# IN THE SUPREME COURT OF ALABAMA

January 3, 2020

1190099

Sheila Degan Gilbert, et al. v. Alabama Democratic Party, State Democratic Executive Committee of Alabama, et al. (Appeal from Montgomery Circuit Court: CV-19-531).

**AMENDED ORDER**

The Motion to Dismiss Appeal filed by Sheila Degan Gilbert, et al., on November 18, 2019, having been submitted to this Court,

IT IS ORDERED that the motion is GRANTED and the appeal is DISMISSED.

**Shaw, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.**

**Parker, C.J., concurs specially.**

**Bolin, J., recuses.**

**Witness my hand this 3rd day of January, 2020.**

Julia Jordan Weller

**Clerk, Supreme Court of Alabama**

FILED
January 3, 2020
9:49 am

Clerk
Supreme Court of Alabama

cc: Gregory O. Griffin, Sr.
Montgomery County Circuit Clerk's Office
Barry A. Ragsdale

Richard P. Rouco
Amardo Wesley Pitters
Marc Erik Elias
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PARKER, Chief Justice (concurring specially).

I concur in dismissing this appeal. The appeal is moot because the temporary restraining order at issue expired under its own terms on November 11, 2019. Nevertheless, because it appears that at least some claims of the plaintiffs remain pending below, I write to clarify the jurisprudential framework under which the courts of this State analyze intra-political-party disputes. I believe the courts have jurisdiction over such disputes in a technical sense because nothing in the State constitution or statutes strip the courts of authority to hear them and because hearing them would not infringe on executive or legislative authority. However, as a prudential matter, under Smith v. McQueen, 232 Ala. 90, 166 So. 788 (1936), Alabama courts traditionally abstain from hearing these disputes.

This case involves a purely intra-political-party dispute. It does not involve a general or primary election, so the statutes and cases that govern in those contexts do not apply here. See, e.g., § 17-16-44, Ala. Code 1975 (stripping the courts of jurisdiction to hear claims regarding the legality of elections); Ex parte Baxley, 496 So. 2d 688, 693 (Ala. 1986) (finding a lack of jurisdiction over primary-

election contests). Furthermore, the political-question doctrine, which arises from the separation of powers, has no application here because political parties are not an arm of another branch of government. See Magee v. Boyd, 175 So. 3d 79, 105 (Ala. 2015) (quoting Japan Whaling Ass'n v. American Cetacean Soc'y, 478 U.S. 221, 230, 106 S. Ct. 2860, 2866, 92 L. Ed. 166 (1986)) ("'The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch.'" (emphasis omitted)).

On the subject of intra-party disputes, Alabama jurisprudence is sparse but generally consistent. In McQueen, the petitioners sought a writ of mandamus to require the chair of a state political-party executive committee to certify them as candidates for delegates to the national convention. 232 Ala. at 91, 166 So. at 789. The committee had unilaterally selected others to be the delegates, and the petitioners claimed that a statute that permitted the committee to hold primary elections for delegates required the committee to hold such elections. 232 Ala. at 92, 166 So. at 790. The McQueen Court began its analysis with a general proposition:

> "It is to be observed, in the first instance, that the subject-matter of this petition concerns a factional controversy within a political party, and that the courts, with rare unanimity, express a reluctance to assume jurisdiction of questions of a purely political nature. The following from the text of 20 Corpus Juris, 137, is well supported by the cited authorities: 'Except to the extent that jurisdiction is conferred by statute or that the subject has been regulated by statute, the courts have no power to interfere with the judgment of the constituted authorities of established political parties in matters involving party government and discipline, or to determine disputes within a political party as to the regularity of the election of its executive officers.'"

232 Ala. at 92, 166 So. at 789. The Court further observed that "political parties are not governmental agencies, but voluntary organizations with the objects 'intimate to those who compose them.'" 232 Ala. at 92, 166 So. at 790 (quoting Lett v. Dennis, 221 Ala. 432, 434, 129 So. 33, 35 (1930)). Nevertheless, political parties are "affected with a public interest" and are, therefore, subject to legislative enactments. Id. Thus, in determining whether this Court should exercise jurisdiction in that intra-party dispute, the first inquiry was: "To what extent is the subject matter of this petition affected by the provisions of the ... statute?" Id. The McQueen Court concluded that the statute in question granted discretion to the committee to determine how to select delegates to the convention. 232 Ala. at 92-94, 166 So. at

790-91. Because the Court was "unable to find that th[e] action of the committee violate[d] any statutory provision," the Court held that the action was "not subject to [the Court's] control." 232 Ala. at 94, 166 So. at 791.

Although the language from Corpus Juris quoted in McQueen seems to imply that courts have no jurisdiction over intra-party disputes, this Court has not generally used jurisdictional language to describe its declining to decide such disputes. For example, in McQueen itself, this Court expressed "reluctance to assume jurisdiction." 232 Ala. at 92, 166 So. at 789 (emphasis added). In other cases, this Court has said that it "'scrupulously avoid[s] interfering'" in these disputes, Baxley, 496 So. 2d at 692 (quoting Ex parte State ex rel. Bragg, 240 Ala. 80, 85, 197 So. 32, 36 (1940)), and is "very reluctant to interfere with party matters," Bridges v. McCorvey, 254 Ala. 677, 681, 49 So. 2d 546, 549 (1950). Moreover, our reluctance has been founded on prudential concerns such as avoiding entanglement in political matters, see McQueen, 232 Ala. at 92, 166 So. at 790 (quoting 20 C.J. 137) ("'[T]he courts ... will seek ... to maintain the integrity and independence of the several departments of the government by leaving questions as to party policy, the

regularity of conventions, the nomination of candidates, and the constitution, powers, and proceedings of committees, to be determined by the tribunals of the party.'"), and deference to political parties' own dispute-resolution mechanisms, see Bridges, 254 Ala. at 681-82, 49 So. 2d at 549 (quoting Moody v. Trimble, 109 Ky. 139, 50 S.W. 504, 505 (1900)) ("'The settlement of [party] questions, in the nature of things, should be left to party authority ....'"). We have not based our noninterference on specific constitutional or statutory limits or on other concrete doctrinal restrictions that typically dictate our lack of jurisdiction. Thus, our policy against deciding intra-party disputes is not ultimately jurisdictional but rather a form of abstention.

This abstention is not without exception, however. Since the decision in McQueen, this Court has decided intra-party disputes that involved violations of Alabama statutes. See Bragg, 240 Ala. at 83, 197 So. at 34 (exercising jurisdiction to ensure compliance with statutory requirements for an election contest); Ex parte May, 253 Ala. 684, 685, 46 So. 2d 836, 837 (1950) (recognizing circuit court's jurisdiction over challenge to election contest when plaintiff alleged that statement of contest did not comply with statutory

requirements). Likewise, this Court has exercised jurisdiction over an intra-party dispute when a constitutional violation was alleged. See Ray v. Blair, 257 Ala. 151, 57 So. 2d 395 (1952) (exercising jurisdiction to hold that Democratic Party's delegate pledge violated 12th Amendment to the United States Constitution), overruled on other grounds by Ray v. Blair, 343 U.S. 154, 72 S. Ct. 598, 96 L. Ed. 852, supplemented, 343 U.S. 214, 72 S. Ct. 654, 96 L. Ed. 894 (1952) (holding that delegate pledge did not violate 12th Amendment).

In addition to being supported by the prudential concerns noted above, McQueen abstention is consistent with Alabama jurisprudence regarding voluntary associations. At the most basic level, a political party is merely "an unincorporated[,] voluntary association of persons sponsoring certain ideas of government." 29 C.J.S. Elections § 149 (2015); see McQueen, 232 Ala. at 92, 166 So. at 790 ("[P]olitical parties are ... voluntary organizations ...."). Other voluntary associations include labor unions, see Local Union No. 57, Bhd. of Painters, Decorators & Paperhangers of Am. v. Boyd, 245 Ala. 227, 234, 16 So. 2d 705, 711 (1944), social and religious clubs, see Dixon v. Club, Inc., 408 So. 2d 76, 81 (Ala. 1981),

and unincorporated churches, see Bailey v. Washington, 236 Ala. 674, 676, 185 So. 172, 173 (1938). Regarding such associations, our jurisdiction over internal disputes is well established, yet we consistently abstain from those disputes.

The constitution and bylaws of a voluntary association function as a binding contract between the members of the association. See Mackey v. Moss, 278 Ala. 55, 59, 175 So. 2d 749, 752 (1965). However, unlike determining ordinary contractual rights between individuals, the interpretation of bylaws is not always appropriate for the courts.

> "'... "The right of a voluntary association to interpret and administer its own rules and regulations is as sacred as is the right to make them, and there is no presumption against just and correct action or conduct on the part of its supervising or appellate authorities and tribunals. On the contrary, the presumption is in favor of it. In connecting himself with the organization, a member subjects himself as fully and completely to the power of administration, within legal limits, as to the power of legislation or prescription. To say courts can make rules and regulations for such associations would be absurd and ridiculous. To say they may interpret and apply them, in view of the powers reserved to, and exercised by, the governing bodies of the association, would be as plainly subversive of contractual right."'"

McNulty v. Higginbotham, 252 Ala. 218, 221, 40 So. 2d 414, 416 (1949) (quoting Shaup v. Grand Int'l Bhd. of Locomotive Eng'rs, 223 Ala. 202, 204-05, 135 So. 327, 328-29 (1931),

quoting in turn State ex rel. Smith v. Kanawha Cty. Ct., 78 W. Va. 168, 88 S.E. 662, 664 (1916)). Therefore, "[o]rdinarily a court of equity will not interfere with the internal affairs of a voluntary association, or assume jurisdiction to restrain its acts done or attempted in accordance with its rules and within the scope of its powers." Medical Soc'y of Mobile Cty. v. Walker, 245 Ala. 135, 140, 16 So. 2d 321, 325 (1944). The Court of Civil Appeals distilled the doctrine as follows:

> "[W]hatever free hand the judiciary may otherwise have in interpreting a contract between two natural persons, the courts are enjoined by precedent not to 'interfere with the internal operations of a voluntary organization' and not to 'substitute their own construction of rules, regulations, bylaws, constitutions, or other formal agreements for that of the organization where the organization's interpretations are not contrary to the law or public policy.'"

Brotherhood's Relief & Comp. Fund v. Rafferty, 91 So. 3d 693, 696 (Ala. Civ. App. 2011) (quoting Wilson v. Spruell, 403 So. 2d 14, 217 (Ala. 1981)).

Thus, under Alabama law, courts have jurisdiction over disputes within voluntary associations, but we abstain from exercising it when the association's acts are not contrary to law or public policy, choosing instead to allow the association to govern itself. Similarly, courts will not exercise jurisdiction over internal disputes within a

political party unless the dispute involves a constitutional, statutory, or regulatory violation.

In summary, I believe that the courts of this State must abstain from exercising jurisdiction over purely intra-political-party disputes unless those disputes involve an alleged violation of a state or federal constitutional provision, statute, or regulation. By refusing to interfere in these disputes, courts protect Alabamians' freedom of association and the independence of political parties.