Appeal is filed in LaRouche Voting Rights Act case

by Mary Jane Freeman

On July 30, attorneys for Lyndon H. LaRouche, Jr., and nine supporters of his 1996 bid for the Democratic Party Presidential nomination, filed their appeal brief in the Voting Rights Act (VRA) case, *LaRouche et al. v. Fowler et al.* The suit was filed in August 1996 when then-Democratic National Committee (DNC) Chairman Donald Fowler's edict to "disregard" votes cast for LaRouche was enforced, resulting in the DNC's refusal to certify and seat delegates pledged to LaRouche to attend the 1996 Democratic National Convention. LaRouche, who won almost 600,000 votes in the 1996 Democratic Presidential primaries, also won sufficient votes, in Louisiana and Virginia, to be awarded delegates.

The case, now on appeal in the U.S. Court of Appeals for the District of Columbia Circuit, was dismissed last summer by U.S. District Judge Thomas Penfield Jackson, when he ruled for the arrogant arguments of the DNC's and Fowler's attorneys, who relied on racialist "Jim Crow" rulings to justify their exclusion of LaRouche and his voters from what they deem to be their "private club," the Democratic Party! But, as the 42-page LaRouche appeal brief and the accompanying 580-page appendix show, the facts of this case raise the crucial issue of the right of all Americans, especially minority voters, to vote and have their votes counted. Such tactics carried out by Fowler and some state Democratic Party officials, caused "the rights of" LaRouche supporters "to associate to advance their political beliefs" to be "demolished," and curtailed "debate of issues" cutting off "a voice . . . in . . . the discussion of issues vital to the party and the country," the brief states.

A review of the case

We excerpt here portions of the brief just filed. But first, we provide a short summary of the facts of the case and of the issues presented.

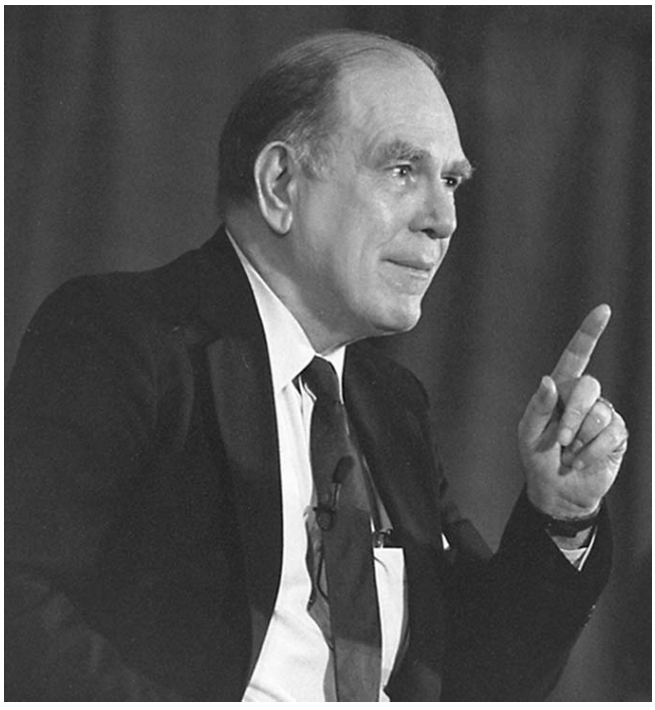
The crucial facts which gave rise to the filing of the suit are these: LaRouche, who, under the terms of Article II, Sec. 1, Clause 4, of the U.S. Constitution, was eligible to run for the office of President, declared his candidacy for the Democratic Party nomination on Aug. 7, 1993. In March 1994, the DNC passed a new rule, Rule 11(K), which gave dictatorial power to the chairman to decide who was a bona fide Democrat, and thus who could participate in the party's election of a candidate for President. Thereafter, LaRouche's name was certified for the Presidential primary ballots in 28 states.

But before the first primary was held, Fowler, on Jan. 5, 1996, issued a letter-directive to all Democratic Party state chairs, pursuant to his powers under Rule 11(K), in which he declared, "Lyndon LaRouche is not a bona fide Democrat." Then, in reckless disregard for the truth, he lied that LaRouche's beliefs are "racist and anti-Semitic." Fowler ordered all state party chairs to "disregard any votes cast" for LaRouche, and to "not recognize the selection of delegates pledged to him." It was the enforcement of this edict by state party officials in Louisiana, Virginia, Texas, and Arizona, all of which are so-called "covered jurisdictions" under the VRA, as well as by officials in the District of Columbia, which led to the violations of law detailed in this case.

In Louisiana and Virginia, LaRouche won enough votes in the 6th Congressional District (CD) of Louisiana and the 2nd CD of Virginia, to be awarded one delegate from each CD, according to Democratic Party rules. But Fowler's edict to "disregard" LaRouche's vote, was followed, and no delegates were selected. In Texas, LaRouche delegates were elected at precinct caucuses, but then were excluded at later party caucuses. In D.C., LaRouche delegates gathered 4,000 petition signatures to run as delegates. But D.C. party leaders, under Fowler's directions, refused to accept the petitions. And in Arizona, the state chairman cancelled the first Democratic primary in Arizona's history.

Each of these exclusions from the electoral process occurred by some change in the qualifications to vote, or to be a candidate. In covered jurisdictions, such "changes" must first be pre-cleared by the U.S. Attorney General, to be tested for any potential "discriminatory" effects, before they can be implemented. This was not done by the state or national Democratic Party officials. Because the state governments had empowered, by law, the state party officials to conduct their primary procedures for selecting a Presidential nominee, the obligation to "pre-clear" such changes affecting voting fell to them.

But, the state party officials demurred, saying that they were just following national party rules. In turn, the DNC and Fowler subverted the purpose and intent of the VRA, by arguing that the Democratic Party is not named as a "covered jurisdiction" in the implementing regulations to the act, therefore they had no obligation to pre-clear Rule 11(K) or Fowler's directive, no matter the consequences. If the courts didn't buy this argument, their fallback was that Rule 11(K) and Fowler's order were merely a definition of who could be a member of the party, and under two decades of U.S. Supreme



Lyndon LaRouche (left) and former Democratic National Committee Donald Fowler (right). Although LaRouche won the support of nearly 600,000 voters in the 1996 Democratic Party Presidential primaries, Fowler instructed party officials to "disregard" that support. His attorneys used "Jim Crow" rulings to insist that the Democratic Party is a "private club," which is not obliged to admit "outsiders."

Court cases, they have a First Amendment right to define membership. While true that it may define its membership, in exercising that right its actions must be "constitutionally permissible," which in this case they were not.

The traditional base of the party

LaRouche's candidacy appealed to the Democratic Party's traditional voter base of blue collar, middle class, civil rights, and entrepreneurial voters who were seeking a voice for traditional policies. The largest part of that support came from African-American voters. It was this base of the party that Fowler, in cahoots with Richard "Dirty Dick" Morris, alienated, by pushing President Clinton to adopt the murderous Welfare Reform bill at the time of the convention. The exclusion of LaRouche Democrats was central to this wrecking operation—something the party has yet to recover from. Thus, the adoption of Fowler's order had the force and effect of discriminating against minority voters, and his abuse of power, the brief explains, also disenfranchised "long-standing Democratic Party members" and contradicted "the express wishes of its members who chose to support LaRouche . . . as well as the over half-million Democratic voters who voted for [him]." It notes 144 *amici curiae* signers—all active Democrats—warned that the "subtle discrimination" as was used here, "harken[s] back to the exclusion of the Mississippi Freedom Democrats."

The LaRouche appeal, in part, relies on the Supreme Court case, *Morse v. Republican Party of Virginia,* 116 S.Ct. 1186, decided in 1996. In *Morse,* Justice John Paul Stevens wrote that practices which "bear on the 'effectiveness' of a vote cast" fall under the VRA. He wrote, "Rules concerning candidacy requirements and qualifications, . . . fall into this category because of their potential to 'undermine the effectiveness of voters who wish to elect [particular] candidates." Justice Stevens recognized "that electoral practices implemented by political parties have the potential to 'deny or abridge the right to vote,' " and identified the importance of the passage of the VRA as a means to "stop discriminatory voting practices in certain areas of the country on account of the intransigence of officials who 'resorted to the extraordinary stratagem of contriving new rules . . . for the sole purpose of perpetuating . . . discrimination. . . .' "

When Judge Jackson dismissed this case, LaRouche, addressing why the appeal to overturn Jackson's ruling and Fowler's actions was necessary, located its historical significance this way: "This means that the African-American vote has been told *it has no home* in the Democratic Party, and a lot of other minority groups and senior citizens and others are going to look at this and say, 'What's the difference between the two parties?' "

The LaRouche appeal brief concludes by warning that the issues raised in this case, if not checked, are "likely, if not certain, to recur," just as decades of discrimination against African-American voters took a new twist and turn every time some new subterfuge was devised by those in power, to keep them from voting. Simply put, discrimination against any

voter is an injustice against each of us, and it cannot go unchallenged.

In the excerpts here, LaRouche and his supporters who filed the suit are identified as either the appellants or as plaintiffs. Fowler, the DNC, and state party chairs who were sued, are the appellees or defendants.

Argument

A. Errors of the District Court

Issue 3—National Appellees are Subject to 42 USC *ss* 1973 et seq.

* * *

The changes effected, . . . by the revision in Party Rules and by the Fowler directive should have been precleared under the Voting Rights Act. Those changes violated the regulations, in that Fowler arbitrarily denied LaRouche his candidacy, he instructed and conspired with the State Parties to refuse to count votes validly cast for LaRouche and the plaintiff delegates, and he changed prior rules (and indirectly laws) relating to allocation of delegates to party conventions.

. . .[D]efendants claimed their First Amendment rights as a political party placed them beyond the reach of the Voting Rights Act. A similar contention was made in *Morse,* [but] Justice Breyer, writing a concurring opinion in *Morse,* rejected such an argument saying:

> Such questions, we are satisfied, are not so difficult as to warrant interpreting this Act as containing a loophole that Congress could not have intended to create.

* * *

Changes in voting procedures were made by Appellees in this case, so preclearance was required. Having failed to obtain preclearance, those changes are void. Justice Stevens continued:

> As we have explained, the fundamental purpose of the preclearance system was to "shift the advantage of time and inertia from the perpetrators of the evil to its victims," . . . by declaring all changes in voting rules void until they are cleared . . .

* * *

The only difference between this case and the *Morse* case is that here the political party jurisdiction is both the State Party and National Committee, while in *Morse* it was only a State Party Committee. Ever since the decision in *Democratic Party of the U.S.A. v. Wisconsin,* 450 U.S. 107 (1981), the rules of the State Party and, indeed, the laws of the State relating to voting procedures governing selection of delegates to the national convention are subject to being overruled by Rule of the National Party. If the National Party is exempt from the provisions of the Voting Rights Act however, then there is created: "a loophole in the statute the size of a mountain.". . . If a National Party orders or instructs a State Party to make a change in voting procedures, as here, either the National or State Party has the obligation to preclear the change if the State is a covered jurisdiction. If it were not so, a further "loophole" would be created which would destroy the Voting Rights Act. In this case, none of the Party defendants submitted the changes . . . for preclearance.

* * *

A review of the hearing transcript reveals that the court below failed to grasp the nature of the constitutional and statutory violations involved in this case. Judge Jackson's query on page 29, "Suppose Rule 11(K) said 'we are only going to recognize white males as Democrats.' " Merely stating this question discloses a failure to understand the scope and breadth of the Voting Rights Act, the thrust of the White Primary cases, and the concept of denial of constitutional rights of plaintiffs. The court's off-hand remedy for the more than a half-million Democratic voters whose votes were nullified was contained in the remark, "I suppose the answer that you get from the other side of the courtroom is that you ought to start your own party."

The trial judge further exposed his personal predilections when he focussed on the argument that plaintiff LaRouche has a criminal conviction. This fact had nothing to do with issues before the court, but revealed much about the Court's viewpoint.

* * *

B. Appellees' Actions Violated the Voting Rights Act

Issues 5-7—Appellees' Actions Required Preclearance and Were Exercised as Agents of the State

* * *

The regulations governing the implementation of the Voting Rights Act enumerate what changes must be submitted for preclearance. For example, any action necessary to make a vote effective in a "primary, special, or general election including . . . having such ballot counted properly . . . with respect to candidates for public or party office," requires preclearance.

* * *

Defendant DNC, acting by and through Chairman Fowler, ordered the State Party organizations to refuse to count votes cast for LaRouche. That order was certainly a change from previous procedures. The DNC also ordered the State Party Chairs and the State Party organizations not to consider LaRouche a candidate for nomination for President of the United States. These acts constitute changes covered by the Voting Rights Act.

Here, the State Party Appellees were extended the power to conduct primary election procedures to select a party nominee and/or delegates to the national convention.

* * *

In Louisiana's Sixth CD LaRouche got 16.696% of the vote; thus the Rules required he be awarded a delegate to the

national convention. After the election, however, Louisiana Appellees adopted and enforced Fowler's directive pursuant to Rule 11(K), despite such action being contrary to Louisiana law and state and national party delegate selection procedures. Therefore, Appellants [Mr.] Promise's and [Mr.] Shaw's votes were nullified, and LaRouche was denied a delegate.

Likewise, the Virginia Appellees, under Virginia Election Code . . . and the precleared Virginia Delegate Selection Plan, had an established procedure by which delegate candidates pledged to presidential candidates would be selected by the electorate. Virginia Appellees accepted all filings from LaRouche and delegates pledged to him for the selection process. Despite the fact that the LaRouche caucus at the 2nd CD convention constituted 24.58% of the assembled Democrats—well above the 15% threshold to be awarded a delegate—[they] shut down the LaRouche caucus, preventing the vote in violation of state-delegated law and Virginia and National Party Rules.

* * *

Appellants assert that when a National Political Party exercises its authority to change State Party Rules (or state law) in matters relating to voting, e.g., rights of candidates, counting of votes, and rights of delegates to state and national conventions of the political party, then it has triggered the provisions of the Voting Rights Act. . . . Appellants do not seek to compel the DNC to seat a delegate selected in violation of the Rules of the Party. Rather, they seek to void those changes which violate the Voting Rights Act and seek damages for those violations. However, if the District Court had properly certified this case to a three-judge panel, Louisiana and Virginia defendants would have had to certify those duly-elected and/or selected delegates pledged to LaRouche, to the Convention, where, they could have exercised their right of contest for their seat under the National Party Rules.

Appellees cite the case of *Democratic Party of the U.S.A. v. Wisconsin,* for the proposition that a national party rule must prevail over a state law concerning selection of National Convention delegates. However, national party rules must be "constitutionally permissible." Here, Rule 11(K), and the actions of Fowler, which lack any due process and/or equal protection provisions, fall for failure to meet constitutional scrutiny, as well as for failure of preclearance. The failure to preclear each of those changes in states subject to the Voting Rights Act also negates the effect of the *Wisconsin* precedent.

* * *

Issues 8-9—Preclearance Is Required When a Previously Precleared Legislative Election Procedure Is Changed

Where there has been legislative adoption of an election process or procedure and that process or procedure has been precleared by the Attorney General of the United States, any change thereto, however minor, requires preclearance. . . . For example, the Arizona defendants' actions . . . were a blatant "end run" around the Voting Rights Act and the rights of the Democratic supporters of LaRouche in that state. There, a Presidential Primary election for the Democratic Party had been lawfully passed by the legislature, and precleared by the Attorney General of the United States. Candidates had filed the requisite petitions to qualify for the ballot (including LaRouche) and voters had pledged support for LaRouche and made the proper designation under law. Disregarding the Voting Rights Act, the Arizona Defendants went into a State Court and obtained an order "cancelling" the Democratic Primary! One of the reasons asserted was the Fowler directive to disqualify LaRouche.

* * *

C. Appellees' Actions Violated the Constitutional Rights of Appellants and Others Similarly Situated

Issue 10—The Right To Vote Is Protected by the Constitution

Appellants contend that a National Chairman of a political party cannot properly have the power to dictate to state party officials to "disregard" votes cast for a candidate seeking party nomination and/or for delegates supporting that candidate. Even without the provisions of the Voting Rights Act, the right of a citizen to have his vote honestly counted was first held by the Supreme Court in *United States v. Moseley,* 238 U.S. 383 (1915). Obviously, the Voting Rights Act was enacted to further enforce the honest count of votes cast. Regardless of the "rights" Appellees believe *Wisconsin* granted them, it stretches the right too far when they assume to deny a fundamental constitutional right to vote.

Issue 11—Fowler Exercised Unfettered Discretion

The action by Fowler in disqualifying LaRouche from the Presidential selection process (nationwide) completely usurped state election laws in many of those states. In other states where the party organizations ran the caucuses and conventions, such disqualification usurped the right (and obligation) of those organizations to run a fair and honest election procedure to select delegates and to fairly count the voters' intent. It cannot be that the Supreme Court in the cases of *Democratic Party of the U.S.A. v. Wisconsin,* and *Cousins v. Wigoda,* 419 U.S. 477 (1975), intended to grant such dictatorial powers as exercised here by Fowler.

* * *

Justice Marshall, taking notice of the line of cases from 1941 to 1980 which invoke the First Amendment and its role in fostering debate in the electoral process, wrote:

> We have recognized repeatedly that "debate on the qualifications of candidates [is] integral to the operation of the system of government established by our Constitution." Indeed, the First Amendment "has its fullest and most urgent application" to speech uttered during a campaign for political office. Free discussion about candidates for public office is no less critical before a primary than before a general election.

As late as 1983, the Supreme Court admonished political

parties concerning potential abuse of First Amendment freedoms, when, in *Anderson v. Celebrezze,* it said:

> In *Williams v. Rhodes,* we concluded that First Amendment values outweighed the State's interest in protecting the two major political parties. . . . [I]n *Storer* we recognized the legitimacy of the State's interest in preventing "splintered parties and unrestrained factionalism" but we did not suggest that a political party could invoke the powers of the state to assure monolithic control over its own members and supporters.

Precisely such "monolithic control" was exercised by Fowler over decades-long members of the Democratic Party who supported LaRouche's candidacy. For example, plaintiff Grace Littlejohn has been an active Democrat for "52 years," and plaintiff Geneva Jones an elected official in her community for "18 years." Yet, District of Columbia Appellees, in concert with Fowler, refused the nominating petitions of these and the other LaRouche-pledged delegate candidates. . . .

. . .When the defendants try to hide behind the First Amendment their reliance is misplaced. Indeed, First Amendment protections exist to foster debate; not to arbitrarily grant the power of censorship as was exercised by defendants in this case.

* * *

D. The Issues Presented Are Not Moot

Although the 1996 election is completed, this case is not moot. Only one of the requested prayers for relief has been rendered moot by that occurrence. The issues of the lack of preclearance of the voting changes made by Rule 11(K) and whether the Fowler directive required preclearance before it was allowed to govern candidacy and counting of votes, remain to be decided. . . .

* * *

LaRouche has run as a Democrat for nomination for President in the past five presidential elections. He garnered over half a million votes during the 1996 primaries. On July 18, 1997, LaRouche issued his announcement titled, "The Time Has Come," stating his "intention to campaign for the Year 2000 Democratic Party presidential nomination." Given this fact, the circumstances similar to those identified in the Complaint are highly likely, if not certain, to recur against LaRouche and his supporters, and/or against another candidate similarly situated. Even were LaRouche not an announced candidate, the unfettered discretion, as detailed herein, exercised by the national defendants against members of their own Party who are minority voters and/or candidates with non-mainstream views, which resulted in the unconstitutional denial of the right to vote, have that vote counted, and to be a candidate, will surely happen again, unless this Court acts to prevent it.

America is killing innocent people

by Marianna Wertz

The execution of Joseph O'Dell in Virginia on July 23, and the last-minute reprieve of Thomas Thompson in California on Aug. 4, highlight the importance of the report, "Innocence and the Death Penalty," released in July by the Washington, D.C.-based Death Penalty Information Center (DPIC). The report is an update of the 1994 study, prepared by the DPIC at the request of Rep. Don Edwards (D-Calif.), then chairman of the House Judiciary Subcommittee on Civil and Constitutional Rights, on the problem of innocent people on death row.

The 1994 report listed 48 defendants who had been released from death row in the prior 20 years because of subsequently discovered evidence of innocence. The growing number of additional cases of innocence on death row, prompted DPIC Executive Director Richard Dieter to prepare the updated report, which lists 21 new such cases since 1993.

In an interview with *EIR* on Aug. 6 (see below), Dieter noted that the recent cases of O'Dell and Thompson "show a tendency in the courts to look at the procedure over substance, to ignore the merits of the case, and to emphasize whether the steps in the appeal have been followed, and that's a dangerous problem. That means that people could be executed solely because they didn't go through the right steps, procedures."

Joseph O'Dell went to his death in Virginia on July 23, proclaiming his innocence (see *EIR,* Aug. 8). He was executed without anyone, from Virginia Gov. George Allen and the lowest Virginia court, to the U.S. Supreme Court, ever allowing a second test on DNA evidence found on the murder-rape victim. The first test, done in 1986, was inconclusive. A second test, conducted with modern DNA analytic techniques, might have proved his innocence. We may never know if he was guilty, because these same courts are still refusing to release the evidence.

Thomas Thompson, 42, was sentenced to death in California for a 1981 rape and murder he says he didn't commit. A veteran with no prior criminal record, Thompson was scheduled to be executed on Aug. 4, but the execution was blocked on Aug. 3 by the 9th Circuit U.S. Court of Appeals in San Francisco. The court cited the "ineffective performance" of his trial attorney, who made no attempt to rebut the prosecution's evidence at trial. This ineffective performance, the court found, prejudiced the trial and led to his conviction.

California Gov. Pete Wilson (R), who has never granted clemency, refused to do so in this case, and denounced the