State of Maine

Supreme Judicial Court
Sitting as the Law Court
Docket No. Ken-24-24

Donald J. Trump

v.

Secretary of State, et al

Memorandum by William
Clardy on Allowing the
Secretary's Appeal to Proceed
on the Merits

Statement of Interest of Amicus Curiae

I am a registered voter in Maine interested in the proper application of election law, acting on the court's invitation of memoranda explaining reasons the court should proceed to consider the Secretary of State's appeal on the merits.

Summary of Argument

Not only does the Superior Court's remand of the Secretary of State's decision epitomize a death knell exception to the final-judgement rule, the schedule set forth in the Superior Court's remand order runs directly counter to the *Purcell* principle espoused in the Court's order.

Argument

Although it is understandable that a trial-court judge might consider it imprudent "to be the first court in Maine to address" the issues of law raised by Secretary Bellows' treatment of Mr. Trump's candidacy, setting a deadline for administrative reconsideration four (4) days after the election seems designed to add confusion to the impending primary election rather than reduce it. "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an

election draws closer, that risk will increase." Purcell v. Gonzalez, 549 U.S. 1, 4-5 (2006) With only seven weeks until the primary, some court in Maine needs to be make not only the first, but also the final, decision on this matter. Maine's Republican voters should know whether we have multiple candidates to choose from, or have been reduced to voting for (or against[1]) a single candidate.

In a footnote, the Superior Court even avers to the potential for its remand mooting the results of the primary election: "If President Trump is disqualified after the primary, it is the Court's understanding that the Republican Party would be primarily responsible for addressing the vacancy." In other words, delaying the decision not only potentially damages Mr. Trump's candidacy, it also could disenfranchise the Republican voters who cast their votes in the upcoming primary. Secretary Bellows is correct to invoke the death knell exception in defending her appeal.

Because the Superior Court has abdicated its responsibility for timely resolution of this issue, that duty falls to this Court. "This Court has the authority and important responsibility to construe the Maine Constitution. See Morris v. Goss , 147 Me. 89, 97, 83 A.2d 556, 561 (1951). In doing so, "we are not bound by any of the interpretations which other courts may have made of their own Constitutions. Nor do we follow such interpretations except to the extent that the reasoning upon which they rest is convincing to us when applied to our Constitution." Id. The

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[1] To "give proper weight to the negative value of a vote for the dead man." Murtagh v. Registrars of Voters of Peabody, 340 Mass. 737, 739 (Mass. 1960) as quoted in Barber v. Edgar, 294 A.2d 453, 457 (Me. 1972)

Supreme Court has recognized that Maine is "free, pursuant to [its] own law, to adopt a higher standard" than that required by the federal Constitution. State v. Rees , 2000 ME 55, ¶ 5, 748 A.2d 976 (quotation marks omitted)." Alliance for Retired Ams. v. Sec'y of State, 240 A.3d 45, 54 (Me. 2020)

Conclusion

While immediate consideration of Secretary Bellows' appeal on its merits may potentially disadvantage Mr. Trump's legal defense, which is facing multiple similar challenges across many states, leaving in place a timeline which pushes any final appellate resolution to an indeterminate date after the primary election does irreparable harm to both Mr. Trump's candidacy and to the Maine Republican Party's presidential primary.

Respectfully submitted,

Dated: January 23, 2024

/s/ _____
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