STATE OF MICHIGAN

COURT OF APPEALS

JON E. COON and LIBERTARIAN PARTY OF MICHIGAN,

Plaintiffs-Appellants,

v

BUREAU OF ELECTIONS,

Defendant-Appellee.

UNPUBLISHED
April 16, 2002

No. 229884
Ingham Circuit Court
LC No. 00-092155-AW

Before: Cavanagh, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Plaintiffs Jon E. Coon and the Libertarian Party of Michigan appeal as of right from the September 13, 2000, order of the trial court granting defendant's motion for summary disposition and denying mandamus. We affirm.

Plaintiffs filed the instant action in Ingham Circuit Court on July 25, 2000, seeking a declaration that MCL 168.558(1), as amended by 1999 PA 217, was unconstitutional.[1] Specifically, plaintiffs alleged violations of due process, equal protection, and the right to freedom of expression. Plaintiffs also alleged that the statute violated the purity of elections clause of the Michigan constitution. Const 1963, art 2, § 4. Plaintiffs also sought a writ of mandamus ordering defendant to place Coon's name on the ballot for the November 2000 general election.

The material facts in this action are not in dispute. According to the record, after the Libertarian Party of Michigan's May 2000 nomination convention, Coon was chosen to be the party's nominee for the state board of education. According to the complaint, on May 22, 2000, Coon presented defendant with an affidavit of candidacy, certificate of acceptance, and statement of organization in an effort to have his name placed on the ballot. However, Coon refused to complete and sign the supplementary affidavit of identity noting his compliance with the provisions of Michigan's Campaign Finance Act (MCFA), MCL 169.201 *et seq*. Consequently, defendant refused to accept Coon's affidavit of identity and certificate of acceptance.

[1] 1999 PA 217 became effective on March 10, 2000.

After plaintiffs filed the present action, defendant moved for summary disposition under MCR 2.116(C)(7) and (10) on August 18, 2000, arguing, as relevant to the present appeal, that plaintiffs failed to make out an appropriate case for an order of mandamus, and that MCL 168.558(1) did not violate constitutional principles. A hearing on the motion was held on August 23, 2000. As relevant to the present appeal, the trial court ruled as follows from the bench:

> In the matter before the court . . . the statute at issue has not restricted Plaintiff Libertarian Party from being placed on the ballot with its candidate. Rather, the decision by its candidate to refrain from signing a sworn statement, which is required of all candidates, resulted in the party's exclusion from the election ballot.
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> As defendant correctly asserts, the statutory provision at issue is a qualification rule that affects individual candidates and does not impact ballot access of any political group. The Court is, therefore, of the opinion that neither unreasonableness of the provision nor discrimination against Plaintiff Libertarian Party has been shown by plaintiffs.

Accordingly, the trial court denied mandamus, and dismissed plaintiffs' action. Plaintiffs now appeal as of right. This Court denied plaintiffs' motion to expedite this appeal in an order entered February 20, 2002.

As noted, plaintiffs sought a writ of mandamus from the lower court ordering defendant to place Coon's name on the ballot for the November 2000 general election. In the context of defendant's summary disposition motion, the trial court denied mandamus. "A writ of mandamus will only be issued if the plaintiffs prove they have a 'clear legal right to performance of the specific duty sought to be compelled' and that the defendant has a 'clear legal duty to perform such act . . . .'" *In re MCI Telecommunications Complaint*, 460 Mich 396, 442-443; 596 NW2d 164 (1999), quoting *Toan v McGinn*, 271 Mich 28, 34; 260 NW 108 (1935). To the extent that the present case requires us to address whether subsection 558(1) of the Michigan Election Law, MCL 168. 1 *et seq*., violates Const 1963, art 2, § 4, this is a question of law that we review de novo on appeal. *Taylor Commons v Taylor*, ___ Mich App ___; ___ NW2d ___ (Docket No. 224686, issued February 5, 2002), slip op, 3. Moreover, a statute is presumed to be constitutional. *Id.*

A useful starting point for our analysis in this case is to delineate what is *not* at issue. Specifically, in their brief on appeal, plaintiffs merely argue that MCL 168.558(1) is violative of the purity of elections clause in the Michigan constitution. Notably, plaintiffs do not advance arguments on appeal that MCL 168.558(1) violates due process, the right to freedom of expression, or equal protection. Consequently, although it appears plaintiffs pursued these arguments in the lower court, their failure to argue these claims on appeal renders them abandoned. See, e.g., *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). As a result, we confine our analysis in the instant case to the narrow question whether MCL

168.558(1)[2] contravenes the Michigan constitution's purity of elections clause, Const 1963, art 2, § 4, which provides in pertinent part:

> The legislature shall enact laws to regulate the time, place, and manner of all nominations and elections, except as otherwise provided in this constitution or in the constitution and laws of the United States. The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.

In *Todd v Election Comm'rs of Kalamazoo, Calhoun, Branch, Eaton & Hillsdale Cos*, 104 Mich 474, 483; 64 NW 496 (1895), our Supreme Court, quoting Justice Cooley's treatise on constitutional law, articulated the applicable standard courts are governed by in determining the constitutionality of acts passed by the Legislature to preserve the purity of elections.

> "All such reasonable regulations of the constitutional right which seem to the legislature important to the preservation of order in elections, to guard against fraud, undue influence, and oppression, and to preserve the purity of the ballot-box, are not only within the constitutional power of the legislature, but are commendable, and at least some of them are absolutely essential." [*Id.*, quoting Cooley, Const Lim 602.]

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[2] MCL 168.558(1) provides in pertinent part:

> When filing a nominating petition, filing fee, or an affidavit of candidacy, or within 1 business day of being nominated by a political party convention or caucus, for a county, state, national, city, township, village or school district office in any election, a candidate shall file with the officer with whom the petitions or fee is filed 2 copies of an affidavit. The affidavit shall contain the candidate's name; address; ward and precinct where registered, if qualified to vote at that election; a statement that the candidate is a citizen of the United States; number of years of residence in that state and county; other information that may be required to satisfy the officer as to the identity of the candidate; *a statement that, as of the date of the affidavit, all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate's election under the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282, have been filed or paid*; and a statement that the candidate acknowledges that making a false statement in the affidavit is perjury, punishable by a fine of up to $1,000.00 or imprisonment for up to 5 years, or both. [Emphasis supplied.]

In *Sullivan v Secretary of State*, 373 Mich 627, 631; 130 NW2d 392 (1964), our Supreme Court, commenting on the purpose of § 558, observed that the requirement of full and complete identification of candidates required by the statutory provision was intended to "provide the electorate with the information necessary to cast their ballots effectively for the candidates of their choice."

On appeal, the thrust of plaintiffs' argument is that preventing an individual's access to the ballot on the basis of his failure to cite his compliance with the MCFA by way of a supplementary affidavit is an unfair restriction by the Legislature outside the scope of Const 1963, art 2, § 4. We disagree.

As our Supreme Court acknowledged in *Wells v Kent Co Bd of Election Comm'rs*, 382 Mich 112, 123; 168 NW2d 222 (1969):

> [T]he constitutional mandate to the legislature to enact laws to preserve the purity of elections has been interpreted by th[e Supreme] Court to carry with it the corollary that any law enacted by the legislature which adversely affects the purity of elections is constitutionally infirm. The phrase, 'purity of elections,' is one of large dimensions. It has no single, precise meaning. . . . [H]owever, . . . one of the primary goals of election procedure is to achieve equality of treatment for all candidates whose names appear on the ballot.

Further, the purity of elections clause requires the Legislature to exercise "fairness and evenhandedness" in the drafting of Michigan's election laws. *Jacobs v Headlee*, 135 Mich App 167, 176-177; 352 NW2d 721 (1984), quoting *Socialist Workers Party v Secretary of State*, 412 Mich 571; 317 NW2d 1 (1982). Where a party alleges unfair treatment on the basis of denial of access to the ballot, this Court will address the argument as implicating a Const 1963, art 2, § 4 issue. *Socialist Workers, supra* at 598.

In the instant case, we reject plaintiffs' contention that the requirement of MCL 168.558(1) that a candidate file a supplementary affidavit reflecting his compliance with the provisions of the MCFA is violative of the purity of elections clause. Quite simply, the provision at issue does not "impart[ ] a substantial unfair advantage to [specific] political parties," and plaintiffs have failed to persuade us that the requirement is inconsistent with the goal of promoting equality of treatment among the various parties appearing on the ballot. *Socialist Workers, supra* at 599. In other words, we do not agree with plaintiffs that MCL 168.588(1), as amended by 1999 PA 217, provides an unfair advantage to a particular political party. *Jacobs, supra* at 177.

Indeed, any disadvantage inuring to a candidate who fails to complete and submit the supplementary affidavit flows not from the requirement of the statute itself, but from the candidate's decision to not comply with the requirement. *Id.* In their brief on appeal, plaintiffs argue at length that the statutory provision is at odds with their belief of the proper function of government. Nonetheless, although the requirement that a candidate submit an affidavit reflecting his compliance with the MCFA may not accord with plaintiffs' political beliefs, this does not render the provision unconstitutional. As the learned trial court aptly observed, the statute imposes the same requirement on all candidates for office, regardless of their political affiliations. Moreover, we are of the view that requiring candidates for public office to prove their compliance with the MCFA serves a compelling state interest by protecting the integrity of Michigan's electoral process. See *Michigan State AFL-CIO v Secretary of State*, 230 Mich App 1, 26, n 1; 583 NW2d 701 (1998) (O'Connell, J. concurring in part and dissenting in part). Thus, the Legislature's amendment of MCL 168.558(1) to require a candidate to demonstrate compliance with the MCFA fell squarely within its authority under Const 1963, art 2, § 4. Consequently, we reject plaintiffs' challenge to the constitutionality of MCL 168.558(1).

Because plaintiffs have not established that defendant was under a clear legal duty to place Coon's name on the ballot, the trial court did not abuse its discretion in denying mandamus.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Peter D. O'Connell