FEDERAL ELECTION COMMISSION

AO 1994-5

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Request for Reconsideration

William D. White, et al.
petitioner,

REQUEST FOR RECONSIDERATION

On April 14, 1994, this Commission concluded that I am not a candidate for the United States Senate due to a lack of $5,000 in campaign funds.

I hereby request the Federal election Commission to reconsider its Advisory Opinion for the following reasons:

1. The Commission's decision is inconsistent with the Commission's previous interpretations of candidate status.

Page 3 of the Commission's "Campaign Guide" states "Money raised and spent to test the waters does not count toward this [$5,000] threshold until the individual decides to run for federal office or conducts activities that indicate he or she is actively campaigning rather than testing the waters..."[emphasis added].

The decision to run or the act of actively campaigning determine whether or not a person is to be regarded as a candidate, not the mere presence of $5,000. Further, amounts in excess of $5,000 may be spent without triggering the reporting obligations if the purpose is "testing the waters". It is the potential candidate's intention to run for office, not their financial activities, that determine their status. It is clear that a might-be candidate could spend $100,000 testing the waters, decide not to run, and have no reporting obligation.

2. The Commission's decision is unconstitutional.

The Fourteenth Amendment guarantee of equal protection does not allow the imposition of burdens that fall with unequal weight on members of a class.

Bullock v. Carter, 405 U.S. 134, 142 - However, the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that effect the candidates always have at least some theoretical, correlative effect on voters.

143 - Unlike a filing fee requirement that most candidates could be expected to fulfill from their own resources or at least thru modest contributions, the very size of the fees imposed under the Texas system gives it a patently exclusinary character. [$1000 for U.S. Senator] Many potential office seekers lacking both personal wealth and affluent backers are in every practical sense precluded from seeking the nomination of their chosen party, no matter how qualified they might be, and no matter how broad or enthusiastic their popular support. The effect of this exclusionary mechanism on voters is neither incidental nor remote.

144 - Not only are voters substantially limited in their choice of candidates, but also there is the obvious likelihood that this limitation would fall more heavily on the less affluent segment of the community, whose favorites may be unable to pay the large costs requires by the Texas system. To the extent that the system requires candidates to rely on contributions from voters in order to pay the assessments, a phenomenon that can hardly be rare in light of the size of the fee's, it tends to deny some voters the opportunity to vote for a candidate of their choosing; at the same time it gives the affluent the power to place on the ballot their own names or the names of persons they favor. Appellants do not dispute that this is endemic to the system. This disparity in voting power based on wealth cannot be described by reference to discrete and precisely defined segments of the community as is

typical of inequities challenged under the Equal Protection Clause, and there are doubtless some instances of candidates representing the views of voters of modest means who are able to pay the required fee. But we would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status.

Because the Texas filing-fee scheme has a real and appreciable impact on the exercise of the franchise, and because this impact is related to the resources of the voters supporting a particular candidate, we must conclude, as in *HARPER*, that the laws must be "closely scrutinized" and found reasonably necessary to the accomplishment of legitimate state objectives in order to pass constitutional muster.

Dunn v. Blumstein, 405 U.S. 330, 336 -...In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction...

But, as a general matter, "before that right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interest served by it must meet close constitutional scrutiny." Evans v. Cornman, supra, at 422.

Kusper v. Pontikes, 414 U.S. 51, 62 -...disqualification amounted to a direct disenfranchisement or a vote dilution suffered by a discrete class whose impediment, as so imposed, was the result of an involuntary condition not directly tied to the franchise.

Lubin v. Panish, 415 U.S. 709 "Held: Absent reasonable alternative means of ballot access, a State may not, consistent with constitutional standards, require from an indigent candidate filing fees that he cannot pay; denying a person the right to file as a candidate solely because of an inability to pay a fixed fee, without providing any alternative means, is not reasonably necessary of the State's legitimate interest of maintaining the integrity of elections. Pp. 712-719"

717 - Filing fees, however large, do not, in and of themselves test the genuineness of a candidacy or the extent of the voter support of an aspirant for public office. A large filing fee may serve the legitimate function of keeping ballots manageable but, standing alone, it is not a certain test of whether the candidacy is serious or spurious. A wealthy candidate with not the remotest chance of election may secure a place on the ballot by writing a check. ...We have also noted that prohibitive filing fees, such as those in *Bullock*, can effectively exclude serious candidates. Even in this day of high-budget political campaigns some candidates have demonstrated that direct contact with thousands of voters by "walking tours" is a route to success. Whatever may be the political mood at any given time, our tradition has been one of hospitality toward all candidates without regard to their economic status. The absence of any alternative means of gaining access to the ballot inevitably renders the California system exclusionary as to some aspirants. As we have noted, the payment of a fee is an absolute, not an alternative, condition, and failure to meet it is a disqualification from running for office.

Harper v. Virginia Board of Education, 383 U.S. 663 HELD: A State's conditioning the right to vote on the payment of a fee or tax violates the Equal Protection Clause of the Fourteenth Amendment.

(b) Fee payments or wealth, like race, creed, or color, are unrelated to the citizens ability to participate intelligently in the electoral process. Pp. 666-668

(d) Lines drawn on the basis of wealth or property, like those of race, are traditionally disfavored. P. 668

(e) Classifications which might impinge of fundamental rights and liberties - such as the franchise - must be closely scrutinized. P. 670 240 F. Supp. 270 reversed.

666 - Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax. Louisiana v. United States, 380 U.S. 145

667 - Previously we had said that neither homesite nor occupation "affords a permissible basis for distinguishing between qualified voters within the state." Gray v. Sanders, 372 U.S. 368, 380, "We think the same must be true of requirements of wealth or affluence or payment of a fee." Long ago in Yick Wo v. Hopkins, 118 U.S. 356, 370, the Court referred to "political franchise of voting" as a "fundamental political right, because preservative of all rights." Recently in Reynolds v. Simms, 377 U.S. 533, 561-562, we said, "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."

668 - Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process.

670 - ...wealth of fee paying has, in our view, no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened or conditioned.

Kramer v. Union School District, 395 U.S. 621, 626 - ...Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government.

Murdock v. Pennsylvania, 319 U.S. 105 "4. A State may not impose a charge for the enjoyment of a right granted by the Federal Constitution. P. 113."

The ability of myself or my supporters to cross the $5,000 threshold is not necessary to exercise our right to be, or to select, a candidate. The purpose of the $5,000 threshold is only to define the point at which a financial reporting obligation takes effect.

The Commission has other duties, such as rendering Advisory Opinions or prosecuting enforcement actions, that are dependant on a petitioner's status.

2 USC §437f(2) requires the Commission to render an Advisory Opinion within 20 days of receipt of the request if within 60 days of an election involving the requesting party (a candidate or the candidate's authorized committee), as opposed to the request of a person, and the advisory opinion made within 60 days of the request. In essence, the Commission would (and in the instant case did) deny a candidate with less than $5,000 in campaign funds Due Process by withholding this Advisory Opinion beyond 20 days after receipt of the request.

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