refers to the candidates as nominees of any party, nor does it treat them as such"; it merely allows them to indicate their party preference.[646] The Court acknowledged that "it is *possible* that voters will misinterpret the candidates' party-preference designations as reflecting endorsement by the parties," but "whether voters will be confused by the party-preference designations will depend in significant part on the form of the ballot."[647] If the form of the ballot used in a particular election is such as to confuse voters, then an as-applied challenge to the statute may be appropriate, but a facial challenge, the Court held, is not.[648]

A significant extension of First Amendment association rights in the political context occurred when the Court curtailed the already limited political patronage system. At first holding that a nonpolicymaking, nonconfidential government employee cannot be discharged from a job that he is satisfactorily performing upon the sole ground of his political beliefs or affiliations,[649] the Court subsequently held that "the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved."[650] The Court thus abandoned the concept of policymaking, confidential positions, noting that some such positions would nonetheless be protected, whereas some people filling positions not reached by the description would not be.[651] The Court's opinion makes it difficult to evaluate the ramifications of the decision, but it seems clear that a majority of the Justices adhere to a doctrine of broad associational political

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[646] 128 S. Ct. at 1192.

[647] 128 S. Ct. at 1193. The Court saw "simply no basis to presume that a well-informed electorate will interpret a candidate's party preference designation to mean that the candidate is the party's chosen nominee or representative or that the party associates with or approves of the candidate." Id.

[648] A ballot could avoid confusion by, for example, "includ[ing] prominent disclaimers explaining that party preference reflects only the self-designation of the candidate and not an official endorsement by the party." 128 S. Ct. at 1194. Justice Scalia, joined by Justice Kennedy in dissent, wrote that "[a]n individual's endorsement of a party shapes the voter's view of what the party stands for," and that it is "quite impossible for the ballot to satisfy a reasonable voter that the candidate is 'not associated' with the party for which he has expressed a preference." Id. at 1200.

[649] Elrod v. Burns, 427 U.S. 347 (1976). The limited concurrence of Justices Stewart and Blackmun provided the qualification for an otherwise expansive plurality opinion. Id. at 374.

[650] Branti v. Finkel, 445 U.S. 507, 518 (1980). On the same page, the Court refers to a position in which "party membership was *essential* to the discharge of the employee's governmental responsibilities." (Emphasis added.) A great gulf separates "appropriate" from "essential," so that much depends on whether the Court was using the two words interchangeably or whether the stronger word was meant to characterize the position noted and not to particularize the standard.

[651] Justice Powell's dissents in both cases contain lengthy treatments of and defenses of the patronage system as a glue strengthening necessary political parties. 445 U.S. at 520.