

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

March 14, 2022

Opinion No. 22-05

Constitutionality of Prohibiting State Political Parties from Charging Fees

Question

Is Senate Bill 1937, 112th Gen. Assem. (2022)—a proposed amendment to Tenn. Code Ann. § 2-13-104 that would prohibit political parties from requiring individuals to pay fees to run for office as candidates for those parties—constitutional?

Opinion

Yes. Tennessee, like all States, has broad authority to regulate its elections so long as those regulations do not violate the U.S. or Tennessee Constitutions. Because this amendment does not conflict with any provision of the U.S. or Tennessee Constitution—and in fact makes it easier for prospective candidates to associate with the State’s political parties—it appears to be a permissible exercise of the General Assembly’s authority to regulate elections.

ANALYSIS

“Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). Indeed, “as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” *Id.* (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). States, the Constitution provides, “may prescribe ‘[t]he Times, Places and Manner of holding Elections for Senators and Representatives,’” and “the [Supreme] Court therefore has recognized that States retain the power to regulate their own elections.” *Id.* (quoting U.S. Const. art. 1, § 4, cl. 1).

The Tennessee Supreme Court has similarly recognized that “[t]he authority of the Tennessee Legislature to control the conduct of elections held in this State is manifest.” *Bemis Pentecostal Church v. State*, 731 S.W.2d 897, 901 (Tenn. 1987) (citing *Trotter v. City of Maryville*, 235 S.W.2d 13, 18 (1950)). It follows, then, that the Tennessee General Assembly has authority to pass laws regulating the State’s elections so long as those laws do not run afoul of the U.S. or Tennessee Constitutions or valid federal legislation. *See, e.g., City of Memphis v. Hargett*, 414 S.W.3d 88, 104 (Tenn. 2013) (upholding Tennessee’s photo-ID requirement as a permissible exercise of the General Assembly’s authority to regulate elections); *Bemis Pentecostal Church*, 731 S.W.2d at 907 (upholding Tennessee’s Campaign Financial Disclosure Act and concluding that it served a variety of election-related interests).

The amendment at issue here is an exercise of that legislative authority. Existing Tennessee law requires that “[a]ll candidates for state executive committee membership and for membership in the general assembly shall be bona fide members of the political party whose election they seek.” Tenn. Code Ann. § 2-13-104. That same statute further provides that, with limited exceptions, “a party may require by rule that candidates for its nominations be bona fide members of the party.” *Id.* The proposed amendment adds another sentence to this statute, which reads: “[A] political party shall not require a person to pay a fee as a requirement to run as a candidate for that political party.” S.B. 1937, 112th Gen. Assem. (2022). This means that the statute, if amended, would permit a political party to require that candidates for its nominations be members of the party but would forbid the political party from requiring the candidate to pay a fee to run for office as a member of the party.

Although the federal Constitution delegates election management largely to the States, U.S. Const. art. 1, § 4, cl. 1, it does have three provisions specifically related to elections. The Fifteenth Amendment ensures that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” U.S. Const. amend. XV. The Nineteenth Amendment extends that same guarantee to women, U.S. Const. amend. XIX, and the Twenty-Sixth guarantees the right to vote to all citizens over the age of 18, U.S. Const. amend. XXVI.

The Tennessee Constitution has two provisions specifically dealing with elections. It gives the General Assembly “power to enact . . . laws to secure the freedom of elections and the purity of the ballot box.” Tenn. Const. art. IV, § 1. And it further provides that the elections in this State “shall be free and equal.” Tenn. Const. art. I, § 5.

Nothing in the proposed amendment is likely to run afoul of any of these election-related provisions in either the federal or the Tennessee Constitution. It does not impinge on anyone’s right to vote, nor does it interfere with free and fair elections.

And the same is true when it comes to the other potentially applicable federal and state constitutional protections. Most relevant to the proposed amendment is the constitutional guarantee of freedom of association. The U.S. Constitution, through the Fourteenth Amendment, guarantees this freedom. It “is beyond debate,” the Supreme Court has observed, “that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). The freedom of association is also protected under Tennessee law. *See, e.g., Kersey v. Wilson*, No. M2005-02106-COA-R3-CV, 2006 WL 3952899, at *8 (Tenn. Ct. App. Dec. 29, 2006) (dissolving an injunction because it “severely inhibit[ed] [a plaintiff’s] freedom of association”). If anything, the proposed amendment might have the effect of enhancing that freedom because, by prohibiting political parties from imposing fees on their candidates for public office, it *removes* a barrier to political association; it does not create one.

In sum, the General Assembly has the authority to pass legislation prohibiting state political parties from requiring individuals to pay fees to run for office as candidates for those political parties so long as that legislation is consistent with the U.S. and Tennessee Constitutions. And

because the proposed amendment likely does not violate the provisions of either Constitution, it appears to be a permissible exercise of the General Assembly's authority.

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