

IN THE SUPREME COURT
STATE OF GEORGIA

SUPREME COURT CASE NUMBER: S24A0917

CATOOSA COUNTY REPUBLICAN PARTY, et al.,
Appellants,

v.

STEVEN M. HENRY, et al.,
Appellees.

BRIEF OF THE GEORGIA REPUBLICAN COALITION, INC.
AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES

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I. Introduction

The origin and foundation of our state government originates with the people and their will. As the Georgia Constitution makes clear, public officials “are at all times amenable to” the people. Ga. Const. Art. I, § II, ¶ I. Additionally, the people of this state retain the “right to alter or reform [the government] whenever the public good may require it.” Ga. Const. Art. I, § II, ¶ II. This right is secured by the right to vote as guaranteed by the Georgia Constitution. Appellants in this case seek to usurp these rights from the people of this state and vest it in an insular group of party officials to make decisions in cigar smoke-filled backrooms as to who the people can elect to represent them.

Unfortunately, for Appellants, the determination of who is nominated as a candidate for office in the State of Georgia is determined by the voters of this state and not a small group of party officials. Appellants seek to use their power, such as it exists, to limit the choices of the Republican voters as to who they wish to nominate as their preferred choice as a candidate for office. Not only does state law not allow for this, but as a policy matter, such actions are an affront to self-government as guaranteed by our state constitution.

II. Statement of Interest

The Georgia Republican Coalition, Inc. (the “Republican Coalition”) is a Georgia non-profit corporation that represents Republican voters across the ideological Republican spectrum. The Republican Coalition believes in the power of collaboration, principled governance, and working hand-in-hand with elected officials to promote Republican values, to advance conservative policies, and ensure integrity in all aspects of governmental operations. The Republican Coalition seeks to preserve conservative values, to promote freedom, and to support candidates who share its vision. The Republican Coalition believes that government should be limited, that individual liberty is sacrosanct, that free markets are the foundation of prosperity, and that a strong national defense is critical to our security and well-being.

Supporters of the Republican Coalition include Republican voters throughout the State of Georgia who have a significant interest in the legal issues and outcome of this case. These supporters wish to exercise their constitutional right to decide at the ballot box who will be the Republican nominee at the conclusion of a primary election and do not wish to have their choices limited by a handful of people who decide who is

Republican enough to run as a Republican. Counsel for Appellees did not participate in the preparation of this brief. Neither Appellees nor counsel for Appellees have contributed funding for preparation of this brief.

III. Argument and Citation of Authority

The trial court's injunction order should be affirmed as it complies with Georgia law and Appellants' attempts to prevent eligible Republican candidates from qualifying for election violated Georgia law.

a. Appellants Seek Additional Requirements For Candidate Qualification Outside Of The Statutory Framework.

The Georgia Constitution gives the General Assembly the legislative power of this state. Ga. Const. Art. III, § I, ¶ I. This Court has held that these inherent powers are plenary and that because the General Assembly has such "plenary legislative powers, there is a strong presumption in favor of the constitutionality of a statute." *Bryan v. Georgia Pub. Serv. Comm'n*, 238 Ga. 572, 573 (1977). The General Assembly has decided that "political parties shall nominate its candidates for public office in a primary." O.C.G.A. § 21-2-151(a). Additionally, the General Assembly has made clear what is necessary for an eligible candidate¹ to qualify

¹ Georgia law does allow the county party to refuse to qualify for a primary election any person who is ineligible to hold the office the candidate seeks; is prohibited

for office—the candidate must pay the qualifying fee (or file a pauper’s affidavit) and must satisfy the procedural rules of the political party for which the candidate seeks to qualify for office. O.C.G.A. § 21-2-153. To the extent an eligible candidate satisfies the procedural rules, the county party is prohibited from denying such candidate from qualifying. O.C.G.A. § 21-2-153(b).

Appellants in this case seek to add additional requirements not authorized by the General Assembly. While Appellants seek to cast these additional requirements as mere procedural rules, these additional requirements are far from procedural. These rules require the candidate to “be approved by the Catoosa County Republican Party County Committee by a majority vote” and to obtain an affidavit attesting to such approval to produce at the qualifying table. While the process for presenting the affidavit may be a procedural issue, the process to obtain the approval and receive the affidavit is not procedural, but substantive. *S. States Chem., Inc. v. Tampa Tank & Welding, Inc.*, 316 Ga. 701, 710 (2023) quoting *EHCA Cartersville, LLC v. Turner*, 280 Ga. 333, 337 (3)

from being nominated or elected under state law, or fails to sign an oath affirming his or her allegiance to the party, if required by party rules. O.C.G.A. § 21-2-153(b)(2) – (b)(4).

(“Substantive law is that law which creates rights, duties, and obligations. Procedural law is that law which prescribes the methods of enforcement of rights, duties, and obligations.”). Here there is no question that the substance to qualify (*i.e.*, the ability to qualify) versus the procedure to qualify (*i.e.*, the how to actually appear and qualify) are implicated by this rule. By requiring an eligible candidate to meet the approval of a majority of the county committee, the party seeks to add additional substantive requirements to qualify and in this case specifically to deny the right of eligible candidates to qualify as opposed to establishing procedures to qualify. The additional requirement to obtain a majority vote of the Catoosa County Republican Party County Committee is a substantive requirement in addition to the requirement for qualification under O.C.G.A. § 21-2-153. Moreover, as this case shows, there is no standard that Appellants applied in making the decision to grant or deny the right to qualify. As the Chair of the Catoosa County Republican Party made clear in her testimony, the decision is purely subjective. Subjective decisions are not procedural but substantive. *See Kent v. Kent*, 289 Ga. 821, 825 (2011) (failing to replace a “bright-line procedural rule” with a “subjective intent based” rule). Because Appellants failed to qualify the

Appellees, in violation of Georgia law, the trial court's order should be affirmed.

b. The Winners Of Primaries Are Associated With The Electorate.

Appellants' claims that their associational rights are being violated misses the point. It is not the "Republican Party" that nominates a candidate for public office. It is Republican voters who do so. Under Georgia law, in a primary election it is the voter who makes the decision as to which ballot to choose on primary election day. O.C.G.A. § 21-2-152. Under the rules of the Georgia Republican Party, its membership includes "all [voters] who are in accord with the principles of the Republican Party, believe in its declaration of policy and are in agreement with its aims and purposes." Rule 1.1 of the Rules of the Georgia Republican Party, <https://gagop.org/rules/> (last visited June 20, 2024). Accordingly, at the conclusion of the primary election, it is the Republican voters who decide who should be the Republican nominee for public office not party officials.

The Appellants, as a group of party insiders, seeking to limit the choice of the Republican voters, are eerily like the Guardian Council of the Islamic Republic of Iran, which is the body that decides who can and cannot run for public office in Iran. *See* Maryam Sinaiee, *Iran's Guardian*

Council Bars Candidates to Secure Succession Plans, IRAN INTERNATIONAL (Jan. 30, 2024), <https://www.iranintl.com/en/202401293591>. As the rights of government belong to the people, it should be the people who make these decisions not insular party insiders. *See Delay v. Sutton*, 304 Ga. 338 (2018); *Rogers v. Med. Ass'n of Ga.*, 244 Ga. 151 (1979).

c. The Trial Court Did Not Compel Appellants To Say Anything.

Primary elections for party nomination for public office are conducted by local election officials. O.C.G.A. § 21-2-152. It is the Republican voters in Republican primaries that decide who the Republican nominee shall be for public offices. The Appellants are not compelled to say anything or to endorse any candidate and the trial court's injunction does not require such compelled speech. While it is the purpose of the Catoosa County Republican Party "to provide support in electing the Republican nominee for all National, Statewide, Districtwide, Countywide, and local elections taking place within the boundaries of Catoosa County" and it would be helpful to those nominated by Republican voters if the party supported and endorsed them, neither the trial court's order nor any governmental law or regulation requires them to do so.

Moreover, Appellants claim that “the voting public understands that the *only* means of access to the Republican primary ballot is to be qualified by the Republican Party under O.C.G.A. [sic.] 21-2-153” and, as a result, that “[b]eing on the ballot must – to a voter – mean Republican endorsement, *ipso facto*” misses a critical point. Under its own rules and the rules of the Georgia Republican Party, party officials are prohibited from using their official position to support any candidate for public office in a contested Republican primary. See Rule 7.6 of the Rules of the Georgia Republican Party and Rule 3 of Section III of the Rules of the Catoosa Republican Party. Considering that the party’s own rules prohibit such *ipso facto* endorsement, no voter would consider that merely appearing on a Republican primary ballot is an endorsement of the candidate by the Appellants, especially considering that O.C.G.A. § 21-2-153 does not permit or require such an endorsement. Appellants’ claims to the contrary are without merit.

IV. Conclusion

Appellants, as their own Guardian Council, seek to take the power of the Republican voter away by allowing a group of insular party insiders to decide, in the proverbial smoke-filled backroom, who is and who is not

Republican enough to run in a Republican primary. Fortunately for Georgia Republican voters, Georgia law does not allow Appellants to do so. The trial court's injunction required Appellants to comply with Georgia law and nothing about the trial court's injunction violates Appellants' rights. The trial court should be affirmed.

Respectfully submitted, this 20th day of June, 2024.

This submission does not exceed the word count limit imposed by Rule 20, because it does not exceed 7,000 words.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that I have this day filed the foregoing *BRIEF OF THE GEORGIA REPUBLICAN COALITION, INC. AS AMI-CUS CURIAE IN SUPPORT OF APPELLEES* with the Clerk of the Court using the Court's e-filing system which will automatically send electronic mail notification of such filing, and via U.S. First Class Mail, to counsel of record indicated below:

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