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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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CLINGMAN, SECRETARY, OKLAHOMA STATE ELECTION BOARD, ET AL. *v.* BEAVER ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 04–37. Argued January 19, 2005—Decided May 23, 2005

Under Oklahoma's semiclosed primary law, a political party may invite only its own registered members and voters registered as Independents to vote in its primary. When the Libertarian Party of Oklahoma (LPO) notified the State Election Board it wanted to open its upcoming primary to all registered voters regardless of party affiliation, the Board agreed as to Independents, but not as to other parties' members. The LPO and several Oklahomans registered as Republicans and Democrats then sued for equitable relief, alleging that Oklahoma's statute unconstitutionally burdens their First Amendment right to freedom of political association. The District Court upheld the statute on the grounds that it did not severely burden respondents' associational rights and that any burden imposed was justified by Oklahoma's asserted interests in preserving parties as viable and identifiable interest groups and in ensuring that primary results accurately reflect party members' voting. Reversing, the Tenth Circuit concluded that the statute imposed a severe burden on respondents' associational rights and was not narrowly tailored to serve a compelling state interest.

Held: The judgment is reversed, and the case is remanded.

363 F. 3d 1048, reversed and remanded.

JUSTICE THOMAS delivered the opinion of the Court except as to Part II–A, concluding that Oklahoma's semiclosed primary system does not violate the right to freedom of association. Any burden it imposes is minor and justified by legitimate state interests. Pp. 3–4, 8–16.

(a) The First Amendment protects citizens' right "to band together

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in promoting among the electorate candidates who espouse their political views." *California Democratic Party* v. *Jones,* 530 U. S. 567, 574. Regulations imposing severe burdens on associational rights must be narrowly tailored to serve a compelling state interest, but when they impose lesser burdens, "a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351, 358. In *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 224, n. 13, the Court left open the question whether a State may prevent a political party from inviting registered voters of other parties to vote in its primary. Pp. 3–4.

(b) Oklahoma's system does not severely burden associational rights. The Court disagrees with respondents' argument that the burden Oklahoma imposes is no less severe than the burden at issue in *Tashjian,* and thus the Court must apply strict scrutiny as it did in *Tashjian*. *Tashjian* applied strict scrutiny without carefully examining the burden on associational rights. Not every electoral law burdening associational rights is subject to strict scrutiny, which is appropriate only if the burden is severe, *e.g., Jones, supra*, at 582. Requiring voters to register with a party before participating in its primary minimally burdens voters' associational rights. Moreover, *Tashjian* is distinguishable. Oklahoma's semiclosed primary imposes an even less substantial burden than did the Connecticut closed primary at issue in *Tashjian*. Unlike that law, Oklahoma's system does not require Independent voters to affiliate publicly with a party to vote in its primary, 479 U. S., at 216, n. 7. Although, like the earlier law, Oklahoma's statute does not allow parties to "broaden opportunities for joining . . . by their own act," but requires intervening action by potential voters," *ibid.,* this burden is not severe, since many electoral regulations require that voters take some action to participate in the primary process. Such minor barriers between voter and party do not compel strict scrutiny. See *Bullock* v. *Carter,* 405 U. S. 134, 143. To deem ordinary and widespread burdens like these severe would subject virtually every electoral regulation to strict scrutiny, hamper the ability of States to run efficient and equitable elections, and compel federal courts to rewrite state electoral codes. The Constitution does not require that result. Pp. 8–10.

(c) Oklahoma's primary advances a number of regulatory interests this Court recognizes as important: It "preserv[es] [political] parties as viable and identifiable interest groups," *Nader* v. *Schaffer*, 417 F. Supp. 837, 845 (D. Conn.), aff'd, 429 U. S. 989; enhances parties' electioneering and party-building efforts, 417 F. Supp., at 848; and guards against party raiding and "sore loser" candidacies by spurned primary contenders, *Storer* v. *Brown,* 415 U. S. 724, 735. Pp. 10–14.

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(d) The Court declines to consider respondents' expansion of their challenge to include several of Oklahoma's ballot access and voter registration laws. Those claims were neither raised nor decided below, see, *e.g., Cooper Industries, Inc.* v. *Aviall Services, Inc.,* 543 U. S. ___, ___, and respondents have pointed to no unusual circumstances warranting their consideration now, see *Taylor* v. *Freeland & Kronz,* 503 U. S. 638, 645–646. Pp. 14–16.

JUSTICE THOMAS, joined by THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY, concluded in Part II–A that a voter unwilling to disaffiliate from another party in order to vote in the LPO's primary forms little "association" with the LPO—nor the LPO with him. See *Tashjian, supra*, at 235. But even if Oklahoma's system burdens an associational right, the burden is less severe than others this Court has upheld as constitutional. The reasons underpinning *Timmons, supra,* show that Oklahoma's system burdens the LPO only minimally. As in *Timmons*, Oklahoma's law does not regulate the LPO's internal processes, its authority to exclude unwanted members, or its capacity to communicate with the public. And just as in *Timmons*, in which a Minnesota law conditioned a party's ability to nominate the candidate of its choice on the candidate's willingness to disaffiliate from another party, Oklahoma conditions a party's ability to welcome a voter into its primary on the voter's willingness to dissociate from his current party of choice. If a party may be prevented from associating with its desired standard bearer because he refuses to disaffiliate from another party, it may also be prevented from associating with a voter who refuses to do the same. Oklahoma's system imposes an even slighter burden on voters than on the LPO. Disaffiliation is not difficult: Other parties' registered members who wish to vote in the LPO primary simply need to file a form changing their registration. Voters are not "locked in" to an unwanted party affiliation, see *Kusper* v. *Pontikes,* 414 U. S. 51, 60–61, because with only nominal effort they are free to vote in the LPO primary. Pp. 4–8.

JUSTICE O'CONNOR, joined by JUSTICE BREYER except as to Part III, agreed with most of the Court's reasoning, but wrote separately to emphasize two points. First, the Libertarian Party of Oklahoma (LPO) and voters registered with another party have constitutionally cognizable interests in associating with one another through the LPO's primary, and these interests should not be minimized to dispose of this case. Second, while the Court is correct that only Oklahoma's semiclosed primary law is properly under review, that standing alone it imposes only a modest, nondiscriminatory burden on respondents' associational rights, and that this burden is justified by the State's legitimate regulatory interests, there are some grounds for concern that other Oklahoma laws governing party recognition

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and changes in party affiliation may unreasonably restrict voters' ability to participate in the LPO's primary. A realistic assessment of regulatory burdens on associational rights would, in an appropriate case, require examination of the cumulative effects of the State's overall primary scheme; and any finding of a more severe burden would trigger more probing review of the State's justifications. Pp. 1–11.

THOMAS, J., delivered an opinion, which was for the Court except as to Part II–A. REHNQUIST, C. J., and SCALIA and KENNEDY, JJ., joined that opinion in full, and O'CONNOR and BREYER, JJ., joined except as to Part II–A. O'CONNOR, J., filed an opinion concurring in part and concurring in the judgment, in which BREYER, J., joined except as to Part III. STEVENS, J., filed a dissenting opinion, in which GINSBURG, J., joined, and in which SOUTER, J., joined as to Parts I, II, and III.