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Summary of DeStefano v. Berkus, 121 Nev. Adv. Op. 62

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DeStefano v. Berkus, 121 Nev. Adv. Op. 62 (September 22, 2005)¹

ELECTION LAW – ELIGIBILITY FOR OFFICE

Summary

In an election dispute, Berkus filed an action for declaratory judgment pursuant to NRS 281.050 asserting DeStefano was not a resident of the district in which he was running for office. DeStefano argued that the district court lacked jurisdiction to consider Berkus' action because NRS 293.182 provided the exclusive method for challenging a candidate's qualifications for office.

Disposition

The Nevada Supreme Court concluded that NRS 293.182 and NRS 281.050 provide alternative and equally viable methods of resolving challenges to a candidate's declaration of residency. Therefore the district court properly entered a declaratory judgment that DeStefano was ineligible to serve if elected.

Factual and Procedural History

In May 2004, DeStefano filed a declaration for candidacy for the office of University of Nevada Regent, District 13. Berkus and other candidates filed an action for declaratory judgment, pursuant to NRS 281.050, asserting that DeStefano was not a resident of District 13 and requested the district court to declare him unqualified to hold office in that district. The district court found that DeStefano did not reside in District 13 and therefore determined that DeStefano was not eligible to serve as a representative of District 13 if elected. Subsequently, DeStefano's name was removed from the ballot. DeStefano appealed, claiming NRS 293.182 provided the exclusive method for challenging a candidate's qualification for office before an election and the district court lacked jurisdiction to consider the candidates' action because the candidates failed to file their written challenge within the time period articulated in the statute.

Discussion

NRS 281.050 governs general matters relating to residency for purposes of eligibility for office. Subsection 3 provides that "the district court has jurisdiction to determine the question of residence in an action for declaratory judgment. NRS 293.182 governs written challenges concerning candidates' qualifications. Subsection 1 allows an elector to file a challenge to a person's candidacy for elected office "on the grounds that the person fails to meet any qualification required for the office . . . including a requirement concerning . . . residency." A challenge under NRS 293.182 must be filed not later than 5 days after the last day the person may withdraw his candidacy.²

Although DeStefano asserted the two statutes are in conflict, the court disagreed. The court found that the two statutes differ in scope and available remedy. Whereas NRS 281.050 applies only to residency requirement, NRS 293.182 applies to any required qualification. Also NRS 281.050 simply allows a party to seek a declaratory judgment to determine residency of a

¹ By Jason Peck

² NEV. REV. ST. § 293.182(1) (2004).

candidate. A successful challenge under NRS 293.182 requires the removal of the candidate's name from the ballot and precludes the candidate from taking office.

Further, NRS 281.050(3) could be helpful in maintaining public confidence in the election system. Candidates for an elected office are required to possess certain requirements considered important to the function of that office. Discovering qualifications such as age, party registration, or educational background may require less effort than discovering a candidate's residency. Whereas the expedited procedure under NRS 293.182 is meant to ensure that a qualifications challenge potentially affecting the names to be printed on an election ballot will be resolved within an adequate period before the election, the declaratory judgment provision of NRS 281.050 can affect the public awareness pertaining to a candidate's eligibility to hold office, therefore, maintaining trust and integrity in the election process.

Conclusion

NRS 281.050 does not conflict with NRS 293.182 and grants the district court jurisdiction to determine a candidate's residency in declaratory judgment actions.