# Federal judge rules against LaRouche, overturning Voting Rights Act

by Nancy Spannaus

Judge Thomas Penfield Jackson, of the U.S. District Court in Washington, D.C. sought to overturn the Voting Rights Act on Aug. 15, in a decision claiming that the Democratic National Committee, and DNC Chairman Donald Fowler, do not fall under the jurisdiction of that 1965 civil rights legislation. The action came in response to the suit filed by Lyndon LaRouche and voters from Arizona, Louisiana, Texas, Virginia, and Washington, D.C., claiming that their rights had been violated, by Fowler's rulings.

"Fowler's attorneys made a racist appeal to the judge, claiming that the DNC did not have to have their decisions precleared for possible racial bias, and the judge went with it," a LaRouche spokesman said in response to the ruling. "President Clinton should fire Fowler, or the word will go out that the Democratic Party leadership is in bed with a bunch of racists."

LaRouche and his co-plaintiffs are considering what their next legal move will be.

The court hearing Aug. 15 featured argument by attorneys Jack Keeney, Jr. for the DNC; Thomas Byron for the Democratic parties of Louisiana and Virginia; Jack Young for the Democratic Party of Virginia; and Steve Ross for the Texas Democratic Party. Representing LaRouche's argument, and the voters, were Odin Anderson, LaRouche's personal attorney; James Wilson of Alabama; Theo Mitchell of South Carolina; and local counsel Nina Ginsburg.

Two hours after the hearing. Judge Jackson issued his ruling upholding the Fowler arguments.

## The DNC claims exemption

Fowler's lawyer Jack Keeney led off, summarizing the Confederate argument for dismissal of the case on the basis that 1) the DNC and its chairman are not covered by Section 5 of the Voting Rights Act; and 2) internal party rules over who can participate, are political matters for the party to decide, not the courts. He cited a series of Supreme Court decisions, footnotes, and so forth, in support of his argument. He then claimed that the states which carried out Fowler's orders also could not be sued, because they were not under the proper kind of jurisdiction.

Ignoring the facts of the discrimination against LaRouche, and those who voted for him, Keeney arrogantly insisted that every time the courts had ordered a party to seat a delegate, they had been reversed, and that the courts had no right to intervene into privately funded, privately held political party functions. This is precisely the same kind of argument that was made under the Jim Crow laws, in an attempt to keep African-Americans from exercising their rights.

It was against such a "First Amendment" argument that Congress had implemented the Voting Rights Act to begin with. As late as the early 1960s, Southern states, in particular, would constantly shift voting regulations in order to keep out racial minorities, claiming their parties' "First Amendment rights" to free association. As a remedy, the Voting Rights Act mandated "preclearance" of voting rules in jurisdictions which had a history of such racism. All the jurisdictions in the LaRouche suit against Fowler fell under the preclearance requirement, with the exception of Washington, D.C.

One case cited by the LaRouche suit provides almost a direct parallel to what Fowler is trying to do. In a series of cases called the Texas "white primary" cases, the state of Texas sought to "remedy" the discrimination carried out by a law which said no African-American could vote in the Democratic primary, by shifting the authority for establishing voting criteria to the party itself. Then the Texas Democratic Party executive enacted the very same restriction—and argued that it could not be challenged because it was the act of a private party, protected by the First Amendment!

Of course, the racist intent and result were absolutely clear, as also in the argument by Fowler et al. that they did not have to "preclear" Fowler's ruling against LaRouche, which disenfranchised thousands of voters, many of them racial minorities.

Louisiana Attorney Byron waxed even more eloquent on the right to bigotry—claiming the "sanctity of national parties." He also claimed that there would be "irreparable harm" to the state parties if they had to seat the (duly elected) LaRouche delegates, because Fowler's rules say that the entire state delegation would be removed if his dictates are violated.

Attorney Young added the argument that LaRouche was not qualified to vote, and that both Democratic Party rule 11K (which gives Fowler his dictatorial power to determine who


*Civil rights activists march on Washington, August 1963, demanding the right to vote. The hard-won victories of that struggle are now being overturned, by a corrupt and racist judicial system.*

is a legitimate candidate), and the Virginia party plan, list voter registration as a requirement for running for office. Young's argument, that LaRouche should never have been qualified to be a candidate under these rules, did not address the fact that the Virginia party had in fact accepted him as a candidate in the caucus process.

## Violating rights

As LaRouche's attorney Odin Anderson rose to respond, Judge Jackson immediately demanded that he tell him, how, if LaRouche was not a qualified voter, he could be considered a candidate? Anderson answered that what was at issue here, was the vote, not the candidacy—although under the Constitution LaRouche is eligible to hold the office of President. Judge Jackson continued to pepper him with questions, asking how he would answer DNC lawyer Keeney's arguments that the court had no jurisdiction over the DNC. Anderson addressed many of the citations, showing that no court had ever previously ruled on the issue at hand—whether the DNC should not come under the jurisdiction, when their rules are enforced without preclearance, and the application of those rules results in deprivations such as those cited in the LaRouche suit—damages which affected the plaintiff voters, and LaRouche himself.

The fact that the judge understood that the issue of racist discrimination involved, was reflected in his next question to Anderson: So you are saying that the DNC would come under the Voting Rights Act, if, for example, it said they would only recognize white males as candidates?

Anderson also addressed at some length the fact that the state parties and the DNC were "inextricably intertwined," "alter egos," and therefore had to be considered under the jurisdiction of the D.C. court, although the central relief sought—that of seating LaRouche's delegates—had to be granted through Fowler and the DNC.

Anderson was followed by James Wilson of Alabama, who argued that voters had been stripped of their rights, by what Fowler had done in disqualifying LaRouche, and therefore Fowler's action had to come under the Voting Rights Act, and its conditions for preclearance.

Judge Jackson virtually took the side of the defense, arguing that voters should have decided to vote for someone else, not an "unqualified" candidate. Wilson countered sharply, and accurately, that the decision to disqualify LaRouche was taken by the DNC, and the states acting for the DNC, after LaRouche had already obtained more than 500,000 votes. Louisiana and Virginia put LaRouche on the ballot, the voters exercised their rights, and then the states came in and nullified their right to vote. The only relief possible is for the court to rule that Fowler and the DNC come under the jurisdiction of the Voting Rights Act.

The last argument for the plaintiffs came from Theo

Mitchell, who immediately addressed Judge Jackson's question about the DNC ruling on "white males." Of course, the Voting Rights Act would apply to such a ruling, he said, and in this case there is also deliberate conduct by DNC head Fowler to carry out a personal vendetta against LaRouche.

### Civil rights veterans file amicus brief

The day before Judge Jackson's ruling, 150 Democratic Party elected officials and activists filed an *amicus curiae* (friend of the court) brief in support of LaRouche and the voters who were suing the DNC and its chairman Fowler. The Democratic Party activists are represented by former U.S. Congressman James Mann of Greenville, S.C., and D.C. School Board member, Bernard Gray.

The *amici* include 4 former congressmen, 39 state representatives, 41 party officials, 19 civil rights leaders, and numerous others, from 31 states.

The *amicus* brief asks the U.S. District Court in Washington, D.C. to grant the request of LaRouche and the disenfranchised voters, that the Democratic Party seat the LaRouche delegates at the Aug. 26-29 Chicago Democratic National Convention.

The 150 signers on the *amicus curiae* brief, include individuals with a considerable history of fighting for voting rights against discrimination.

Among the 39 state legislators, are the leadership of black caucuses in nine states, the president of Alabama's New South Coalition, and the vice-president of the Alabama Democratic Coalition. National and state leaders of the nation's two major civil rights organizations—the National Association for the Advancement of Colored People (NAACP) and the Southern Christian Leadership Conference (SCLC)—have signed on, as have prominent members of the African-American Lawyers Association and the National Black Women's Caucus. In sum, the leadership of black Democrats in the United States is well represented, as are many other constituencies.

The short brief includes the following statements:

"Your Amici are concerned that the actions taken by the Defendants (Fowler, et al.), unless legally repudiated, will be used as a model for further future deprivations of the rights of people of color or other minorities. . . .

"Often minority voters are attracted to candidates who may not always have the approval of the establishment party leaders, but this is the very purpose of the primary system," the brief states.

"The LaRouche candidacy represents the opportunity for robust debate on policy issues of critical importance to the nation. Whether it is likely that the Convention delegates ultimately select him as their choice for the nomination is not the issue. The right of free speech, the furtherance of public debate, and the rights of voters to choose the candidate to be their voice in the national political debate must be respected and protected if our democracy is to endure."

## Documentation

# Suit seeks to overturn DNC's discrimination

*The following is excerpted from the Aug. 2, 1996 suit against Democratic National Committee Chairman Donald Fowler and the DNC, by Lyndon LaRouche.*

## Nature of the Action

4. This action arises under the Voting Rights Act of 1965 as amended, 42 USC §1971 et seq. This action seeks declaratory judgment by a Three-Judge District Court panel as follows:

a. Declaratory judgment that Rule 11(K) of the Democratic Party Delegate Selection Rules for the 1996 Democratic National Convention, and its subsequent implementation, is void, of no force and effect, and legally unenforceable for lack of preclearance pursuant to Section 5 of the Voting Rights Act, and is otherwise unconstitutional under Article II, §1, Clause 4, of the Constitution of the United States of America.

b. Declaratory judgment declaring that such provisions as are in Rule 11(K) are in themselves unable to be precleared.

c. Declaratory judgment declaring the actions taken by Defendant Donald L. Fowler whereby the issuing of a January 5, 1996 and an April 1, 1996 (and such other and unknown correspondence and/or actions by Defendant Fowler) disqualified Plaintiff LaRouche's Presidential candidacy from seeking the nomination of the Democratic Party which had the purpose and/or effect of disqualifying and discriminating against voters who are African-American, Hispanic-American, American-Indian, and disabled, among others, and delegates pledged to LaRouche and/or who wish to be a delegate pledged to candidate Lyndon H. LaRouche, Jr. to be seated at the 1996 Democratic National Convention, are void, of no force and effect, and legally unenforceable for lack of preclearance pursuant to Section 5 of the Voting Rights Act.

d. Declaratory judgment declaring the actions of Defendant Fowler are in themselves unable to be precleared as they have the purpose and/or effect of denying Plaintiffs and others similarly situated of their rights in violation of the Voting Rights Act, the Civil Rights Act, and the Constitution of the United States and the Amendments thereto. . . .

## Facts

35. Plaintiff LaRouche meets the criteria established in Article II, §1, Clause 4 of the Constitution of the United States to be a candidate for President of the United States. LaRouche is a Democrat actively seeking the nomination of the Democratic Party for President. He is certified for Matching Funds by the Federal Election Commission, and met the criteria to appear on the Presidential Preference Primary ballots in 28 states. . . .

36. The total votes officially reported in those primaries for LaRouche's candidacy, nationwide, is 597,853. Candidate LaRouche received double-digit percentiles of the vote cast in a number of state primaries, despite a deliberate policy by the national news media to virtually black out his campaign—even when he campaigned in various states, holding press conferences and "town meetings.". . .

37. On or about March 12, 1994, Defendant DNC adopted Rule 11(K) of the Democratic Party Delegate Selection Rules for the 1996 Democratic National Convention which changed a voting qualification as defined in Section 5 of the Voting Rights Act (42 §1973c et seq.), which had the purpose and/or effect of depriving persons of their right to vote.

38. Rule 11(K) of the Democratic Party Delegate Selection Rules for the 1996 Democratic National Convention states:

"For purposes of these rules, a Democratic candidate for president must be registered to vote, must be a declared Democrat, and must, as determined by the Chairman of the Democratic National Committee, have established a bona fide record of public service, accomplishment, public writings and/or public statements affirmatively demonstrating that he or she has the interests, welfare and success of the Democratic Party of the United States at heart and will participate in the Convention in good faith.". . .

40. Defendant DNC's change in the National Party Rules deprived persons protected by the Voting Rights Act, the Civil Rights Act, and others of an equal opportunity to participate in the political process and to elect a candidate of their choice.

41. Plaintiffs are informed and believe that Defendant DNC did not submit its change to the National Party Rules (Rule 11(K)) to the Attorney General of the United States, nor did they seek preclearance from the District Court for the District of Columbia as required by the Voting Rights Act. . . .

42. The provisions of Rule 11(K) are not preclearable as they do not meet the criteria of the Voting Rights Act nor do they comport with the Constitution, and the discriminatory effect of such provisions is a denial of First, Fifth, Fourteenth, and Fifteenth Amendments to the Constitution of the United States.

43. On January 5, 1996 Defendant Fowler issued a letter to all Democratic Party State Chairs which made a unilateral determination that under the Democratic Party Delegate Selection Rules for the 1996 Democratic National Convention and the accompanying Call for the 1996 Democratic National Convention, Plaintiff LaRouche is not a bona fide candidate. Fowler declares:

". . . I have determined that Lyndon Larouche (sic) is not a bona fide Democrat and does not possess a record affirmatively demonstrating that he is faithful to, or has at heart, the interests, welfare and success of the Democratic Party of the United States. This determination is based on Mr. Larouche's expressed political beliefs, including beliefs which are explicitly racist and anti-Semitic, and otherwise utterly contrary to the fundamental beliefs, values and tenets of the Democratic Party and is also based on his past activities including exploitation of and defrauding contributors and voters.

"Accordingly, Mr. Larouche is not to be considered a qualified candidate for nomination of the Democratic Party for President . . . Therefore, state parties, in the implementation of their delegate selection plans, should disregard any votes that might be cast for Mr. Larouche, should not allocate delegate positions to Mr. Larouche and should not recognize the selection of delegates pledged to him at any stage of the Delegate Selection Process.

"Further, Mr. Larouche will not be entitled to have his name placed in nomination for the office of President at the 1996 Democratic National Convention. No certification of a delegate pledged to [him] will be accepted by the Secretary of the DNC and no such delegate shall be placed on the Temporary Roll of the Convention. The National Chair will, if necessary, and upon the proper filing of a challenge, recommend to the Credentials Committee . . . that the Committee resolve that any such delegate not be seated.". . .

44. Fowler's declarations are false, made with reckless disregard for the truth, and imposed voting qualifications, standards, practices or procedures which deprived Plaintiffs of their rights under the laws of the United States, and upon information and belief, were not precleared in accordance with 42 USC §1973 et seq.

45. On January 8, 1996, Plaintiff LaRouche, having learned of the issuance of Defendant Fowler's January 5, 1996 letter to State Chairs, issued a reply to Fowler, Democratic Party State Chairs, and relevant other party members. LaRouche's reply states in relevant part:

"I am in receipt of a two-page, scurrilous letter, which presents itself as a policy statement, from Democratic National Committee chairperson Donald L. Fowler, to each and all 'Democratic Party state Chairs.'. . .

"The purpose of the letter is stated within the third of the letter's five paragraphs. The signator, ostensibly Fowler,

states that 'Lyndon Larouche is not a bona fide Democrat . . . This determination is based on Mr. Larouche's expressed political beliefs, including beliefs which are explicitly racist and anti-Semitic. . . .'

"On this account, either Mr. Fowler, or whoever issued this letter in his name, is purely and simply a liar.

"I am not obliged to speculate on the motives of whoever caused that letter to be put into circulation. However, since I have been an active Democratic Party campaigner during more than fifteen years, and have campaigned for the party's nomination five times, such an obviously hysterical document now, suggests that someone is terribly afraid of the extent of my estimated potential support for my candidacy . . . Since Mr. Clinton's reelection is virtually inevitable, and since I am committed to support his reelection after the August convention, one may ask: whether the authorship of the scurrilous letter either wrote in a deranged state of mind, or is operating under the influence of some secret agenda?

"Ironically, given its reliance upon that flagrant lie, the text of the letter as a whole is fairly described as recalling the totalitarian style of 'political correctness' (*Gleichschaltung*) practiced by Nazi Propaganda Minister Josef Goebbels, a quality which one might have thought were 'utterly contrary to the fundamental beliefs, values and tenets of the Democratic Party.'

"Since that letter's reported determination by the Chair is explicitly premised upon no evidence other than a flagrant lie, I propose that the letter be tabled by all National and State party officials, until such time as Mr. Fowler may have rebuked whomever might have misused his name, or, in the alternative, may have made suitable apology for the utterance of so flagrantly false and disgusting a lie.". . .

47. Defendant DNC's adoption of Rule 11(K) and Defendant Fowler's actions are also inconsistent with Rule 4(B)1 and 2 of the Democratic Party Delegate Selection Rules for the 1996 Democratic National Convention which read:

"4(B)1 All public meetings at all levels of the Democratic Party in each state should be open to all members of the Democratic Party regardless of race, sex, age, color, creed, national origin, religion, ethnic identity, sexual orientation, economic status, philosophical persuasion or physical disability (hereinafter collectively referred to as 'status').

"4(B)2 No test for membership in, or any oaths of loyalty to, the Democratic Party in any state should be required or used which has the effect of requiring prospective or current members of the Democratic Party to acquiesce in, condone or support discrimination based on 'status.' ". . .

## Louisiana

49. Plaintiff LaRouche timely filed his declaration of candidacy and filing fee with the Louisiana Secretary of State to have his name appear on the March 12, 1996 statewide President Preference Primary. . . .

52. In the 6th C.D., the official returns also show that LaRouche received 3,995 votes, which is over 15%. . . .

54. According to the governing Party Rules (both nationally and in Louisiana), a Presidential candidate qualifies to receive a district level delegate to the National Convention when "a threshold of at least 15% of the votes cast at the primary in each congressional district" is reached. . . .

56. Because no Louisiana resident of the 6th C.D. had prefiled as a delegate pledged to LaRouche, LEC national campaign representative Debra Hanania-Freeman, attempted to reach Defendant James J. Brady, the Louisiana Democratic Party state chairman, to work out the post-primary procedure by which a delegate pledged to LaRouche would be selected for the 6th C.D. . . .

58. On March 18, 1996, Mrs. Freeman called the Louisiana Democratic Party headquarters in Baton Rouge, attempting to reach Defendant Brady. She was told that Brady was not in the Baton Rouge office, but worked in Washington, D.C. . . .

59. Freeman explained the reason for her call. The secretary acknowledged that she knew LaRouche had qualified for a delegate in the 6th C.D., and told Freeman the matter was being handled by Jim Nickel, the Executive Director of the Louisiana Democratic Party. . . .

60. On March 19, the next day, Freeman reached Nickel at the Baton Rouge office and explained that based upon the Secretary of State's official returns, LaRouche is entitled to one district level delegate and one alternate. Nickel replied, "Yes, indeed, it certainly does appear that he is.". . .

61. Freeman then proposed, in accordance with the National Party Rules, that a LaRouche caucus be convened in the 6th C.D. on March 30, along with the other district caucuses scheduled to meet. She further stated that if this presented a problem, she was open to working out alternative dates. . . .

62. Nickel's response to Freeman was to ask her if she was aware of Defendant Fowler's January 5, 1996 letter to all state chairmen, stating his intention to deny certification of any delegate pledged to LaRouche at the National Convention. After discussion, Nickel asked Freeman to send him a letter summarizing the facts and LaRouche's request for the convening of a post-primary procedure. . . .

66. On April 9, 1996 Freeman received, by fax, a letter from Defendant Brady which was dated April 4, 1996. Brady's letter stated in relevant part: "Please be advised, [based on] the declarations of the National Party Chair . . . Lyndon LaRouche was not entitled to a delegate or an alternate to the 1996 National Convention from Louisiana.". . .

67. Freeman attempted to reach Brady by phone at the Baton Rouge office, but was told he could only be reached at Defendant DNC's offices in Washington, D.C. Freeman called the DNC headquarters to speak with Brady who refused to take her call. . . .