u>	Discussed at Length