

COURT OF APPEALS OF MARYLAND

Suessmann v. Lamone, 383 Md. 697

862 A.2d 1 (2004) · No. No. 140, September Term, 2003 · Decided November 17, 2004

SUMMARY

The Maryland Court of Appeals addressed a constitutional challenge to the exclusion of unaffiliated voters from Democratic and Republican primary elections for circuit court judicial candidates. The court held that unaffiliated registered voters had statutory standing under Maryland Election Law § 12-202, but denied election-related relief because the appellants failed to show that the challenged exclusion may have changed the election outcomes. The court also explained the demanding evidentiary standard applicable to challenges seeking to overturn completed election results.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Raker, J.; Bell, C.J.; Wilner, J.; Cathell, J.; Harrell, J.; Greene, J.; John C. Eldridge, J. (retired, specially assigned)
JURISDICTION	Maryland
DECIDED	November 17, 2004
DOCKET	No. 140, September Term, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal under Maryland Election Law § 12-203 from a three-judge Circuit Court for St. Mary's County decision denying declaratory, injunctive, and election-contest relief. The Court of Appeals previously affirmed denial of a preliminary injunction and reserved judgment on the declaratory-judgment issues; this opinion supplied the reasons for that order and resolved the reserved issues.
STANDARD OF REVIEW	Statutory interpretation was reviewed under the plain-language rule. The court stated that the standard for whether an election is nonpartisan was unclear but that the circuit court's conclusion was correct under any standard. Constitutional election-law claims were analyzed under the applicable equal-protection and election-law framework, including the flexible balancing test described in <i>Burdick v. Takushi</i> .
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Michael B. Suessmann, Gregory Care, other unaffiliated registered voters v. Linda H. Lamone, State Administrator of Elections, members of the State Board of Elections, Anne Arundel County Board of Elections, St. Mary's County Board of Elections

TOPICS

election contests

voting rights

election administration

equal protection

statutory interpretation

PRACTICE AREAS

election law

constitutional law

civil rights

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remedies

QUESTIONS PRESENTED

1. Whether unaffiliated registered voters qualify as registered voters with statutory standing under Maryland Election Law § 12-202(a) to challenge an election-related act or omission.
2. What showing is required under Maryland Election Law § 12-202(a)(2) to establish that an unlawful act or omission may have changed or has changed an election outcome.
3. Whether the plaintiffs established the required probability that excluding unaffiliated voters changed or may have changed the March 2, 2004 judicial primary outcomes.
4. Whether Maryland's judicial primary election system is nonpartisan or partisan for purposes of determining whether unaffiliated voters have a constitutional right to participate.
5. Whether excluding unaffiliated voters from party primaries for circuit court judicial candidates violates the Fourteenth Amendment, Articles 7 and 24 of the Maryland Declaration of Rights, or 42 U.S.C. § 1983.

HOLDINGS

1. Any lawful registered voter, including an unaffiliated voter, has statutory standing to seek relief under § 12-202(a); the statute does not require registration with the political party conducting the primary.
2. A party challenging an election under § 12-202 must prove by clear and convincing evidence a substantial probability that the election outcome would have been different but for the unlawful act or omission.
3. The plaintiffs failed to satisfy § 12-202(a)(2) because they offered only speculation that unaffiliated voters would have voted for different candidates or in sufficient numbers to change the primary results.
4. Maryland's judicial primary elections for circuit court judges are partisan elections in form and substance, notwithstanding statutory features designed to reduce partisanship in judicial candidacies.
5. Unaffiliated voters have no fundamental constitutional right to vote in the primary election of a political party to which they do not belong.

KEY QUOTATIONS

“To sustain a judicial challenge pursuant to § 12-202, the litigant must prove, by clear and convincing evidence, a substantial probability that the outcome would have been different but for the illegality.” (383 Md. at 721, 862 A.2d at 14)

“The Supreme Court has explicitly rejected the notion that there is a fundamental right to vote in the nominating primary of a party to which one does not belong” (383 Md. at 733-34, 862 A.2d at 21-22)

FACTUAL BACKGROUND

Maryland circuit court judicial candidates generally obtain access to the general-election ballot by winning a Democratic or Republican primary. The principal political parties restricted participation in those primaries to their registered party members, excluding unaffiliated voters. Suessmann and Care were unaffiliated registered voters who wished to vote in judicial primaries, and they challenged the March 2, 2004 primary results and the continuing exclusion of unaffiliated voters.

PROCEDURAL HISTORY

Suessmann and Care, unaffiliated registered voters, challenged Maryland's exclusion of unaffiliated voters from Democratic and Republican primary elections for circuit court judicial candidates. They sought to invalidate the March 2, 2004 judicial primary elections, require new elections open to all registered voters, and enjoin future exclusion of unaffiliated voters. A three-judge circuit-court panel denied relief. The Court of Appeals affirmed the denial of preliminary relief and held that the statutory election challenge failed because the plaintiffs did not establish the required probability that the alleged illegality changed the election outcome; it also rejected their state and federal constitutional claims.

DISPOSITION

affirmed

CASES CITED

- Hillman v. Boone, 190 Md. 606, 59 A.2d 506 (1948)
- State Admin. Bd. v. Calvert, 272 Md. 659, 327 A.2d 290 (1974)
- California Democratic Party v. Jones, 530 U.S. 567, 120 S. Ct. 2402, 147 L. Ed. 2d 502 (2000)
- Hennegan v. Geartner, 186 Md. 551, 47 A.2d 393 (1946)
- Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986)
- Duffy v. Conaway, 295 Md. 242, 455 A.2d 955 (1983)
- Department of Natural Resources v. Linchester Sand & Gravel Corp., 274 Md. 211, 334 A.2d 514 (1975)
- Pollokoff v. Maryland National Bank, 288 Md. 485, 418 A.2d 1201 (1980)
- Flast v. Cohen, 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968)
- Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998)
- Green Party v. Board of Elections, 377 Md. 127, 832 A.2d 214 (2003)
- Mid-Atlantic v. Public Service, 361 Md. 196, 760 A.2d 1087 (2000)

- Price v. State, 378 Md. 378, 835 A.2d 1221 (2003)
- Snyder v. Glusing, 307 Md. 548, 515 A.2d 767 (1986)
- Snyder v. Glusing, 308 Md. 411, 520 A.2d 349 (1987)
- Wilkinson v. McGill, 192 Md. 387, 64 A.2d 266 (1949)
- McNulty v. Board of Elections, 245 Md. 1, 224 A.2d 844 (1966)
- Pelagatti v. Board of Elections, 343 Md. 425, 682 A.2d 237 (1996)
- Spencer v. Board of Pharmacy, 380 Md. 515, 846 A.2d 341 (2004)
- Republican Party of Minnesota v. White, 536 U.S. 765, 122 S. Ct. 2528, 153 L. Ed. 2d 694 (2002)
- Gregory v. Ashcroft, 501 U.S. 452, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991)
- Anderson v. Baker, 23 Md. 531 (1865)
- Falik v. Prince George's Hospital, 322 Md. 409, 588 A.2d 324 (1991)
- Burdick v. Takushi, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992)
- Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976)
- Monroe v. Pape, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961)
- Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)
- Nader v. Schaffer, 417 F. Supp. 837 (D. Conn. 1976), summarily affirmed, 429 U.S. 989, 97 S. Ct. 516, 50 L. Ed. 2d 602 (1976)