

Application of Election Law to a Straw Poll

Schulz v. Iowa

(James E. Gritzner, S.D. Iowa 4:07-cv-350)

An eight-plaintiff pro se federal complaint challenged the participation fee for Iowa State University's Republican straw poll for the 2008 presidential election, which was to be held two days after the complaint was filed. On the afternoon before the poll, the district judge denied the plaintiffs immediate relief from the bench after a hearing. The court of appeals affirmed the decision, on the day of the poll.

Topics: Pro se party; equal protection; interlocutory appeal.

Eight plaintiffs filed a pro se federal complaint in the Southern District of Iowa on August 9, 2007, two days before the Republican Party's straw poll at Iowa State University in Ames for the 2008 presidential election.¹ The plaintiffs alleged that the \$35 participation fee was an unconstitutional poll tax, and they alleged improprieties in the voting equipment.² The complaint included requests for a temporary restraining order, a preliminary injunction, and a permanent injunction.³

Judge James E. Gritzner set the case for hearing on August 10.⁴ At the hearing, Judge Gritzner informed the lead plaintiff how he would accommodate the plaintiff's pro se status:

THE COURT: Our small amount of research that we've been able to do in the short time since we learned that you were on the premises has told us that while you are not a lawyer you appear to be a frequent litigator, so you have some experience in court, and so we'll cut kind of a middle ground as to how forgiving we are for a pro se litigant in terms of what we expect from you, Mr. Schulz.⁵

At 3:15 on the day before the straw poll, Judge Gritzner ruled from the bench and denied the plaintiffs immediate relief.⁶ An order and opinion followed on the following day.⁷

The Court is aware of no constitutional right to participate in the details of a non-binding poll hosted by a private political party

. . . The plaintiffs have failed to demonstrate that the purchase price to attend an event hosted by a private political party, in which individuals in

1. Complaint, *Schulz v. Iowa*, No. 4:07-cv-350 (S.D. Iowa Aug. 9, 2007), D.E. 1.

2. *Id.*

3. *Id.* at 21–23.

4. Docket Sheet, *id.* (Aug. 9, 2007).

5. Transcript at 4, *id.* (Aug. 10, 2007, filed Aug. 13, 2007), D.E. 14.

6. *Id.* at 61–65.

7. Opinion, *id.* (Aug. 10, 2007), D.E. 10; Minutes, *id.* (Aug. 10, 2007), D.E. 9; see Jennifer Jacobs, *Judge Keeps Straw Poll's Computerized Voting Machines*, Des Moines Register, Aug. 11, 2007, at A6.

attendance can participate in a vote that has no binding effect on a public affair (such as an election) constitutes a “poll tax.”⁸

With respect to equipment defects, “If the Plaintiffs entered into this alleged contract knowing the terms of the contract, they cannot now claim the contract has been breached merely because they find some terms of the contract distasteful.”⁹

The plaintiffs filed a notice of interlocutory appeal after the hearing,¹⁰ and on the following day, the day of the straw poll, the court of appeals affirmed Judge Gritzner’s decision.¹¹ The parties stipulated to a dismissal of the action on September 27.¹²

8. Opinion, *supra* note 7, at 8–9.

9. *Id.* at 9.

10. Notice of Interlocutory Appeal, *Schulz*, No. 4:07-cv-350 (S.D. Iowa Aug. 10, 2007), D.E. 11.

11. Judgment, *Schulz v. Iowa*, No. 07-2889 (8th Cir. Aug. 11, 2007).

Having concluded that the judgment of the district court is based on findings of fact that are not clearly erroneous, that no error of law appears and that the district court did not abuse its discretion, the order of the district court denying plaintiffs’ motion for a preliminary injunction is affirmed.

Id.

12. Joint Motion, *Schulz*, No. 4:07-cv-350 (S.D. Iowa Sept. 27, 2007), D.E. 21.