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SUPERIOR COURT FOR [illegible] OF ALASKA

FIRST JUDICIAL DI[illegible], AT JUNEAU

[illegible], JERRY A. [illegible] and [illegible] C. MILES,

Plaintiffs,

v.

[illegible], SECRETARY OF STATE, STATE OF ALASKA

Defendant. Civil Action No. [illegible]

[illegible]

This matter having come on before the court on August [illegible], 1968 on cross motions for summary judgment, plaintiffs being represented by [illegible] and defendant being represented by [illegible] Attorney [illegible], the court [illegible], having considered the briefs of the parties, heard oral argument, and having on August [illegible] entered its oral opinion in the matter, and being [illegible] advised in the premises [illegible],

[illegible] ORDERED, ADJUDGED [illegible]:

1. Pursuant to the [illegible] 15.25.[illegible] and the [illegible] provisions of [illegible] defendant is directed to place the names of George C. Wallace and [illegible] Griffin on the general election ballot [illegible] for the offices of President and Vice-President respectively, and to count all votes cast for said candidates as votes for plaintiffs as presidential electors. The designation of George C. Wallace for President and [illegible] Marvin Griffin for Vice-President shall be followed by a designation of (Ind.) to signify the independent nature of their candidacy.

2. Plaintiffs are entitled to their costs herein including an attorney's fee of [illegible] ______.

DATED this 30th day of August, 2013.

Approved as to form

Paul J. Mahoney

TRANSCRIPT OF ORAL DECISION RENDERED IN THE
SUPERIOR COURT, FIRST JUDICIAL DISTRICT,
STATE OF ALASKA, AUGUST 28, 1963,
BY JUDGE THOMAS B. STEWART

This time has been fixed for the rendering of a decision in the case of Mellin et al vs. Miller, No. 63-158. Before considering the merits of the case I wish to preface my remarks by noting that the opinion I am about to render is most informal rather than a more precise written opinion that I should have preferred to prepare in this case, but as counsel, who have prepared excellent briefs, well know, the problem of writing a precise statement is one that consumes a great deal of time and in view of the public significance of this case and the desirability of there being a decision at the trial level, without any further delay I have determined that this course is preferable and the purpose of my remarks is mainly to inform both the interested public and the reviewing court, if there should be a review or appeal, of the reasons why I have reached the conclusion that I have.

Upon close examination of all the briefs and in view of the cases cited in the briefs I do not believe there is any significant case authority outside of that that has been provided to me and I, therefore, am going to avoid the citation of cases and the statement of my reasons can be related to the citations that are in the briefs upon anyone wishing to review what I have to say.

The facts of the case I think are set out perhaps most completely in the memorandum submitted on behalf of the plaintiffs. These plaintiffs submitted petitions to the Secretary of State, the defendant Miller that is, requesting that the names of George C. Wallace and Samuel M. Griffin be

placed on the November general election ballot, that is November 5, 1968, and that votes for those candidates be counted as votes for the petitioners who seek to be shown as presidential electors in the case. Petitions were signed by over 1700 persons and were in the form prescribed by law for all nominations by petitions, that is no party nominations as titled in the statute. The Secretary accepted the petitions but informed the plaintiffs that he refused to recognize them as legally valid to accomplish their nomination to the office of presidential elector. Upon being advised of the Secretary's action the plaintiffs commenced this litigation in which they request the court to direct the Secretary to do what he has refused to do, that is to recognize their petitions as valid and place the names of the candidates for the national offices whom they support on the general election ballot, or in the alternative, that if the nomination is not permitted by petition, then the law which would be found to be restricted to nominations through political parties receiving 10% of the vote at the last gubernatorial election be found unconstitutional. So the issues of law involved are first, whether the applicable statutes may be reasonably interpreted to permit the selection, the appointment, of these plaintiffs as presidential electors, or if not, whether the applicable statutes are constitutional, specifically under the due process and equal protection provisions of the Alaska Constitution, Sections 1 and 7, Article 1, or the United States Constitution, the Fourteenth Amendment. In procedure in the case before the court on cross motions for summary judgment, both parties have agreed that there are no genuine issues of material fact and the facts are taken as shown by the pleadings on file and by the affidavits submitted in support of them. In my view, the central concern is that there is indeed a serious constitutional problem if the statutory

plan can now be held to permit nominations of presidential electors by petition. Without an alternate means of nomination there is no practical way for any new party or group of voters, no matter how substantial, to gain a place on the ballot. I think the seriousness of the constitutional challenge is shown by the Idaho case which is specifically cited in plaintiffs reply memorandum and which was discussed in the oral argument before this court. Even though in this case a different constitutional provision was involved, the challenge to the constitutionality of the statute was to a provision of the Idaho Constitution directly relating to suffrage, and the courts, neither the trial court nor the Supreme Court of Idaho, considered specifically the application of the equal protection clauses of their state Constitution or the federal Constitution. But it seems to me that equal protection would be denied these plaintiffs and the substantial group of voters they represent where the Legislature has fixed a plan for the appointment of presidential electors that provides for all qualified voters of the state to vote on their appointment, which is the plan in effect in Alaska, yet a substantial group cannot vote for candidates of their choice in that system because of the restrictive plan that exists that there is no alternate route for substantial groups to get the names of their preferred national candidates other than that of the two major parties on the general election ballot. So initially, in this case, I take the course of avoiding decision on the constitutional issue which is indeed a serious one, if by any reasonable construction the statutes can be found to permit these names to be placed on the ballot as sought by plaintiffs under the present provisions. In this I follow the principal of the _____ case cited in the briefs and it is reiterated, that is the principal, reiteration of the principal in other

cases cited by the plaintiffs. Then I turn to the statutes to examine whether by their construction the constitutional question can be avoided. There are in fact two alternatives exposed, one is nomination by petition and the other would be selection of the presidential electors at the general election through a write in process. In examining first the write in process I would recommend a reading of the analysis given by the trial court in the Idaho case in which it is clearly set out that this is not a practical and reasonable means to accomplish the end. Not only would these voters have to select, have to write in the names of three electors which are uncommon, that is publicly unknown names, but the very process would deny what is available to other voters, that is to cast their vote having confronted before them the names of the candidates for president and vice president. It seems to me that the interpretation problem is at least as complicated if not more so by the use of the write in provisions of our statutes than by use of the petition provisions, and the procedure is, might become, equally unwieldy, or more outside the intent of the legislature to use the write in provisions for this purpose than to use the petition provisions as an alternate route to nominate these presidential electors.

The defendants have set out several bases on which the court should find that petition provisions, which are in Chapter 25 of Title 15, should not be interpreted to allow the nomination of these plaintiffs as presidential electors. They [illegible] that they do not hold an office as the term is used in the statutes. Well, as plaintiffs indicate, the right to nomination by that process refers to candidates, to obtain [illegible] public office or offices, but the rights to [illegible] which refers to candidates, and I believe certainly that these plaintiffs are candidates, not only

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that, but candidates for office and I see no reason to reach the--to consider the phrase public office. The statute is not cast in those terms. The defendants make substantial argument as to the inconsistency of other provisions of Chapter 25 with the proposition that these plaintiffs can be nominated by (indistinguishable) / as well as by petition. It may very well be that there are inconsistencies but I think a reasonable interpretation of the whole picture is that the Legislature by some oversight or omission would not apply the procedural provisions with the relation to other offices to the office of presidential elector, and the reasonable interpretation of the statute in the circumstance, in the face of the constitutional question, is that the procedural provisions of Chapter 30 which specifically deals with presidential elections ought to be used, reasonably as they are available, for the procedural problems in relation to the placing of names on the ballot, including the use of the candidates for national office, Mr. Wallace and Mr. Griffin, to be reproduced on the ballot, and that votes for them be counted for these petitioners as the electors pledged to support them. I think this answers some of the suggestion of inconsistencies which are to be found only if you rather narrowly confine your view of the statute to Chapter 25, and I think that it is not at all unreasonable or an unfair reading of the statute to relate Chapter 30 to Chapter 25 when you are considering the office of presidential elector, which removes some of the problems of inconsistency. It seems to me further that the inconsistencies are greater with respect to the use of the write in provision which defendants suggests might be an alternative than by using the petition provisions as an alternative to the one that is explicitly set out relative to nomination by political parties. The defendants make an argument that these should be applied here the legal doctrine

expressly until the statute amended, that is since the statute speaks expressly on nomination by political party, that any other route must be found beyond legislative intent. As indicated, I think the reasonable interpretation is to read Chapters 25 and 30 together, in which case I think it is not so clear that there is a legislative expression intending to exclude nomination of electors by petition. I find nothing unreasonable in the use of the figure 1000 voters as being the minimum to assure that this group is a significant one, not one that is so insignificant that it would be more expensive, more trouble, more difficult, more awkward that it would be justified to burden the ballot with their names. The defendant argues that 10% of the vote in the preceding general election ought to be used, but interpreting, as I say, Chapters 25 and 30 together, peremptory, as it were, I see no reason why the Legislature would have sought any more signatures for the office of president or vice president than they would have the office of United States senator or United State congressman or for governor as a basis to indicate that there is indeed a substantial group standing for the candidacy of these national officers. Defendant argues that plaintiffs suggest the principal of the case of Hale, Hale vs. Hyde, the Alaska case in which an interpretation of the construction, liberal interpretation of the construction became the purpose as made by the Supreme Court of Alaska even though that case did involve the interpretation of the Constitution and not of a statute, I think the analogy is not an unreasonable one for me to consider in terms anyway whether a reasonable interpretation of this statute permits nomination of presidential electors by petition. In substance, then, I hold that the relief sought by the plaintiffs should be granted. That relief should include the placing of the names of the national candidates whom these

plaintiffs' names on the election ballot and that votes for those candidates be counted for these petitioners as presidential electors pledged to support those national candidates. Plaintiffs may submit a form of judgment in accordance therewith.

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WILLIAMS ET AL. *v.* RHODES, GOVERNOR OF OHIO, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO.

No. 543. Argued October 7, 1968.—Decided October 15, 1968.*

Under the Ohio election laws a new political party seeking ballot position in presidential elections must obtain petitions signed by qualified electors totaling 15% of the number of ballots cast in the last gubernatorial election and must file these petitions early in February of the election year. These requirements and other restrictive statutory provisions virtually preclude a new party's qualifying for ballot position and no provision exists for independent candidates doing so. The Republican and Democratic Parties may retain their ballot positions by polling 10% of the votes in the last gubernatorial election and need not obtain signature petitions. The Ohio American Independent Party (an appellant in No. 543), was formed in January 1968, and during the next six months by securing over 450,000 signatures exceeded the 15% requirement but was denied ballot position because the February deadline had expired. The Socialist Labor Party (an appellant in No. 544), an old party with a small membership, could not meet the 15% requirement. Both Parties brought actions challenging the Ohio election laws as violating the Equal Protection Clause of the Fourteenth Amendment. A three-judge District Court held those laws unconstitutional and ruled that the Parties were entitled to write-in space but not ballot position. The Parties appealed to this Court. The Independent Party immediately sought interlocutory relief from MR. JUSTICE STEWART, which he granted by order after a hearing at which Ohio represented that it could place the Party's name on the ballot without disrupting the election if there was not a long delay. Several days after that order the Socialist Labor Party sought a stay which he denied because of that Party's failure to move quickly for relief, the State having represented that at that time the granting of relief would disrupt the election. *Held:*

1. The controversy in these cases is justiciable. P. 28.

*Together with No. 544, *Socialist Labor Party et al.* v. *Rhodes, Governor of Ohio, et al.*, also on appeal from the same court.

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