Blankenship v. Secretary of State

By Elbert Lin and Katy Boatman

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After Don Blankenship lost his primary bid to be the Republican candidate in the 2018 U.S. Senate race in West Virginia, he changed his party registration to The Constitution Party and filed an application to run in the general election as that party's candidate. But West Virginia, like more than forty other states, has a sore loser law that prevents primary losers from changing parties and running in general elections. Citing that law, the West Virginia Secretary of State denied his application.

Mr. Blankenship and The Constitution Party directly petitioned West Virginia's highest court, the Supreme Court of Appeals, for a writ of mandamus to force the Secretary of State to add him to the ballot. The petition included both a statutory challenge to the Secretary of State's denial of his application and a constitutional challenge to the sore loser law. The case had to be resolved quickly in light of the upcoming general election, so the case was briefed in less than a month and argued on August 29, 2018. The court denied the writ the same day the case was argued. The Supreme Court of Appeals unanimously agreed with the Secretary of State and the West Virginia Republican Party, which had intervened in the case, on every issue that it decided.[1]

First, the court held that the plain language of West Virginia's statute disallowed Mr. Blankenship's sore loser campaign. The statute provides that groups of citizens who are not members of a party recognized by state law—which includes The Constitution Party, since West Virginia recognizes only the Democratic, Libertarian, Mountain, and Republican parties—"may nominate candidates who are not already candidates in the primary election" for the general election.[2] Mr. Blankenship and The Constitution Party argued that the statute's words—"who are not already candidates in the primary election"—mean that the law's limitation only applies during the pendency of the primary election. Because Mr. Blankenship filed to run in the general election several months after he lost the primary election, they claimed, the statute did not bar his candidacy. The court rejected that construction of the statute as unreasonable because it would lead to the absurd result of allowing a primary candidate "simply to wait until the conclusion of the primary election to file his or her nomination certificate" and then participate in the general election.[3] The court held that the law "prevents unsuccessful primary election candidates from subsequently running as nomination-certificate candidates in the general election."[4]

Second, the court held that the sore loser statute was constitutional under both the U.S. and West Virginia constitutions. States have the authority to prescribe reasonable rules for the conduct of elections.[5] Burdens imposed on minor parties and their candidates are justified by the "correspondingly weighty" state interests in ballot integrity and political stability.[6] And the burden on Mr. Blankenship was not large. He was required only to "choose between the two paths for a spot on the general election ballot: the path for recognized parties or the one for independents and unrecognized parties."[7] The court held the sore loser law did not violate the rights to either free association or equal protection. The law was reasonable and nondiscriminatory, and it was justified by the state's important regulatory interests.

1 *See* State ex rel. Blankenship v. Warner, No. 18-0712, 2018 WL 4904729 (W. Va. Oct. 5, 2018).

2 W. Va. Code § 3-5-23(a).

3 *Blankenship*, 2018 WL 4904729, at *5.

4 *Id.* at *6.

5 *Id.* at *1.

6 Timmons v. Twin Cities Area New Party, 520 U.S. 351, 369 (1997).

7 *Blankenship*, 2018 WL 4904729, at *10.