Local Party Reorganization – State Statutes

Some Background on the Applicability of State Statutes to Democratic Party Reorganizations

Every two years the Democratic Party meets to reorganize the State Central Committee, the County Central Committees and the Legislative District Organizations. These organizations are specifically established by the Charter of the Democratic Party of Washington (Article V.B, C) and are authorized to function continuously. Pursuant to the Charter they are to be

> constituted and conduct business according to [the] Charter and other provisions adopted pursuant to the authority of [the] Charter. State laws relating to Party operations shall be observed unless in conflict with [the] Charter and other provisions adopted pursuant to [the] Charter.

Charter, Article V.A.

Washington State has a number of statutes on its books which purport to govern the organization of political parties and which can cause confusion for newcomers at Reorganizations. People often have a misunderstanding as to which requirement (State Party or Statute) prevails in the event of a conflict. The answer is that the State Party rule prevails over an inconsistent statutory requirement. While this fact is clear in the law it is not necessarily well understood by the public. For that reason, and in anticipation that you may get assertions that such statutes must be followed in connection with your re-organizations, we are distributing this background summary of the relationship between party rules and statutes when it comes to reorganization.

Reorganization is, as the name suggests, the process by which the Party at all levels selects its officers and representatives and reviews its bylaws for potential amendment. The Party has fundamental First Amendment rights to peaceably assemble for the redress of grievances and to determine with whom and on what basis to associate. These constitutional rights ensure that the Party has control over its reorganization process. Courts have long recognized that the Constitution provides strong protection against attempts by state governments to direct and regulate political parties. See, e.g., *Eu v San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989), in which the United States Supreme Court held unconstitutional a California ban on political party endorsements in primaries.

California separately sought to dictate the size and composition of the state party central committee, set rules governing the selection and removal of committee members, set term limits on officers, require party officers to be elected on a rotating geographical basis allowing no one to serve more than two years in the State Chair's position, and to dictate the time and place of committee meetings. These efforts were also held unconstitutional. In connection with these attempted regulations the Supreme Court said:

> These laws directly implicate the associational rights of political parties and their members. As we noted in *Tashijian*, a political party's "determination . . . of the structure which best allows it to pursue its

> political goals is protected by the Constitution." 479 U.S. at 224. Freedom of association also encompasses a political party's decisions about the identity of, and the process for electing, its leaders….

489 U.S. 230 (citations omitted)

A law that burdens the rights of political parties and their members can survive constitutional scrutiny only if the State shows that it advances a compelling state interest and is narrowly tailored to serve that interest. *Eu,* 489 U.S. 222. California failed to show any compelling interest and the Supreme Court declared the law unconstitutional.

The *Eu* case is one of many striking down state laws that attempt to regulate political parties. Although *Eu* is almost 30 years old it remains vibrant. As recently as last Fall the Washington State Supreme Court held RCW 29A.80.061 unconstitutional, citing *Eu*, because it purported to require the Republican Party to elect legislative district chairs when the Republican Party preferred to simply appoint them:

> [RCW 29A.80.061] requires that the [Republican] Committee elect district chairs, but the Committee bylaws require that the Committee appoint district chairs. The Committee's control over the selection of chairpersons is a matter of internal organization, analogous to the control over the geographic rotation of chairpersons held in *Eu* to be constitutionally protected. 489 U.S. at 232-33 ("[A] State cannot substitute its judgment for that of the party as to the desirability of a particular internal party structure."). Because the statute specifies the manner in which an internal office is filled, the statute interferes with the Committee's discretion in organizing itself and selecting its leaders. Therefore, the statute can survive constitutional scrutiny only if it is necessary to ensure fair and orderly elections. Id. at 233

Pilloud v. King County Republican Central Committee, 189 Wn.2d 599, 602, 404 P.3d 500, 503 (2017). (footnote omitted)

The State of Washington not only failed to provide a constitutional justification for RCW 29A.80.061, the Attorney-General's office filed an amicus brief urging the state supreme court to declare the statute unconstitutional as violative of First Amendment Freedoms.

In sum, the law in this area is well-settled and very clear, if not well known. Statutes such as RCW 29A.80.061 are only applicable to Democratic Party reorganization activities to the extent that the Party decides, for its own reasons, to follow them.