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when they lift their heads to look across [to America], hope that in this time a legitimate election shall place a virtuous person in the White House. For many years, we have read with great respect your economic treatises, and your global strategic ideas we hold in still more respect. We deeply believe that if you can enter the White House, it will truly be to America's good fortune, and also to the good fortune of all mankind. "Each generation produces a man of genius, each leads in the arts for several decades."

Washington, Lincoln, Franklin Roosevelt, and other renowned Presidents have attained fame as great men in history. The composer of this chapter of history for America and for the whole world is certainly you, Lyndon LaRouche! We solemnly congratulate you beforehand.

Win the election, honorably ascend the throne, enter the White House, and bring benefit to the whole world!

Amicus Brief to Supreme Court

'The Democratic Party is not a private club'

At the request of the Democratic National Committee, the U.S. Supreme Court on March 27 let stand a lower court ruling gutting the Voting Rights Act of 1965, affirming that the DNC is not subject to the Act, but can function as a "private club." The case was brought by Lyndon H. LaRouche, Jr. and voters from Virginia, Louisiana, Texas, and Arizona in 1996, after Donald Fowler, then DNC chairman, ordered state Democratic parties to "disregard" votes cast for LaRouche in the Presidential primaries and caucuses, without first obtaining pre-clearance by the U.S. Department of Justice, as required by the Voting Rights Act.

In its ruling, the Supreme Court ignored the following amicus curiae *(friend of the court) brief filed by former Congressman James Mann on behalf of more than 60 prominent Democratic Party officials and prominent members, who urged the court to back LaRouche's position.*

For more information on the case, see "LaRouche Takes Voting Rights Case to U.S. Supreme Court," EIR, *Feb. 18, 2000, and Lyndon H. LaRouche, Jr., "U.S.A. v. Lyndon LaRouche: He's a Bad Guy, But We Can't Say Why,"* EIR, *March 10, 2000.*

No. 99-1212
In the Supreme Court of the United States
October term, 1999

Lyndon H. LaRouche, Jr., Alex D. Promise, Charles Shaw, Delores Whitaker, Nathaniel Sawyer, Joel Dejean, Eloi Morales, and Maria Elena Leyna-Milton,

Appellants,

v.

Donald L. Fowler as Chairman, Democratic National Committee, James L. Brady as Chairman, Louisiana Democratic Party, Louisiana Democratic Party, Louisiana Democratic State Central Committee, Sue Wrenn, as Chairman Virginia Democratic Party, Kenneth Geroe, as Chair of the Virginia 2nd Congressional District Caucus, Virginia Democratic Party, William White, as Chairman Texas Democratic Party, Texas Democratic Party, Texas State Democratic Party Executive Committee, Samuel Coppersmith as Chairman Arizona Democratic Party, Arizona Democratic Party, Arizona State Democratic Party Committee,

Appellees.

BRIEF AMICUS CURIAE OF DEMOCRATIC PARTY OFFICIALS AND MEMBERS IN SUPPORT OF APPELLANTS

Interest of Amicus Curiae

Pursuant to Rule 37.3 of this Court, the appended list of Democratic Party Officials and Members respectfully submit this brief *amicus curiae* in support of Appellants.

As members and officials of the Democratic Party we have a strong interest in the outcome of this case. Throughout our nation's history, minority voters have been victims of discrimination perpetrated under many rubrics, including the employment of Democratic Party rules and procedures. As officials and members of the Democratic Party we have looked to the Voting Rights Act of 1965, as a protection from such discriminatory rubrics, even when perpetrated by officials of our own party.

This case strikes at the heart of the electoral process itself: the right to vote and the right to have that vote counted. An election has no meaning, if, either a state, or a statutorily sanctioned political party can unilaterally nullify the votes cast in that election. Contrary to the argument of the Democratic National Committee, the Democratic Party is not a mere private club, with an absolute right to exclude anyone. The Party rules at issue in this case impact the rights of candidates and voters in elections in and the Party's function as a public institution that is an integral part of the electoral machinery of every state in the nation. If our party changes its electoral rules for the presidential nominating process or for primary processes in any state, the Party should have no hesitancy in submitting those rules for preclearance under Section 5 of the Voting Rights Act. After all, it was our

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party which fought for passage of these very provisions of the Act after years of countenancing the very practices which the Voting Rights Act attacks. Section 5 stands as a bulwark against any practices which exclude minorities from the electoral process, whether formulated by the Democratic Party, the Republican Party, or any other party which is similarly situated to control the nomination of major candidates for public office, including the most important office, that of President of the United States. Accordingly, this case has substantial public interest. We believe our perspective will complement the arguments of Appellants and aid the Court in its consideration of the issues.

Summary of argument

If the history of the efforts to end discrimination in voting in the United States tells us anything, it is that, those who want to impede the right of some citizens to vote, will resort to many different stratagems and devices to accomplish that result. For nearly a century, non-white voters were presented with one roadblock after another in their efforts to exercise their right to vote. In some cases, states passed laws that banned blacks from voting in certain elections. When the federal courts outlawed such obvious violations of the Fifteenth Amendment, new methods were designed to prevent blacks from voting. One of the most successful methods was to shift the control of elections from the states, which were subject to the plain terms of the 14th and 15th Amendments, to the Democratic Party, which, it was argued, had an inalienable First Amendment right to define itself as all white. The White Primary Cases document the history of this arrogant and abusive defiance of the U.S. Constitution.

To end the seemingly endless resourcefulness through which racial discrimination was being perpetuated, Congress, after the extraordinary efforts of President Lyndon Baines Johnson, passed the Voting Rights Act in 1965. Section 5 of the Act requires that any change in voting be precleared for approval, in those jurisdictions that have had a history of discrimination. In 1996, then Democratic National Committee Chairman Donald Fowler issued an edict ordering all state Democratic Parties to disregard all votes cast for Lyndon H. LaRouche, Jr., in the Democratic Party primaries for President of the United States. Fowler's order and its subsequent implementation, was not precleared by either the Democratic National Committee, or the Democratic Parties in the covered jurisdictions of Virginia, Louisiana, Texas and Arizona. According to the pleadings and legal arguments in the court below, the state parties were coerced into implementing Chairman Fowler's edict, despite obvious non-compliance with the Voting Rights Act. The state parties were threatened that their delegations would not be seated at the Democratic National Convention if the votes of Democratic voters for LaRouche and the minority delegates pledged to him were honored. The effect of Fowler's order and its implementation was to disenfranchise minority voters in those states who voted for LaRouche or minority delegate candidates committed to him and to deny the plaintiffs in this case the right to be a candidate for office.

The district court's decision creates an obvious loophole in the Voting Rights Act, by exempting National Party rules from preclearance requirements, when the DNC has the power to coerce state parties in covered jurisdictions to implement such changes. By characterizing as a merely private matter, rules changes and actions that affect the electoral process over which the Democratic Party has complete control, the district court has taken us back to the bad old days of the Jaybird primaries of Ft. Bend County Texas.

Argument

The First Amendment does not exempt the Democratic Party from Section 5 of the Voting Rights Act.

Our Party's full support of civil rights for all citizens is a relatively recent event in our history. Few individuals who support civil rights and know their history would want to be associated with our Party's stand on these issues, prior to the Presidency of Franklin Delano Roosevelt. Even after President Roosevelt, sections of our Party continued to advocate racial separatism and inequality. This painful history includes a long chapter in which the southern Democratic Parties sought to avoid the legal and constitutional prohibitions against racial discrimination by claiming that the Democratic Party was a mere private aggregate of individuals akin to a private club. Too many Democrats, fearful of losing votes and elections, tolerated these practices.

The White Primary Cases detail how the Jaybird Democratic clubs in Texas and similar private associations were created by southern Democrats in order to pretend that the Party was not a state actor subject to the provisions of the 14th and 15th Amendments. Yet, the Democratic Party, disguised as a "private club" simultaneously controlled all the actual levers to political power. *Morse v. Republican Party of Virginia,* 517 U.S., 186, pp. 192-193, 204-205 (1996). As was noted in *Terry v. Adams,* 345 U.S. 461, 469 (1953):

> Quite evidently the Jaybird Democratic Association operates as an auxillary of the local Democratic Party organization selecting its nominees and using its machinery for carrying out an admitted design of destroying the weight and effect of Negro ballots in Fort Bend County. To be sure the Democratic Primary and the general election are nominally open to the colored elector. But his must be an empty vote cast after the real decisions are made.

It was claimed that these private Democratic clubs could exclude minorities because as private associations they had

an absolute First Amendment right to define themselves and exclude whoever they wished. This radical view of the First Amendment was fully articulated by Mr. Justice McReynolds in *Nixon v. Condon,* 286 U.S. 73, 104 (1932), where he argued that it was "essential to free government," and in no sense evil, because "white men may organize," "Blacks may do likewise," "a woman's party may exclude males." In *Grovey v. Townsend,* 295 U.S. 45 (1935), the Supreme Court fully endorsed this reasoning and allowed the White Primary system to continue. Our courts did not finally repudiate the "private club rationale until equitable ideas prevailed over artificial legal constructs in *Smith v. Allright,* 321 U.S. 649 (1944), *Terry v. Adams,* 345 U.S., 461 (1953), and Terry's predecessor, *Rice v. Elmore,* 165 F.2d 387 (4th Cir. 1947). Rice instructed the Democratic Party of South Carolina that the fundamental error in their position consisted:

> in the premise that a political party is a mere private aggregation of individuals, like a country club, and the primary is a mere piece of party machinery . . . the party may, indeed, have been a mere private aggregation of individuals in the early days of the Republic, but with the passage of years political parties have become in effect state institutions, governmental agencies through which sovereign power is exercised by the people.

It is unfortunate that our party did not fully embrace the cause of equal justice for all and with it, the idea of doing right no matter what the apparent consequences for pragmatic politics, until after the shameful episode in which the Mississippi Freedom Democratic Party was excluded from our 1964 convention. The exclusion of the Mississippi Freedom Democrats led Representative Jonathan Bingham to make absolutely clear on the Congressional Record in 1965 that in passing the Voting Rights Act, Congress fully intended to bring the electoral nominating practices of political parties under its coverage. *Morse,* 517 U.S. at 208, 236, Hearings Before the Committee on the Judiciary, H.R. 6400, March 25, 1965 pp. 456-457. As Justice Breyer stated in *Morse,* anything less than Voting Rights Act coverage of party nominating activities would "open a loophole in the statute the size of a mountain." *Morse,* 517 U.S. at 235.

In *Cousins v. Wigoda,* 419 U.S. 477 (1975), and *Democratic Party of U.S. v. Wisconsin,* 450 U.S. 107 (1981), our party argued that its rules governing the nominating process should supersede state law when state law allowed Republicans to vote in Democratic Party primaries (*Democratic Party of U.S. v. Wisconsin*) or when state law allowed a delegation to be seated at the Democratic Party convention which did not include sufficient minority participation under our Rules promoting an open party (*Cousins*). The Democratic National Committees' use of those precedents in this case seriously distorts them. Those cases do not stand for the proposition that the Democratic National Committee's Chairman may nullify minority votes in a Democratic primary election because he does not like the politics of the candidate chosen by the minority voters. Those cases also do not stand for the proposition that the First Amendment grants more protection to the institutionalized and publicly funded Democratic Party than it does to the minority and other voters who belong to that Party. In fact, the actions of Chairman Fowler against Appellants LaRouche and minority voters committed to his candidacy are directly contrary to our Party's rules calling for an Open Party and stating that discrimination on grounds of philosophical viewpoint are strictly forbidden. See e.g. 1996 Democratic Party Delegate Selection Rule 4, set forth in the Appendix to Appellants Brief.

The changes in voting and candidacy requirements in this case affect the basic process by which the President of the United States is elected. The district court's endorsement of the DNC's position that the President of the United States is nominated in purely private process, free from the results of state authorized elections and caucuses is exactly what was found unconstitutional about the Jaybird primaries in *Terry v. Allen*. There, the real election took place in the private Jaybird club rendering the state run primary election meaningless. Fowler's edict to state parties to disregard the results of state authorized primaries and caucuses, and the district court's sanction of that action, has given the Jaybirds new wings. Further, by creating a sanctuary from the Voting Rights Act in national Party rules, the district court has created a paradoxical situation. Changes in voting and candidacy requirements, such as those in this case, clearly require preclearance when implemented in covered jurisdictions. However, under the district court's ruling, the Democratic Party can evade the preclearance requirement, by promulgating those changes as national Party rules. This gives the Democratic National Committee the power to coerce state parties into violating state law and the Voting Rights Act.

Contrary to Justice McReynolds and those who would resurrect his arguments today, the gravamen of the First Amendment is the right shared by voters and candidates to speak, associate and campaign for public office, on an even playing field. *Williams v. Rhodes,* 393 U.S. 23, 30 (1968), *Anderson v. Celebreeze,* 460 U.S. 780, 787 (1987), quoting *Bullock v. Carter,* 405 U.S. 134 (1972). As then Chief Judge of the District of Columbia Circuit Court Abner Mivka has noted "[t]he government of any democracy, let alone one shaped by the values of our Constitution's first amendment, must avoid tilting the electoral playing field, lest the democracy itself become tarnished." *Fulani v. Brady,* 935 F.2d 1324, 1337 (D.C. Cir. 1991). In this case, an entrenched political party bureaucracy forgot these actual principles, essential to free government, and jeopardized one of the most essential features of the Voting Rights Act in the process: Section 5's requirement that political party rules which effect voting must be precleared.

Conclusion

Section 5 of the Voting Rights Act clearly applies to the political party rules at issue in this case and that application is constitutional. The Democratic Party Appellees arguments to the contrary are without merit and the district court's decision endorsing those arguments should be summarily reversed.

Signed

Democratic Party officials and members represented as *amicus curiae* in support of Appellants:

Syed A. Ahsani, chairman, American Muslim Alliance-Texas, Arlington, Tex.
Lee Alcorn, president, Dallas NAACP, Dallas, Tex.
Helen G. Alexander, County Democratic Committee, Frederick, Md.
James Barnett, Northwest Alabama chairman, Coalition of Black Trade Unionists, Florence, Ala.
James L. Bevel, Minister, Chicago, Ill.
Mary Borawski, Democratic State Central Committee, Frederick, Md.
Jim Boren, author, Tahlequah, Okla.
Bernard Broussard, co-founder, Louisiana Human Relations Council, Franklin, La.
Rose Broussard, co-founder, Louisiana Human Relations Council, Franklin, La.
Louis Byrd, Mayor, Lynwood, Calif.
Raphael Cassimere, Jr., professor of history, New Orleans, La.
Ben Chaney, president, James Earl Chaney Foundation, New York, N.Y.
JL Chestnut, Jr., attorney, Selma, Ala.
Angelo J. Citron, trustee, Village of Haverstraw, N.J.
William Clark, State Representative, Pritchard, Ala.
Clarence Davis, State Delegate, Baltimore, Md.
Walter Dawson, E. Baton Rouge Parish Democratic Executive Committee, Baton Rouge, La.
Max Dean, attorney, Flint, Mich.
Michael V. Dobson, State Delegate, Baltimore, Md.
John Dow, U.S. House of Representatives (ret.), Grand View, N.Y.
Mervyn M. Dymally, U.S. Congress (ret.), Los Angeles, Calif.
Floyd Fullen, State Delegate (ret.), Shinston, W.V.
Robert T. Goodwin, Sr., Housing Authority Commission, Tuskegee, Ala.
Andrew Hayden, State Representative, Uniontown, Ala.
Fred Huenefeld, Jr., Louisiana State Democratic Central Committee, Monroe, La.
Howard Hunter, State Representative, Murfreesboro, N.C.
Thomas Jackson, State Representative, Thomasville, Ala.
John D. Jefferies, State Senator (ret.), Baltimore, Md.
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Sharon McPhail, past president, National Bar Association, Detroit, Mich.
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M. Mike McNair, publisher, *Buckeye Review,* Youngstown, Ohio
Bryant Melton, State Representative, Tuscaloosa, Ala.
Sylvia L. Montenegro, Mayor, Coachella, Calif.
Noemi Lopez Morales, Mayor Pro-tem, Alvin, Tex.
Ted Moreno, Council Member, Santa Ana, Calif.
Ira Murphy, General Sessions Judge (ret.), Memphis, Tenn.
Melvin Muhammad, chairman, Nebraska Association of Public Employees, Omaha, Neb.
Joe Neal, State Senator, Las Vegas, Nev.
George Perdue, State Representative, Birmingham, Ala.
Angel L. Perez, first vice president, Community School Board #12, New York, N.Y.
Wendell Phillips, State Delegate, Baltimore, Md.
Clifton E. Reed, chairman, Education Committee, Merrimack Valley Branch, NAACP, Boston, Mass.
William Ferguson Reid, M.D., General Assembly (ret.), Richmond, Va.
Edward Roberts, Executive Council, United Teachers of New Orleans, New Orleans, La.
Amelia Boynton Robinson, civil rights activist, Tuskegee Institute, Ala.
Edward Robinson, City Council, Florence, S.C.
John W. Rogers, Jr., State Representative, Birmingham, Ala.
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